

GRANTING OF CRIMINAL SANCTIONS AGAINST CHILDREN CONSUMPTING NARCOTICS

Elche Angelina Ediwan^[1]; Budi Parmono^[2]; Moh. Muhibbin^[3].

^{[1][2][3]}Malang Islamic University

^{[1][2][3]}Jl. Cakrawala No.5, Sumbersari, Kec. Lowokwaru, Kota Malang, Jawa Timur 65145

Email: 22102021022@unisma.ac.id

** Corresponding Author*

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Abstract: This research aims to describe the regulation of Narcotics criminal acts according to positive law in Indonesia and those responsible for criminal sanctions against children who use Narcotics according to Law Number 35 of 2009 concerning Narcotics' This research is normative legal research, descriptive in nature, statutory approach, consisting of primary, secondary and tertiary legal materials. Qualitative analysis is carried out systematically in order to get answers to problems. The results of the study stated that the regulation of narcotics crimes began with Law No. 9 of 1976 which prohibited the manufacture, storage, distribution and use of narcotics. Then Law No. 22 of 1997 with a wider scope, the criminal threat is made worse in the form of the death penalty. Then Law no. 35 of 2009, prohibits possessing, storing, controlling or providing Narcotics and Narcotics Precursors; the act of producing, importing, exporting, or releasing Narcotics and Narcotics precursor; acts in the form of offering to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics and Narcotics precursors; and acts in the form of bringing, sending, transporting or transiting Narcotics and precursors. Criminal sanctions for children who use Narcotics are regulated in Law No. 3 of 1997 concerning Juvenile Courts and Law No. 35. Children who commit Narcotics crimes can be sentenced under Article 127 of Law No. 35 of 2009 in conjunction with Article 22 of Law No. 3 of 1997 amended to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Prison sentence that can be written off for Narcotics children is no longer than ½ (one half) of the maximum prison sentence for adults.

Keywords: Criminal Sanctions; Child, Consumption; Narcotics

1. INTRODUCTION

Drug abuse has encouraged illicit traffic, while drug trafficking has led to an increase in abuse that is increasingly widespread and has an international dimension.

Therefore, it is necessary to prevent and overcome drug abuse and efforts to eradicate illicit drug trafficking.

Increased supervision as an effort to prevent and eradicate the abuse and illicit traffic of narcotics is urgently needed, because narcotics crimes are generally not committed by individuals as individuals but are carried out jointly and even by syndicates that are well organized, neat and very secretive. In addition, the development of narcotics crime in quality has penetrated into human life, both adults and children. For this reason, joint efforts are needed between law enforcement officials and the community in general. Without it, it is impossible to prevent and eradicate the abuse and illicit traffic of narcotics to its full potential (Herie, 1996).

In this regard, the government has issued the Narcotics Law Number 9 of 1976, amended based on Law Number 22 of 1997, also amended based on Law Number 35 of 2009 concerning Narcotics. The government also issued a psychotropic law based on Law Number 5 of 1997 concerning Psychotropics. Then for the categorization of narcotics and the classification of psychotropics, the Minister also issued Regulation of the Minister of Health of the Republic of Indonesia Number 49 of 2018 concerning the Determination and Changes to the Classification of Psychotropics, Regulation of the Minister of Health of the Republic of Indonesia Number 23 of 2020 concerning the Determination and Classification of Psychotropics, and Regulation of the Minister of Health of the Republic of Indonesia Number 4 Year 2021 concerning Changes in the Classification of Narcotics.

2. METHODS

This research is normative legal research. The writer uses a statutory law approach, and focuses on primary legal material, namely Law Number 35 of 2014, Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 12 of 2022 concerning Sexual Violence Crime. The nature of qualitative descriptive analysis. Collection of legal materials through library research, processing of legal materials is carried out by inspection, tagging, reconstruction, and systematization.

Analysis of legal materials is carried out qualitatively and systematically to provide answers to the research problems.

3. RESULTS AND DISCUSSION

3.1. Regulation of Narcotics Crime in Indonesian Positive Law

In Indonesian positive law, what is meant by narcotics is a type of substance that can cause certain effects on those who use it, namely by injecting it into the body. The term narcotics used here is not "narcotics" in pharmacology (pharmacy), but has the same meaning as "drug", which is a type of substance which, when used, will bring certain effects and influences on the user's body, namely (Soedjono, D, 1977):

1. affect consciousness;
2. provide encouragement that can affect human behavior
3. These influences are in the form of: a. tranquilizers; b. stimulants (not sexual stimulation), c cause hallucinations (the wearer is unable to distinguish between fantasy and reality, loses awareness of time and place.)

Initially, the use of narcotic substances was intended for the benefit of mankind, especially in the field of medicine. However, in the rapid development of the drug industry, the categories of types of narcotic substances are increasingly expanding, as in the annex to the Narcotics Law and Minister of Health Regulations, most recently Regulation of the Minister of Health of the Republic of Indonesia Number 4 of 2021 concerning Changes in the Classification of Narcotics.

Narcotics abuse is a criminal act as stated in Law no. 35 of 2009 concerning Narcotics. This law is a revision of the previous Narcotics Law, namely, Law no. 22 of 1997, aims to ensure the availability of narcotics for the benefit of health services and/or the development of science and technology; prevent, protect, and save the Indonesian people from abuse of Narcotics; eradicate the illicit traffic of narcotics and Narcotics Precursor; as well as ensuring the regulation of medical and social rehabilitation efforts for Narcotics abusers and addicts. In this Narcotics Law, material

has been added that was not regulated in the old Law, both regarding Narcotics, as well as regarding institutions authorized to prevent drug abuse.

Perpetrators of drug abuse in Law Number 35 of 2009 are divided into two, namely: perpetrators of criminal acts who have status as users (Articles 84 and 85) and not as drug users (Articles 78, 79, 80, 81, and 82). Narcotics users can be further divided into two, namely: users to give to others (Article 84) and users for themselves (Article 85).

Narcotics users for themselves are the use of narcotics carried out by someone without going through the supervision of a doctor. If the person concerned suffers from addiction, he must undergo rehabilitation, both medically and socially, and his treatment and rehabilitation period will be counted as a period of serving his sentence.

Perpetrators of narcotics crimes who are not users are further classified into four, namely: owners (Articles 78 and 79), processors (Article 80), carriers and/or deliverers (Article 81), and dealers (Article 82). What is meant by owner is a person who plants, maintains, owns, owns, stores, or controls without rights and against the law.

The criminal provisions contained in Law no. 35 of 2009 is formulated in Article 111 to Article 148. In Law no. 35 of 2009 there are four categories of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely (Sunarso, Environmental Criminal Law and Dispute Resolution Strategy, 2005):

- a. The first category, acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a));
- b. The second category, acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for narcotics class I, Article 118 for narcotics class II, and Article 123 for narcotics group III and Article 129 letter (b));
- c. The third category, acts in the form of offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119

and Article 121 for class narcotics II, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));

- d. The fourth category, acts in the form of carrying, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics group III and Article 129 letter (d)). Law No. 35 of 2009 concerning Narcotics has regulated the types of sanctions given to narcotics crimes.

Regarding criminal sanctions, Law Number 35 of 2009 also regulates criminal sanctions for perpetrators of abuse and illicit traffic of Narcotics and Narcotics Precursors, particularly regarding aggravation of criminal sanctions, both in the form of a special minimum sentence, imprisonment of 20 (twenty) years , life imprisonment, or death penalty. The criminal weighting is carried out based on the class, type, size, and amount of Narcotics.

3.2. Sanctions for Children Using Narcotics in Law Number 35 of 2009

In order to have a psychological effect on the public so that they do not commit narcotics crimes, it is necessary to stipulate a heavier, minimum and maximum criminal threat, bearing in mind the level of danger caused by the abuse and distribution of narcotics seriously threatens national security.

Actors or legal subjects who can be convicted of narcotics abuse cases are individuals (individuals) and corporations (legal entities). The types of punishment that can be imposed on the second perpetrator of narcotics abuse are imprisonment, life imprisonment, up to death penalty, which cumulatively is added to fines. Narcotics crimes in the Indonesian legal system are qualified as crimes. This is because narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, destroys life and the future, especially the younger generation and in turn can then threaten the existence of this nation and state.

Children in the Convention on the Right of the Child (CRC) are: "Child means every human being under the age of 18, unless according to the law that applies to children, maturity is reached earlier". In Law Number 35 Years 2014, Amendments to

Law Number 23 of 2002 concerning Child Protection states: A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

According to Moeljatno, in order to have the ability to be responsible for one's criminal acts, one must have the ability to distinguish between good and bad actions, according to the law and those that are against the law, and the ability to determine one's will according to one's convictions about the good and bad of an action. The first requirement is the factor of reason, which is being able to distinguish between actions that are permissible and not; The second requirement is the feeling or will factor, namely being able to adjust one's behavior with the awareness of what is permissible or not.

Marlina stated that by fulfilling the conditions for criminal responsibility to a child who has committed a crime, this means that the child can be subject to punishment, but the punishment of a child should pay attention to the development of a child. This is due to the fact that children cannot / lack of thinking and lack of consideration for the actions they do.

The provision of criminal responsibility for children must consider the development and best interests of the child in the future. Incorrect handling causes damage and even destruction of the nation in the future, because children are the next generation of the nation and the aspirations of the nation. According to Setya Wayhudi, the imposition of sanctions on children, in this case what needs to be considered is as follows:

- a. whether the sanction actually prevent the crime from happening;
- b. whether the sanction does not result in a more detrimental situation for the child (*stigmatization*), than if the sanction is not imposed;
- c. whether there are no other sanctions that can prevent effectively with smaller losses.

The policy of imposing criminal penalties on children who are in conflict with the law shows a tendency to be detrimental to the development of the child's soul in the future. This detrimental tendency is due to the involvement of children in the juvenile justice process, and can be caused by the effects of criminal imposition in the form of

stigma. Negative effects for children due to the involvement of children in the criminal justice process can be in the form of physical and emotional suffering such as fear, anxiety, sleep disturbances, appetite disorders and mental disorders. As a result of all this, the child becomes restless, tense, loses emotional control, cries, trembles, is embarrassed and so on. The occurrence of this negative effect is caused by the criminal justice process, both before the trial, during the examination of the case, and the negative effects of the involvement of children in the examination of criminal cases.

Law Number 11 of 2012 concerning the Juvenile Justice System and Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 concerning Child Protection have accommodated child protection and provided space for judges to apply these laws in making decisions on crimes what children do, the role of the judge is so dominant." Satjipto Rahardjo in a discussion argued that, judges must not only hide behind the law, he must appear in totality including with conscience. Laws, laws are just paper with general and abstract writing. In the hands of the judges, he becomes living justice."

It must be remembered, the rigidity and formality of the criminal justice process is a separate burden for a child that must be considered in making a decision. The child of the perpetrator of the crime may not be sentenced to a sentence because the imposition of a sentence is a deprivation of independence for a child who commits a crime must be carried out by a judge as an ultimum remedium (last resort), and only for the benefit of the child. However prison is not a good place for children. On the other hand, judges must pay attention to the balance and demands of justice from the people affected by crime. Forced efforts (detention, deprivation of certain rights) if it does not interfere with the criminal justice process should not be carried out.

Based on the complexity of tackling narcotics abuse committed by children through the application of criminal sanctions, it is appropriate to pay attention to the negative impact it has, which will become a guarantor for the protection of children's basic rights, if the policy orientation is aimed at protecting the interests of the child. On the other hand, it will become a complicated social problem if the policy ends up giving birth to a downturn in children (Adi, 2009)

In particular, the provisions governing juvenile criminal law issues are stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The law on the juvenile justice system was enacted, among other things, to maintain their dignity, children are entitled to special protection, especially legal protection in the justice system, with the principle of legal protection for children, the state has an obligation to provide special protection for children who are in conflict with the law. and the state has not comprehensively provided protection to children who are in conflict with the law.

It is recognized that although child delinquency is an anti-social act that can unsettle the community, it is also recognized as a general phenomenon that must be accepted as a social fact. Therefore, the treatment of naughty children should be different from the treatment of adults. Children who commit delinquency based on physical, mental and social development have a weak position compared to adults, so they need to be handled specifically. Naughty children need to be protected from actions that can hinder their development, so that in handling them it is necessary to make a special juvenile criminal law, both regarding material criminal law, formal criminal law, and criminal law enforcement (Adi, 2009).

Previously Article 23 of Law Number 3 of 1997 concerning Juvenile Courts stated that the crimes that could be imposed on children were:

1. Main crime, which includes: a. Prison sentence; b. Criminal Cage: V; c. Fines; d. Supervisory crime;
2. Additional punishment, can be in the form of: a. Confiscation of certain goods; b. Compensation payment.

However, after the issuance of Law Number 11 of 2012, diversion is a step that is highly recommended. According to Article 6 of Law Number 11 of 2012, diversion aims to:

- a. achieve peace between the victim and the child;
- b. resolve cases of children outside the judicial process;
- c. prevent children from deprivation of independence;
- d. encourage people to participate; And

- e. instill a sense of responsibility to children.

Thus it can be said that the imposition of punishment on children who are in conflict with the law according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is something that is highly avoided.

The narcotics law does not specifically regulate the system of sanctions for children. Although, in the narcotics law there are also several exception articles that specifically apply to those who are not old enough. So that the application of the sanctions system in the narcotics law against children must also be enforced by the Juvenile Court Act as special provisions apply to children. This is a consequence of the existence of the principle of *Lex specialis derogat legi generalis* (laws that are specific (lex specialis) overrule general laws (lex generalis)) (Purbacaraka & Soekanto, 1979).

4. CONCLUSIONS

- a. The regulation of narcotics crimes began with the issuance of Law No. 9 of 1976 which prohibited the manufacture, storage, distribution and use of narcotics. Then came Law No. 22 of 1997 concerning Narcotics which has a wider scope both in terms of norms, scope of material, as well as aggravating criminal threats in the form of the death penalty. Subsequently, Law No. 35 of 2009, in this law there are four categorizations of unlawful acts that are prohibited by law and can be punishable by criminal sanctions, namely: acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors; acts in the form of producing, importing, exporting, or distributing narcotics and narcotics precursors; acts in the form of offering to be sold, selling, buying, receiving, intermediary in buying and selling, exchanging, or handing over narcotics and narcotics precursors; and acts in the form of carrying, sending, transporting or transiting narcotics and precursors..
- b. Provisions for criminal sanctions against children who use narcotics are based on Law No. 3 of 1997 concerning Juvenile Courts and Law No. 35 of 2009. These two laws do not provide exceptions for children as perpetrators. Children who commit narcotics crimes can be sentenced under the provisions of Article 127 of

Law No. 35 of 2009 in conjunction with Article 22 of Law No. 3 of 1997 amended into Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Imprisonment that can be imposed on children who violate the provisions of laws and regulations in this case narcotics is a maximum of ½ (one half) of the maximum threat of imprisonment for adults.

5. SUGGESTION

- a. To all components of the nation to be able to help prevent the distribution and abuse of Narcotics because Narcotics are very dangerous, including children as the next generation of the nation.
- b. Narcotics abuse is not only the responsibility of law enforcers, but also the responsibility of all of us as components of the nation. Therefore it is necessary to socialize to the community about the parties responsible for narcotics abuse.

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