



Criminal Liability of Juvenile Narcotics Users

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Abstract

In practice, the juvenile justice system is deemed unable to provide protection and justice for children's rights so that a restorative justice approach is needed so that the law can be used to realize predictive and anticipatory protection. This approach needs to be put forward as an effort to prevent and overcome criminal acts committed by children as victims of narcotics abuse caused by persuasion and threats by adults. This problem focuses on the factors that cause children to abuse narcotics in the juvenile delinquency category to analyze the form of legal protection against the accountability of children who abuse narcotics in Indonesia. The results of the research prove that the criminal regulation against children who abuse narcotics juridically through the Narcotics Law tends to emphasize the aspects of imprisonment rather than protection of the best interests of the child which is inconsistent with the purpose of establishing the Narcotics Law. Therefore, the criminal responsibility for children who abuse narcotics should emphasize medical and social rehabilitation measures.

Keywords: *Restorative Justice; Child Criminal Liability; Rehabilitation*

A. Introduction

The development of globalization in the field of information and telecommunications, advances in science and technology, as well as changes in the style and way of life of some parents are factors outside of the child's self as the cause of behavior deviations or unlawful acts by children. In the case of narcotics abuse, it has been shown that the number of children in conflict with the law is increasing.¹ Placement of children in prison and stigmatization of children's position as prisoners require alternative solutions in providing legal protection for children.²

Law can be functioned to realize protection that is not only adaptive and flexible but predictive and anticipatory.³ Child protection, among others, can be formulated as a joint effort to protect children to

¹ Alfitra, *Hukum Acara Peradilan Anak dalam Teori dan Praktek di Indonesia*, (Jawa Timur: Wade Group Nations Publisher, 2019), hlm. 2.

² Rahayu S. "Diversi sebagai Alternatif Penyelesaian Sengketa Perkara Tindak Pidana yang Dilakukan Anak dalam Perspektif Sistem Peradilan Pidana Anak", (*Jurnal Ilmu Hukum*), hlm. 128

³ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2010) hlm. 55.

carry out their rights and obligations in a humane and positive manner.⁴ Based on Law Number 23 of 2002 concerning Child Protection in Article 1 paragraph (2) it is defined that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and receive protection from violence without discrimination.

Implementation of the juvenile criminal justice system is an effort to prevent and overcome criminal acts committed by children. This system aims to impose criminal sanctions as a means of supporting the realization of the welfare of children who are perpetrators of criminal acts.⁵ In practice, the juvenile criminal justice system is considered unable to provide protection and a sense of justice for children, even children's rights are often neglected because children are often positioned as objects of harm.⁶

Based on Law Number 11 of 2012 concerning the Juvenile Justice System, it has mandated the application of diversion which emphasizes the role of law enforcement officers in the process of handling child criminal cases by prioritizing child protection through a restorative justice approach. According to Umbreit, restorative justice is said to be "a victim-centered response to crime that allows the victims, the offender, their families and representatives of the community to address the harm caused by the crime." Umbreit views restorative justice as a response to victim-centered crime by allowing victims, criminals, their families and community representatives to repair the damage caused by the crime.⁷

Drug abuse among children has become a global problem. The United Nations Office on Drugs and Crime (UNODC) in the World Drug Reports 2018 found 5.6 percent of the world's population or 275 people in the age range of 15 to 64 years had consumed narcotics, at least once.⁸ In Indonesia, according to the National Narcotics Agency (BNN) in 2018, the prevalence of narcotics abuse among students in 13 provincial capitals in Indonesia was 3.2 percent or 2.29 million people, an increase compared to 2017 which was 1.77 percent or as many as 3.37 people in the age range 10-59 years.⁹ According to the Indonesian Child Protection Commission (KPAI) in 2018, out of 87 million children in Indonesia, 5.9 million children with a maximum age of 18 years have consumed narcotics. Of the 2,218 cases of children, KPAI noted 15.9 percent were cases of narcotics addicts, while 8.1 percent were cases of children as narcotics dealers.¹⁰

Children's behavior that makes them have to deal with the law can be divided into two categories, namely: offender status and juvenile delinquency. In offender status category as child delinquency behavior committed by adults is not considered a crime, while the category of juvenile delinquency as juvenile delinquency behavior by adults is considered a crime or a violation of the law.¹¹

Child delinquency behavior by juvenile delinquency category one of which was found in the case of Mella Aprialiani, aged 17 years and 10 months, who was caught red-handed by the North Jakarta Cilincing Police in 2018 with evidence of 0.16 grams of methamphetamine. The abuse of narcotics by the

⁴ Arif Gosita, "Aspek Hukum Perlindungan Anak dan Konvensi Hak-Hak Anak", (*Jurnal Ilmu Hukum*, Nomor 4 Tahun V, April 1999), hlm. 264-265.

⁵ Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Anak di Indonesia*, (Yogyakarta: Genta Publishing, 2011), hlm. 1.

⁶ Ismawati S. "Mekanisme Penyelesaian Perkara Anak yang Berhadapan dengan Hukum pada Masyarakat Dayak Kanayan", (*Jurnal Dinamika Hukum*, Volume 3 Nomor 2, 2013), hlm. 197.

⁷ Mark M. Lanier & Stuart Henry. *Essential Criminology*, (USA: Wastview Colorado, 2004), hlm. 367.

⁸ Survei BNN: 2,3 Juta Pelajar Konsumsi Narkoba, received from <https://www.cnnindonesia.com/nasional/20190622182557-20-405549/survei-bnn-23-juta-pelajar-konsumsi-narkoba> on 1 Desember 2019.

⁹ BNN Sebut Penyalahgunaan dan Peredaran Narkotika Semakin Meningkat, received from <https://nasional.kompas.com/read/2019/06/26/11421691/bnn-sebut-penyalahgunaan-dan-peredaran-narkotika-semakin-meningkat> on 1 Desember 2019.

¹⁰ 5,9 Juta Anak Indonesia Jadi Pecandu Narkotika, received from <https://nasional.okezone.com/read/2018/03/06/337/1868702/5-9-juta-anak-indonesia-jadi-pecandu-narkoba> on 1 Desember 2019.

¹¹ Setya Wahyudi, *Op.Cit*, hlm. 15.

child occurred due to persuasion and threats made by another suspect named Dayat who was an adult. As a result of this unlawful act, Mella Aprialini may be subject to criminal threats in Article 112 paragraph (1) Sub-Article 132 paragraph (1) Sub-Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics.

Based on the description above, this study will explore the criminal responsibility of children who abuse narcotics, analyze the factors that cause children to abuse narcotics in narcotics abuse cases with a child suspect named Mella Aprialiani included in the category juvenile delinquency considered unlawful, to be analyzed related to the form of legal protection for children who abuse narcotics in Indonesia.

B. Research Methods

This research belonged to the type of normative legal research by focusing on the analysis of criminal liability of children who abuse narcotics seen from the causal factors of juvenile delinquency in the category juvenile delinquency in order to find the ideal form of legal protection for children who abuse narcotics in Indonesia. Normative legal research is the study of primary and secondary legal materials by determining legal issues (legal issues) as an orientation to the problem under study.¹² Data collection was carried out using library research techniques to be processed through the following stages: editing, classifying, analyzing, and concluding.¹³ The analysis used a qualitative descriptive method to find answers to the formulation of the problem in this study.

C. Discussion

1. Criminal Liability of Child Narcotics Abusers According to Positive Legal Provisions in Indonesia

Criminal liability is something that is criminally responsible for someone who commits a criminal act or criminal act, but it must be clear first who can be accounted for, it must first be confirmed who is declared the maker of a crime.¹⁴ Criminal liability contains the principle of error (culpability) in monodualistic equilibrium. That is, errors based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty.¹⁵ In other words, criminal liability arises after a crime has been committed by the person concerned.¹⁶

Based on the theory of criminal responsibility through the concept of restorative justice, it is reflected in the case of narcotics abuse of class I type of methamphetamine involving the perpetrator of a crime, namely a 17 (seventeen) year old Mella Aprialiani. In the criminal responsibility of children who abuse narcotics, the North Jakarta Cilincing Police must ensure who can be accounted for as the maker of a crime. Through an Arrest, Search and Confiscation Warrant as a follow-up to a public report related to narcotics transactions by Mella Aprialiani who admitted to possessing class I narcotics of the type of methamphetamine without a valid permit from the competent government agency. After the arrest, an examination is then carried out in completing the examination file for the criminal act of narcotics abuse.

From the results of the examination, it was known that the suspect, Mella Aprialiani, was 17 (seventeen) years old with the last education of junior high school, and worked in a cafe. Examination of

¹² Bahder Johar Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2016), hlm. 97-98.

¹³ Bambang Waluyo, *Penelitian Hukum dalam Praktek*, (Jakarta: Sinar Grafika, 2006), hlm. 73.

¹⁴ Roeslan Saleh, *Op.Cit.*, hlm. 80.

¹⁵ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, (Bandung: PT Citra Aditya Bakti, 2003), hlm. 23.

¹⁶ Chairul Huda, *Dari 'Tiada Pidana Tanpa Kesalahan' Menuju Kepada 'Tiada Pertanggungjawaban Pidana Tanpa Kesalahan'*, (Jakarta: Prenada Media Group, 2011), hlm. 70.

a child suspect is carried out on the basis of the arrest of a suspect who possesses, controls narcotics type methamphetamine without rights or against the law and is threatened with violating the criminal provisions in Article 112 paragraph (1) Sub-Article 132 paragraph (1) Sub-Article 127 paragraph (1) letter a Narcotics Act. For criminal liability, based on the testimony of witnesses, confessions from the defendant, the testimony of expert witnesses, and the results of the BNN Laboratory, the elements of the article on narcotics abuse against the suspect can be fulfilled. Then, the Cilincing Sector Police placed the suspect in the Cilincing Police Detention Center for 7 (seven) days.

Judging from the provisions stipulated in Article 112 and Article 127 of the Narcotics Law, there are multiple interpretations or ambiguities in its application. The multiple interpretations and ambiguities contained in Article 112 are widely used to ensnare narcotics criminals, while Article 127 is often applied to victims of narcotics abusers which clearly states that it is specifically for narcotics abusers. If you read and analyze the elements of Article 112, Narcotics abusers should also be subject to sanctions using Article 112. Narcotics abusers in Article 1 number 15 are stated, "people who use Narcotics without rights or against the law".

Based on a restorative justice approach to the perpetrators of the crime of narcotics abuse with the suspect Mella Aprilliani was categorized as a Child in Conflict with the Law so that in the investigation process, the Police issued a Detention Order to the Lido Rehabilitation Center for rehabilitation of the suspect. The results of the Lido Rehabilitation Center's examination on physical examination and urinalization were in good condition and there were signs of narcotics use. From the results of the assessment, the suspect is in the Trial-to-Use category and requires rehabilitation services.

In order to obtain valid and relevant information as material for consideration of the conduct of the trial where the suspect Mella Aprilliani is a Child in Conflict with the Law, it is necessary to apply the provisions stipulated in the Law on the Juvenile Criminal Justice System and other laws and regulations, so that during the investigation process, the Police submit an application for Community Research to reveal and find sociological, psychological, economic and other aspects related to the case of narcotics abuse by the suspect. At the investigation level, the diversion process has not been carried out.

The results of the Community Research revealed the background and factors that caused the suspect Mella Aprilliani to commit a narcotic crime because she was often invited and threatened when she refused an invitation to consume methamphetamine by her uncle. Recommendations issued so that the suspect gets social rehabilitation.

From the narcotics abuse case, it can be seen that the criminal responsibility of narcotics abuse which can be ascertained is that the perpetrator of a criminal act is the maker of a criminal act, as evidenced by the existence of evidence that is controlled, owned by the perpetrator of a criminal act in the form of narcotics of methamphetamine, without rights and against the law, has violated the crime that has been committed which fulfilled the elements of Article 112 paragraph (1) Sub-Article 132 paragraph (1) Sub-Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics, so that perpetrators of criminal acts of narcotics abuse are detained by the Police. Law enforcement officers should be able to pay attention to the rights of children in the prosecution process, including setting a child's detention period only from the point of the urgency of examination, making indictments that the child understands, immediately transferring the case to the Court or conducting rehabilitation.

In the criminal justice system, there are at least three stages in the trial process, namely the pre-trial stage, the trial process, and the post-trial stage. At the pre-trial stage, coercion is the most vulnerable part of torture and violations of the rights of children who abuse narcotics. In the early stages of an arrest, the police must seek diversion or refer a child who uses narcotics to a rehabilitation center. Arrest, detention, and imprisonment of children must be a last resort when all alternative solutions have been carried out. As much as possible during the trial, the child remains with his family at home under the

supervision of law enforcement officials. To prevent children from being detained, during the trial process the child is also entitled to a suspension of detention.

As a result of the detention actions carried out by the Police against the perpetrators of criminal acts, from the results of the examination, it is known that the perpetrators of criminal acts of narcotics abuse are Children in Conflict with the Law, while in detention, the perpetrator is in a sick condition and requires treatment so that the Police issued an order for the detention to be directed at Lido Rehabilitation Center and it is known that the child perpetrator is a narcotics abuser in the category of Try-Users and thus requires rehabilitation services. In order to obtain valid and relevant information in the conduct of the trial under the provisions of the Juvenile Criminal Justice System Act, then the results from the Social Advisor were obtained so that child perpetrators of narcotics abuse received social rehabilitation at the LPKS Panti Sosial Marsudi Putra Handayani in Cipayang, East Jakarta.

Thus the criminal responsibility of children who abuse narcotics according to the provisions of positive law in Indonesia is based on the Narcotics Law, and against children in conflict with the law in the conduct of the trial in accordance with the provisions of the Law on the Juvenile Criminal Justice System, valid and relevant information is needed for sociological aspects, psychological, economic and others so that the provisions in the criminal system are in line with Barda Nawawi Arief's opinion, including all the provisions of the legislation governing how the criminal law is enforced or operationalized concretely so that a person is subject to criminal sanctions.¹⁷

In the explanation of the Law on the Juvenile Criminal Justice System, it is stated that sanctions against children who have reached the age of 12 (twelve) years to 18 (eighteen) years can be subject to action and punishment. The formulation of criminal sanctions and sanctions for this action has adhered to double track system, even though the Criminal Code adheres to single track system which only regulates criminal sanctions. According to J.E Jonkers, criminal sanctions are focused on the punishment applied for the crime committed, while the action sanction has a social purpose.¹⁸

2. Factors Causing Children Abusing Narcotics

Narcotics abuse is a form of abuse that is used continuously for a period of at least one month so that it has a negative impact on the social or work environment in the family, school, work environment and community.¹⁹ Narcotics abusers can be grouped into three types of dependence, namely primary, symptomatic, and reactive.²⁰ These factors lead to narcotics abuse which can have a negative impact on children and adolescents in primary and secondary education.²¹

In the case of a child who abuses narcotics with the suspect named Mella Aprilliani, 17 (seventeen) years old, only studied up to SMK Class I and did not continue school because she wanted to work. Narcotics abuse is known from public reports of narcotics transactions and the suspect is caught red-handed by police officers. From the results of the arrest and search, it has been acknowledged that the suspect has possession of narcotics of the type of methamphetamine. The methamphetamine-type narcotics were obtained from the suspect's uncle who persuaded and threatened the suspect if he refused to consume the methamphetamine-type narcotics obtained in a joint venture to buy 1 (one) package of methamphetamine-type narcotics.

¹⁷ Barda Nawawi Arief, *Op.Cit*, hlm. 129.

¹⁸ J.E Jonkers, *Buku Pedoman Hukum Pidana Hindia Belanda*, (Jakarta: Bina Aksara, 1987), hlm. 350.

¹⁹ Basuki Veronika Tarigan. "Faktor-Faktor yang Mempengaruhi Penyalahgunaan Narkotika di Kalangan Murid SMU Negeri Jakarta Timur", (*Tesis*), (Jakarta: Universitas Indonesia, 2016), hlm. 63.

²⁰ Dadang Hawari. *Penyalahgunaan dan Ketergantungan NAZA (Narkotika, Alkohol, dan Zat Adiktif)*, (Jakarta: Penerbit FKUI, 2006), hlm. 82.

²¹ Sujono, AR dan Bony Daniel. *Komentar dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, (Jakarta: Sinar Grafika, 2013), hlm. 7.

The presence of an invitation or persuasion from the suspect's uncle and the effects felt after consuming narcotics felt by the suspect can make the body feel fresh and not sleepy when staying up late accompanying café guests, making the suspect addicted. It is known from the suspect's confession that he has consumed narcotics and alcoholic beverages since the suspect lived with his grandmother because of the influence of his uncle without thinking about the consequences.

From the case of the child who abused narcotics, it could be seen that he had consumed methamphetamine for more than a month and felt the effects of consuming the narcotics then appeared reactive addiction. According to Dadang Hawari, reactive dependence is a type of dependence that occurs in teenagers due to persuasion or solicitation, traps and pressure or being threatened with intimidation if they refuse to consume methamphetamine. This dependence is caused by the encouragement of individual factors, socio-cultural and narcotics itself.²²

On the individual factor, he was mentally weak due to an invitation from his uncle to consume narcotics of methamphetamine type because he felt afraid of threats from his uncle if he refused to consume narcotics of methamphetamine. The socio-cultural factor is caused by a lack of attention, guidance and supervision from both parents to the suspect who has lived with his grandmother since Class I Junior High School. On the narcotics factor itself, it is due to the ease with which narcotics are obtained by means of a joint venture of one hundred and fifty thousand rupiah, already able to consume methamphetamine with his uncle.

3. Legal Protection for Children Abusing Narcotics

Legal protection for children who abuse narcotics is one way to protect the nation in the future. This legal protection relates to all applicable legal rules where children are part of a society that has physical and mental limitations that require special protection.²³ Child protection activities have legal consequences, both in relation to written and unwritten laws.²⁴

The provisions of the Narcotics Law in handling children who use narcotics in criminal acts in the form of possession, possession or sale and purchase of narcotics are threatened with imprisonment for 12 (twelve) years so that children cannot seek diversion which results in the loss of opportunities for children who use narcotics to get diversion. The Narcotics Law does not specifically regulate sanctions for children involved in narcotics abuse, but instead regulates sanctions for children as victims of a narcotics crime, namely narcotics crimes related to victims of narcotics abuse.

In formulating the enactment of sanctions in the Narcotics Law, law enforcement must also apply the Juvenile Criminal Justice System Act as a special provision that is applied to children, so this is where the principle applies. *lex specialis derogate legi generalis*.

In the case of a child who abuses narcotics with the suspect Mella Aprilliani after being arrested for possession and possession of narcotics by the Police, then after an examination, they have fulfilled the elements of the article on the crime of narcotics abuse in Article 112 paragraph (1) Sub-Article 132 paragraph (1) Sub-Article 127 paragraph (1) letter a of Law Number Narcotics, the Police shall place a suspect child of a narcotics abuser in the Cilincing Sector Police Office for 7 (seven) days. During the detention period, based on a doctor's certificate, it was explained that the suspect needed hospitalization (hospitalization) so that the Police have suspended detention for treatment of the suspect to the Narcotics Rehabilitation Center of the National Narcotics Agency at the Lido Rehabilitation Center.

²² Dadang Hawari. *Op.Cit*, hlm. 82.

²³ Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, (Jakarta: PT Refika Aditama, 2012), hlm. 33.

²⁴ Maidin Gultom, *Op.Cit*, hlm. 41.

Then the Police at the investigation stage there is no diversion process yet, making a request for Community Research in order to obtain valid and relevant information on children who abuse narcotics as material for consideration in the implementation of juvenile justice trials as regulated in the provisions of the Juvenile Justice System Act and other laws and regulations. The Community Advisor gives consideration that the child who abuses narcotics should be given social rehabilitation.

This illustrates that legal protection for child narcotics abusers is juridical, the essence of the provisions of the Narcotics Law cannot provide protection for children who abuse narcotics and is not in line with the purpose of enacting the Narcotics Law in order to prevent, protect and save the Indonesian nation from Narcotics abuse, seen from the case of a child narcotics abuser with the suspect Mella Aprilliani where the Police have placed a suspected child narcotics abuser in the Cilincing Police Detention Center based on the fulfillment of the criminal elements of the article suspected of the suspect, and during the detention period it has had a bad impact on the health of suspected child narcotics abusers who require (hospitalization). The Narcotics Law does not provide exceptions to child offenders.

The ability of children who are still limited and not as perfect as adults must be considered by law enforcement officers, especially in the case of Mella Aprilliani, the Police should apply punishment to children who are perpetrators of narcotics crimes, with the issuance of the Law on the Juvenile Criminal Justice System which is more fostering and protecting against the child of a criminal. If you look at the child's age limit, it has been regulated in the Child Protection Act, it is stated that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. In the Criminal Code Article 45 and Article 72 paragraph (1), it is explained that the age limit for a person who is not yet an adult is before the age of 16 years.

One of the principles of restorative justice is realized through intervention outside the court or often referred to as diversion. The implementation of this diversion aims to avoid stigma against children in conflict with the law so that later children in conflict with the law will not have a criminal record. This will then have an impact on the growth and development of children's life's. The best interest of the child is one of the four main principles in implementing Article 3, paragraph 1 of the Convention on the Rights of the Child. The state must make the best interests of children the main consideration in deciding policies, laws, court decisions, and other government actions related to children.

Conclusion

The dominant factor that causes children to abuse narcotics is driven by individual, socio-cultural factors and the narcotics themselves are related to the sociological and psychological conditions of children who abuse narcotics who have limitations on physical and psychological abilities, especially mental weakness when a child or teenager is coaxed either by force by adults. The limitations that the child has have resulted in the addictive effect of narcotics being easily obtained by buying a joint venture. In addition, the actions of children abusing narcotics are caused by a lack of parental attention, guidance and supervision so that children seek pleasure in their own way. Consuming narcotics can have an impact on the behavior of children skipping school and dropping out of school by choosing to work in order to earn money to buy narcotics.

The form of legal protection for children who abuse narcotics in Indonesia adheres to double-track system based on the juridical protection of children, it still causes injustice in the handling of children who are in conflict with the law from the level of examination of the condition of children who abuse narcotics placed in the State Prison House which has a negative impact on the health condition of the child. The recommended suggestion from this research is that criminal responsibility is more emphasized on people who have persuaded children to abuse narcotics so that law enforcement officers can emphasize the protection of children from a non-judicial perspective where children have a weak

mentality when persuaded by people who are categorized as adults to consume narcotics. Therefore, protection for children who are in conflict with the law in narcotics abuse cases should be emphasized more on medical and social rehabilitation measures.

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