

## CRIMINAL STELSEL IN NARCOTICS CRIMES FOR CHILD ACTORS

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**Abstract:** *This study aims to find out and understand about Criminal Stelsel in Narcotics Crimes for Child Actors as well as to know and analyze Criminal Applications Against Narcotics Abusing Children. The research method used is normative juridical research method, with the approach of Legislation, Conceptual Approach, and Case Approach. The results of the study show that: First, criminal Stelsel against child perpetrators in Narcotics crimes that can be imposed by Judges is not limited to the threat of imprisonment as stipulated in Article 127 of Law No. 35 of 2009 concerning Narcotics, but judges also in imposing sanctions on their decisions must be guided as stipulated in Article 71 of Act No.11 of 2012 concerning the Criminal Justice System of Children which formulates that children who have not reached the age of 14 (fourteen) years only can be subject to action and for children who have reached the age of 12 (twelve) years up to 18 (eighteen) years can be punished and criminal. Second, the Judge in imposing a verdict on the child perpetrators of narcotics users tend to use juridical considerations compared to non-juridical ones. This is seen in 3 (Three) Mataram District Court Decisions and only 1 (one) Decision of the District Court that applies Diversity in the form of rehabilitation for children. Juridical considerations alone are not enough to determine the value of justice in prosecuting minors, without being supported by sociological, psychological, and criminological non-juridical considerations.*

**Keywords:** *criminal stelsel, judge's decision*

### I. INTRODUCTION

Children as one of the human resources and the next generation of the nation should get special attention, both from parents, community and government. It aims to foster children to realize strong and quality human resources, and the interests of children must be used as a basis for guidance by those who are responsible for the education and guidance of the child concerned, and of course the main holder of that responsibility is parents.<sup>1</sup>

<sup>1</sup> Abdul Hakim Garuda Nusantara, "Prospek Perlindungan Anak," dalam *Hukum Dan Hak-Hak Anak*, ed. Mulyana W. Kusumah, Rajawali dan Yayasan Lembaga Bantuan Hukum Indonesia, Jakarta, 1986. p. 19.

Appropriate compassion, protection, coaching and direction are the most basic psychological needs in the life and life of a child that actually rests on the conscience of parents. In reality many parents are not aware of this, which affects the development of children's lives. Children who are raised in an atmosphere of conflict tend to experience mental anxiety that can encourage children to do negative actions, which are categorized as child delinquency. Delinquency caused, can even lead to acts against the law. Examples are drug abuse.

Drug abuse in Indonesia is a problem that began to arise since  $\pm$  26 years ago. This problem is getting bigger and wider so that it is finally a national problem which in its response needs to get the attention of all parties. Based on research and observations from various parties, most of those who abuse drugs are mostly young people (children). The survey conducted by the National Narcotics Agency there are 8% (eight percent) of children aged 12-19 years have tried narcotics. One in four children who have tried narcotics I say they continue to use or become addicts.<sup>2</sup>

According to Article 1 number 15 of Law Number 35 of 2009 concerning Narcotics, it is stated that narcotics abusers are people who use narcotics without rights or against the law. Based on these provisions, the definition of drug abuse is the use of narcotics without rights or against the law.

A child, who commits or is suspected of committing a crime such as narcotics abuse, is in dire need of legal protection. The issue of legal protection for children is one way to protect the nation's shoots in the future. Legal protection for children involves all applicable legal rules. This protection is necessary, because children are part of society that has physical and mental limitations; therefore children need special protection, care and handling.

One effort that can be done to prevent the increase of criminal acts committed by children is the implementation of criminal law sanctions for children who commit crimes or sentences. Criminal imposition is also related to criminal Stelsel, criminal Stelsel is a part of penitentiary law which contains the type of criminal, criminal imposition limits, the way of imposing the crime, the way and where to do it, as well as the reduction, addition and exclusion of criminal imprisonment.<sup>3</sup>

The number of cases that have reached court related to children as perpetrators of criminal acts which in this case Narcotics crime makes a serious discussion necessary. It should be remembered that since the enactment of the Child Criminal Justice System Act which is currently not effectively implemented because there are only a few articles governing criminal Stelsel, making the implementation of criminal law in the courts becomes uncertain both from the vision of criminal imposition and from the mission of the mechanism.

In reality the criminal sentence given by the judge against the child as a perpetrator of narcotics abuse still raises a legal problem, because there are still many differences in the length of the sentence for children in the same case of narcotics abuse. It is not uncommon for perpetrators of child narcotics crimes to be punished severely, whereas for perpetrators of other narcotics crimes are sentenced lightly or even released, even though the article violated is the same.

<sup>2</sup> Sadar BNN Maret 2011/Maulani KSG IV, "Terapi dan Rehabilitasi Korban Narkoba," <http://www.ham.go.id/artikel.htm>, (Retrieved 15 March 2018, 17:47 WITA)

<sup>3</sup> Adami Chazawi. *Pelajaran Hukum Pidana Bagian 1*, PT.Raja Grafindo, Jakarta, 2002. p.157

Existing child criminal laws and regulations do not provide guidelines for judges in imposing criminal sanctions on children, resulting in obscurity of norms, these guidelines should be expressly stated in Law Number 11 of 2012 concerning Child Criminal Justice System and Law Number 35 2009 concerning Narcotics. So as to avoid the arbitrariness of imposing criminal penalties on children in their decisions. Therefore, differences in considerations used by judges in giving punishment to children as perpetrators in the Mataram District Court are very interesting to study.

Based on the background of the problem as described above, the problem in this study is formulated as follows: 1. How is Stelsel criminal sanctions for children in Law Number 11 of 2012 concerning the juvenile criminal justice system? 2. What is the criminal application of children who abuse narcotics.

This type of research uses normative juridical research methods. Because the research method used is normative juridical, then one thing is certain is the use of statute approach, conceptual approach, and case approach. Normative legal research, generally using this type of data directed at secondary data research. In legal research, secondary data includes: a. Primary legal material, b. Secondary law material, and tertiary legal material. Analysis of legal material in this study using the method of Law Discovery (*Rechtsvinding*). Legal discovery, namely the process of forming a law by a judge or other legal officers who are given the task of carrying out legal laws or applying general legal rules for concrete legal events.<sup>4</sup> As in the Mataram District Court Decisions in the Case of Children, which is the object of this study.

## **II. RESULT AND DISCUSSION**

### **2.1 Criminal Sanctions for Children in Law Number 11 of 2012 concerning the Criminal Justice System of Children**

Use of Stelsel criminal sanctions regulated in Law Number 11 of 2012 concerning the Criminal Justice System of the Child and Law Number 35 of 2009 concerning Narcotics in situations of judicial circumstances against children who are dealing with the law more specifically in the case of narcotics abuse, tend to impose criminal sanctions deprivation of liberty (imprisonment) did not have a deterrent effect on children. As a result, the abuse of narcotics carried out by children from year to year is increasing, so the Stelsel formulation policy should be criminal sanction, especially for children who commit narcotics abuse as regulated in Law Number 11 of 2012 concerning Child Criminal Justice System and Law Number 35 2009 concerning Narcotics needs to be reviewed or revisions and improvements need to be made.

Thus, even though the concept and draft of the new Penal Code cannot be used as a legal basis, the spirit of the law can still be used. Because in the case of narcotics abuse carried out by children there is an understanding that in the crime of narcotics abuse children in addition to being the real perpetrators or also act as victims who must still get legal protection and get the right guidance for growth and development for the future.

In Law Number 11 of 2012 concerning the Criminal Justice System of Children criminal provisions for children are expressly stipulated in Chapter V on Criminal Crimes and Acts from Article 69 to Article 83. In the initial section, it is explicitly stated in article 69 paragraphs (1) that children can only be sentenced to criminal or subject to action based on

<sup>4</sup> Sudikno Mertokusumo, 2011. *Penemuan Hukum Sebuah Pengantar*, Yogyakarta: Liberty. p. 37

the provisions in this Law. Besides that, there is also a limitation on the age of a child in punishment in article 69 paragraph (2) which states that a child who is not 14 (fourteen) years old can only be subject to action.

In the event that criminal imposition or taking action against a child is regulated on the basis of consideration for the judge is formulated in article 70 which states that the act, the child's personal condition, or the situation at the time of the act or which occurs later it can be used as a basis for the consideration of the judge, not to impose actions into account of the aspects of justice and humanity.<sup>5</sup>

But because Law No. 35 of 2009 concerning narcotics does not specifically regulate Stelsel sanctions for children, it is more focused on how the Stelsel sanction applies in Law No. 35 of 2009 concerning narcotics to children. Although in the Narcotics Law there are also several articles of exceptions that are specifically applied to those who are not old enough. So that the enactment of Stelsel criminal sanctions in Law number 35 of 2009 concerning narcotics against children must also apply Law Number 11 of 2012 concerning the Criminal Justice System of Children as a special provision applied to children. This is known as the principle of *lex specialis derogat legi generalis*.<sup>6</sup>

Law Number 35 of 2009 concerning Narcotics regulates criminal provisions for drug abuse in Article 127 which states:<sup>7</sup>

- 1) Every Abuser To:
  - a. Narcotics Group I is convicted for a maximum of 4 (four) years in prison;
  - b. Narcotics Group II for oneself is subject to imprisonment for a maximum of 2 (two) years; and
  - c. Narcotics Group III for themselves is subject to imprisonment for a maximum of 1 (one) year.

Based on the provisions of Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics mentioned above, the abuse of narcotics in the context of this study implies that narcotics abuse is carried out without rights and against the law intended for you. Children who commit criminal acts of narcotics users based on the provisions of Article 127 of Law Number 35 of 2009 concerning Narcotics jo Article 22 of Law Number 3 of 1997 Juvenile Justice (has been amended into Law Number 11 of 2012 concerning the Criminal Justice System of Children) can be punished or actions as specified in this law. Prison sentences that can be imposed on children who violate the provisions of the legislation in this case narcotics for a maximum of ½ (one half) of the maximum threat of imprisonment for adults.

## 2.2 Criminal Application Against Narcotics Abusing Children

Seeing the complexity of narcotics abuse prevention carried out by children through the application of criminal sanctions, it should be a concern that the negative impacts it causes, which will be the guarantor of the protection of children's basic rights, if the policy orientation is intended to protect the interests of children. On the contrary, it will be a

<sup>5</sup> Koesno Adi, 2014, *Diversi Tindak Pidana Narkotika Anak*, Setara Press, Surabaya, p. 18

<sup>6</sup> Purnadi Purbacaraka, *Perundang-undangan Dan Yurisprudensi*, Bandung: Alumni, 2014, p.16.

<sup>7</sup> Lihat Pasal 127 Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika

complex social problem, if the policy eventually gives birth to child deprivation.<sup>8</sup>

The use of criminal law as a means of overcoming narcotics abuse will ultimately lead to the issue of how the judge dropped the decision. The basis of the judge's consideration in imposing a criminal sentence will determine the decision of a judge to be considered fair or determine whether the decision can be accounted for or not.<sup>9</sup> Decisions on the perpetrators of narcotics abuses committed by children, judges make considerations. According to observations from 4 decisions from the Mataram District Court there were differences in criminal sentences against children. The indictment of the public prosecutor, criminal prosecution, witness testimony, testimony of the defendant, evidence, and articles in the Narcotics Act. Whereas non-juridical considerations are sociological, psychological, criminological, and philosophical considerations.<sup>10</sup>

No	No. Case	Indictment	Decision
	4/Pid.Sus-Anak/2016/PN.Mtr 13/Pid.Sus-Anak/2016/PN.Mtr	Narcotics	Granting Successful Diversity or Diversity Agreements
1	2/Pid.Sus-Anak/2017/PN.Mtr	Narcotics	Coaching in Social Institutions for 10 months and Job Training for 2 months
2	23/Pid.Sus-Anak/2017/PN.Mtr 27/Pid.Sus-Anak/2017/PN.Mtr	Narcotics	Imprisonment for 9 months
3	32/Pid.Sus-Anak/2017/PN.Mtr 33/Pid.Sus-Anak/2017/PN.Mtr	Narcotics	Coaching in the Institution for 7 months
4	37/Pid.Sus-Anak/2017/PN.Mtr	Narcotics	Coaching outside the institution in the form of Therapy for 6 Months

Source: Register for the Criminal Case of the Mataram District Court

In the four cases in the table above, based on the testimony of witnesses, the statement of the defendant and the evidence, the elements without rights and against the law of class I drug abuse for themselves have been fulfilled. The defendants in the five cases that were the research in writing this thesis were caught using class I narcotics in the form of non-plants (*shabu-shabu*). This was corroborated by witness testimony and the defendant's own statement, and at the scene of the incident found evidence in the form of methamphetamine.

Based on the decision examined in this paper it can be concluded that the judge in imposing a decision on the child who is a criminal of narcotics users is more inclined to juridical considerations.

In the consideration of the judge there is no unraveling of non-juridical considerations, this can be seen from the results of social studies. Where in the report describes the background of the child, his personality, and the background of his life. In the four court decisions only one decision in his consideration the judge mentioned the diversion of Diversity.

In this case the defendants were children who were underage where they were

<sup>8</sup> Kusno Adi, *Op,Cit*, p. 42

<sup>9</sup> *Ibid*, p. 90

<sup>10</sup> Bunadi Hidayat, *Pemidanaan Anak Di Bawah Umur*, PT. Alumni, 2009, Bandung, p. 93

victims of the rampant narcotics circulation, where the defendant as a victim of narcotics misuse should get protection in the form of rehabilitation instead of getting a sentence of imprisonment as well as imprisonment in the institution. As a beginner, early rehabilitation actions will help the defendant to get the right to health and education rights, where the punishment will actually eliminate the opportunity for the defendants to get rehabilitation.

Punishment does not aim to get revenge and seek detention from the perpetrators, but find a child's self-awareness, that what is done is a mistake. Therefore, you must improve yourself.<sup>11</sup> Prison has given stigma and labeling to a child so that the hope of a child's mental moral return is difficult to achieve because the labeling will place the child's status in the community.<sup>12</sup>

### III. CONCLUSIONS

Based on the results of the discussion above, it can be concluded as follows:

1. Criminal Stelsel against child perpetrators in Narcotics crimes that can be imposed by Judges is not only limited to the threat of imprisonment as stipulated in article 127 of Law No.35 of 2009 concerning narcotics, but judges also in imposing sanctions on their decisions must be guided as regulated in Article 71 of Act No.11 of 2012 concerning the criminal justice system of children which defines that underage children can only be sanctioned in the form of criminal sanctions and actions, namely the act of returning to parents, criminal warnings, criminal conditions, crimes with the provision of training employment, criminal by providing guidance in the institution, as well as imprisonment which can only be given a maximum period of 1/2 of the criminal threat of an adult.
2. Criminal application of narcotics abuse for children there are 4 (four) court decisions that are thoroughly examined in this writing, judges in imposing decisions on children who commit criminal acts of narcotics users tend to use judicial considerations rather than non-judicial ones. This is seen in 3 (Three) Mataram District Court Decisions and only 1 (one) Decision of the District Court that applies Diversity in the form of rehabilitation for children.

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<sup>11</sup> Hadi Supeno, *Kriminalisasi Anak Tawaran Radikal Peradilan Anak Tanpa Pemidanaan*, Jakarta: PT. Gramedia Pustaka Utama, 2010, p. 168

<sup>12</sup> *Ibid*, p. 186



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