

THE URGENCY OF PUNISHMENT AGAINST CHILDREN OF NARCOTICS ABUSERS

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Abstract

This research aims to analyze the public prosecutor's considerations in proving the elements of the article so that children are categorized as narcotics providers and the public prosecutor's considerations in proving the elements of the article regarding children as perpetrators of narcotics providers. This research is empirical research carried out at the Sidenreng Rappang District Prosecutor's Office. The data obtained is then processed and analyzed using a qualitative descriptive method, namely a method where data is collected, compiled, interpreted and analyzed so as to provide complete information according to the problems faced. The results of this research are: 1) The child's public prosecutor's considerations in making a child's demand letter pay attention to the best interests and future for the child, then in its implementation it refers to juridical reasons related to applicable legal rules and non-juridical ones related to the child's personal, social, family and environment. children and the impact of children's actions on society and the state, as well as children's attitudes in undergoing the trial process; 2) There is conformity in the demands and decisions regarding the proven element, namely the element of providing, even though the element of control is not included in the judge's consideration as an element that is fulfilled in the proof of the indictment in the child's public prosecutor's claim, so even so, the public prosecutor's claim is proven in the element of providing in Article 112 paragraph (1) and paragraph (2) of Law Number 35 of 2009 concerning Narcotics, this strengthens the position of the claim that the claim is appropriate).

Keywords: Punishment, Children, Narcotics Abusers

INTRODUCTION

The problem of drug abuse is increasingly common not only in developing countries but also in developed countries. As is known, drugs are currently not only distributed in big cities but have reached the rural level. Apart from that, the perpetrators of drug trafficking abuse are not only adults but are also dominated by children or the younger generation (Anwar, 2019).

Drug criminal sanctions against children who commit criminal acts of drug abuse must be in accordance with Article 112 and Article 127 of Law Number 35 of 2009 concerning Narcotics. This law stipulates that every person who suffers from the use of Class I drugs can be sentenced to imprisonment for a maximum of 4 years and victims of abuse are required to undergo medical and social rehabilitation.

Meanwhile, for children who abuse drugs, criminal handling is regulated in Article 71 of Law Number 11 of 2012 concerning the Juvenile Justice System, that the length of the sentence is limited by Article 79 of Law Number 11 of 2012 concerning the Juvenile Justice System, that the maximum sentence that can be imposed to a child is a maximum of ½ (half) of the maximum penalty for a child and an adult.

In Article 1 number (15) of Law Number 35 of 2009 concerning Narcotics, it is stated that narcotics abuse is a person who uses narcotics without rights or against the law. Narcotics are actually drugs that are needed by health services, so their availability needs to be guaranteed. The problem now is the abuse of these narcotics (UU, 2009).

In cases of children in conflict with the law, the person who has the right to carry out prosecution is the children's public prosecutor. This is in accordance with the rules contained in Article 41 point 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states "Prosecution of children is carried out by a public prosecutor who is appointed based on a decision by the attorney general or another official appointed by the attorney general (UU, 2012)."

Children are the main investment and are the hope of the nation which will continue the existence of the nation and state in the future, so that the government pays considerable attention to children's development, namely by providing the widest possible opportunities for children so that they can grow and develop optimally, both physical, mental and emotional.

The government's attention to child development is very necessary, especially because childhood is a golden period in the formation of a human's character, personality and character, which has a big influence on a child's future abilities as an adult. Attention to children's development needs to involve all parties, both directly and indirectly, so that children can avoid physical and mental pressure or torture, as well as avoid committing crimes, both as victims and as perpetrators of criminal acts (Raharjo, 2006).

The spread of narcotics has spread to various levels of society and remote villages and has reached children whose thinking abilities are still low. Children are unknowingly involved in the misuse of very dangerous goods just because adults are involved (Kurniawan, 2008). This means that in fact the main factors that cause a child to come into conflict with the law in a narcotics case actually come from outside him, such as a lack of parental (family) attention and social environmental factors. These two factors simultaneously cause children to fall into crimes which unconsciously lead the child to be involved in narcotics. The child does not yet have the maturity to think so that the crime he commits does not arise from his awareness, but is more dominantly caused by factors that are influenced by his social environment. Children's involvement in the abuse and distribution of narcotics is generally a process of imitating or being influenced by the persuasion of adults.

The criminal system that still exists today treats children as perpetrators of criminal acts like perpetrators of criminal acts committed by adults. Children are placed in the position of criminals who deserve the same punishment as adults in Indonesia. Even though punishment is more oriented towards the individual perpetrator or what is usually called individual

responsibility, *where* the perpetrator is seen as an individual who is able to take full responsibility for the actions he has committed, while children are individuals who are not yet fully aware of the actions/deeds they have committed, because Children are individuals who are immature in thinking (Wahyudi, 2011).

Punishment of children can have a great psychological impact on children which ultimately affects the child's mental and mental development. By treating children the same as adults, it is feared that children will quickly imitate the behavior of those around them. On this basis, a law enforcement concept called *restorative justice was introduced*. The main concern of this concept is the interests of the perpetrator, victim and society (Ediwarman, 2016).

To strive to protect the interests of children who are in conflict with the law, the government has enacted Law Number 11 of 2012 concerning the Juvenile Justice System, the main aim of which is to maintain the honor and dignity of children by providing legal protection in the justice system, as well as providing adequate opportunities. as widely as possible to settle cases outside of court.

In fact, the concept of diversion as an alternative for resolving juvenile crimes cannot yet be implemented optimally. This situation can be seen from the large number of cases of children in conflict with the law being resolved through the courts so that the number of children sentenced to prison still dominates the judge's decisions (Hartanto, 2019).

Based on the description of the background of the problem described above, the formulation of the research problem is how the judge's legal considerations regarding children who abuse narcotics in Article 112 of Law Number 35 of 2009 concerning Narcotics in Decision Number 53/Pid.Sus-Anak/2017/PN.Jkt.Brt and Decision Number 00/Pid.Sus-Anak/2022/PN Crp? And how is the law applied to children who abuse narcotics in Article 112 of Law Number 35 of 2009 concerning Narcotics?

RESEARCH METHODS

In preparing this thesis, research was carried out by taking data and documents at the West Jakarta District Court and the Curup Bengkulu District Court. The reason for taking the research location in the area of the West Jakarta District Court and the Curup Bengkulu District Court, was due to the relationship between the title of the thesis which was considered to be in full accordance with the location of the research carried out by the author. The types and sources of data used by the author in this research are primary data and secondary data. Data obtained from primary data and secondary data will be processed and analyzed qualitatively and then the data will be described. Qualitative analysis is a qualitative analysis of verbal data and accurate data descriptively by describing the real conditions of the object to be discussed using a formal juridical approach and referring to legal doctrinal concepts.

RESEARCH RESULT

In Decision No. 53/Pid.Sus-Anak/2017/PN Jkt.Brt, The Public Prosecutor presented the following evidence: 1 (one) pack of plastic clips containing methamphetamine weighing 0.0394 grams was confiscated and 1 (one) Samsung brand cell phone.

Considering, that the evidence of the letter based on the Minutes of Criminalistic Laboratory Examination, No. Lab: 4958/NNF/2017 dated 30 November 2017 stated that evidence in the form of 1 (one) pack of plastic clips containing white crystals with a net weight of 0.0394 grams actually contained methamphetamine and was listed in Group I Serial Number 61 Attachment to Law Number 35 2009 concerning Narcotics.

Considering, that the evidence submitted has been confiscated according to law so that it can be used in proving this case.

Considering, that from the statements of the witnesses and the testimony of Ahmad Suryadi Bin Maddin Rangkuti's son and the evidence, they are related to each other and if they are connected with each other, the Judge obtains the legal facts as mentioned above.

Considering, that next the judge will consider whether from the legal facts the defendant's actions can be declared legally and convincingly guilty of committing a criminal act as charged by the Public Prosecutor with the Primair indictment of violating Article 114 paragraph (1) of Law Number 35 of 2009 regarding Narcotics and the Subsidiary's charges of violating Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the elements of which are as follows:

1. "Everyone" element.
2. The element "Without rights or against the law".
3. The element "Offering for sale, selling, buying, receiving, being an intermediary in buying and selling, exchanging or handing over non-plant Class I Narcotics".

Considering, that children without rights or against the law offer to sell, sell, buy, receive, become intermediaries in buying and selling, exchange or hand over Class I narcotics in the form of methamphetamine.

Considering, that based on the description and considerations as mentioned above, the 3rd element which is an alternative, none of the elements was fulfilled by the Defendant, because according to the facts at trial it turned out that he was only a user of the type of marijuana narcotics which he obtained by buying from Perdi (not yet caught) for Rp. 150,000,- (one hundred and fifty thousand rupiah).

Considering, that the evidence is in the form of 1 (one) plastic clip pack containing the narcotic type shabu-shabu which was kept for the use of Ahmad Suryadi Bin Maddin Rangkuti's son, therefore element 3 of the Primary Indictment is not fulfilled and has not been proven legally and convincingly, therefore The defendant must be acquitted of the primary indictment;

Considering, that because the Primary Indictment is not proven, the Panel of Judges will next consider the Subsidiary Indictment to violate Article 112 paragraph (1) of Law Number 35 of 2009, the elements of which are as follows:

1. "Everyone" element.
2. The element "Without rights or against the law".
3. The element "Owning, storing and controlling or providing non-plant Class I narcotics".

Considering, that based on the Minutes of Laboratory Examination from the National Police Criminal Investigation Agency No. Lab: 4958/NNF/2017 dated 30 November 2017 states that evidence consists of 1 (one) plastic clip pack containing white crystals with a net weight of 0.0394 grams actually contains methamphetamine and is registered in Group I Serial Number 61 of the Attachment to Law Number 35 of 2009 concerning Narcotics .

Considering, that the child without rights or against the law offers to sell, sells, buys, receives, becomes an intermediary in buying and selling, exchanges or hands over Class I narcotics in the form of methamphetamine, which is not for treatment and has nothing to do with the defendant's work and does not have permission from the party authorized.

Considering, that in this way the element of "Owning, storing, controlling or providing non-plant Class I Narcotics" is proven and fulfilled legally and convincingly according to the law.

Considering, that with all the elements in article 112 paragraph (1) of Republic of Indonesia Law no. 35 of 2009 concerning Narcotics, as stated in the Subsidiary's indictment, Ahmad Suryadi Bin Maddin Rangkuti's son must be punished for the criminal acts he has committed.

Considering, that before the Panel of Judges handed down the verdict, against the child, it had also considered the defense of the child, Ahmad Suryadi Bin Maddin Rangkuti, which in essence was to give him the lightest possible sentence and to regret the actions he had committed.

Considering, that from the facts obtained during the trial in this case, the Panel of Judges did not find anything that could exonerate criminal responsibility, either as a justification or excuse, therefore the Panel of Judges concluded that the actions committed by Anak Ahmad Suryadi Bin Maddin Rangkuti must be held accountable to him.

Considering, that because Ahmad Suryadi Bin Maddin Rangkuti's child is proven guilty of committing a criminal act as stated in the indictment, Ahmad Suryadi Bin Maddin Rangkuti's child must be given a punishment commensurate with his actions, either in the form of imprisonment or a fine, provided that if the fine is not paid by the child Ahmad Suryadi Bin Maddin Rangkuti will be replaced with another prison sentence which will be mentioned in this decision.

Considering, that according to the provisions of Article 22 paragraph (4) of the Criminal Code, the length of time that Ahmad Suryadi Bin Maddin Rangkuti's son was arrested and detained in the State Detention Center must be deducted entirely from the sentence imposed.

Considering, that because the detention of Child Ahmad Suryadi Bin Maddin Rangkuti is still necessary and there are no reasons to remove Child Ahmad Suryadi Bin Maddin Rangkuti from detention, therefore Child Ahmad Suryadi Bin Maddin Rangkuti must be determined to remain in detention.

Considering, the evidence presented by the Public Prosecutor at trial will be determined in the decision below.

Considering, that because the child Ahmad Suryadi Bin Maddin Rangkuti was sentenced to a crime and the child Ahmad Suryadi Bin Maddin Rangkuti, based on Article 222 of the Criminal Procedure Code, the child is charged with paying court costs, the amount of which will be determined in this decision.

will first consider the following aggravating and mitigating factors for the child's punishment:

1. Aggravating Things:
 - The actions of Ahmad Suryadi Bin Maddin Rangkuti's son do not support the Government's program in eradicating narcotics crimes.
2. Mitigating Matters:
 - Ahmad Suryadi Bin Maddin Rangkuti's son has never been punished.
 - Ahmad Suryadi Bin Maddin Rangkuti's son was polite in court.
 - Ahmad Suryadi Bin Maddin Rangkuti's son admitted and regretted his actions and promised not to repeat them.
 - Ahmad Suryadi Bin Maddin Rangkuti's son is still at school and promised not to do it again.

Considering, that by taking into account the matters as the Tribunal has considered above, the Tribunal has finally come to the conclusion that the punishment to be imposed on the child Ahmad Suryadi Bin Maddin Rangkuti as stated in this decision is a criminal act which is considered fair and wise in accordance with with a sense of justice.

Meanwhile, the judge's consideration in Decision No. 00/Pid.Sus-Anak/2022/PN Crp , considers that further consideration will be given to whether, based on the legal facts mentioned above, the two children in conflict with the law can be declared to have committed the crime for which they were charged. .

Considering, that the two Children who are in conflict with the law have been charged by the Public Prosecutor with alternative charges, namely:

1. First: Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) in conjunction with Article 148 of Law Number 35 of 2009 concerning Narcotics.

Or

2. Second: Article 112 paragraph (2) in conjunction with Article 132 paragraph (1) in conjunction with Article 148 of Law Number 35 of 2009 concerning Narcotics.

Considering that, observing the form of such charges, the Panel of Judges, taking into account the legal facts mentioned above, can immediately consider the charges which are deemed to best meet the actions of the two children in conflict with the law, which in this case is the second alternative charge as regulated in Article 112 paragraph (2) Jo Article 132 paragraph (1) Jo Article 148 Law Number 35 of 2009 concerning Narcotics, the elements of which are as follows:

1. Everyone's element.
2. Elements without rights or against the law possessing, holding possession of, or providing Class I Narcotics which are not plants.

Considering, that based on the entire description of the considerations above, the material acts as charged have been proven according to law and the Juvenile Judge also believes that the two children in conflict with the law are the perpetrators, so that because all the elements of the second alternative article of indictment have been fulfilled, then The two children in conflict with the law must be declared to have been legally and convincingly proven guilty of committing a criminal act as in the second alternative indictment, and will be sentenced to a crime commensurate with their actions.

Considering, that because during the trial nothing was found that could eliminate criminal liability, either justification or reasons for forgiveness in the person or actions of the child who was in conflict with the law, and because the child who was in conflict with the law was a person who was capable of taking responsibility within the scope of the system. Juvenile Criminal Justice, the two children in conflict with the law must be declared guilty.

Considering, that regarding the defense of the two children in conflict with the law through their legal advisors who are essentially requesting to be given the lightest possible punishment, the Children's Judge is *mutatis mutandis* of the opinion that what has been contained and considered in this Decision is deemed to have accommodated the request of the two children in conflict with the law through their legal advisors and other people. parents, and have considered the Community Research Report and the opinions expressed by the Social Worker as a companion to the two Children who are in conflict with the law.

Considering, however, that because the actions of the two children in conflict with the law are actions that often occur in society, it is hoped that this decision will be able to provide a lesson for the two children in conflict with the law, their parents and also society in general to create a deterrent effect. but still prioritizes the best interests of children as is the principle of law enforcement in the Juvenile Criminal Justice System.

Considering, that because the criminal threat contained in this second alternative indictment is a cumulative crime (imprisonment and fine) then in accordance with the provisions of Article 71 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the fine will be replaced with work training.

Considering that in this case the two children in conflict with the law have been subject to lawful arrest and detention, the period of arrest and detention must be deducted in full from the sentence imposed.

Considering, that because the two Children in conflict with the law are detained and the detention of the two Children in conflict with the law is based on sufficient reasons, it is necessary to determine that the two Children in conflict with the law remain in detention.

Considering, that the evidence presented at the trial is further considered as follows:

- 2 (Two) large packages of Class 1 Narcotics in non-plant form, wrapped in clear plastic clips.
- 1 (One) Medium Package of Class 1 Narcotics in the form of Non-Plants Serial Number 61 attachment to Law No. 35 of 2009 concerning Narcotics which is wrapped in clear plastic clips.
- 23 (twenty three) EXTACY pills wrapped in clear plastic clips.
- 4 (Four) bales of clear plastic clips.
- 1 (one) unit of HWH POCKET SCALE digital scale.

Because these pieces of evidence are prohibited items, it is appropriate that they be declared destroyed.

Considering, that before imposing a crime on the two children who are in conflict with the law, it is necessary to first consider the aggravating and mitigating circumstances:

1. Aggravating circumstances:
 - The actions of the two children who are in conflict with the law are actions that have the potential to damage the mentality of the younger generation and especially themselves and their future.
2. Extenuating circumstances:
 - The two children in conflict with the law are still young and are expected to improve their attitudes and behavior.
 - Both children admitted and regretted their actions.

Considering, that because the two children in conflict with the law were sentenced to crime, each of them must also be burdened with paying the court costs.

A judicial process ends with the passing of a final decision (verdict) in which criminal sanctions (punishment) are imposed on the guilty defendant, and in that decision the judge states his opinion regarding what has been considered and what will become his decision. Before arriving at this stage, there are stages that must be carried out beforehand, namely the evidentiary stage in convicting the defendant.

In imposing a crime, the judge must be based on two pieces of valid evidence, then from these two pieces of evidence the judge is convinced that the criminal act charged actually occurred and the defendant was the one who committed it. This is regulated in Article 184 of the Criminal Procedure Code.

Regarding what the author explained above, what the judge needs to pay attention to is that in order for the perpetrator to be convicted, it is required that the criminal act he committed meets the elements that have been stipulated in the law. Viewed from the point of view of the occurrence of the action and the ability to be responsible, a person will be held responsible for his or her actions and deeds and there will be no justification/excuse for eliminating the unlawful nature of the crime he or she has committed.

In the West Jakarta District Court Decision Number 53/Pid.Sus-Anak/2017/PN Jkt.Brt., Ahmad Suryadi Bin Maddin Rangkuti's son was not legally and convincingly proven guilty of committing a criminal act as stated in Primair's indictment and the crime of "controlling and possessing Class I Narcotics are not plants" in the subsidiary indictment, Sentencing the child above therefore to imprisonment for 2 (two) years and a fine of Rp. 800,000,000,- (eight hundred million rupiah), if the fine is not paid, replaced by imprisonment for: 1 (one) month, for violating Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the Criminal Procedure Code (KUHP) and other relevant laws and regulations with this matter. And as a comparison, the Curup District Court Decision Number 00/Pid.Sus-Anak/2022/PN Crp., which stated that Child I and Child II were legally and convincingly proven guilty of committing a criminal act "without right or against the law of possessing, holding possession of, or providing class I non-plant narcotics" as in the second alternative indictment. The Panel

of Judges sentenced Child I and Child II to imprisonment for 3 (three) years and 6 (six) months respectively at the Bengkulu Class II Special Child Development Institution (LPKA), because they had violated Article 112 paragraph (2) Jo Article 132 paragraph (1) Jo Article 148 Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law and statutory regulations other relevant invitations.

Furthermore, the panel of judges imposed a prison sentence in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, by applying the criminal conditions in accordance with Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely as follows:

1. Basic Crimes for Children
 - a. Warning Crime.
 - b. Criminal with Conditions.
 - 1). Coaching outside the institution.
 - 2). Society service.
 - 3). Supervision.
 - 4). Work training.
 - 5). Coaching within the institution.
 - 6). Prison.
2. Additional penalties
 - a. Confiscation of profits obtained from criminal acts; or
 - b. Fulfillment of customary obligations.
3. If the material law carries a cumulative penalty in the form of imprisonment and a fine, the fine is replaced with job training.
4. Crimes imposed on children are prohibited from violating the child's honor and dignity.
5. Further provisions regarding the form and procedures for carrying out criminal penalties as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by government regulations.

The application of criminal law should also pay attention to Article 73 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that "criminal conditions can be imposed by a judge in the case of a maximum prison sentence of 2 (two) years" and criminal coaching within the institution, in this case placing children in LPKS/LPM Social Institutions, to take part in coaching, education and job training.

The legal process can still be carried out, but it must take into account the rights of children so that imprisonment is the last step. The paradigm of protection for children like this should not be "revenge" by "criminalizing children" but must have deterrent and educative aspects so that in the future children will not be trapped as "recidivists". In this context, it is best for law enforcement officers not to simply use the Criminal Procedure Code in their proceedings, but to use Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. From the criminal aspect, it is clear that this is a form of crime. However, from the aspect of protecting children's rights, this is a social problem for children that must receive serious attention from all parties, from all parents, families, society, especially the government and the state. Children are victims of adult engineering in the narcotics problem, children are the main targets where their curiosity is still unstable because children are classified as victims.

CONCLUSION

Legal considerations by the Panel of Judges in imposing a crime on the crime of narcotics abuse by children in the West Jakarta District Court Decision Number 53/Pid.Sus-Anak/2017/PN Jkt.Brt., Ahmad Suryadi Bin Maddin Rangkuti's child was not legally and

convincingly proven guilty of committing the criminal offense as stated in the Primair indictment and the criminal offense of "controlling and possessing Class I non-plant Narcotics" in the subsidiary indictment, Sentencing the child above therefore to imprisonment for 2 (two) years and a fine of IDR 800,000 ,000,- (eight hundred million rupiah), if the fine is not paid, it will be replaced by imprisonment for: 1 (one) month, for violating Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the Book of Laws.

The Criminal Procedure Law (KUHAP) and other laws and regulations related to this case. And as a comparison, the Curup District Court Decision Number 00/Pid.Sus-Anak/2022/PN Crp., which stated that Child I and Child II were legally and convincingly proven guilty of committing a criminal act "without right or against the law of possessing, holding possession of, or providing class I non-plant narcotics" as in the second alternative indictment. The Panel of Judges sentenced Child I and Child II to imprisonment for 3 (three) years and 6 (six) months respectively at the Bengkulu Class II Special Child Development Institution (LPKA), because they had violated Article 112 paragraph (2) Jo Article 132 paragraph (1) Jo Article 148 Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 concerning Criminal Procedure Law and statutory regulations other relevant invitations. According to the author, it is correct, based on evidence from witness statements, the defendant's statement and the evidence obtained as well as opinions and suggestions from Bapas officers and also considering that the child is still an active student.

Application of Material Criminal Law to the Crime of Narcotics Abuse by Children in the West Jakarta District Court Decision Number 53/Pid.Sus-Anak/2017/PN Jkt.Brt., and the Curup District Court Decision Number 00/Pid.Sus-Anak/2022/ PN Crp. The Public Prosecutor is basically correct in using 2 (two) charges, namely: Primair and Subsidiary in Article 114 paragraph (1) and paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Among the elements of the two articles charged by the Public Prosecutor, those which were legally and convincingly proven guilty were Article 114 paragraph (1) and paragraph (2) of Law Number 35 of 2009 concerning Narcotics. Where the act and the elements of the article match each other.

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