

Criminal Responsibility of Children in Drug Abuse

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Abstract

Drug-related crimes are considered extraordinary crimes. In Law No. 35 of 2009, narcotics do not provide exceptions for children who use narcotics. This study aims to analyse the forms of criminal responsibility of children who abuse narcotics and the ideal concept of criminal responsibility for children who abuse narcotics. This study uses an empirical juridical method and data collection techniques through interviews and literature review, which are then analysed qualitatively. From the results of the study, the criminal responsibility of children who abuse narcotics is carried out in accordance with Law No. 35 of 2009 and Law No. 11 of 2012. Criminal responsibility for children who abuse narcotics is imposed in the form of punishment or measures, taking into account the rights of the children to ensure their best interests are served. The ideal concept of criminal responsibility for children who abuse narcotics is to prioritise restorative justice and diversion efforts, and the need to review this from a regulatory policy perspective to ensure that decisions do not result in imprisonment (punitive sanctions). This is to ensure that future criminal law reforms involve reconstructing the sanctions imposed on children who commit narcotics-related crimes and considering the aspects of justice and benefit for the child as important points to be taken into account.

Paper Type: Research Article

Keywords: Children; Narcotics; Criminal Responsibility

Note: The total of word accounts in the abstract should not be more than 300 words



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Introduction

Narcotics were initially only used for medical purposes. The first type of narcotics used is opium narcotics. In line with the development of the era, narcotics are increasingly being abused by society. Narcotics but can also make huge profits by selling these drugs illegally to various countries. So, this is very worrying for the national and international community.

In general, if narcotics are misused, they will have very dangerous effects on the user, dealer and so on. Initially, narcotics were only used as a tool for religious ritual ceremonies and for treatment, but many people misuse these items, which as a result can cause dangerous effects and lead to very detrimental addictions. The impact

caused by narcotics abuse is dangerous for the life of the nation and state, especially for the continued growth and development of the younger generation (Adi, 2014).

Many people currently admit that the widespread distribution and abuse of narcotics is one of the biggest threats among teenagers which could endanger the future of the Indonesian nation. The circulation of narcotics increases over time and becomes more intense, making prevention and eradication difficult in Indonesian territory. Shipping usually uses package services that send by land, air or sea. It is not uncommon for these deliveries or narcotics buying and selling transactions to involve minors as couriers or intermediaries in the narcotics buying and selling transactions (Salam, 2019).

The development of information technology, where narcotics are transnational in nature and be used with a modus operandi supported by sophisticated technology, a wide network of organizations or individuals, means that the laws that have been in force in Indonesia are no longer in accordance with the developments in the situation occurring in society.

Narcotics crime is one of the criminal acts that is considered an extraordinary crime because it is transnational in nature and the modus operandi is carried out using high and massive methods or technology. In the Republic of Indonesia itself, narcotics crimes are no longer foreign crimes and have become a special concern for the government. The law regulating narcotics crimes has been in existence since 1976 through Law Number 9 of 1976, then replaced by Law Number 22 of 1997, and then replaced by Law Number 35 of 2009 ("Narcotics Law"). These changes/replacements to the law show that narcotics crimes in Indonesia are growing over time so that more serious handling and better legal regulations are needed.

The term narcotics addict is certainly used more frequently/widely in social life than the term narcotics abuser. In fact, perhaps most ordinary people cannot differentiate between the two terms and tend to mean the same thing, namely the term for people who use narcotics. In the Narcotics Law, these two terms are different, both in terms of their meaning and the punishment for each perpetrator. As regulated in Article 1 of the Narcotics Law, the meaning of both is regulated as follows:

"13. A narcotics addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically".

"15. Abusers are people who use narcotics without rights or against the law".

A person can be called a narcotics addict if it can be proven that the person is using narcotics because they are dependent. Meanwhile, someone can be called a narcotics abuser if they are proven to be using narcotics unlawfully (not getting permission to use them) regardless of whether they are in a state of dependence or not (they should

not be in a state of dependency, because if they are already in a state of dependency, they are considered an addict).

Law Number 35 of 2009 concerning Narcotics does not provide exceptions regarding children who use narcotics, however there are several decisions handed down by judges regarding what punishment can be imposed on the perpetrator and the severity of the sentence imposed must take into account the social conditions regarding the factors or facts of the case. the child perpetrator. If children commit a criminal act, they never have the opportunity to receive physical attention, or accidentally often commit criminal acts that can harm the community, family and the surrounding environment.

A child who is suspected of committing a crime can make the child lose direction or can make the child a prisoner which can make the child lose the future or dreams that had been planned. Often by sending him to prison, he becomes more professional in committing criminal acts (Irsan, 2007).

Children should not be punished, but should be given guidance and guidance. Children must also be differentiated from punishment from adults, because children who commit a crime are still developing in all aspects, so children still cannot determine which choice the child thinks is correct. Charity is also the starting point of people's hopes. Children need special treatment so that the child's physical and spiritual development can grow naturally. Childhood is a phase where the child forms the character, nature, personality and character of the child. Then, if a child makes a mistake or commits a crime, the child will be labeled and this will affect the child's psychological and social growth. The judge, in making a decision regarding a child as a narcotics abuser, must consider several circumstances which must see how the child will be affected in the future, therefore the decision must be taken fairly and appropriately (Tarigan, 2020)

Narcotics cases are relatively high in the jurisdiction of the Merauke Police, with 1 case proven in 2021, and 9 cases in 2022. As a result, narcotics cases handled by the Merauke Police are increasing and the problems that arise regarding children as narcotics abusers are becoming increasingly complex.

From the background description above, there are two main focuses in the problem that will be analyzed, namely first, what form of criminal responsibility exists for children who abuse narcotics; and secondly what is the ideal concept for criminal responsibility for children who abuse narcotics.

Methodology

The method used is an empirical juridical method, namely by conducting research by looking at events and realities that occur in the field and comparing them with the rules that apply in society. Juridical factors, namely, Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile

Criminal Justice System, Law Number 35 of 2009 concerning Narcotics, Law of 1995 concerning Corrections. Meanwhile, empirical factors look at implementation and problems related to handling children in the investigation process until the trial.

In this research, the location used was Merauke Regency. So, the data sources used are primary data and secondary data. In the discussion, data collection was carried out by means of library studies, namely by looking at laws, legal journals, books and internet media, while field studies were carried out by conducting interviews with authorities such as the Head of the Criminal Investigation Unit of the Merauke Police, the Head of the General Crimes Section of the Merauke District Prosecutor's Office, the Head of the Court. Merauke State, and Head of the Merauke Father's Child Development Section. The data obtained was then analyzed qualitatively with a descriptive nature which later explained the problems of the phenomena which were explained in writing and combined with data from the literature, then a legislative approach was carried out which led to a conclusion.

Results and Discussion

Criminal Liability of Children for Drug Abuse

Accountability for children who abuse narcotics is actually regulated in positive legal regulations in Indonesia. You need to know in advance that for children who break the law, what legal provisions are used, and you need to know what the punishment provisions are.

Narcotics etymologically comes from language Inggris *narcose* or *narcosis* which means putting sleep and anesthesia (Shintya, n.d.). Narcotics comes from the Greek word *narke*, which means being drugged so you don't feel anything. Terminologically, narcotics in the Big Indonesian Dictionary are drugs that can calm the nerves, relieve pain, cause drowsiness and stimulate.

According to Soedjono D, narcotics are a type of substance, which when used (put into the body) will have an influence on the user's body. This influence is in the form of calming, stimulating and causing delusions or hallucinations. Apart from that, according to Edy Karsono, narcotics are active substances/ingredients that work on the central nervous system (brain) which can cause a decrease to loss of consciousness and pain (pain) and can cause dependence (addiction). Another opinion from Elijah Adams states that narcotics consist of synthetic and semi-synthetic substances, the most famous of which is heroin which is made from morphine which is not used, but is often seen in illicit trade, besides being known as dihydro morphine. So, it can be said that narcotics are substances originating from plants or non-plants which can cause a decrease, change in consciousness, reduce or eliminate pain, cause delusions or hallucinations and can cause dependency effects which are differentiated into groups as attached in the law or then determined by the decision of the minister of health.

In reality, narcotics crimes that occur in society show an increasing trend both quantitatively and qualitatively with widespread victims, especially among children, teenagers and the younger generation in general. Narcotics crimes are no longer carried out individually, but involve many people together, even forming an organized syndicate with a wide network that works neatly and very secretly both at the national and international levels.

The commonly known forms of Narcotics Crime are, Abuse or exceeding the dose, Distribution of Narcotics and Buying and Selling of Narcotics. Narcotics regulation based on Law Number 35 of 2009, aims to ensure availability for health and scientific purposes, prevent narcotics abuse, and eradicate the illicit trafficking of narcotics. On the one hand, narcotics are drugs or substances that are useful in the field of medicine or health services and the development of science, on the other hand they can cause dependence which is very detrimental if used without strict and thorough control and supervision.

Juvenile justice is a court that handles criminal cases involving children which are included in a system called the criminal justice system in a society to deal with child delinquency, while at the same time it is hoped that it can provide protection to children who experience conflicts with the law who are perpetrators of juvenile delinquency. Talking about criminal responsibility, it cannot be separated from criminal acts. Because a criminal act only has meaning when there is criminal responsibility, while the meaning of criminal responsibility is the passing of the blame objectively on the criminal act and subjectively on someone who meets the requirements to be sentenced to a crime because of that act.

Regarding juridical responsibility regulated in the Criminal Code, there is a rule in criminal responsibility that not everyone is said to be capable of responsibility. It is said that someone is incapable of responsibility, which consists of two aspects that can be seen:

- a. Determining the mental condition of the person making the Testimony (Constataion) of the personal condition of the person making it in the form of a state of mind or soul whose growth is disabled or disturbed due to illness, which is carried out by a mental illness doctor (psychiatrist). This psychiatrist investigates the mental state of the creator at the time the action was carried out.
- b. There is a causal determination of punishment between the perpetrator's mental state and his actions, while the judge determines the casual relationship between such mental state and the suspect's actions. It is the judge who assesses whether the suspect can be held responsible for the act.

Based on the provisions of Law no. 11 of 2012 in Article 2 in the implementation of the Juvenile Criminal Justice System is implemented based on the principles of protection, justice, non-discrimination, best interests of children, respect for

children's opinions, survival and growth and development of children, proportional development and guidance of children, deprivation of liberty and punishment as a last resort, and avoidance of retaliation (Amdani, 2017).

As a basis for the age limit for children in Law no. 11 of 2012 Article 1 paragraph (3), determines the new age limit for criminal responsibility for children who are 12 (twelve) years old, but not yet 18 (eighteen) years old. Regarding the issue of accountability, apart from age, it is important for children to be held accountable. However, these two aspects are also benchmarks for whether a child who commits a criminal act can be held accountable. Meanwhile, looking at the criminal responsibility of children which is outside the Criminal Code, in terms of regulations regarding criminal acts committed by someone who is not yet an adult, in providing criminal sanctions, it can not only be seen in the punishment provisions contained in the Criminal Code as material law.

The criminal provisions for perpetrators of narcotics abuse are regulated in Article 127 of the Narcotics Law, namely:

- a. Every Abuser:
 - 1) Class I Narcotics for oneself is punishable by a maximum imprisonment of 4 (four) years.
 - 2) Class II Narcotics for oneself is punishable by a maximum imprisonment of 2 (two) years.
 - 3) Class III narcotics for oneself is punishable.
- b. In deciding cases as intended in paragraph (1), the Judge is obliged to pay attention to the provisions as intended in Article 54, Article 55 and Article 103.
- c. In the event that the abuser can be proven or proven to be a victim of narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation.

In law, a judge is given the freedom to make decisions based on evidence and his beliefs, according to the evidentiary system adopted in our criminal procedural law. The judge's freedom in making decisions can be said to be the judge's prerogative.

According to the Criminal Procedure Code, Article 1 point 11, a court decision is a judge's statement made in an open court session, which can be in the form of punishment or acquittal or release from all legal charges in terms and according to the method regulated in the Criminal Procedure Code. When making a decision, there are things that a judge must pay attention to, namely:

1. The judge must always pay attention to everything related to the perpetrator of the Narcotics Crime, environment in which the perpetrator socializes, education, etc. The things mentioned above can be used as a reference for

the judge to give a decision or sentence that is appropriate to the perpetrator of the Narcotics Crime.

2. During the examination at trial, the judge must also see whether the perpetrator received formal education or not. Because education is also one of the factors that causes someone to commit a crime such as narcotics abuse.

Then the form of criminal responsibility for children must be oriented towards restorative justice, namely giving the perpetrator the opportunity to take responsibility for his actions to the victim and society. All parties involved are brought together to reach an agreement on what is the best course of action for the perpetrator's child. With this, the focus on criminal punishment for children involved in narcotics abuse must prioritize a restorative approach, which emphasizes rehabilitation and behavioral improvement rather than prison sentences.

Furthermore, Law no. 11 of 2012 firmly states that in handling children in conflict with the law, investigators, prosecutors and judges are obliged to take diversion measures. In accordance with Article 7 paragraph (2) Law no. 11 of 2012, diversion can be implemented if the child perpetrator is threatened with imprisonment for less than 7 (seven) years and is not a repeat criminal act, taking into account the category of criminal act, the age of the child, the results of social research from the Bapas and the support of the family and community environment.

If a child is deemed criminally responsible, the criminal sanctions applied must be proportional to the crime committed. Sanctions may include monitoring by correctional institutions, rehabilitation programs, or other legal measures aimed at educating rather than punishing. However, what happened was that punishment was given to the child who had to end up in prison. So, to ensure that children have special features in the criminal justice system, the rehabilitation process and training should be prioritized so that children are not disturbed psychologically or mentally. Children's actions should follow existing positive legal regulations, threats and punishments must be carried out, if seen in the context of the jurisdiction of Merauke, the behavior of children involved in narcotics abuse is seen from the environmental and cultural perspective. This makes children fall into criminal acts, so they must be held accountable.

Thus, in the author's opinion, children's cases related to narcotics abuse that occurred in Merauke Regency have been handled by the police, the prosecutor's office and the Father's Office in accordance with the provisions of the law. For the good and future of rare children, diversion is part of the resolution process. However, the result of the trial was that the child had to receive an unexpected criminal sentence. Therefore, this is in accordance with existing legal regulations which mean that children who abuse narcotics are given special treatment in carrying out criminal sentences and the ultimate goal is to provide protection and recovery to children involved in narcotics

abuse while ensuring that the approach taken consider their needs and rights thoroughly.

The Ideal Concept of Criminal Responsibility for Children Who Abuse Narcotics

Someone who is said to be a child is someone who is not yet an adult, in a broad sense, children do things not accidentally, curiosity definitely arises about something new. In criminal responsibility for children which has been regulated in the Criminal Code and outside the Criminal Code. Children's criminal responsibility is regulated in the Criminal Code by looking at an act regulated by law. As a basis, it has been based on principles relating to criminal responsibility, namely, the principle of legality and the principle of error, as Andi Hamzah, citing the opinion of Pompe and Jonkers, also includes "against the law" as a mistake in the broadest sense in addition to "intentionally" or "mistake" (*schuld*) and can be accounted for (*toerekeningsvatbaarheid*) or the term Pompe *toerekenbaar* (Hamzah, 2010).

The problem of narcotics abuse or what is usually called "Madat" has broad and complex dimensions, both from media, psychiatric, economic, social political, cultural and even defense and security aspects. Narcotics abuse is a chronic disease that recurs repeatedly so that it becomes an endemic disease in society with victims generally being the younger generation (children).

From a criminological perspective, the crime pattern of narcotics abuse is a typical crime that can encourage the emergence of various other crime patterns, such as theft, fraud and various other criminal behavior carried out by narcotics addicts. According to Law no. 35 of 2009 sanctions for drug abuse include article 111 which includes lighter sentences of between 5-15 years. Apart from that, articles 112-118 explain sanctions against perpetrators who use or consume narcotics.

In the perspective of Law no. 35 of 2009, does not specifically regulate children as perpetrators of criminal acts of narcotics abuse. In this law, another alternative is provided for resolving cases of children who are criminals who abuse narcotics, namely by diversion, so as not to involve children in a lengthy and quite complicated judicial process for children who are still minors. dealing with the law and the legal provisions used are the juvenile justice law. This law not only regulates formal criminal provisions, but also regulates material criminal provisions for children involved in legal matters, especially in criminal law. Meanwhile, the child in question can still be punished under the narcotics law according to his actions.

The Indonesian state itself applies strict laws regarding all matters related to drug abuse. Criminal sanctions can be imposed on both producers, distributors and drug users. These three parties without exception will receive their respective sanctions in accordance with the article above. Provisions of Article of Law no. 35 of 2009, is only imposed on people who take advantage of underage children, while the child in question can still be punished based on the provisions of the Narcotics Law in

accordance with his actions. However, because the child is a minor, the provisions of the juvenile justice law apply so they must be separated.

Based on cases of criminal acts of narcotics abuse committed by children in the Merauke District Court decision, namely:

- 1) Putusan Nomor 5/Pid.Sus-Anak/2022/ PN Mrk;
- 2) Putusan Nomor 6/Pid.Sus-Anak/2022/ PN Mrk;
- 3) Putusan Nomor 11/Pid.Sus-Anak/2022/ PN Mrk;
- 4) Putusan Nomor 5/Pid.Sus-Anak/2023/ PN Mrk.

From this decision, the actions of children who abuse narcotics are subject to Article 114 Paragraph (1) of Law No. 35 of 2009. It is known that a child's actions regarding criminal acts committed can pay attention to the child's future. However, it must be noted that there are limitations that can put a child who can stabthemselves in prison. Law No. 11 of 2012 states that the conditions for children to undergo diversion are a prison sentence of less than 7 years and that it is not a repetition of a criminal act.

Furthermore, in the general explanation of Article 21 Paragraph (1) of Law No. 11 of 2012, it states the age limit for children in the event that they are not yet able to take responsibility for their actions, namely they are not yet 12 years old (Arifin, 2021). So, in cases where the child is more than 12 years old, on the other hand, considerations need to be taken in determining an appropriate punishment for the child. However, the act of narcotics abuse is a special criminal act, in this case we need to be firmin determining the actions committed by children as narcotics abusers, considering that cases are always increasing every year. Then the process of examining children who have committed criminal acts is in accordance with existing regulations, this is the basis for making decisions by investigators, community counselors and social workers, during the investigation stage.

In the decision in the child case above, the child was unwittingly acting as an intermediary in a narcotics case. Actions carried out by children are influenced by adults with the promise of getting rewards. So, it is necessary to look at the things that influence the child to get involved. Therefore, using children in narcotics activities is a violation of human rights and contrary to human values. This is also a criminal offense that is punishable by crime with serious sanctions. As a society, it is important to safeguard and protect children from all forms of exploitation and abuse. Education, awareness and strong legal measures can help address this problem. In this case, the role of parents, educators and law enforcement agencies is very important to create a safe and supportive environment for children (Carmela et.al., 2021).

Furthermore, in cases that occurred against children in the jurisdiction of Merauke, narcotics abuse by children was not in line with the provision of punishment by children. If you look at the imposition of punishment on children in the form of imprisonment for 1 year, this is contrary to the principles of the juvenile criminal

justice system. This is not in accordance with the principle of the best interests of the child, the principle of avoiding retaliation and the principle of deprivation of liberty and punishment as a last resort.

Then from the principle of restorative justice, the desired thing has not been achieved as is known to find a solution to restore and cure children from narcotics criminal behavior. This is an illustration that social justice has not been achieved, which results in children having to face the law by following the entire criminal justice system.

In connection with the concept criminal responsibility for children who abuse narcotics, the main problem arising from the juvenile criminal justice process or a criminal decision is the stigma attached to those convicted of narcotics abuse after the criminal justice process is completed. The increasing trend of narcotics abuse by children or young offenders has encouraged efforts to overcome and handle it specifically in the field of juvenile criminal law, both formally and materially. In essence, children who abuse narcotics cannot be seen solely as perpetrators of criminal acts, but must also be seen as victims (Hidayat, et. al, 2021). This paradigmatic approach essentially departs from the idea that (the crime of) narcotics abuse can be qualified as crime without victim.

Thus, the victims of narcotics abuse crimes are the perpetrators themselves, not other people. Therefore, it would be inappropriate if in the event of narcotics abuse the person concerned is only seen as the perpetrator and not as the victim. Confirmation of this problem is considered very urgent in relation to the efforts that must be taken to overcome it (Dirjosisworo, 1990).

In the author's view, the importance of an ideal concept about what should be done from a policy perspective in cases of narcotics abuse, especially children. If these regulations are regulated then efforts can be made so that the decision does not take the form of a prison sentence (enforcement sanctions), and of course by carrying out criminal law reform, in particular by reconstructing the regulation of sanctions against children who commit delinquencies.

Then another thing that concerns the ideal concept put forward in child criminal responsibility is the restorative justice process, this begins with achieving the desire to avoid bad things for the child's life and growth and development through the child's involvement in the criminal justice system.

Conclusion

The form of criminal responsibility for children who abuse narcotics is carried out in accordance with Law Number 35 of 2009 concerning Narcotics and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The criminal responsibility of children who abuse narcotics is in the form of punishment or action, so that it can be seen from the form of action that exceeds the punishment or is less than the requirements given by taking into account the child's rights in order to provide the

best interests of the child. The ideal concept of criminal responsibility for children who abuse narcotics is to prioritize restorative justice and diversion efforts as a form of defending the rights of children who abuse narcotics. Apart from that, it is necessary to review it from the perspective of regulatory policy so that the decision is not a prison sentence (an action sanction), this is so that in the future criminal law can be reformed, namely by reconstructing the regulation of sanctions against children who commit narcotics crimes and looking at the justice side so that the benefit for children becomes the point. important thing to consider.

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