

Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps.

Dudu Wawan Setiawan¹ and Bambang Tri Bawono²

Abstract. The problem of this research is Why the disparity between the criminal Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps.? Whether due to the disparity of criminal child Narcotics Crimes between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. ?

The method used by researchers is normative juridical law approach and specification in this study were included descriptive analysis. Now sources and types of data in this study are primary data obtained from interviews with field studies Denpasar State Court Judge, and secondary data obtained from the study of literature. Data were analyzed qualitatively. The problems studied by the theory of *Pancasila* justice, law enforcement and progressive.

Based on the results of research that Children judge anyone considering the Research Society (*Litmas*) Community Advisors (PK) from the Institute of Corrections (*Bapas*) that, as considered by the Child Justice in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. Children temporary Judge's decision in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. not considering it, should judge Children in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. PK *Litmas Bapas* expensive, because the perpetrators of the Child is the only user, but instead judge Children in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. considering *Litmas* PK *Bapas*, whereas perpetrators Children in this case proved to be a dealer. Disparities criminal perpetrators of criminal acts against children Narcotics between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. implications for the protection of child neglect.

Keywords: Children; Disparity; Narcotics; Decision; Crime Actor.

1. Introduction

Children in the growth and development requires special attention and protection both of the parents, family, community, nation and the State³, Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity and to realize the quality of Indonesian children, noble and prosperous.

Everyone must realize that the child is a gift given to each parent. Kids are an integral part of human survival and sustainability of a nation and the State. Indonesia's constitution, the child has a strategic role which explicitly stated that the State

¹ Student of Master of Law, Universitas Islam Sultan Agung Semarang and Police members, email: duduwawans@gmail.com

² Lecturer of Master of Law, Sultan Agung Islamic University (UNISSULA), Semarang

³ Darwan Prinst, 2014, *Hukum Anak Indonesia*, Jakarta: PTIK, p. 11.

guarantees the right of every child to survival, grow, and develop as well as protection from violence and discrimination. The protection of children in a community of nations, is a measure of the nation's civilization, therefore must match the capabilities cultivated homeland. Child protection activities is an action law that legal consequences⁴.

"Narcotics are substances that can cause certain effects to those used by inserting into the body"⁵. The use of drug abuse can be dangerous, which eventually damage the nervous system. If this trend continues, it will be detrimental to self, family, community, and country.

Child protection system in Indonesia, many raised questions in the community about how the treatment is given if a child committed a crime. The child who commits a crime is generally not due to the nature of evil, but because of the nature of children 'naughty' alone⁶. That is why the children like this should receive protection and special treatment as well.

According to the Criminal Justice System Child, Criminal possession implementation independence and conviction of the final attempt. However, in relation to children who are victims of abuse of drugs or narcotics are involved in criminal acts, the judge decide the case of children in the criminal disparities often occur. The criminal is a criminal disparity unequal application of the same offenses. From this definition it can be seen that the criminal disparity arises because of the different sentencing on similar offenses. Is certainly a criminal punishment is the sentence imposed by the judge, against criminals so that it can be said that the role of the judge in the case of the emergence of criminal disparity is crucial⁷, One criminal disparities that occur as happened in criminal abuse of drugs by children who disconnected the Court Denpasar District in decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps.

Based on the background of the problems mentioned above, then the problem can be formulated as follows: Why the disparity between the criminal Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. ?; Whether due to the disparity of criminal child Narcotics Crimes between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. ?

Research methods

Researchers used the method is legal normative juridical approach and specification in this study were included descriptive analysis. Now sources and types of data in this

⁴ According to Abdul Hakim G. Nusantara, *Perlindungan Anak yang serupa ini merupakan salah satu perlindungan melalui pendekatan yuridis. Pendekatan yang lebih luas yaitu mengangkuat ekonomi, sosial, dan budaya*. Abdul G. Nusantara, 1996, *Hukum dan Hak-Hak Anak*, edited by Mulayana W. Kusuma, Jakarta: Rajawali, p 23.

⁵ Soedjono Dirjosisworo, 1990, *Hukum Narkotika Indonesia*, Bandung: Citra Aditya Bhakti, p. 3

⁶ Ahmad Sofian, 2012, *Perlindungan Anak di Indonesia*, Jakarta: PT. SOFMEDIA, p. 7.

⁷ Muladi and Barda Nawawi Arief, 1984, *Teori-teori dan kebijakan pidana*, the second Molds, Bandung, p. 52. In Een Indriyanie Santoso, Gunarto, "*Disparitas Pidana Terhadap Perkara Anak (Studi Kasus Di Pengadilan Negeri Demak)*", *Jurnal Hukum Khaira Ummah* Vol. 13. No. March 1st, 2018 p. 312.

study are primary data obtained from field studies of interviews with the Denpasar State Court Judge. And secondary data obtained from the study of literature. Data were analyzed qualitatively. The problems studied by the theory of *Pancasila* justice, law enforcement and progressive.

2. Results and Discussion

3.1. Any Criminal Disparity Between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps

In conducting this research, the study in using domestic court decisions in which researchers get through access Directory Supreme Court ruling that <https://putusan.mahkamahagung.go.id/>, Researchers have analyzed two decision disparity against the crime of Narcotics in the State Court Denpasar of Bali, Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps.

From two narcotics cases above, can be seen from a disparity to the difference between the criminal case Number 3 / Pid.Sus.Anak / 2014 / PN.Dps. and Case Number 14 / Pid.Sus.Anak / 2015 / PN.Dps. Where the defendant in case No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. sentenced to imprisonment for nine (9) months, while the defendant with a case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. sentenced to imprisonment for three (3) years at the Institute of Special Development Center (LPKA),⁸

Considering that, on the recommendation of PK *Bapas*, contained in *Litmas*, Judge agrees with PK *Bapas* to reduce the length of imprisonment imposed on the Son of the length of imprisonment demanded by the Prosecution in its demands and imprisonment of the child held in LPKA Karangasem in the best interest for Children; Considering that on the job training criminal injunction contained in the charges, the judge agreed with the Public Prosecutor, in accordance with Article 71 Paragraph (3) by Act No. 11 Of 2012 on the SPPA.

Based on the disparity between the criminal Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. is because nobody considered the Child Justice Research Society (*Litmas*) Community Advisors (PK) from the Institute of Corrections (*Bapas*) that, as considered by the Child Justice in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. Children temporary Judge's decision in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. not considering it, should judge Children in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. PK *Litmas Bapas* expensive, because the perpetrators of the Child is the only user, but instead judge Children in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. considering *Litmas* PK *Bapas*, whereas perpetrators Children in this case proved to be a dealer.

Based on the above research by the authors studied the theory of law enforcement because the reality of the criminal disparity, do not be surprised if the public

⁸ Results of interviews with A.A. Ketut Anom Wirakanta, SH, as Judge at the Denpasar State Court, on 21 January 2020 at 13:10 pm

questioned whether the judge / court has actually carry out its duty to uphold law and justice

3.2. Disparity Implications On Criminal Actors Against Children Narcotics Crime Between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps.

The doers have the role, position and different sanctions, either based on laws and regulations that govern it and based on the role and impact of his actions. Classification of the doers can be seen from several aspects, as in Act No. 35 of 2009 and other statutory provisions relating to the offense narcotic⁹.

The absolute authority of the judge in determining the sanctions often a trigger for sanctions difference, even if it's on the case on the same / similar. Differences sanctions that may occur due to any judge demanded to be independent in carrying out duties and function, as a form of independence of the judge certainly had a view and consideration of different, other than that the Indonesian criminal law also gives reproach to the difference in the application of sanctions, which Indonesian criminal law sanctions system adopted is known as the Double Track system of criminal sanctions Two Line as indicated by "M. Sholehuddin "in his book, two-track system in question is the enactment of the two types of sanctions in criminal law, the criminal penalties and sanctions action.

Different sanctions against the crime of the same / similar in criminal law known as the disparity of sentencing of disparity. Disparity / disparity sanction referred to also occur in both the Trial Judgment is lifted by the author. Sanctions imposed against the defendant in the Kids Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. but have differences in giving consideration of PK *Bapas*, Kids Court decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. consider *Litmas* of PK *Bapas*, while the Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. did not consider the defendant when the son is only as consumers, while at Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. Children defendant is a lot.

Disparity, according to the Indonesian criminal law is not a thing wrong and forbidden, because of disparity caused by the demands of the independence of judges in deciding the case are likely to result in a difference between the decision with other decisions. But according to legal principle *Similia Similibus*, against a case that the same / similar should be disconnected same / similar. This principle aims to ensure the right of every people to be treated equally before the law and avoid discrimination as defined in Article 4 paragraph (1) of Act No. 48 Of 2009 regarding Judicial Power that court adjudicating according to the law with no respecter of persons.

Sanctions to imprisonment for nine (9) months against the Accused Child describes the lack of attention of judges in considering and determining sanctions, when it was supposed to be the judge as the spearhead of the giver of justice in this country issued a ruling that reflects siding with the interests of the child because it influences the

⁹ Dahlan, *Penerapan Pidana Terhadap Penyalahgunaan Narkotika Untuk Dirinya Sendiri*, North Jakarta State Court, Vol, IV, No. 1, p. 18.

future of the child. In contrast to the Denpasar State Court Number 3 / Pid.Sus.Anak / 2014 / PN.Dps. Mentioned above, the Child Justice Denpasar State Court in the case No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. choose consider *Litmas Bapas* line with the objective of child protection even child actors are drug dealers, but the Son of the Denpasar State Court Judge Number 3 / Pid.Sus.Anak / 2014 / PN.Dps. PK *Litmas Bapas* ignore.¹⁰

Consideration and discretion of the judge in deciding a criminal case the child has a very big role in the effort to support the protection of children in Indonesia, thus indirectly will help to minimize the disparity, because there will be more Judge children who sided with the child with more regard to the principle "*Utimum Remedium*" as mentioned above. So the future is expected every Decision reflects justice and legal certainty and to avoid any kind of discrimination as well as the ideals of the nation has been regulated under the Indonesian Constitution that the State guarantees the right of every child to survival, grow, and develop as well as protection from violence and discrimination.

Thus due to the disparity of criminal child Narcotics Crimes between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. implications for the protection of child neglect. Based on the above research by the authors studied the theory of justice *Pancasila* then disparities also has implications for the criminal injustice for those seeking justice, because in case of narcotics with the same level of seriousness of different Decision handed down by a panel of judges will lead to controversy

3. Closing

3.1. Conclusion

- Criminal disparity between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. is because nobody considered the Child Justice Research Society (*Litmas*) Community Advisors (PK) from the Institute of Corrections (*Bapas*) that, as considered by the Child Justice in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. Children temporary Judge's decision in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. not considering it, should judge Children in case number 3 / Pid.Sus.Anak / 2014 / PN.Dps. PK *Litmas Bapas* expensive, because the perpetrators of the Child is the only user, but instead judge Children in case number 14 / Pid.Sus.Anak / 2015 / PN.Dps. considering *Litmas PK Bapas*, whereas perpetrators Children in this case proved to be a dealer.
- Disparities criminal perpetrators of criminal acts against children Narcotics between Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 / PN.Dps. implications for the protection of child neglect

¹⁰ Results of interviews with A.A. Ketut Anom Wirakanta, SH, as Judge at the Denpasar State Court, on 21 January 2020 at 13:10 pm

3.2. Suggestion

- Child protection and children's rights in Indonesia can not be said to be the maximum, as aspired by forming legislation in Indonesia. Often in practice the law enforcement interests of the child ruled out due to lack of knowledge of the child about their rights. Supposedly law enforcement in Indonesia more prudent in running his authority when dealing with cases involving children. Because children are not yet able to defend himself and in desperate need of adults to defend its own interests.
- Indonesian criminal law has not explicitly set of sanctions that may be imposed against children or victims of drug users, so that they provide a blemish-reproach for the difference of punishment is too much. Supposedly the legislature explicitly set of sanctions to ensure legal certainty, so that any sanctions imposed each judge does not differ too much because it can cause problems in the community.

4. References

- [1] Dahlan, *Penerapan Pidana Terhadap Penyalahgunaan Narkotika Untuk Dirinya Sendiri*, North Jakarta State Court, Vol, IV, No. 1
- [2] Darwan Prinst, 2014, *Hukum Anak Indonesia*, Jakarta: PTKI
- [3] According to Abdul Hakim G. Nusantara, *Perlindungan Anak yang serupa ini merupakan salah satu perlindungan melalui pendekatan yuridis. Pendekatan yang lebih luas yaitu mengangkut ekonomi, sosial, dan budaya*. Abdul G. Nusantara, 1996, *Hukum dan Hak-Hak Anak*, edited by Mulayana W. Kusuma, Jakarta: Rajawali
- [4] Een Indriyanie Santoso, Gunarto, "Disparitas Pidana Terhadap Perkara Anak (Studi Kasus Di Pengadilan Negeri Demak)" *Jurnal Hukum Khaira Ummah* Vol. 13. No. March 1st, 2018.
- [5] Soedjono Dirjosisworo, 1990, *Hukum Narkotika Indonesia*, Bandung: Aditya Citra Bhakti