

Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction

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Abstract. The purpose of this study to know and analyze the mechanisms used in the investigation of children in conflict with the law against narcotic crime, the provision of diversion for children who are in conflict with the law in narcotic crime, obstacles and solutions in the process of diversion for children who are in conflict with the law in narcotics. This research uses the approach method of normative juridical and sociology juridical methods, the specifications in the study are analytical descriptive, population and sampling methods are all objects or all symptoms or all events or all units to be studied, data collection techniques using literature studies and interviews, analysis the data used are qualitative, using the theory of law enforcement, the theory of expediency and the theory of justice. Research result: Act No. 11 of 2012 on the Child Criminal Justice System. Giving diversion for criminal acts without victims also must be diversified. Crimes without victims such as narcotics abuse, children who become narcotics abusers are categorized as victims. Internal barriers, agreement between the victim and the child in conflict with the law; Human Resources (HR). External barriers, limited facilities and infrastructure; Different understandings; Lack of coordination; Community understanding of diversion; Regulation regarding supervision of the implementation of the agreed version of the agreement. Efforts to overcome internal barriers: Develop a work plan, include training investigators and educate. Efforts to overcome external barriers: Optimize facilities and infrastructure; Using social welfare personnel in the diversion process; Establish intensive communication with other law enforcement officers; Improve coordination with community mentors; Hold socialization.

Keywords: Investigation; Children; Legal Conflict; Criminal Acts; Narcotics.

1. Introduction

Article 1 paragraph (2) of the Criminal Procedure Code provides explanations regarding investigations, namely a series of investigative actions in terms of and in the manner stipulated in this Law to search for and collect evidence about criminal offenses, with which the evidence makes clear about criminal acts that occur and to find suspects. . Whereas investigators according to Article 1 paragraph (10) Police Act No. 2 of 2002 is an official of the Indonesian National Police who is authorized by law to conduct investigations³.

Children are the mandate and the gift of God Almighty who must always be guarded because inherent dignity, dignity, and rights as human beings must be upheld. Talking

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³ *Republic of Indonesia National Police Act, 2010, Fokusmedia*, p. 4

about children is very important because children are the potential for future human destiny, it is children who play a role in determining the history of the nation as well as a mirror of the nation's future life attitudes⁴. Children are part of the young generation one of the human resources which is the potential and the successor of the ideals the ideals of the struggle of the nation, which requires coaching and protection in the context of physical, mental and social growth and development in full, harmonious and balanced⁵.

Deviations of behavior or acts that violate the law committed by children, due to various factors including weak religious education in the family environment, deterioration of mental and morals, the negative impact of rapid development development, the flow of globalization in the field of communication and information, advances in science and technology, the unstable social, political and economic conditions and changes in the style and way of life of some parents, have brought fundamental social changes in people's lives that greatly affect children's values and behavior.

The increase in the quality and quantity of crimes that place children as victims is a worrying condition because children are the nation's next generation and are entitled to protection. As is the case with the rise of drug crimes that make children victims.

The problem of drug abuse in Indonesia, now is very alarming. This is due to several things, among others, because Indonesia is located in a position between three continents and given the development of science and technology, the influence of globalization, highly developed transportation flows and shifting of materialistic values with the dynamics of illicit trafficking targets. Indonesian society and even the world community in general are currently facing a very alarming situation due to the rampant illegal use of various types of drugs. This concern is further exacerbated due to the widespread illicit exposure of drugs that have spread throughout all walks of life, including among the younger generation. This is very influential on the life of the nation and state in the future.

In Article 1 number 3 of the Law of the Republic of Indonesia No 11 of 2012 on the Juvenile Justice System explains that⁶:

"Children who are in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who have been alleged to have committed a crime".

In the juvenile justice system as referred to in paragraph (2) letter a and letter b must be sought diversion. Law of the Republic of Indonesia No 11 of 2012 on the Juvenile Justice System, Chapter I Article 1 explains that diversion is the transfer of the settlement of a child case from a criminal justice process to a process outside of criminal justice. Chapter II Article 6 further explains that diversion aims to achieve peace between victims and children, resolve cases outside the judicial process, prevent children from deprivation of liberty, encourage communities to participate and instill a sense of responsibility to children.

⁴ Wagiati Soetodjo, *Hukum Pidana Anak*, PT. Refika Aditama, Bandung, 2005, p. 5

⁵ Gatot Supramono, *Hukum Acara Pengadilan Anak*, Jakarta:Djambatan, 2007, p. 11

⁶ *Acta of the Republic of Indonesia No 11 of 2012 on the Juvenile Criminal System*

Regarding the investigation of narcotics crimes committed by children, many are carried out by Semarang Police. As was the case that occurred on Wednesday, July 25, 2018 at approximately 22:00 West Indonesia Time, Semarang Police Resort Police officers made the arrest of Muhammad Ali Sabilal bin Sukarman in front of the Pucang Gading gas station toilet Jl. Sarwo Edi Wibowo Kel. Palmongan Sari Kec. Pedurungan of Semarang City, then searched and found items in the form of: 1 (one) small plastic clip containing black insulated methamphetamine supported by a piece of straw in a Sampoerna Mild cigarette pack that was on the dashboard of a motorcycle that was occupied by Muhammad Ali Sabilal bin Sukarman.

The role of investigators becomes very vital in the process of law enforcement against drug offenses involving children, because investigators must be able to package investigations against children in a family atmosphere in accordance with what is mandated in Law of the Republic of Indonesia No. 11 of 2012 on the Juvenile Justice System, as well as seeking diversion to provide protection to children.

The initial condition of a child related to narcotics in the Semarang Police Jurisdiction. Based on the description above, the writer is interested in researching with the title "Investigation of Children in Conflict with the Law in Narcotics Criminal Acts in the Semarang Regional Police Legal Area".

The formulation of the problem in writing this research is: How is the mechanism used in investigating children in conflict with the law related to the existing rules in narcotics crime in the Semarang Police Jurisdiction?; How is the provision of diversion to children who are in conflict with the law in narcotics crime in the Semarang Police Jurisdiction? and What are the obstacles and solutions in the diversion process for children who are in conflict with the law in narcotics crime in the area of Semarang Police Jurisdiction?

Research methods

The approach method used in this study is empirical juridical, which is a method used to solve research problems by examining secondary data first and then proceed with conducting research on primary data in the field⁷.

The specifications in this study are analytical descriptive, which is a study that aims to find out investigation of children who are in conflict with the law in narcotics crime in the Semarang Police Jurisdiction.

2. Results And Discussion

2.1. Mechanisms Used In Investigating Children In Conflict With The Law

Based on research conducted by the author in the Semarang Police Jurisdiction, the mechanism used in the investigation of children in conflict with the law is associated with existing rules, namely Act No. 11 of 2012 on the Criminal Justice System for Children (SPPA Law), specifically for the case of the Child there is a mechanism known to transfer the settlement of the case from the criminal justice process to a process

⁷ Soejono Soekamto, *Pengantar Penelitian Hukum*, Cetakan III, UI Press, 2007, p. 5

outside of criminal justice, which is called Diversi (Article 1 number 7). According to Article 7 paragraph (1) stated in all levels of examination both at the level of investigation, prosecution, and examination of cases of Children in the District Court must be pursued Diversion.

The case above is with a child offender in the Semarang police area with a suspect MAS bin S, DRII bin K and GA bin M were not diversified as mandated by Act No. 11 of 2012 on the Child Criminal Justice System, all child offenders, whether a criminal threat of less than 7 (seven) years and more than 7 (seven), must be diversified according to the mandate of the law, both from the investigation process, investigation and detention must refer to all special rules regarding children.

Perpetrators of drug offenses committed by children should be arrested in accordance with Article 30 of Act No. 11 of 2012 on the Criminal Justice System for Children, which is that the arrest of a child is carried out for the purpose of investigating a maximum of 24 (twenty four) hours, must be placed in a special service room Children, in the case that there is no special service room for Children in the area concerned, Children are entrusted in LPKS, arrest of children must be done humanely by taking into account the needs in accordance with their age and the cost for each child placed in LPKS is charged to the budget of the ministry that carries out government affairs in the social field. But in its implementation at Semarang Police Jurisdiction not in accordance with these rules, because all the process of investigation, investigation,

Act No. 11 of 2012 on the Criminal Justice System for Children, the implementation of diversion is not merely carried out against criminal acts that have victims, for criminal acts without victims also must be diversified. In judicial practice, criminal acts without victims, for example, misuse of narcotics which, even according to the Child Protection Act, children who become narcotics abusers are categorized as victims.

In accordance with the research that the author conducted on the casethe child offender in the Semarang police area with the suspect MAS bin S, DRII bin K and GA bin M are criminal acts without victims. Unlike the diversion in general, which depends on the success of peace with the victim, because the crime without a victim does not have a victim, the essence of the victim's agreement is lost, therefore it is normal if Act No. 11 of 2012 on the juvenile justice system makes special rules regarding the diversion of crime without victims which is different from the diversion in general, which is contained in Article 9 and Article 10.

2.2. Provision of Diversity for Children in Conflict with Law in Narcotics Crimes

Provision of diversion after the evidence has been fulfilled in the investigation process then proceed with diversion. If the diversion process is successfully carried out, then the problematic child is handed over to parents for guidance, but if the diversionary effort is not carried out because the investigator prioritizes repressive measures, then the investigation of the problematic child continues to the criminal justice process to fulfill what is regulated in Article 75 of the Regulation National Police Chief Number 14 of 2012 on Management of Criminal Investigations, namely by making minutes of the handover of suspects and evidence to the Public Prosecutor.

With the provisions stipulated in the Criminal Procedure Code, the mechanism for dealing with children with legal problems that have been carried out by the Semarang Police Narcotics Unit is in accordance with the Criminal Procedure Code, Perkap No. 14 of 2012 on Management of Criminal Investigations, and Act No. 11 of 2012 on the Children's Criminal Justice System. This was done by the Semarang Police Narcotics Unit so that the investigation did not violate the rules that could lead to lawsuits for the police officers conducting the investigation. The thing that needs special attention is that the investigation by the Semarang Police Narcotics Unit as a whole is in accordance with Act Number 11 of 2012 on the Child Criminal Justice System,

However, there are still doubts experienced by investigators Semarang Narcotics Police Unit due to the absence of standard rules or clear SOPs in investigating drug crime in children with legal problems, so that investigators prioritize repressive actions through law enforcement compared with other efforts. The situation gives the impression that the Semarang Police Jurisdiction Narcotics Unit is only pursuing the completion of the investigation process and the perpetrators can be charged with law, but it does not show an effort to prioritize the values of human rights (HAM), especially against children. Action steps partak legal protection in conflict with the laws of the Semarang Police Jurisdiction Narcotics Unit has been carried out since the investigation process until the diversion attempt.

The diversion process is carried out through deliberations by involving children and their parents / guardians, Community Guidance, and Professional Social Workers based on a Restorative Justice approach. If necessary, it can involve social welfare workers, and / or the community. The purpose of diversion in accordance with Act of the Republic of Indonesia Number 11 of 2012 on juvenile justice is more focused on children who are in conflict with the law, so that children who are in conflict with the law are not processed by criminal law. However, in the research findings, it was found that there are still different mechanisms in the handling of children with legal problems by investigators from the Semarang Police Narcotics Unit related to the implementation of diversion.

The provision of diversion for children who are in conflict with the law in narcotics crime in the Semarang area of law Police Resort Big City is appropriate when linked to the theory of law enforcement, the first is the substance of the law or the rule of law in accordance with the applicable rules, namely the perpetrators of children by implementing child protection laws, the second is the legal structure, namely law enforcers such as the Police in conducting investigations, investigations and their application in accordance with child protection laws, so the investigators at the Semarang Police Resort firmly carried out without discrimination, thirdly the culture of the community, that law enforcement, especially narcotics crime according to the law used and no law was misused, which is in accordance with the culture of the community influenced by the law used, avoided and abused.

2.3. Obstacles That Arise In The Process Of Applying Diversion

The obstacles that arise in the process of applying diversion are as follows:

Internal obstacles, including: reaching an agreement between the victim and the child who is in conflict with the law and Human Resources (HR) related to investigations in the Police specifically for children.

External barriers, including: limited adequate facilities and infrastructure in the diversion process of children who commit crimes; different understanding in handling children in conflict with the law among law enforcement officials; coordination between investigators (the Police) and community supervisors; community understanding of diversion; and regulations regarding supervision of the implementation of the agreed version of the agreement.

Efforts by Police Investigators in overcoming internal barriers, namely holding separate (special) meetings to reach an agreement: compiling a work plan and maximizing the performance of each investigator in handling cases of children and including special investigators who handle the crime of minors by conducting training and dikjur about how is the investigation of children who commit criminal acts.

Efforts to overcome external obstacles, namely optimizing facilities and infrastructure; use social welfare personnel in the diversion process; establish intensive communication with other law enforcement officials; improve coordination with community mentors; held outreach about diversion among the people and made an agreement on supervising the implementation of the diversion agreement.

3. Closing

3.1. Conclusions

- The mechanism used in investigating children in conflict with the law is related to existing rules, i.e. Act No. 11 of 2012 on the Criminal Justice System for Children (SPPA Law), specifically for the case of the Child there is a mechanism known to transfer the settlement of the case from the criminal justice process to a process outside of criminal justice, which is called Diversi (Article 1 number 7).

In investigating criminal acts, attention must be paid to the theory of expediency and the theory of justice.

- Invite Act No. 11 of 2012 on the Criminal Justice System for Children, the implementation of diversion is not merely carried out against criminal acts that have victims, for criminal acts without victims also must be diversified. In accordance with the research that the author conducted on the case the child offender in the Semarang police area with the suspect Muhamad Ali Sabilal bin Sukarman, Dian Riki Indra Irfan bin Kasmono and Ghany Adinugroho bin Mulyono were criminal acts without victims according to the Law Invite No. 11 of 2012 on the juvenile justice system makes special rules regarding the diversion of crime without victims which is different from the diversion in general, which is contained in Article 9 and Article 10.

Law enforcement in a criminal case must pay attention to first, namely the substance of the law or regulations or legislation, secondly about the legal structure, which is the firmness of the Police in taking action against the

perpetrators of the crime and the culture of the people affected by the law used and abused.

- The obstacles that arise in the process of applying diversion are as follows:
 - Internal barriers, including: reaching agreement between the victim and the child in conflict with the law; Human Resources (HR) related to investigations in the Police specifically for children. External barriers, including: Limited facilities and adequate infrastructure in the diversion process of children who commit crimes; Different understandings in handling children in conflict with the law among law enforcement officials; Coordination between investigators (Police) and community counselors; Community understanding of diversion; Regulation regarding supervision of the implementation of the agreed version of the agreement.
 - Efforts of Police Investigators in overcoming internal obstacles: Conducting separate (special) meetings to reach an agreement, Developing work plans and maximizing performance, Engaging investigators in training and education on how to investigate children who commit criminal acts. Efforts to overcome external obstacles: Optimizing facilities and infrastructure; Using social welfare personnel in the diversion process; Establish intensive communication with other law enforcement officers; Improve coordination with community mentors; Hold socialization about diversion in the community; Make an agreement regarding the supervision of the implementation of the agreed version of the agreement.
- In law enforcement the point the second legal structure, namely law enforcement such as the Police in conducting investigations. In improving the quality of human resources of investigators, training or education should be conducted on investigations of child offenders and can overcome obstacles in facilities and infrastructure so as not to interfere with investigators' performance in uncovering a criminal act

3.2. Suggestions

Based on the conclusion above, it is suggested as follows:

- Investigators consider the need for a diversion approach in drug criminal cases, because children are the successor to the nation
- It is necessary to do a common perception of more stringent supervision of the implementation of diversion in each stage of the Police, Attorney General's Office and Court so that there is no abuse of authority regarding diversion so that the diversion process can run smoothly and provide justice for criminal acts committed by children.
- Legal counseling is needed by investigators, public prosecutors, judges, and correctional centers and related ministries that carry out affairs in the field of child protection to the public about diversion ideas so that the public understands the importance of diversion in the administration of the juvenile justice system.

4. References

- [1] Gatot Supramono, 2007, *Hukum Acara Pengadilan Anak*, Djambat, Jakarta
- [2] Soejono Soekamto, 2007, *Pengantar Penelitian Hukum*, 3rd print, UI Press.
- [3] Wagianti Soetodjo, 2005, *Hukum Pidana Anak*, PT. Refika Aditama, Bandung.
- [4] Republic of Indonesia National Police Act, 2010, Fokusmedia.
- [5] Act of the Republic of Indonesia No 11 of 2012 on the Juvenile Criminal System
- [6] Criminal Law Book
- [7] Criminal Procedure Code
- [8] Perkap No. 6 of 2019 on Criminal Investigations