

## Process of Settlement of Criminal Cases of Drug Abuse by Children at the District Prosecutor's Office of Semarang City

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**Abstract.** *The position of children who commit narcotics abuse crimes based on Article 22 of Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA), children can only be sentenced according to the provisions of applicable laws. While for children aged 8-18 years, they can be punished using exclusive limits in sync with the SPPA Law. This writing aims to find out and analyze the process of resolving narcotics abuse cases by children and law enforcement in resolving narcotics abuse cases by children at the Semarang District Attorney's Office. The approach method used in this study is the sociological legal approach method. Sociological legal is by finding the legal reality experienced in the field or an approach that is based on problems regarding legal matters and existing realities. The analytical tool in this writing uses the theory of legal certainty and the theory of legal effectiveness. The results of the study show that the settlement of cases for children has a difference because of the rights owned by children. The stages carried out in the settlement process start from the investigation and diversion stage by the Police, the prosecution and diversion stage by the public prosecutor, the trial and diversion stage at the District Court. Law enforcement against perpetrators of child abuse is attempted not to be processed through litigation. BNK Semarang further examines the chronology of drug abuse by children.*

**Keywords:** *Children; Narcotics; Resolution.*

### 1. Introduction

Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia has made rules that regulate the order of life of its society which are sourced from the law to create security and order, where the consequence of the above is that all actions and behavior of all components of society must be in accordance with and in line with the applicable legal values.

"As a state of law that in carrying out all its activities regarding state and community life before upholding human dignity and honor where law enforcement is an important element in creating security and order in society".<sup>1</sup>

The regulations that are regulated can be classified into civil, administrative, criminal, community, person or legal entity that commits a crime or violation in the field is called a criminal act. Criminal acts in English are called criminal acts or criminal offenses, while in Dutch, they are called strafbaar feit, meaning acts related to crimes.<sup>2</sup>

One of the crimes that is still rampant in Indonesia is drug abuse. Narcotics are drugs or substances that can calm the nerves, cause unconsciousness, or anesthesia, eliminate pain and illness, cause drowsiness or stimulation, can cause stupor, and can cause addiction or addiction, and which are determined by the Minister of Health as Narcotics.<sup>3</sup>

The role of the Prosecutor in confiscating and prosecuting evidence in narcotics crime cases in the context of implementing Law No. 35 of 2009 concerning Narcotics is essentially implementing the objectives of Law No. 35 of 2009 as stated in Article 4 as follows:

- 1) Ensure the availability of narcotics for the benefit of health services and/or the development of science and technology;
- 2) Prevent, protect and save the Indonesian nation from narcotics abuse;
- 3) Eradicating the illicit trafficking of narcotics and narcotic precursors; and
- 4) Ensure the provision of medical and social rehabilitation efforts for drug abusers and addicts.

The role of the Prosecutor's Office as one of the important elements in the SPP occupies a very important role in carrying out its duties and authorities in order to carry out prosecution in narcotics crime cases in court. Sociologically, each law enforcer has a position (status) and role (role). Position is a certain position in the social structure that may be high, medium or low.<sup>4</sup>

The position is actually a container that contains certain rights and obligations, where the rights and obligations are roles. A person who has a certain position is usually called a role occupant. A right is actually the authority to act or not to

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<sup>1</sup>Sukrdi, 2016, "The Role of Law Enforcement in Economic Development", *Journal of Law and Development* 46 No. 4, p. 442

<sup>2</sup>Rodliyah and Salim, 2017, *Special Criminal Law*, PT Raja Grafindo Persada, Depok, p. 11.

<sup>3</sup>Mardani, 2008, *Drug Abuse in the Perspective of Islamic Law and National Criminal Law*, PT. Raja Grafindo Persada, Jakarta, p. 32

<sup>4</sup>Soerjono Soekanto, 2008, *Factors Influencing Law Enforcement*, PT Raja Grafindo Persada, Jakarta, p. 20.

act, while an obligation is a burden or task. A law enforcer and also like other people, usually have several positions and roles at once. Thus, between various positions and roles, conflicts will arise (status conflict and conflict of roles). In reality, there is a gap between the role that should be and the role that is actually carried out or the actual role, so with this there will be a role gap (role distance).<sup>5</sup>

## **2. Research methods**

The approach method used in this study is the sociological legal approach method. Sociological legal is by finding the legal reality experienced in the field or an approach that is based on problems regarding legal matters and existing realities. Sociological legal research mainly examines primary data in addition to also collecting data sourced from secondary data. So in this study it is more suitable to use sociological legal, because in the formulation of the problem the data obtained is more accurate. By conducting this approach, it is intended to obtain a clear picture and understanding of the problems that will be discussed in this study.<sup>6</sup>

## **3. Research Methods**

### **3.1. Process of Settlement of Criminal Cases of Drug Abuse by Children at the Semarang District Attorney's Office**

Crimes in fact can not only be committed by adults it is possible that crimes can be committed by children due to several factors such as the environment in which the child is located. The definition of a child is important for the enforcement of juvenile criminal law because it is related to the formulation of the age of a child who is considered capable of being held responsible for a crime.<sup>7</sup>Indonesia as a country of law has laws and regulations that regulate the age limits of a child.<sup>8</sup>

Drug abuse cases are unique in that the perpetrator also acts as a victim.<sup>9</sup>The settlement of cases for children has a difference because of the rights that children have. To maintain special rights and uphold criminal regulations, the Indonesian government has formed a legal policy to protect and try criminal cases of children. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System is a policy that uses the concept of restorative justice in which the

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<sup>5</sup>Ibid, p. 20.

<sup>6</sup>Hilman Hadi Kusuma, 2012, *Method of Making Working Papers or Legal Thesis*, CV. Mandar Maju, Bandung, p. 34

<sup>7</sup>Paulus Hadisuprpto, 2008, *Child Delinquency (Understanding and Dealing with It)*, Bayu Media, Malang, p. 8.

<sup>8</sup>Mita Dwijayanti, 2017, "Diversion Against Child Recidive", *Jurnal Rechtidee*, Vol. 12 No. 2, p. 239

<sup>9</sup>Asep Syarifuddin, et al., 2018, "Legal Protection for Children as Narcotics Couriers", *SALAM: Jurnal Sosial dan Budaya Syar-I*, Vol. 5 No. 3, p.310

settlement of criminal cases involves the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation. So it is mandatory for children to get a diversion or non-litigation in their cases. For this reason, there are several stages in the implementation of the juvenile criminal justice system.

- 1) Investigation and Diversion Stage by Police
- 2) Prosecution and Diversion Stage by Public Prosecutor
- 3) Trial and Diversion Stages at the District Court

In relation to the handling of children who are addicted/abusers of narcotics, by law children can be tried for diversion, because basically the punishment stated in Article 127 paragraph (1) of the Narcotics Law is less than 7 years in prison, and Article 127 paragraph (2) states that judges who decide on narcotics abuse cases must pay attention to Articles 54, 55 and 103 where narcotics addicts must undergo medical rehabilitation and social rehabilitation. Cases of children as perpetrators of narcotics abuse crimes in the process always involve the Police, Prosecutor's Office, Correctional Institutions, and Courts just like other criminal cases, but handling narcotics abuse crimes requires more special attention compared to other criminal cases.<sup>10</sup>

The following are the stages that occur in the jurisdiction of the Semarang District Court in handling cases of children who abuse narcotics:

- 1) Investigation and Diversion Stage by Police

The investigation process by the Police can be carried out if there is a complaint or report from the public or caught red-handed committing a crime. The child's case file will be processed, if there is evidence then an investigation will be carried out by the police appointed by the Chief of Police. Cases of children who abuse narcotics are not detained but undergo mandatory reporting procedures. Detention is carried out if the child is 14 years old or older, which will then be assessed by the Integrated Assessment Team (TAT). TAT is a team that provides recommendations to the police and judges to carry out or not to carry out rehabilitation for a perpetrator of narcotics abuse.<sup>11</sup>

Basically, this investigation is led by a principal investigator who is dedicated to children's issues and has attended technical training on juvenile criminal justice,

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<sup>10</sup>Puteri Hikmawati, 2016, "Analysis of Criminal Sanctions for Drug Users", *State of Law: Building Law for Justice and Welfare*, Vol. 2 No. 2, p.339

<sup>11</sup>Rasdianah and Fuad Nur, 2018, "Effectiveness of Medical Rehabilitation Implementation for Drug Addicts and Victims of Drug Abuse in Gorontalo Province", *Jurisprudentie: Department of Law, Faculty of Sharia and Law*, Vol. 5 No. 2, p.178

who is appointed by the Chief of the Indonesian National Police. However, in the event that there is no investigator who meets these requirements, an investigation can be carried out by an investigator who is tasked with investigating crimes committed by adults. The investigation is carried out by requiring consideration and advice from community counselors, experts, religious leaders, professional social workers (peksos) or social welfare workers (TKS) after the crime is reported.

The implementation of the examination of child victims and witnesses, must request a social report from Peksos or TKS. The Correctional Center (Bapas) is required to submit a social report to investigators no later than 3 x 24 hours (3 days) after the investigator requests it. The time required in the investigation of drug abuse cases by children lasts for three times 24 (twenty four) hours multiplied by 2 (two), sometimes it takes quite a long time because some cases involve other law enforcement officers, or have previously been caught in other cases so that cooperation must be carried out between other law enforcement officers.

Investigators are required to ensure that diversion is carried out no later than 30 (thirty) days after the start of the investigation. Before diversion is carried out, the police send a diversion invitation letter to parents/guardians, lawyers, Bapas, community leaders, accompanying parties, and other social institutions. In the diversion process, investigators use official attributes because these attributes are the daily uniforms used while working. Coordination between the prosecutor's office is carried out by sending files when diversion is declared failed and continued at the prosecution stage by submitting the child's BAP which was made accompanied by parents/guardians, lawyers and Bapas.

If the diversion is successful in reaching an agreement, the investigator submits the diversion report to the Head of the District Court to obtain a decision. The results of the diversion that have reached an agreement and have been determined by the court can be submitted to Bapas to supervise the child in implementing the results of the diversion decision, and if it requires rehabilitation and reintegration, it is submitted to the Temporary Child Placement Institution (LPAS). Social Welfare Institution (LPKS), Witness and Victim Protection Institution (LPSK), Child Social Protection House (RPSA).

### **3.2. Law Enforcement for Settlement of Criminal Cases of Drug Abuse by Children at the Semarang District Attorney's Office**

Drug abuse has consequences that should not be ignored because, like corruption, it endangers the development and security of the country. The records only contain cases that are found or registered, although drug cases are still increasing and are often involved in other crimes or violations. Many drug cases are sometimes resolved peacefully without being formally documented.

Narcotics are defined as substances or drugs, either synthetic or semisynthetic, derived from plants or not, which have the ability to cause addiction, alter consciousness, cause loss of appetite, and reduce pain. Most opioids can be useful in the fields of medicine, health care, and scientific advancement, but their use must be carefully regulated to avoid dangerous addiction.

A person who experiences specific problems due to drugs is considered an abuser. Physical, mental, emotional, and spiritual manifestations of these problems are all possible. Abusers usually find it difficult to stop completely and permanently. Some reasons that may drive someone to commit drug abuse are as follows:

- 1) To prove courage in facing dangerous and risky actions.
- 2) To challenge authority, be it parents, teachers, the law, or any other authority.
- 3) To facilitate sexual activity and fulfill these needs.
- 4) To escape from feelings of loneliness and seek new emotional experiences.
- 5) To find the meaning of life that is felt to be less fulfilled. To fill the emptiness and overcome boredom that arises due to lack of activity or busyness.
- 6) To reduce frustration and anxiety caused by intractable problems and stuck thoughts, especially for those with disharmonious personalities.
- 7) To follow the wishes of friends and strengthen solidarity with them.
- 8) Because it is driven by curiosity and just for kicks.

The scope of criminal law includes three provisions, namely criminal acts, accountability, and punishment. The criminal provisions contained in Law No. 35 of 2009 concerning Narcotics are formulated in Chapter XV Criminal Provisions Articles 111 to 148. Law No. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely:

- 1) The first category, namely acts in the form of possessing, storing, controlling or providing narcotics and narcotic precursors (Articles 111 and 112 for class I narcotics, Article 117 for class II narcotics and Article 122 for class III narcotics and Article 129 letter (a));
- 2) The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for class I narcotics, Article 118 for class II narcotics, and Article 123 for class III narcotics and Article 129 letter (b));

3) The third category, namely acts in the form of offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging, or handing over narcotics and narcotic precursors (Article 114 and Article 116 for class I narcotics, Article 119 and Article 121 for class II narcotics, Article 124 and Article 126 for class III narcotics and Article 129 letter (c));

4) The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotic precursors (Article 115 for class I narcotics, Article 120 for class II narcotics and Article 125 for class III narcotics and Article 129 letter (d)).

As one of the factors in law enforcement, law enforcement officers have an equally important role, because law enforcement officers are the main operators in law enforcement and are the determining factor for the success of law enforcement. In the integrated criminal law enforcement system, there are 4 (four) subsystems of authority, namely the authority to investigate (police), the authority to prosecute (prosecutors), the authority to try/impose criminal penalties (judges), and the authority to implement criminal penalties (prosecutors assisted by wardens). Law enforcement of narcotics crimes due to its complex nature, law enforcement officers related to narcotics crimes are not only the owners of this authority. In addition to the police, prosecutors, courts and prison wardens who have the original authority in law enforcement, in narcotics crimes the National Narcotics Agency (BNN) also has an important role, because BNN is the coordinator for every agency related to the prevention, eradication, abuse and illicit trafficking of narcotics.<sup>12</sup>

#### **4. Conclusion**

The process of resolving cases of drug abuse by children at the Semarang District Attorney's Office, the settlement of cases for children has a difference because of the rights owned by children. To maintain special rights and uphold criminal regulations, the Indonesian government has formed a legal policy to protect and try criminal cases of children. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is a policy that uses the concept of restorative justice in which the settlement of criminal cases involves the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation. The stages carried out in the settlement process start from the investigation and diversion stage by the Police, the prosecution and diversion stage by the public prosecutor, the trial and diversion stage at the District Court. Law enforcement of the settlement of drug abuse cases by children at the Semarang District Attorney's Office, Implementation of the Semarang District Attorney's authority

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<sup>12</sup>Humphrey Wangke (eds), 2011, *Transnational Crime in Indonesia and Efforts to Handle It*, (Jakarta: Center for Research, Data Processing and Information (P3DI), p. 99-100.

over drug crimes by children within the jurisdiction of the Semarang District Attorney's Office, has a Special Prosecutor who handles cases of children in conflict with the law in accordance with the Decree issued by the leadership, in this case the Head of the Semarang District Attorney's Office. The procedure for handling cases of children in conflict with the law is related to synergy in law enforcement. Perpetrators of child abuse are attempted not to be processed through litigation. The Semarang BNK further investigates the chronology of drug abuse by children. In addition, drug abuse by children in the jurisdiction of the Semarang BNK is very small in number, therefore the Semarang BNK team is making more efforts for children to be rehabilitated.

## 5. References

### Journals:

- Andri Winjaya Laksana, 2016, *Pelaksanaan Pemeriksaan Terhadap Pelaku Penyalahgunaan Narkotika Dengan Sistem Rehabilitasi di Badan Nasional Narkotika Propinsi Jawa Tengah*, Jurna; Pembaharuan Hukum, Vol. III No. 2.
- Asep Syarifuddin, dkk, 2018, "Perlindungan Hukum terhadap Anak sebagai Kurir Narkotika", *SALAM: Jurnal Sosial dan Budaya Syar-I*, Vol. 5 No. 3.
- Irwan, 2020, "Problematika Penerapan Diversi Terhadap Anak Pelaku Tindak Pidana Narkotika", *Jurnal Lex Renaissance*, Vol. 3 Vol. 5.
- M. Yuhdi, 2014, "Tugas dan Wewenang Kejaksaan Dalam Pelaksanaan Pemilihan Umum", *Jurnal Pendidikan Pancasiala dan Kewarganegaraan*, Vol. 7, No. 2.
- Mita Dwijayanti, 2017, "Diversi Terhadap Recidive Anak", *Jurnal Rehtidee*, Vol. 12 No. 2.
- Novi Novitasari dan Nur Rochaeti, 2021, "Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak", *Jurnal Pembangunan Hukum Indonesia*, Vol. 3 No. 1.