



Legal Review of Decision No. 6/Pid.Sus-Anak/2023 of the Lamongan District Court regarding the Case of Drug Abuse by Children

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ABSTRACT

Criminal acts of narcotics abuse by children where judges do not provide rehabilitation because narcotics abuse committed by children should be a diversion process in accordance with Law Number 11 of 2012 concerning the Children Criminal Justice System. In cases of narcotics abuses by children, there are several factors that can be the basis for the judge's decision not to provide rehabilitation to drug abusing children. The formulation of the problem in this study is what is the basis for the judge's consideration of not providing rehabilitation to drug abusing children. The result of this study are based on Article 1 of Law Number 35 of 2009 concerning Narcotics. Narcotics addicts and narcotics abusers who without rights and obligations against the law as suspects and/or defendants in narcotics abusers who are undergoing the process of investigation, prosecution, and trial in court are given treatment, care, and recovery.

Keywords: Narcotics, Rehabilitation, Children.

Introduction

The new Criminal Code (KUHP) has elements of rehabilitative justice that are more relevant to the values of humanity and the conditions of Indonesian society, the concept of punishment in the Criminal Code is now much more relevant. This is because the regulation of basic punishments does not only prioritize imprisonment, but also includes supervision and social work.

As we know, as a country of law, Indonesia should provide protection to every citizen, including minors. In Indonesia, the age category of children can be seen in the applicable regulations, such as according to Article 150 of Law Number 1 of 2023 concerning the Criminal Code, which states that a child who is not yet 18 (eighteen) years old. This is also similar to the sound of Article 1 paragraph 1 of Law Number 35



of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. However, according to Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Child Criminal Justice System, it states that a child who enters the criminal justice process is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old and is suspected of committing a crime, so that the child can also be referred to as a child who is experiencing a legal conflict.¹

In general, a child is not considered an adult when facing legal problems and must be under the responsibility of his/her parents or guardians. Therefore, we can be sure that the child may experience weak physical and mental conditions, which means he/she has the right to special protection. This protection must still be obtained by children who are victims or perpetrators of criminal acts. To prevent discrimination in the Juvenile Criminal Justice System (SPPA), children who are facing the law must receive legal protection. One form of legal protection that can be given to children who are facing the law is the right to receive protection, such as the provision of appropriate sanctions and in accordance with the child's condition to fulfill the child's best interests. Children who abuse narcotics can be considered a victimless crime because their actions harm themselves, so the child can be considered a victim of their own crime.²

The seriousness of the government in eradicating narcotics crimes, including determining narcotics as an extraordinary crime. In addition, Law Number 35 of 2009 which regulates Narcotics. The problem of narcotics is not only related to health problems, but is also considered to damage the future of the country. Several alternative punishments for narcotics abuse crimes that can be considered in the Criminal Code Number 1 of 2023:

1. Criminal Sentencing
2. Rehabilitation and Recovery

¹ Tasya Nasifatul Hasan dan Marli Candra, Tinjauan Viktimologi Terhadap Hak Perlindungan Penyalagunaan Narkotika (*Victimless Crime*), PAMPAS: Journal of Criminal, Vol 2, No. 2, 2021, h. 93-94.

² Tasya Nasifatul Hasan dan Marli Candra, *Tinjauan Viktimologi Terhadap Hak Perlindungan Penyalahgunaan Narkotika*, Jurnal of Criminal, Vol 2, No. 2, 2012, h. 100-101.



3. Education and Prevention
4. Conditional Sentencing
5. Restitution

All sentencing options have advantages and disadvantages, and the right decision must take into account such things as fairness, effectiveness in reducing drug abuse, and the rehabilitation needs of the person involved..

Research methods

In this research method, the type of normative legal research is used, with a statute approach, and a conceptual approach. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning the Implementation of Mandatory Reporting of Narcotics Users, Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Covenant on The Right of The Child. It is carried out by reviewing the laws and regulations related to the legal issues being handled while the conceptual approach starts from the views and doctrines that develop in legal science.

Research Results and Discussion

Analysis of Rehabilitation Decisions for Drug Abusers Who Are Also Victims

Sesuai Putusan Nomor 6/Pid.Sus-Anak/2023/Pengadilan Negeri Lamongan. Hasil putusan pengadilan diatas, ada beberapa Langkah yang dapat diambil dalam menganalisa putusan tersebut:

1. Identify Important Facts
2. Evaluate Legal Considerations
3. Analyze Mental Health and Medical Issues
4. Consider Social Factors
5. Evaluate Rehabilitation Programs
6. Consider Relapse Prevention Efforts



7. Consider Justice and Empowerment

By gaining a better understanding of the rehabilitation decisions made for drug abusers who are also victims by considering all these aspects.

Basic Considerations of Judges in Deciding on Criminal Acts of Drug Abuse by Children

Starting from the arrest of Witness I on Wednesday, April 12, 2023 at around 00.15 WIB at Witness I's house located in Lamongan Regency by members of the Lamongan Police Narcotics Unit, namely Witness AGUS HARDIANTO, SH and Witness MOHAMAD FARID, SH when a search was carried out on Witness I, evidence was found in the form of 1 (one) plastic clip containing Class I Narcotics, type Methamphetamine with a net weight of + 0.20 (Zero Point Twenty) grams in the room, cash amounting to IDR 100,000 (One Hundred Thousand Rupiah) and 1 (one) Realme C11 brand cellphone in blue with the number 08970478717, all of which were admitted to belonging to Witness I. When interrogated, Witness I admitted that the Methamphetamine evidence was purchased by Witness I for IDR 800,000 (Eight Hundred Thousand Rupiah) from the defendant's child. where the purchase of crystal methamphetamine was carried out at the house of Witness I located in Lamongan Regency on Tuesday, April 11, 2023 at approximately 23.30 WIB. Furthermore, after obtaining information, then Witness AGUS HARDIANTO, SH and Witness MOHAMAD FARID, SH carried out development by arresting the child on Wednesday, April 12, 2023 at approximately 00.30 WIB in the child's house located in Lamongan Regency witnessed by Witness II. When interrogated, the child admitted that the evidence in the form of 1 (One) plastic clip containing Class I Narcotics Type Crystal Methamphetamine with a Net Weight of ± 0.20 (Zero Point Twenty) grams which was secured from Witness I was indeed purchased from the child for IDR 800,000, - (Eight Hundred Thousand Rupiah). Furthermore, after securing the child, a search was carried out and several pieces of evidence were found in the form of 1 (One) HP Brand VIVO Y21A silver color.



SIM card number 08225718247 recognized by the child. During interrogation, information was obtained that the child obtained the Methamphetamine type narcotics from Mr. DPO (Wanted List) as much as 1 (One) pocket on Tuesday, April 11, 2023 at around 22.45 WIB by being mined by Mr. DPO (Wanted List) in an orange balloon in Lamongan Regency for IDR 800,000 (Eight Hundred Thousand Rupiah) belonging to Witness I. Furthermore, at around 23.30 WIB the child went to Witness I's house to hand over 1 (One) plastic clip containing Class I Narcotics Type Methamphetamine with a net weight of + 0.20 (Zero Point Twenty) grams, then Witness I gave a little Methamphetamine type narcotics and put it in a straw then the child went home and inhaled the Methamphetamine type narcotics alone in the child's room. Then on Wednesday, April 12, 2023 at around 00.30 WIB, members of the Lamongan Police Narcotics Unit suddenly arrived, including Witness AGUS HARDIANTO.SH and Witness MOHAMAD FARID, SH to secure the child. Furthermore, because he could not show a permit for the distribution of the methamphetamine type narcotics, the child along with the evidence that was successfully secured was taken to the Lamongan Police Office for further legal processing.

That the intention and purpose of the defendant's child in selling or handing over goods in the form of 1 (one) plastic clip containing Class I narcotics of the type of crystal methamphetamine with a net weight of + 0.20 (zero point twenty) grams to the witness for Rp. 800,000,- (eight hundred thousand rupiah) was to gain profit from being invited by Witness I to consume the narcotics of the type of crystal methamphetamine together.

Based on the Minutes of the Criminalistics Laboratory Examination of the East Java Regional Police Lab Number: 03138/NNF/2023 Dated April 18, 2023 which was made and signed by SODIQ PRATOMO, S.Si., M.Si, AKBP IMAM MUKTI, S.Si, A.PT.M.SI, TITIN ERNAWATI, S.Farm, A.Pt, and RENDY DWI MARTA CAHYA, ST, It was concluded that the evidence belonging to Witness I with Number: 07282/2023/NNF in the form of 1 (One) plastic bag containing white crystals with a net weight of ± 0.015 grams is indeed crystal methamphetamine, registered in group I



(One) Serial Number -1 Attachment I of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics (Attached in the Case File).

Based on Minutes Number: XX/120800/2023 dated April 12, 2023 from Perum Pegadaian Lamongan signed by THOMAS. Simcard number 08225718247 recognized by the child. During interrogation, information was obtained that the child obtained the Methamphetamine type narcotics from Mr. DPO (Wanted List) as much as 1 (One) pocket on Tuesday, April 11, 2023 at around 22.45 WIB by being mined by Mr. DPO (Wanted List) in an orange balloon in Lamongan Regency for IDR 800,000 (Eight Hundred Thousand Rupiah) belonging to Witness I. Furthermore, at around 23.30 WIB the child went to Witness I's house to hand over 1 (One) plastic clip containing Class I Narcotics Type Methamphetamine with a net weight of +0.20 (Zero Point Twenty) grams, then Witness I gave a little Methamphetamine type narcotics and put it in a straw then the child went home and inhaled the Methamphetamine type narcotics alone in the child's room. Then on Wednesday, April 12, 2023 at around 00.30 WIB, members of the Lamongan Police Narcotics Unit suddenly arrived, including witnesses AGUS HARDIANTO.SH and MOHAMAD FARID, SH to secure the child. Furthermore, because they could not show a permit for the distribution of the methamphetamine type narcotics, the child along with the evidence that was successfully secured was taken to the Lamongan Police Office for further legal proceedings.

With the charge in the form of the defendant's child's actions as regulated and threatened with criminal penalties in Article 114 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics.

And with the verdict:

1. Declaring that the DEFENDANT's child has been proven legally and convincingly guilty of committing a crime without rights or against the law, being an intermediary in the sale of drugs, or handing over Class 1 (one) Narcotics;



2. Sentencing the perpetrator's child (ABH) therefore to imprisonment for 1 (one) year at the Blitar Children's LPKA in Blitar Regency and job training for 1 (one) year in Lamongan Regency; (six) months at the BLK Social Service;
3. Determining evidence in the form of 1 (one) unit of blue VIVO cellphone with black combination no. Simcard 08133128949 Confiscated for destruction;
4. Charging the perpetrator's child (ABH) to pay court costs of Rp. 5,000,- (five thousand rupiah)

In deciding on the criminal act of drug abuse by children as regulated in Law Number 35 of 2009, the judge must consider various special aspects related to Decision Number 6/Pid.Sus-Anak/2023/Lamongan District Court concerning Drug Abuse by Children.

The qualifications for a child refer to the provisions of Article 1 paragraph 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely that a child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb.

In order to impose a criminal penalty on the child perpetrator (ABH), it is necessary to first consider the aggravating and mitigating circumstances, as follows:

Aggravating circumstances:

1. The perpetrator's child (ABH) not only uses narcotics but is also involved in its distribution;
2. The actions of the perpetrator's child (ABH) cause unrest in the neighborhood where he lives;
3. The perpetrator's child (ABH) does not support the government's efforts to eradicate the distribution of narcotics;

Mitigating circumstances:

1. The perpetrator's child (ABH) regrets his actions and promises not to repeat his actions;
2. The perpetrator's child (ABH) is still expected to improve his behavior;
3. The child lacks attention from his parents and has dropped out of school;



4. The perpetrator's child's parents (ABH) are still willing to foster and care for him to become a better child;

Taking into account Article 114 paragraph 1 of Law Number 35 of 2009 concerning Narcotics, Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

Judges can consider several aspects when making a decision in a court hearing.³

- a. The perpetrator's guilt;
- b. The motive and purpose of committing a crime;
- c. The method of committing the crime;
- d. The perpetrator's mental attitude;
- e. Life history and socio-economics;
- f. The perpetrator's attitude and actions after committing the crime;
- g. The influence of the crime on the perpetrator's future;
- h. The public's view of the crime committed by the perpetrator.

Based on Article 50 of the Judicial Power Law, it reads::

- (1) Putusan (1) In addition to containing the reasons and basis for the decision, a court decision must also contain certain articles of the relevant legislation or unwritten legal sources that are used as the basis for the trial.
- (2) Each court decision must be signed by the chairman and the judge who made the decision and the clerk who participated in the trial.

Judges in deciding a case must consider legal truth, philosophical truth and sociological truth. Legal truth means the legal basis used whether it has met the applicable legal provisions. Philosophical truth means that the judge must consider the side of justice whether the judge has acted and acted fairly in deciding a case.

Sociological considerations mean that the judge must also consider whether his

³ Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan, (Bandung: PT Citra Aditya Bakti, 2001), h. 23.



decision will have bad consequences and impacts on society in other words that a judge must make a fair and wise decision by considering the impact that occurs in society. In this decision the judge decided by considering that because he is classified as a child, during the trial the accused child was accompanied by a legal advisor and parents who all also confirmed the child's identity.

Judges must consider various specific aspects related to the protection and rehabilitation of children. Here are some basic considerations that can be used by judges:

1. Best Interests of the Child Principle

The best interests of the child when making legal decisions. They must consider how the decision will affect the child's rights, welfare and safety..

2. Recovery and Rehabilitation Approach

The judge's consideration on this principle, rehabilitation is an option that allows children to improve their behavior and avoid drug abuse in the future, such as rehabilitation programs, counseling, and social support, rather than just applying punishment.

3. Protection from Stigma and Discrimination

Judges must ensure that children are not stigmatized or discriminated against unduly as a result of their actions. Often, drug users are associated with more complex problems such as trauma, mental health disorders, or family instability, which require deeper understanding and careful treatment.

4. Educational and Preventive Approaches

Judges can consider sentencing as an educational and preventive effort. This can include requiring children to take courses that teach them about the dangers of drug abuse or inviting them to take part in community programs that discuss drug abuse prevention.

5. Age and Maturity Considerations

In making legal decisions, judges must consider the age and maturity level of the child. Children may require different approaches based on their developmental stage.



6. Collaboration with Institutions and Related Parties

This principle is to ensure that the child's needs are met properly, judges can collaborate with institutions and related parties such as social institutions, mental health institutions, or schools.

Essentially, judges must ensure that their decisions take into account the unique circumstances of children involved in drug abuse, take into account their rights and needs, and seek to ensure their long-term recovery and protection.

Some possible considerations that a judge might consider in deciding not to provide rehabilitation to a child who abuses narcotics include:

1. Principle of Public Interest

In deciding drug abuse cases, judges may consider the public interest by considering the protection of the community from the dangers of drug abuse.

2. Principle of Victim Protection

Judges may prioritize the protection of victims or potential victims of drug abuse.

3. Principle of Justice

In cases of drug abuse, judges will ensure that the decision made is in accordance with the level of error and that the sanctions given are proportional.

4. Principle of Crime Prevention

Judges may consider making efforts to prevent further crime by giving strong sanctions to reduce the possibility of drug abuse in the future.

5. Principle of Guidance and Correction

Judges may consider how effective rehabilitation is in the case, such as whether the child shows awareness and commitment to change and how long rehabilitation is successful.

6. Principle of Individual Consideration

Unique factors such as a history of drug abuse, causes, and other factors that influence the decision on rehabilitation will be considered by the judge.

7. Principles of Legal Policy

In making decisions, judges will consider legal policies and legal perspectives on rehabilitation and drug abuse.



It is important to remember that, depending on the unique circumstances of each case, the decisions made by judges in drug abuse cases can be influenced by many complex and different factors.

Conclusion

The basis for the judge's consideration not to provide rehabilitation to child drug abusers based on Decision Number 6/Pid.Sus-Anak/2023/PN LAMONGAN. is from various aspects, namely legal and non-legal aspects. The judge's considerations that are legal in nature are in the form of witness statements, expert statements, evidence, and the defendant's statement revealed in the trial. Then the judge's considerations that are non-legal in nature are in the form of the defendant's attitudes during the trial process, age and responsibility factors, several factors that hinder judges from not providing a rehabilitation decision for drug abuse are the negative stigma of society towards a judge. In addition, the minimum and maximum sentencing system for drug abuse if there is an intentional failure to report drug crimes in a minimum prison sentence of 1 year makes someone afraid to report their relatives that they are addicted.

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