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## THE USE OF CHILDREN AS TRAFFICKER IN NARCOTICS OFFENSE

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### **ABSTRACT:**

**Background:** One of the crimes that keeps increasing in number every year is narcotics offense, narcotics abuse and narcotics distribution. However, criminals recently turn to children to traffic narcotics. In solving criminal cases involving children, the government has its own provisions in providing penalties.

**Aim:** This study aims to describe the court decision on the involvement of children who are used as traffickers in narcotics crime.

**Method:** This study is a normative legal study, which examines closely the principles of law and systematic system of law in the regulation of existing laws through a statute approach and a conceptual approach

**Result:** There are two striking differences in the Court Verdict Number 1 / Pid.Sus.Anak / 2014 / PN.Pli and Court Verdict number 10 / Pid.Sus.Anak / 2015 / PN.Stb, which is the consideration of penalties given by the judge to the defendant. According to aspects of the use of law on the protection of witnesses and victims, children can be qualified as a victim. However, in article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, children that are used as trafficker or couriers can be qualified as perpetrators.

**Conclusion:** Court decision regarding the involvement of children as narcotics trafficker exemplifies that the children qualified as perpetrators must still be sanctioned and, most importantly at the same time, be given training for the future of the children.

### **INTRODUCTION**

Narcotics offense is a crime that threatens safety, both physical and psychological perpetrators and also the surrounding community (Anna & Mannan, 2020). Until now, the distribution of narcotics is still painstakingly difficult to eradicate, considering that almost all people and the world

population can easily buy narcotics and psychotropic substances from irresponsible persons. Moreover, the distribution of narcotics does not only occur in certain places such as discotheques, gathering places, but also in school area. This can spread to children fast (Ornell et al., 2020).

Narcotics crime today is not only committed by adults, but also by children under age. Based on the statement of Asrorun Niam Sholeh as chairman of the Indonesian Child Protection Commission (KPAI), the number of children carrying out narcotics distribution from 2011 to 2014 continued to increase even reaching almost 300%, with 17 cases in 2012, 17 in 2013, and 42 cases in 2014 (Megawati et al., 2015). The involvement of children in narcotics crime makes this problem more complex. The high number of children used as a tool to commit narcotics offenses with the intent to ease the penalties. That is due to the fact that children who are involved in criminal acts will be less likely to be suspected by the authorities, so the risk is more minimum.

Child protection is an obligation of a country, as stipulated in Law Number 23 of 2002 concerning Child Protection Article 1 number 2 that "Protection of children is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination." The role of the government in protecting children is very necessary because children fundamentally cannot protect themselves from various actions that cause mental, physical, social harms in various fields of life and livelihood (Dewi Trapsilowati, 2017).

Narcotics traffickers often use children for narcotics trafficking activities with the tendency that legal penalties for children are relatively lighter and even in Law Number 35 concerning Child Criminal Justice System (hereinafter referred to as SPPA Law) towards children who commit compulsory crimes, a diversion is sought, which is an effort to divert the settlement of a child case from the criminal justice process to the process outside the criminal court (Article 1 number 7 of the SPPA Law). Diversion is offered at the level of investigation, prosecution and examination of children in court. If the diversion fails to reach an agreement between the parties, the procedure will continue with the trial process. These special arrangements are intended to protect children. On the other hand, with special criminal arrangements such as these, children are often used as traffickers in narcotics offense.

These conditions can cause confusion for law enforcers in the context of law enforcement in narcotics crime, especially when the imposition of appropriate penalties to be imposed. In the case of a child who has been proven to have committed a narcotic offense, the conviction of a child must be done in a very deliberate manner in order not to cause a loss or trauma to the child either psychologically or physically. Criminal charge on a child if without considering the other side of the child can have an adverse effect on the child's future.

The objective of this study is to describe the court verdict regarding the involvement of children who are used as dealers/traffickers in narcotics crime.

## **METHOD**

This study is normative juridical study juridical study or commonly known as legal study, which is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand (Noviansyah et al., 2016). The approach used in this study was the statutory approach (Statute Approach), which is a legal framework by tackling the laws and regulations relating to legal issues that will be used as study sources (Muhammad, 2012). The sources used in this study were the SPPA Law and Narcotics Law (Coomber et al., 2018). On the other hand, the conceptual approach is an approach derived from the doctrine of legal scholars in legal context. The concept of law can be found both in the law and in court verdict.

The sources of law used were: the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 1979 concerning Child Welfare, Law Number 39 of 1999 concerning Child Human Rights, Law Number 23 of 2002 concerning Child Protection, Law Law Number 35 Year 2009 concerning Narcotics, Law Number 11 Year 2012 concerning the Child Criminal Justice System, Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection, Presidential Decree Number 36 Year 1990 about children's rights.

## **RESULTS AND DISCUSSION**

### **Children Used as Traffickers in Narcotics Offense**

#### **Actions Qualified as The Child Use in Narcotics Offense**

Use according to The Great Indonesian Dictionary is a process, method, act of utilizing. Use itself is a way or effort made to seek profits (Pratasik, 2015). The advantage in this context can be either a good or bad thing like violation of the law. Use categorized in unlawful acts is criminal offense (Moeljatno, 2002).

A criminal act is an act that is done in error and violates a rule of law. According to Kansil and Kansil, (2004): The term "Criminal Events" or "Criminal Acts" is as a translation of the Dutch language term "strafbaar feit". In Indonesian, besides the term "criminal event" for translating strafbaar feit or deliet, there are also several other translations of criminal acts, criminal acts, acts that can be punished and actions that can be punished. Criminal acts come with penalties, in which the rule is enforced on those who commit them Acts. Based on Article 2 of the Criminal Code, it is explained that the criminal provisions in Indonesian law are applied to every person who commits a criminal offense in Indonesia. Every criminal offense contained in the Criminal Code (KUHP) contains elements of criminal acts (Purwoleksono, 2016). In this case, the use of children can be associated with criminal acts where the use is intended to benefit themselves by committing acts that violate the law and to avoid the authorities because children are less likely to be suspected. In this problem, a dealer uses children to carry out narcotics

distribution activities, which are illegal activities. Based on Article 7 of the Narcotics Act, narcotics are only used for the benefit of health services and the needs of science and technology. If narcotics are used not according to what is stipulated in the article and the Law, then it is considered as a crime.

Based on the provisions in Article 55 of the Criminal Code that those who perpetrate, cause others to perpetrate, take direct part or provoke the execution of act by gifts or promises are all criminal offenses. In accordance with the provisions contained in the Narcotics Act, in Article 133, that every person who orders, and entices children who are not old enough to commit a criminal offense as referred to in Article 111, Article 112, Article 113, Article 114, Article 115, Article 116, Article 117 Article 118, Article 119, Article 120, Article 121, Article 122, Article 123, Article 124, Article 125, Article 126 and Article 129 constitute a crime boundary act.

### **Children as Victims and/or Perpetrators in Narcotics Offense**

The definition of victim is explained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power as follows: "victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws proscribing criminal abuse of power ". The definition of victim described in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is people who have suffered individually, including physical or mental injury, emotional suffering, and economic loss. Broadly speaking, victims are interpreted not only as victims who suffer directly, but also victims who suffer indirectly both physically and psychologically caused by the acts (Indriastuti, 2009). In this case the suffering of the victim is not entirely due to other people but also because of the victim's involvement in a crime; this can be said of the victim who considers himself not a victim of a crime.

In the provisions of Article 111 through Article 126 of Law Number 35 Year 2009 concerning Narcotics, it is explained that both the dealer and the user are subject to penalties. In this provision, criminal acts in the form of users, addicts, dealers, narcotics abusers are subject to sanctions, except for those who have reported dependence on a person against narcotics that are known beforehand. Then, it cannot be clearly distinguished and known between the perpetrators or victims in narcotics crime.

Children who are exploited in narcotics crimes cannot easily be deemed as the victims, but also as the perpetrators. Essentially, narcotics offense is crime without victim. Therefore, the victims of narcotics crime are the perpetrators of narcotics crime themselves.

Pursuant to Article 1 paragraph (2) of Law Number 11 of 2012 concerning the Child Criminal Justice System referred to as children in conflict with the law are children in conflict with the law, children who are victims of criminal acts, and witnesses of criminal acts. Harry E. Allen and Clifford E. Simmons

explained that there are 2 (two) categories of child behavior that make children have to deal with the law, namely Allen, Simonsen and Latessa, (1975):

a) Status Offence is a child's delinquency behavior which if done by an adult is not considered a crime, such as disobeying, skipping school, or running away from home.

b) Juvenile Delinquency is the behavior of juvenile delinquency committed by adults is considered a crime or violation of the law.

Hence, children who are dealing with the law or children who are in conflict with the law are those who are directly related to a crime, be it the child as a victim or the child as a witness in a crime. And victims of a crime are not always individuals but can also be groups, communities, and also legal entities. In the case of the use of children in this narcotics crime, the victim is the community. The community feels and fears the involvement of family or children in narcotics crime. The victims are those who suffer physically or psychologically for their own actions or those of others.

The definition of perpetrators of crime in a society is often referred to as "criminals", the definition of criminals from a juridical aspect is that a criminal is someone who violates criminal rules or laws and is found guilty by the court and sentenced (Shubhan et al., 2020). From this understanding explains that a criminal is a person who has violated the law. Criminal provisions based on the Narcotics Act continue to apply to children who are categorized as perpetrators, but in terms of the imposition of criminal sanctions refer to Law Number 11 of 2012 concerning the Child Criminal Justice System.

A child can be said to be a dealer/trafficker in narcotics crime if the child carries out activities including planting, maintaining, possessing, storing, controlling, offering to sell, selling, buying, receiving, becoming an intermediary in buying and selling, exchanging, carrying, sending, transporting, transporting, importing, exporting narcotics. Formal juridical criminal sanctions on children are relatively lighter, and even in the SPPA Law, children who commit criminal offenses must be sought diversion at the beginning of the settlement of child cases. The definition of diversion is an attempt to divert the settlement of a child case from the criminal justice process to the process outside the criminal court (Article 1 number 7 of the SPPA Law). Diversion is offered at the level of investigation, prosecution and examination of children in court. If the diversion fails to reach an agreement between the parties, the procedure will continue with the trial process. These special arrangements aims to protect children.

### **Penalties for Children as Traffickers in Narcotics Offense**

In the applicable laws and regulations in Indonesia, narcotics crimes are classified as special crimes because they are not mentioned in the Criminal Code, the arrangements are also specific as regulated in Law No. 35 of 2009 concerning Narcotics. There are several articles in the Narcotics Act that can

be qualified as narcotics couriers/traffickers, namely in Article 114, Article 115, and Article 119 of the Narcotics Act.

A child who becomes a narcotics courier, in Act No. 35 of 2014 concerning Narcotics does not specifically regulate the provisions of penalties for children, but basically a child who commits a narcotic offense as a narcotics trafficker is a child who is a courier that carries out a narcotics illicit trafficking process which is still ensnared by articles as regulated in criminal provisions contained in the Narcotics Act but does not rule out special provisions stipulated in Law No. 11 of 2012 concerning the Child Criminal Justice System.

Determination of the age limit of children who can be submitted before the trial is 12 years to 18 years in accordance with the verdict of the Constitutional Court No. 1 / PUUVIII / 201/021 and also those stipulated in Law No.11 of 2012 concerning the Juvenile Justice System. There is in Article 69 paragraph (2) which explains that "children who are not yet 14 years old can only be subject to action". Thus, children aged 12 years to 13 years can only be sanctioned with action, while those aged 14 years to 18 years can be subject to criminal penalties.

In determining the sentence for a crime committed by a child, the role of the judge is very important. This is considering that children are the nation's next generation so that if they are subjected to improper penalties, the penalties will have a negative impact on children's development in the future. Therefore, in addition to the important role of law enforcement and apparatus, the role and support of the family is needed to assist children.

### **Judge Deliberation in Court Verdict on Children Involved as Narcotics Trafficker**

#### **The Case on Court Verdict Number 1/Pid.Sus.Anak/2014/PN.Pli**

Case Description: On Wednesday 3 December 2014 at around 08.00 A.M., the defendant named Tirtajaya, 17 years old, who lived on Jalan Merdeka Rt 4 Rw 2, Tirtajaya Village, Bajuin Subdistrict, Tanah District, South Kalimantan Province, Indonesia was about to deliver the package. The package was known to be ordered and delivered for a person named Saidi. At the same time, defendant Tirtajaya was examined at the place by two people named Haryono and Witness Edhi Sunardi (witnesses). These two people turned out to be both members of the Tanah Laut Resort Police. The investigation was carried out on site. From the investigation, it was found that defendant Tirtajaya brought a package which was neatly wrapped. The package was found in the defendant who, after opening it, was evidence in the form of 4 methamphetamine narcotics packages. After further investigation, it turned out that the defendant Tirtajaya wanted to deliver the package containing methamphetamine to Saidi as the person who ordered the package, and it was discovered that the package belonged to Hendri Lian.

The panel of judges considered that every element in article 114 paragraph (1) of the Narcotics Law had been fulfilled, so that the verdict in this case reads:

1. Defendant Tirtajaya was proven legally and convincingly guilty of committing a crime "Without the right or against the law to offer to sell, sell, buy, accept, be an intermediary in the sale, exchange or surrender of Group I not plants"
2. Charge the defendant with imprisonment for 2 (two) years and 6 (six) months and a fine of IDR500,000,000.00 (five hundred million rupiah) provided that if the fine is not paid, it must be replaced with imprisonment for 1 (one month)
3. Establish the period of detention that has been served by the defendant deducted entirely from the criminal sentence;
4. Determine that the defendant remains in custody;
5. Determine that the evidence in the form of: 4 small package Narcotics group I not a plant type of methamphetamine, 1 cellphone, 1 cigarette box Sampurna Menthol, 1 unit motorcycle of the brand YAMAHA F1Z-R yellow without vehicle number, with the Order Number MH3NS002K730513 and Engine Number 4WH-407707 with a key
6. Impose the defendant to pay the court fee in this case amounting to IDR 5,000.00 (five thousand rupiah)

#### **The analysis of the Case on Court Verdict 1/Pid.Sus.Anak/2014/PN Pli**

In this case, the judge's decision considered the Criminal Justice System Law in which the SPPA Law has been in effect since July 31, 2014. However, the child is not treated as stipulated in Article 81 paragraph (5) of the SPPA Law, wherein imprisonment is the last attempt. And in this case, the judge did not pay attention and prioritize the best interests of children.

It is explained in Article 85 paragraph (1) that children sentenced to prison terms are placed in LPKA. Where LPKA itself is an institution or place where children go through their criminal period. In addition, in accordance with the provisions of Article 81 Paragraph (1) of the SPPA Law, it is stipulated that every child sentenced to imprisonment. If the condition of the victim can endanger the community, he should be sent to imprisonment at the Special Child Development Institute.

In this case, the writer of this study believes that narcotics offense is a dangerous type of crime because the impact of narcotics circulation can damage the nation's generation. Therefore, in this case, the panel of judges should impose the article. Besides that, in article 71 paragraph (3), in the event that there is a cumulative threat of punishment between imprisonment and fine, the fine is replaced with job training whereas in this decision the panel of judges has neglected to impose this article because the assembly in its decision said that in the case of the provisions of the fine not paid by the defendant, the judge requires the defendant to replace prison with imprisonment instead of job training.

Children underage should not get imprisonment without training because the child is the successor to the nation; therefore, the child should get appropriate training so that the perpetrator can recover psychologically, physically, socially and he can redeem all the mistakes he made, considering the defendant Trijaya admitted regret to have committed a narcotic crime and promised not to repeat it.

### **The Case On Court Verdict Number 10/Pid.Sus.Anak/2015/PN.Stb**

Case Description: On Thursday 15 October 2015 at around 04.30 A.M., the defendant named Muhajir aka Bulek was in the Bus of PT.Putra Pelangi Perkasa with the Plate Number BL 7520 AA who was speeding through Jalan Lintas Sumatera, Hamlet III, hammer sweet village. At the same place and time, members of the Gebang Polri Police checked the passing vehicles, and three members of the police who did the checking were witness Nazri Lubis, witness Anggiat Simanjuntak and witness Aldolf Simanjuntak. When checking the defendant Muhajir aka Bulek, the two members of the police conducted a check on the black backpack brand Elgini owned by defendant Muhajir. When Muhajir's black backpack was inspected, 4 (four) dried narcotics bales were wrapped in yellow duct tape. When questioned by witness Anggiat and witness Aldolf, defendant Muhajir claimed to also bring another package which was stored in a instant noodle box placed on the left side of the bus. The witness asked to show the boxes brought by the defendant Muhajir and when opened the innate defendant's box, more evidence was found as follows: of 11 (eleven) types of marijuana bales of cannabis, each wrapped in yellow duct tape. Defendant Muhajir admitted to bringing 15 (fifteen) types of cannabis Narcotics that were brought from Sawang (Aceh) to Medan and the marijuana belonged to Hamdan while defendant Muhajir only served as a courier with a wage of IDR 100,000, - (one hundred thousand rupiah) per kilograms or their provisions. Because he did not have the permission, the defendant Muhajir along with evidence in the form of 15 bales of marijuana type of marijuana was taken to the Gebang police station for further inspection.

The panel of judges considered that every element in article 114 paragraph (1) of the Narcotics Law had been fulfilled so that the verdict in this case decided:

1. Muhajir alias Bulek has been proven legally and convincingly guilty of committing a crime "Without the right and against the law to be the intermediary for buying and selling Narcotics of Group I in the form of plants", as in the indictment of Article 114 paragraph (2) of Law of Republic Indonesia Number 35 of 2009 concerning Narcotics to Law of Republic Indonesia No. 11 of 2012 concerning the Juvenile Justice System;
2. Convict a crime against Muhajir's son alias Bulek therefore with a imprisonment of 3 years and a fine of IDR 1,000,000,000. If the child does not pay the fine, it will be replaced by work training for 2 months.
3. Determine the period of arrest and detention that has been lived by the child Muhajir alias Bulek deducted entirely from the criminal sentence.
4. Order Muhajir's son alias Bulek to remain detained

5. Order that the child of Muhajir aka Bulek be placed in the LPKA (Special Guidance Institution for Children) in Medan
6. Establish evidence in the form of: 15 bales / pack of Narcotics Type I of dried marijuana with a gross weight of 16,500 (sixteen thousand five hundred) grams, allowance for evidence weighing 129 grams for the Lab. Medan Narcotics and the rest of the Lab. Narcotics 125 grams, (one) black backpack Elgini, 1 (one) Popmie cardboard, 1 (one) Nokia black cellphone type 202.1 (one) white Samsung brand type 150 seized and destroyed.
7. Charge the child with a court fee of IDR 2,000 (two thousand rupiah)

### **The Analysis of The Case on Court Verdict Number 10/Pid.Sus.Anak/2015/PN.StbNn**

In this case, there was a child named Muhajir who became a narcotics courier/trafficker. It has been explained in the verdict that the sentence imposed on a child defendant is not retaliatory but rather a preventive effort. The sentence imposed did not aim to tarnish the dignity of the child, but to be educational, constructive in the hope that the child will not repeat his actions later after completing the sentence imposed.

In view of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it strongly prioritizes the rights of every child. The penalty imposed on children is prohibited from violating the dignity of children. Thus, the judge's decision in charging the defendant on the with supervision of the child defendant is very appropriate. Moreover, children are placed under the supervision of the public prosecutor and guided by the social counselor.

This decision is in accordance with existing norms or legal norms. The judge panel deliberately thought the imposing of a crime is not a form of embezzlement, but rather as a preventive or repressive effort or even more so that the sentence imposed is not to tarnish the dignity of a child. The imprisonment is the last resort in accordance with Article 81 paragraph (5) of Law No.11 of 2012 concerning SPPA.

The panel of judges in this case has adopted norms related to imposing sanctions / imposing sentences on underage defendants. In the SPPA Law, it is explained that the maximum imprisonment of the prison is ½ of the maximum imprisonment for adults. And the imprisonment is carried out in LPKA. Children in this case are the nation's next generation, so the penalties given must take into account the psychological condition of the child, and the panel of judges in this case had imposed sanctions in accordance with that regard. This decision is different from the previous decision. This verdict has represented the rules or norms in the SPPA Law well by upholding the rights and dignity of children. The given imprisonment was in accordance with the SPPA Law.

### **CONCLUSION**

There are two judges' decisions that have striking differences in the same case, namely children as narcotics dealers/traffickers. Firstly, in Court Verdict Number 1 / Pid.Sus.Anak / 2014 / PN.Pli,the judge decided that the defendant

was charged article 114 (1) of the Narcotics Act with a prison sentence of 2 years 6 months with a fine of 500,000,000. This means that if the fine is not paid, then it is replaced with a 1-month jail sentence. Actually the imposition of this sanction is not in accordance with Article 71 paragraph (3) of the SPPA Law that if the fine is not paid, then it is replaced with job training. Secondly, in Court Verdict Number 10 / Pid.Sus.Anak / 2015 / PN.Stb, the judge decided the defendant was imposed with article 114 paragraph (2) of the Narcotics Act with 3 years imprisonment with a fine of IDR 1,000,000,000. If it is not paid, it is replaced with job training and in this decision the judge ordered the child to be placed in LPKA. With this decision, the judge put forward the best interests of the child.

For the sake of narcotics dealers, children can be used as couriers or narcotics traffickers. From the aspect of use according to the Law on the Protection of Witnesses and Victims, children can qualify as a victim. However, in article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, children who are used as dealers or couriers can qualify as perpetrators as the provisions of that article stipulates that every person without rights or against the law who offers to sell, sell, buy, receive, become intermediaries in buying and selling, exchanging, or submitting Type I Narcotics, sentenced with life imprisonment or imprisonment for a minimum of 5 years and a maximum of 20 years and a minimum fine of IDR 1,000,000,000 and at most IDR 10,000,000,000.

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