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THE PRINCIPLE OF NON-DISCRIMINATION AS A FORM OF PROTECTION FOR UNDERAGE CHILDREN VICTIMS OF NARCOTICS AND PSYCHOTROPIC CRIMES

Ida Ayu Rosida¹, Rifda Ayu Akmalia², Sonia Amelia³, Ega Permatadani⁴, Anang Dony Irawan⁵

Faculty of Law, Muhammadiyah University of Surabaya

Jl. Raya Sutorejo No. 59, Dukuh Sutorejo, Kec. Mulyorejo, City of Surabaya, East Java 60113

* Correspondence email: anangdonyirawan@um-surabaya.ac.id

Abstract

The specific crime of narcotics is still something to be feared in Indonesia, the victims resulting from this problem are children. Even though the next generation of the nation are children who are in the growth stage, namely as survival assets for humans, the nation and the state. External and internal impacts are the cause of children who are victims of this evil object. Children have rights in their hands, with this right, children need to have legal protection, which has the goal of guaranteeing a child will get a decent life. Narcotics itself has been regulated in general, this is explained by the presence of Law no. 35 of 2009 concerning Narcotics. Rehabilitation efforts as well as special rules that clearly regulate juvenile justice are explained in law number 11 of 2012. On this occasion the author would like to discuss the Rehabilitation and Legal Protection of Underage Narcotics Crimes. The method used in this writing is normative legal research with a statute and literature study approach which is then analyzed using qualitative method techniques using primary legal sources in the form of laws and regulations, secondary legal sources, namely from journals related to research and also legal sources. or other legal sources. tertiary. From this paper it is hoped that it can provide knowledge about rehabilitation efforts for children who are caught in narcotics crime cases. The method used in this writing is normative legal research with a statute and literature study approach which is then analyzed using qualitative method techniques using primary legal sources in the form of laws and regulations, secondary legal sources, namely from journals related to research and also sources or other legal sources. tertiary. From this paper it is hoped that it can provide knowledge about rehabilitation efforts for children who are caught in narcotics crime cases. The method used in this writing is normative legal research with a statute and literature study approach which is then analyzed using qualitative method techniques using primary legal sources in the form of laws and regulations, secondary legal sources, namely from journals related to research and also sources or other legal sources. tertiary. From this paper it is hoped that it can provide knowledge about rehabilitation efforts for children who are caught in narcotics crime cases. secondary legal sources, namely from journals related to research and also other legal sources or sources. tertiary. From this paper it is hoped that it can provide knowledge about rehabilitation efforts for children who are caught in narcotics crime cases. secondary legal sources, namely from journals related to research and also other legal sources of sources. tertiary. From this paper it is hoped that it can provide knowledge about rehabilitation efforts for children who are caught in narcotics crime cases.

Keywords: Children, Narcotics, Victims, Principles of Non-Discrimination, Rehabilitation.

INTRODUCTION

Indonesia is a country law republic form, this is in line with Article 1 (3) of the 1945 Constitution of the Republic of Indonesia, which aims to maintain order and form a just society. Thus it can be interpreted that every indigenous person who commits a crime of law, negligence, crime against manners and even general discipline must be upheld and given sanctions. In law enforcement there are 3 elements namely legal certainty, expediency and justice. Basically the law exists with the aim of making society better, not intending to harm society, that's where the existence of law then arises harmony, order, legal certainty, and so on (Dwiatmodjo, 2013). At present what is of concern as citizens is the behavior of children under the age category of children, both as perpetrators and targets (victims) of law violations, such as the highly developed conflict regarding narcotics abuse.

Children are entrusted gifts from God, since birth children already have dignity, and rightsfully human. Children play a role as a generation for the life of society, nation and state in order to realize a better purpose in life (Hidayat et al., 2019). In various parts of the globe, including the State of Indonesia, it has changed Convention on the Rights of the Child in 1990 which was fully rounded up with other international instruments, including: Beijing Rules (1985), The Tokyo Rules (1990), Riyadh Guidelines (1990), and Havana Rules (1990).

In national law itself the legal basis relating to children's rights includes Article 28 B paragraph (2) and Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 1989 concerning Child Welfare. Then Law Number 12 of 1995 concerning Society, Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, In Human or Degrading Treatment or Punishment, Law Number 23 of 2002 in conjunction with Law Number 19 of 2014 concerning Child Protection (Child Protection Law), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

The problem of Narcotics has become a national and even international problem that everyone is constantly talking about. At present the development of illegal Narcotics continues to increase with the development of modern traffic and means of connecting and transportation which makes the spread of Narcotics to the territory of Indonesia more rapid. In the era of society 5.0, the level of narcotics abuse

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can be said to be increasingly critical, narcotics are able to undermine all levels of people's lives at various ages. Perpetrators of drug abuse are not only among adults, but also infect children like a virus that is difficult to eradicate. No doubt now there are many underage children who have to come into contact with the existence of the criminal justice system. Children who are in contact with a law or child who are having problems with the law need special guidance and protection. So that it is necessary to protect children against a law (Salam, 2005) whether the child acts as a perpetrator of a crime or as a child victim. After all, children are the next generation of a nation in facing future challenges.

The beginning of this form of crime that makes children victims is from narcotics perpetrators, which are caused by promiscuity in the social environment, family upbringing, association, and education. Because a child is in a position as a victim, legal protection is needed for the realization of rights and obligations in growing and developing physically, mentally and socially healthy (Harefa, 2017). Children who are victims of narcotics crimes should receive assistance from the social, family and institutional spheres. It is the family's obligation when they find out that their child is a victim, they must report to the Rehabilitation Institute for immediate medical treatment or social guidance. This anticipation aims to avoid negative impacts on the physical and spiritual health of victims (Najemi et al., 2020).

Indonesia itself, which is a country among the many developing countries, is an easy target for illegally producing and distributing narcotics. Narcotics in Indonesia do not only infect adults, even now many children have become drug addicts, even to the point where they cannot be controlled. This is triggered because the child's curiosity tends to be high. Jumaydi et al., (2021) also held the same opinion, according to the public that a child will have a big sense of questioning, so that something that is rarely known is appropriate for them to try without them realizing the impact that will follow. Narcotics abuse by adolescents is closely related to the causes, motivations and effects to be achieved (Hermana, 2017). As mentioned in Dr. Graha's research said that a teenager or minor is triggered by the desired causes, motivations and goals. For example, a child with a broken home who does not receive love and attention from the person in charge or his guardian as a child. Start trying to consume narcotics with the excuse of eliminating loneliness, frustration, and depression. From this it can be seen that the child takes drugs because he is frustrated by the divorce of his parents, his motivation is to get rid of feelings of loneliness,

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frustration, and depression, until he achieves the goal of his actions, which is to gain inner peace while taking the drug.

Narcotics itself is an entity or material that can cause addictive effects, which can affect consciousness to relieve pain, besides that narcotics can also change the nerves of the brain which causes the user to think, feel and behave abnormally (Alifia, 2019). Narcotic treatment based on Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics is a drug product or substance whose original content is in the form of an aphrodisiac or not, either artificial or semi-synthetic, which has an impact on deteriorating or changing the effectiveness, the sense of taste that is disappear, even to the loss of pain or excruciating feeling, and can even produce dependency effects.

The development of illicit circulation, manipulation and narcotics crimes in Indonesia itself began in the 1970s which infected the younger generation in several bustling big areas, such as Jakarta, Bandung and Surabaya. Then in 1980-2000 there was a significant increase in which the negative effects of drug abuse, illicit traffic and crime, not only on the user, but also related to family, financial, spiritual (moral and ethical), social and cultural aspects and it is not impossible to the emergence of several other crimes, especially those committed by the younger generation (Wirasila et al., 2017). From BNN data from 2009 to 2021, the number of narcotics cases was 6,894 cases involving suspects reaching 10,715 people (Mutia, 2022) in 2018 UNODC (United Nations Office on Drugs and Crime) published the World Drugs Reports which stated that as many as 275 million or the equivalent of 5.6% of the world's population aged 15-64 years had consumed drugs. Meanwhile in Indonesia, BNN as the focal point in the field of Prevention and Eradication of Drug Abuse and Trafficking (P4GN) recorded that in 2017 there were 3,376,115 people aged 10-59 years who had consumed these illicit substances. In addition, in 2018 the number of drug abuse among millennial youth in all Indonesian provinces reached 2.29 million people with a vulnerable age of 15-35 years (Puslidatin, 2019).

Problems that occur related to drug-related abuse that occur in children at school age will certainly have negative effects and impacts on their mental and physical health. Currently, the crucial cases that have occurred related to drug abuse, especially for children whose ages are still in elementary school to high school, started with offers made by drug dealers. The large number of gangs of perpetrators of this abuse is very concerning and must also be the focus of the community and the

government considering that they will certainly face the law. This of course has causes and effects as well as reasons because they have committed a crime and will certainly be held accountable for the actions they have committed. A child who has become a drug abuser will certainly be processed through the same laws and regulations as adult offenders, it's just that the difference here is for child offenders the process in court is different from adult offenders and the special protection that has been given to children by the state is regulated in Indonesian people's Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection where in Article 67 it is explained that special protection is for children who are victims of abuse of narcotics, alcohol, psychotropics, or other addictive substances. So that in the end the children involved in the production and distribution are carried out through preventive supervision efforts to rehabilitation.

Based on the background that has been explained, an ongoing problem can be taken and can be formulated, namely the effort section legal protection for minors as victims of narcotics users through rehabilitation and child protection programs in order to realize a settlement based on non-discriminatory principles?

RESEARCH METHODS

In writing this paper, the method used a normative juridical approach, namely writing that emphasizes positive legal interpretation and analyses using bibliographic materials and written legal norms (Irawan, 2020). The method used in this research is a normative legal research method with an approach *state approach* and the library research approach. According to Surjono Sukanto in the *Muhdlor Journal*, it states that normative legal research consists of research on legal principles, legal systematics, level of legal synchronization, legal history and comparative law (Muhdlor, 2012). In the research conducted by the author using primary legal sources, secondary and also other legal sources (tertiary). Primary legal sources are obtained from Law Number 35 of 2009 concerning Narcotics, Law Number 12 of 2011 concerning the Juvenile Criminal Justice System and also Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection. As for the secondary legal sources obtained from journals, articles, books, scientific papers, and other library materials published through electronic media, of course, those related to the issues or problems being researched by the author. These legal sources were then processed and studied so that they were found suitability between the subject matter and its normative provisions, then described in descriptive form (Henni, 2015) whose

contents are based on the provisions concerning children as victims of narcotics abusers.

RESULTS, DISCUSSION AND ANALYSIS

The definition of a child who is in conflict with the law has been explained in the Law of Juvenile Criminal Justice System (SPPA) divided into 3, namely (1) A child in conflict with the law (Perpetrator Child), has reached the age of 10 years, but is not yet 18 years old who is suspected of having committed a crime. (2) Child Victims are children under the age of 18 who experience physical, psychological disorders, or who are having problems with an economic downturn that has occurred as a result of a crime. (3) A child witness is a child under the age of 18 who can provide comments or explanations that are used for the purpose of investigation, prosecution, up to investigation into a trial in court regarding a criminal matter that has been heard, seen or experienced. Herlina (2004) states that children who are in conflict with the law are also referred to as children who are forced into conflict with the criminal justice system. So that from this statement it can be explained that children are forced into conflict with the law when the child is suspected, charged, or proven to have violated the law, then becomes a victim of an unlawful act by a person, group of people, institution or institution, and also witnesses to the incident that is, having seen, heard, felt, or known about an incident of law violation.

Narcotics crime for minors is caused by the influence of the surrounding environment which cannot be avoided. This influence can be seen from the factors that can influence child development, including: (1) internal factors, which influence these factors are the individual individuals, for example high curiosity, unstable emotional and mental control, (2) external factors, which caused by surrounding influences, including the way of association, parenting and family environment, as well as from economic and educational social factors (Paramita et al., 2022).

In his book Dirdjosisworo (1996) explained in a scientific study conducted by psychiatrist Dr. Graha Blaine reasons why a teenager consumes narcotics include:

1. Provide evidence of the level of courage in carrying out dangerous actions, such as speeding, brawls, promiscuity, etc.;
2. Proof to parents and social norms that they can challenge authority;
3. Make it easier to channel sexual desires;
4. get rid of loneliness and get emotional sensations;

5. The process of finding identity in life;
6. Eliminate depression and frustration in living life, and;
7. High curiosity so desperate to try.

In the case of the imposition of sanctions on criminal offenders basically has a critical nature about an act or what has been done, where this criminal flogging has a focus on giving a deterrent effect to the perpetrators of criminal acts. On the other hand, there is such a thing as action sanctions, in which the punishment of this action is more inclined to be anticipatory towards the perpetrator, the punishment that occurs is actually more inclined to provide assistance to the perpetrator so that he becomes a better person (Wahyuni, 2021). If it is related to the crime of narcotics for minors, it can be said that the punishment imposed on minors is a sanction for action, especially in narcotics cases for minors where the child is in the position of the victim, not purely as a perpetrator. Sanctions for action referred to here are medical rehabilitation and social rehabilitation.

The age category for minors already exists in Article 1 Paragraph (1) of the Child Protection Law, namely that they have not reached the age of 18 years. So that minors who are in conflict with the law, are entitled to guarantees for legal protection. Arif Gosita stated that child protection is the result of influences related to interactions and phenomena (M. Iqbal, 2013). In addition, children are also given the right to asylum from violence and discrimination, Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

A. Legal Protection for Underage Children as Victims of Narcotics Users Through the Rehabilitation Program.

Narcotics is a criminal offense which has been specifically detailed in the Narcotics Law (Nyoman et al., 2020), where this law confirms that criminal sanctions are divided into two types, namely:

- (1) Main criminal sanctions, threats of sanctions such as life imprisonment until the person's death, death penalty, punishment with a certain time limit, imprisonment, and fines.
- (2) Sanctions through rehabilitation efforts, these efforts can be carried out through medical or social treatment and care. This provision depends on the consequences, the amount of narcotics used, what kind of use it was, whether it was planned, or corporate, or carried out by a child who was not yet legally competent.

As emphasized in Article 127 Paragraph (1a) of the Narcotics Law, narcotics abusers as victims or perpetrators who order to commit or participate in acts without violating the law Class I for themselves carry a maximum prison sentence of 4 years in prison. Considering that because here the victim is a child, child protection is specifically regulated based on the foundation of a juvenile court contained in the SPPA Law. The Juvenile Criminal Justice System does not relate it to the threat of Article 10 letter (a) of the Criminal Code regarding the principal crime (Hapsari et al., 2016) the contents of the punishment in the form of: capital punishment, imprisonment, imprisonment, fines, and imprisonment. However, the main punishments for children in Article 71 include warnings, conditional punishment (counseling outside institutions, community services, and supervision), job training, coaching within institutions, and imprisonment. Besides that, in the Juvenile Criminal Justice System there are additional penalties in the form of deprivation of profits from the perpetrator's actions and fulfillment of customary obligations.

Law enforcement against children as victims of narcotics can be carried out through the restorative justice system, with diversionary settlement efforts. The terms of this effort apply when the child victim gets a criminal punishment up to 7 years and is not a repetition of the crime. In particular, the diversion efforts in the Juvenile Criminal Justice System aim to prevent and at the same time distance children from the actual court process so as not to cause a feeling of trauma when they return to their usual social activities. The diversion process is carried out in a deliberative manner accompanied by the person in charge/guardian, then community instructors, and professional social workers. Seeing from Article 3 of the Juvenile Criminal Justice System, children have rights when they carry out the judicial process, namely to be treated in a non-discriminatory humane manner, distinguished from the adult judicial process (Ramadan et al., 2020).

Diversion efforts for children who are victims of narcotics can be carried out through the rehabilitation stage. In Article 54 of the Narcotics Law the rehabilitation phase is divided into 2 parts, namely:

- A. Medical rehabilitation, is an effort to treat and care for narcotics abusers, in order to free narcotics users from addiction (Article 1 Number (16) of the Narcotics Law).

B. Social rehabilitation, efforts to recover abusers through social, physical and mental activities, (Article 1 Number (17) of the Narcotics Law).

In the Narcotics Law, narcotics victims who are underage, their parents or guardians are required to report to a health center or rehabilitation institution that has been sent by the government as a form of recovery or treatment. In other national laws that have a system for children who use narcotics that are protected in Article 67 of the Child Protection Act.

Regarding medical rehabilitation efforts carried out by means of care and medication in order to reduce victims of narcotics addiction (Novitasari, 2017). The administration of the drug is tailored to the individual needs of the patient. For efforts to implement medical rehabilitation, it is contained in Perminister of Health Regulations Number 2415/MENKES/Per/XII/2011. Regarding system efforts, the obligation to report regarding medical rehabilitation for addicts, abusers or victims is set forth in the regulations in the provisions of Perminister of Social Regulations Number 50 of 2015 concerning Technical Guidelines for Carrying out Reports and Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse which was passed on July 13, 2015.

Next, the goal of social rehabilitation for children is to achieve acceptance and teach them not to consume drugs in the social environment of the community. For minors who are victims of narcotics, it has been confirmed in Permensos No.26/2012 concerning General Social Rehabilitation of Victims of Narcotics, Psychotropic and Other Addictive Substances Abuse, which has been in force since its enactment, namely November 29, 2012. The indicators are for understanding the program, targeting accuracy, timeliness, target realization, achievement of a real change.

B. Realization of Settlement of Narcotics Crime by Underage Children Based on the Principle of Non-Discrimination.

Principle non-discrimination or more commonly known as the principle of equality before the law in essence is equality before the law. The principle of equality before the law is a principle that applies universally in a rule-of-law state, because in its understanding this principle contains equality of human dignity before the law (Kholis, 2019). The importance of Indonesia to apply the discriminatory principle is basically a term in the formation of laws against forms

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of criminalization. In Indonesia, discriminatory practices are very common in the realm of judicial review. The world is starting to move to reduce the use of criminal acts in many crimes, one of which is narcotics. Discrimination against narcotics users refers to the abolition or adoption of non-criminal pathways for cases of narcotics use, narcotics possession, possession of equipment for narcotic use, and cultivation of narcotics for the purpose of personal consumption. The discriminatory concept of narcotics use also allows for the abolition of all forms of punishment, so that narcotics use discrimination will have a very significant impact on prison overcrowding (Hendarto, 2020).

In cases involving "children", a special legal umbrella is needed in carrying out law enforcement, namely the SPPA Law (Law Number 11 of 2012 concerning the Juvenile Criminal Justice System). In addition, there are also other supporting regulations, namely the Child Protection Law which regulates the process of protecting and guaranteeing ABH both as perpetrators and as victims so that children's rights can be fulfilled optimally in accordance with human dignity in a non-discriminatory manner (Purba, 2021). A similar opinion was expressed Kurniawan & Lego (2022) in his journal namely the requirement for law to include a complete comprehensive and comprehensive conception of child protection based on the principle of non-discrimination, the principle of the best interest, the principle of the right to life along with its survival and development, and the principle of respect for the opinion of ABH.

In the process it also prioritizes using diversion, the purpose of diversion itself is contained in Article 6 of the Law of Juvenile Criminal Justice System which in essence is to settle outside the court. This is also reinforced by the existence of the principle of ultimum remedium, which in the case of this child is the last resort for the child to be brought before the court (Firismanda, 2018). The process of carrying out the settlement uses diversion, the child is accompanied by his guardian and also PK BAPAS (Social Advisor and Correctional Center) as the investigator's deputy facilitator as a facilitator if at the investigative level, but if at the prosecution level then the one serving as a facilitator is the public prosecutor, and if at the investigative level trial court, the one who serves as a facilitator is a judge.

CONCLUSION

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After conducting the discussion, the writer can conclude that the results and quality of children depend on a process. Adverse effects on children caused by internal or external influences make them victims of narcotics abuse. This can be overcome through restorative justice with medical or social rehabilitation efforts. Talking about criminal acts of children cannot be separated from the names of parents. Parents play an important role in the development and behavior of children. Children who feel neglected by their parents do not rule out the possibility will use narcotics as an escape. Our savings to parents provide supervision of children and guide children to comply with existing regulations. External factors also affect environmental conditions, for example, if the environmental conditions are good then the child will also behave well, as the saying goes, a good environment will create a good personality. Thus the role of parents as part of the family is needed in supervising and educating children to always stay away from drugs. In other words, the role of parents here is very important, namely embracing children to prevent drug abuse. Regarding the settlement in a non-discriminatory way, the writer's opinion is very necessary, especially for perpetrators who are minors, where this principle of non-discrimination provides guarantees and protection of children's rights, including the right to life and survival, the right to express opinions, and the right to obtain the best interests. However, in Indonesia itself this is still rare, no doubt many child perpetrators of narcotics crimes are sent to adult prisons instead of undergoing rehabilitation.

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