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The concept of legal protection of children as a narcotics courier

Martini¹, Made Warka², Otto Yudianto³

^{1 2 3}Faculty of Law, Universitas 17 Agustus 1945 Surabaya

martiniidris2019@gmail.com

Abstract. The type of research used in this research is normative legal research. The regulation of legal protection for children in the judicial process is carried out starting from the level of investigation, investigation, prosecution, examination in court until the implementation of the court decision. During the judicial process, the rights of children must be protected by applicable law and therefore must be carried out consistently by parties related to the resolution of the problem of juvenile delinquents as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Keywords. legal; children; courier

Introduction

One form of transnational crime (Prayuda 2020) that is crucial because it involves the future generation of a nation, especially among the younger generation (children) is a crime in the field of narcotics abuse, so that many children are used as narcotics couriers. The purpose of narcotics dealers is to use minors to be used as couriers for these drugs, namely to deceive the authorities or law enforcement in carrying out their operations. Whereas children are the future of the nation and the next generation of the ideals of the nation, so that every child has the right to survive, grow and develop, participate in freedom. Therefore, the protection of children is very important, considering that children are the next generation of the nation. For this reason, Law No. 35 of 2014 is urgently needed to amend Law No. 23 of 2002 concerning Child Protection. The purpose of this law is to protect children's rights from all kinds of criminal acts.

The reality shows that the quantity of crime in the field of narcotics abuse continues to increase from year to year along with the increasing number of illegal narcotics trafficking operations through international syndicate networks to developing countries. (Jones et al. 2020) This is evident based on the age / age of drug abuse, especially the younger generation, there has been an increase from the age of 15 years to 19 years in 2010 as many as 240 compared to 2011 as many as 350 people, an increase of 110 people, ages 20 years to 24 years in 2010 as many as 646 people compared to 2011 as many as 755 people, an increase of 109 people, aged 25 years to 64 years in 2010 as many as 2,337 compared to 2011 as many as 2,686 people, an increase of 349 people.

The problem is that law enforcement (Michael 2019) has not been optimal in carrying out legal protection for children as narcotics couriers, it is proven that in practice in the field the treatment of the method of arresting children remains the same as adults, because if during the arrest there is abuse, the child caught in a legal case will be suppressed and will not be punished admitting to the family against pressure and threats from unscrupulous investigators, while when there are traces of abuse, the investigators will prohibit the family from meeting the child on the grounds that the examination has not been completed. This shows that law enforcers are less professional in carrying out legal protection for children as narcotics couriers. (Hidayat, Anam, and Helmi 2019)

Based on the above background, the authors formulate the following problems: (1) What is the urgency of regulating legal protection for children as narcotics couriers in positive law in Indonesia? and (2) What is the concept of legal protection for children as narcotics couriers?

Research methods

The type of research used in this research is normative legal research. (Michael 2020)

Result and discussion

Regulation of legal protection for children as narcotics couriers in positive law in Indonesia

UU No. 11 of 2012 article 7 concerning the juvenile criminal justice system stipulates that at the level of investigation, prosecution, and examination of cases of children in district courts, diversion must be sought. Diversion (Smith 2021) is the transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal justice system. Diversion aims to achieve peace, resolve children's cases outside the judicial process, prevent children from deprivation of independence, encourage the community to participate and in still a sense of responsibility in children.

Legal protection of children at the level of investigation. (Afifah and Lessy 2014) When examining a child suspect, the investigator is obliged to examine the suspect in a family atmosphere, the investigator is obliged to ask for consideration or advice from the community advisor and if necessary may ask for the consideration or advice of an educational expert, mental health expert, religious expert, or official other penitentiary. (Budiarsih et al. 2020) Through research reports originating from the Community Counselor, it can be considered by investigators to take actions such as detention or case titles. The suspect's investigation process must also be kept confidential (Article 19 paragraph 1 of Law No. 11 of 2012).

Legal protection of children at the prosecution level. Prosecution of children's cases in the juvenile criminal justice system in Indonesia is carried out by the Public Prosecutor who is determined based on the decision of the Attorney General or other officials appointed by the Attorney General. The Public Prosecutor is obliged to seek Diversion no later than 7 (seven) days after receiving the case file from the Investigator. Diversion is carried out no later than 30 (thirty) days. In the event that the Diversion process is successful in reaching an agreement, the Public Prosecutor shall submit the minutes of the Diversion along with the Diversion agreement to the head of the district court for determination. In the event that Diversion fails, the Public Prosecutor is obliged to submit an official report on the Diversion and delegate the case to the court by attaching a report on the results of community research.

Legal protection at the level of case examination. (Maemunah 2020) Examination at the level of investigation and investigation of children if it's solely to obtain retributive justice which sees crime as a violation of the system, the focus is only on making mistakes, causing guilt, the victim is ignored, the perpetrator is passive, the perpetrator's responsibility is law, the

response is focused on the past behavior of the perpetrator, the stigma is indelible, not supported to regret and forgive, depending on the apparatus, then the rights of children will be difficult to protect. Therefore we need a paradigm shift, for example by changing the paradigm of the concept of retributive justice to restorative justice. Restorative justice is a process in which all parties involved in a particular crime work together to solve the problem of how to deal with the consequences in the future.(Maglione 2020) This restorative approach is regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

The Restorative Justice Approach views that crime/criminal action doesn't only lead to punishment for the perpetrator, but also pays attention to the interests of the victim, the solution can be done by involving both parties and doesn't have to end in a crime, the goal is to create welfare for children who have problems with the law in this case child who is a drug courier.(Kartikasari, Warka, and Kongres 2021) From the explanation above, it can be concluded that the regulation of legal protection for children as narcotics couriers in positive law in Indonesia, by using legal protection at the level of investigation, prosecution, and examination of children's cases in district courts must strive for diversion.(Sapoelete et al. 2021)

The Concept Of Legal Protection For Children As Narcotics Couriers

Legal protection for children who are perpetrators of narcotics crimes either as couriers or delivery of goods to consumers or dealers in the legal perspective remains the same as subjects who are entitled to special protection when the child is arrested and processed in court. The reality is that children who are perpetrators of narcotics crimes or as narcotics couriers have not received their rights to the fullest in the juvenile criminal justice system. The connection between children committing acts against the law as narcotics couriers, it can be said that the child is both a perpetrator and a victim, so that a restorative justice approach is carried out to realize diversion.(Gumilang, Yudianto, and Setyorini 2019)

This is in accordance with Law no.11 of 2012, Article 7 Paragraph (2) of the Juvenile Criminal Justice System Law confirms that diversion is carried out in the event that the crime committed is punishable by imprisonment of under 7 (seven) years and is not a repetition of the crime. This means that children who become narcotics couriers can be sought for diversion because of the threat of imprisonment in the criminal provisions applied to narcotics couriers in Law No. 35 of 2009 concerning Narcotics, namely at least 4 (four) and 5 (five) years and the child is not a recidivist.

In the criminal justice system, children are required to seek diversion based on a restorative justice approach to children in conflict with the law as an effort to protect children from the law, either by investigators at the investigation level, prosecutors at the prosecution level and judges at the court level. As stipulated in article 9 of the Juvenile Criminal Justice System Law, it's stated that investigators, public prosecutors, and judges in conducting diversion must consider the category of crime, the age of the child, the results of research by the Correctional Center (BAPAS) as well as support from the family and community.(Wood 2015)

From this explanation, it can be seen that the Juvenile Criminal Justice System Act contradicts the Narcotics Law. This is because the Juvenile Criminal Justice System Law prioritizes the element of diversion or the transfer of criminal penalties at the level of examination, prosecution and trial for the suspect. This means that if a suspect in a narcotics case commits a minor, it is possible that he will receive different sanctions, because the Juvenile Criminal Justice System Act applies to him.

Conclusion

The regulation of legal protection for children in the judicial process is carried out starting from the level of investigation, investigation, prosecution, examination in court until the implementation of the court decision. During the judicial process, the rights of children must be protected by applicable law and therefore must be carried out consistently by parties related to the resolution of the problem of juvenile delinquents as regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

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