

BASIS FOR THE JUDGE'S CONSIDERATIONS REGARDING THE REPORT CORRECTION CENTER FOR CHILDREN OF DRUG ABUSE (CASE STUDY IN GRESIK DISTRICT COURT)

Roytomi Isabilton¹, Milda Istiqomah², I Nyoman Nurjaya³

^{1,2,3}Master of Law Program, Faculty of Law/ Universitas Brawijaya, Malang

E-mail: roytomisabilton@student.ub.ac.id¹, milda.istiqomah@ub.ac.id², inyoman@ub.ac.id³

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Abstract

Drug cases are currently difficult to stop, this is due to the illicit trafficking of narcotics which until now has not been resolved completely. This has an impact on children who abuse narcotics because currently drug abuse is not only targeting adults but also children. Based on this, appropriate efforts and steps are needed to handle children as drug abusers so that they get protection and the best interests of children can be realized. Therefore, the discussion of this study is how the influence of the correctional center report on the basis of judges' considerations for children who abuse narcotics and how the legal regulations will be in the future regarding the provision of correctional center recommendations for children who abuse narcotics for the best interests of children. This study is a normative study with a legislative, conceptual approach and emphasis on elements, norms, rules, principles, theories and legal rules in dealing with legal problems such as legal vacuum, norm conflict or norm ambiguity.

Keywords: *child, rehabilitation, abuser, renewal*

A. Introduction

Drug cases in Indonesia have now entered a worrying stage. This is proven based on data presented by the Acting Director of Security and Intelligence of the Ministry of Law and Human Rights, Erwedi Supriyatno as of April 23, 2024, there were 271,385 prisoners in correctional institutions (prisons) and state detention centers (rutan) throughout Indonesia, of which 135,823 people were prisoners and detainees in narcotics cases.¹ Starting from 2019 to 2024, there were 71 cases contributed by children as drug abusers.² This indicates that the circulation of narcotics and drug abuse does not only target night entertainment venues, but has also spread to residential areas, campuses, schools, boarding houses and even the community.³

Abusers are people who use narcotics without permission or against the law.⁴ Meanwhile, abusers are guaranteed to receive medical and social rehabilitation.⁵ The explanation is contained in Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law), however the implementation of rehabilitation is not regulated in detail by the Narcotics Law. The purpose of the narcotics law is to prevent, protect and save the Indonesian nation from narcotics abuse, eradicate illicit drug trafficking and guarantee medical and social rehabilitation efforts for drug abusers. The Implementing Regulations of the Narcotics Law only regulate guidance and supervision, and one of the functions of guidance is to prevent the younger generation and school-age children from drug abuse.⁶ The government through the National Narcotics Agency has issued a program called the Prevention and Eradication of Abuse and Illicit Trafficking of Narcotics and Narcotics Precursors (P4GN) which aims to

¹Antara News, "Ministry of Law and Human Rights: 52.97 percent of prison inmates are from drug cases, <https://www.antaraneews.com/berita/4071018/kemenkumham-5297-percent-of-prisoners-from-narkoba-cases>, (accessed November 7, 2024)

²Data Warehouse for Special Correctional Crimes, https://sdppublik.ditjenpas.go.id/dwh/special_crime (accessed 7 November 2024)

³National Narcotics Agency, *Drugs and Their Problems*, Deputy for Prevention, 2017, p. 1

⁴Law Number 35 of 2009 concerning Narcotics, Article 1 number 15

⁵Ibid, Article 4

⁶Government Regulation Number 40 of 2013, concerning the Implementation of Law Number 35 of 2009 concerning Narcotics, Article 49

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minimize the illicit trafficking of narcotics. The role of the community is also very necessary for the success of this program, because the government cannot reach all elements of society, so it is hoped that the community can report to the authorities if there is any abuse or illicit trafficking of narcotics.⁷In fact, there are no specific regulations regarding children who commit the crime of drug abuse, but law enforcement officers will usually link 2 (two) related legal regulations, namely the narcotics law and the law on the juvenile criminal justice system.

Currently, drug crimes are grouped into 2 (two), namely crimes related to drug abuse and illicit trafficking. The law contains the Double Track Criminalization construction, namely the Criminal Justice System (CJS) for illicit trafficking crimes and the Rehabilitation Justice System (RJS) for drug abusers.⁸The Double Track System is also adopted by the juvenile criminal justice system law, which separates the sanctions imposed on the child.⁹Moreover, the principles and objectives of child protection are activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in society and receive protection from violence and discrimination in order to realize quality, noble and prosperous Indonesian children.¹⁰

Children who commit crimes are called children in conflict with the law. Children are also required to be given legal assistance and accompanied by community counselors under the auspices of the correctional center at all levels of examination.¹¹. The Correctional Center is one of the Legal Teams included in the Integrated Assessment Team and also children who abuse narcotics can be requested for assessment by investigators, public prosecutors and judges to the correctional center to be able to see the extent of the child's involvement in drug abuse.¹². Reports on the results of the assessment must be considered by the Judge before deciding the case. Often in narcotics cases, each law enforcement officer has his own point of view that seems to still be thinking about sectoral egos, resulting in different applications of the law. Therefore, harmony is needed between law enforcement officers for law enforcement against child drug abusers, as well as improving the quality of law enforcement for narcotics crimes.¹³The judge is a central figure in determining the fate of humans, that is the basis for the pinning as God's Representative. The task for the judge is not only to decide the case but the judge can provide a moral message or advice to the parties in the case.¹⁴Due to their heavy duties, judges are expected to be wise and have integrity, because judges are also the last line of defense for those seeking justice. When a judge decides a case, he adheres to the principle of *Res Judicata Pro Veritate Habetur* or what we commonly know as the judge's decision must be considered correct. However, every judge's decision is interesting to study.

The Judge's Decision is also a crucial aspect to resolve a case, in the case of a criminal case, it is also important for the Defendant, because in the decision, his fate is determined to obtain legal certainty (*rechtzekerheids*). In addition, the judge's decision is the crown and at the same time the peak of the reflection of the values of justice, absolute truth, human rights, mastery of law or factual legal facts, and describes the personality, ethics and morality of the judge, because in his decision the judge must accompany the basis of his considerations.¹⁵ In deciding a case, the judge must consider the formal and material law of the case, in addition to internal and external factors also greatly influencing, such as internal factors, namely the inner feelings experienced by the judge when deciding the case, and external factors such as the rules governing the crime. In addition, the judge can also see whether there are recommendations from the correctional center for children in conflict with the law. If there are none, the judge with

⁷Gugun Hariadi Gunawan, "Community Participation in Combating Narcotics Crimes (Case Study at the Southeast Aceh Police)," *Al-Hikmah Journal of Law and Society*, Vol 2 No. 1 (March, 2021), <https://jurnal.uisu.ac.id/index.php/alhikmah/article/view/3604>

⁸Anang Iskandar, *Enforcement of Narcotics Law*, (Jakarta: Kompas Gramedia, 2019), p. 48

⁹Law Number 12 of 2011 concerning the Juvenile Criminal Justice System, Article 69

¹⁰Law Number 30 of 2002 concerning Child Protection, Article 3

¹¹Palopo District Court, "A Glimpse of the Juvenile Criminal Justice System", <https://pn-palopo.go.id/30-berita/artikel/363-sekilas-tentang-sistem-peradilan-pidana-anak>, (accessed November 28, 2024)

¹²Joint Regulation Number 01/PB/MA/III/2014 concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, Article 8

¹³Report on the Results of the Harmonization of the Academic Manuscript of the Draft Law on Amendments to Law Number 35 of 2009 concerning Narcotics, Ministry of Law and Human Rights of the Republic of Indonesia, National Legal Development Agency, 2018, p. 71

¹⁴Directorate General of Religious Courts, "Judges Are Not Just Case Deciders" <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/hakim-bukan-hanya-pemutus-perkara-oleh-adeng-septi-irawan-sh-6-6>, (accessed November 7, 2024)

¹⁵Lilik Mulyadi, *The Face of Judges' Decisions in Indonesian Criminal Procedure Law: Perspective, Theory, Practice, Techniques for Making and Problems*, Citra Aditya Bakti, 2014, p. 129

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his authority can request that the child be accompanied by the Correctional Center accompanied by an assessment, so that it can be seen to what extent the child is involved in the crime of drug abuse.

Thus, the integrated assessment team represented by the correctional center has a vital role in cases involving children who abuse narcotics in order to create legal certainty and ensure that the interests of children are prioritized.

The problem studied is how the report from the Correctional Center influences the basis for judges' considerations for children who abuse narcotics and how future legal regulations will be related to the provision of recommendations from the correctional center for children who abuse narcotics in the best interests of the child.

B. Research Methods

This study uses normative nature with an emphasis on laws, elements in articles, principles, theories or legal rules and can be used as guidelines for handling legal issues, such as legal vacuum, norm conflict or norm ambiguity. The types of legal materials used in this study are primary, secondary and tertiary. Where primary legal materials are laws and regulations, agreements, and international conventions. Secondary legal materials are in the form of academic manuscripts, expert opinions, while tertiary legal materials are explanations of legislation, legal encyclopedias or the like.

C. Discussion

As explained above, the Correctional Center has a fundamental role in cases of children in conflict with the law, the correctional center also has duties and authorities, one of which is to make a social research report for the benefit of all stages of the examination, especially in providing evidence in court in cases of children, as implied in the SPPA Law which prioritizes the principle of the best interests of the child. The report from the Correctional Center is very influential for the Judge to decide a case, because in Article 60 of the SPPA Law, which basically explains that the judge is obliged to consider the report from the correctional center before making a decision, if the report is not considered in the decision, then the decision is null and void. Void and void in this provision is without being requested to be canceled and the decision does not have binding legal force. In addition, the judge is also required to consider legal and non-legal factors in deciding the case. Such as legal factors based on legal facts revealed in the trial and non-legal facts such as the background of the Defendant's actions, the consequences of the actions, conditions and socio-economic circumstances¹⁶.

Judges and judges' decisions in Indonesia cannot be separated from discussions about justice and legal certainty, because these two things are essential elements in judges' decisions.¹⁷ Every decision made by a judge must be based on clear and sufficient considerations because decisions that do not meet these requirements are categorized as decisions that do not have sufficient considerations or onvoldoende gemotiveerd (insufficient judgment).¹⁸ In this context, every judge must be able to find the right law to provide all the reasons and legal bases for his decision.¹⁹ The decision made by the judge must contain the judge's legal considerations which are based on appropriate and correct legal reasons and bases.²⁰

1. How does the report from the Correctional Center influence the basis for judges' considerations for children who abuse narcotics?

The decision that is the object of this writing is case number 5/Pid.Sus-Anak/2020/PN Gsk. In this case, the Child was investigated by the Community Guidance Officer or Bapas with Report Number W15.PAS.PAS.03-PK.01.05.02-6351. In essence, in his report, Bapas recommended that the child be given "Institutional Guidance at the ORBIT Surabaya Healthy Home Foundation" by considering that the child still has a long future, is a first-time criminal, parents are still able to educate, the child regrets his actions and the child's environment is still willing to accept him back even though the child has not been assessed.

¹⁶Nurhafifah and Rahmiati, Judge's Considerations in Sentencing Criminal Cases Related to Matters Aggravating and Mitigating Verdicts, *Kanun Jurnal Ilmu Hukum*, No. 66, Th. XVII (August, 2015), pp. 341-362.

¹⁷Antonius Sudirman, The Judge's Conscience and His Decisions, An Approach from the Perspective of Behavioral Jurisprudence in the Case of Judge Bismar Siregar, (Citra Aditya Bakti, 2007), p. 47

¹⁸Ramdani Wahyu Sururie, Court Decision, (Bandung; Mimbar Pustaka, April 2023), p. 29

¹⁹Ibid

²⁰Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, Article 68 Letter A

In order to provide justice and legal certainty, the Bapas has duties and authorities, one of which is to make a social research report for the benefit of the investigation stage, prosecution process, and evidence in court in cases of children. So that Bapas is given the authority to provide recommendations or reports in accordance with its duties and functions, in addition to the criminal acts of children who abuse narcotics also aims to organize justice for children.²¹ It is appropriate that the father's report greatly influences the law enforcement process against children. Because according to the mandate of the SPPA Law Article 60 paragraph 3 and 4 which states that in essence the judge is obliged to consider the father's report before making a decision, if the report is not considered in the decision, then the decision is null and void. Because the father's report contains a) Personal data of the child, family, education and social life; b) Background of the crime; c) History of Criminal Acts; d) Condition of the child, parents and environment; e) Other things that are considered necessary; f) Conclusions and recommendations from the Community Guidance. This report is intended to provide time and make it easier for the judge to decide the case²². In fact, the influence of the Bapas report does not stop at the decision-making process but continues until after the trial.²³ However, on the other hand, in addition to considering the report of the Bapas, the judge in his decision must include legal and non-legal considerations.

2. What will the legal arrangements be in the future regarding recommendations for correctional facilities for children who abuse narcotics in the best interests of the child?

Good legal regulation is very important to be carried out by policy makers, so that legal certainty and justice are created for children who abuse narcotics, especially so that there is no inequality of cases between one and another. Talking about legal regulation in the future cannot be separated from the history of the intended law being formed. Regarding ideal legal regulation, it can be seen from several factors below:

a. History and Purpose of the Narcotics Law

The Indonesian government issued legislation Number (State Gazette Number 419 of 1949) concerning the production, use and distribution of dangerous drugs, the authority for which was delegated to the Minister of Health.²⁴ As a form of commitment and/or seriousness of the government to eradicate or supervise the illicit trafficking of transnational narcotics, the Indonesian government ratified the Single Convention on Narcotics in 1961 accompanied by its amendment protocol through Law Number 8 of 1976. In the same year, the government issued Law Number 9 of 1976 concerning Narcotics, which aims to regulate the provision and use of narcotics for medical and/or scientific purposes and to prevent and overcome abuse of narcotics addicts. In the Vienna Convention, discussions began on the importance of rehabilitation, which then gave rise to exceptions to the punishment for psychotropic abusers, namely replacing prison sentences with treatment, education, after-care, or social reintegration.²⁵ After issuing Law Number 8 of 1976, the government made changes again by creating Law Number 22 of 1997, because the previous Law was considered no longer relevant to the development of narcotics crimes. This is emphasized in the considerations of Law Number 22 of 1997 "That narcotics crimes have become transnational in nature which are carried out using high modus operandi and sophisticated technology, while existing laws and regulations are no longer in accordance with the development of the situation and conditions that are developing to overcome these crimes". The purpose of establishing Law 22 of 1997 is emphasized to prevent abuse and eradicate illicit trafficking of narcotics.²⁶ After several changes, currently

²¹I Kadek Diah Sukmawati, Ni Putu Noni Suharyanti, "The Role of Community Guidance for Children of Drug Crime Offenders at Class I Denpasar Correctional Center", *Student Law Journal*, Vol. 3 No. 2, 2023

²²Fioren Mataheru, Yanti Amelia Leweriss, Carolina Tuhumur "Societal Research Reports as Consideration Material for Judges in Sentencing Children," *Tatohi Journal of Legal Studies*, Vol 4 No. 1 (2024), <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/2119>

²³Herman, Sabrina Hidayat, Oheo Kaimuddin Haris, "Legal Consequences of Judges' Decisions that Do Not Consider Correctional Institutions in Child Criminal Cases", *Halu Oleo Legal Research*, Vol 6 No 2 (2024), <https://journal.uho.ac.id/index.php/holresch/article/view/765>

²⁴Amirotul Azizah, Putu Eka Trisna Dewi "Reformulation of Rehabilitation Provisions for Narcotics Addicts in the Dimension of Ius Constituendum," *Yusthima Journal*, Vol 3 No. 2 (2023), <https://e-journal.unmas.ac.id/index.php/yusthima/article/view/8046>

²⁵ Anang Iskandar, *Politics of Narcotics Law*, Elex Media Komputindo, Jakarta, 2020, p. 2

²⁶Law Number 22 of 1997 concerning Narcotics, Article 3

Law Number 35 of 2009 is in effect. This law emphasizes and expands the objectives of the formation of the Narcotics Law. In the considerations of Law Number 35 of 2009 concerning Narcotics, it is explained that currently narcotics crimes have become transnational in nature, carried out using a high modus operandi, accompanied by sophisticated technology and supported by a wide network of organizations and have caused many victims, especially among the young generation of the nation which is very dangerous for the lives of society, the nation, and the state. The expansion of the objectives of the formation of Law Number 35 of 2009 is to guarantee medical and social rehabilitation for narcotics abusers and addicts.²⁷ The history of the formation of the Narcotics Law is an effort by the government to commit to playing an active role in cooperation between other countries in the context of efforts to monitor, distribute and abuse narcotics.²⁸ It is worth noting that since the Indonesian Government ratified the Narcotics Convention, its main objective was to eradicate the illicit trafficking of narcotics. Along with the development of the times, currently in addition to eradicating the illicit trafficking of narcotics, the Indonesian Government focuses on ensuring medical and social rehabilitation for drug abusers and addicts, this can be seen from the establishment of a special institution that handles narcotics cases, and discusses technical instructions related to rehabilitation, namely the National Narcotics Agency (BNN). The Indonesian Government assesses that drug abusers and addicts must be guaranteed medical and social rehabilitation efforts, because drug abusers and addicts are victims of the illicit trafficking of narcotics.

Indonesia itself has adopted regulations regarding narcotics to be able to combat the illicit trafficking of narcotics and ensure the availability of narcotics for medical needs, as well as regulate efforts for medical rehabilitation and social rehabilitation in accordance with the objectives of the establishment of the Narcotics Law and the single convention on narcotics.

b. Types of Narcotics Crimes

There are actually quite a lot of types of narcotics crimes, which are regulated starting from Article 111 to Article 147. If we examine the construction of the act in the elements of the crime and the articles in particular, they can be classified as follows:²⁹

1. Narcotics Crimes
2. Crime of Drug Abuse
3. Criminal acts related to non-reporting of addicts
4. *Obstruction of Justice* related to the process of enforcing narcotics criminal law; and
5. Criminal acts related to attempted conspiracy, encouragement and participation in committing criminal acts.
- 6.

c. Mechanisms and Procedures for Handling Narcotics Crimes

The Mechanism and Procedure for Handling Narcotics Crimes are regulated separately in accordance with applicable regulations. The mechanism and procedure for handling narcotics crimes are divided into several parts, namely for dealers, addicts, abusers and victims of narcotics abuse. For dealers, it is very clear that the elements that are fulfilled in narcotics crimes are anyone who without rights or against the law, maintains, provides, produces, distributes, imports, exports, sells and sends. Meanwhile, for addicts, abusers and victims of abuse, the regulations are emphasized in the Narcotics Law or regulations governing the handling of addicts, abusers and victims of abuse. For example, in Law Number 35 of 2009:

1. Article 54

Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation.

2. Article 55

- a. Parents or guardians of underage drug addicts are required to report to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed

²⁷Law Number 35 of 2009 concerning Narcotics, Article 4

²⁸Andi Dasril Dwi Darmawan, Achmad Ruslan, Mussakir "Legal Politics of the Regulation of Criminal Acts of Narcotics Distribution Based on Indonesian Law," *Hermeneutika Journal*, Vol. 5 No. 2 (August, 2021): 1171-84, <http://dx.doi.org/10.33603/hermeneutika.v3i2>

²⁹Budi Suhariyanto, et al. *Restorative Justice in Drug Abuse Crime Cases*, (Kencana First Edition, 1st Printing, February 2023) p. 23

by the government to receive treatment and/or care through medical rehabilitation and social rehabilitation.

- b. Drug addicts who are old enough are required to report themselves or be reported by their families to community health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or care through medical rehabilitation and social rehabilitation.

3. Article 56

Medical rehabilitation of drug addicts is carried out in hospitals appointed by the Minister.

4. Article 103

- a. Judges who examine cases of drug addicts can:
 1. Decide to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or
 2. Determine to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime.

Apart from the Narcotics Law above, the regulation regarding the provisions of medical and social rehabilitation for addicts, abusers and victims of drug abuse is in Joint Regulation Number 01/PB/MA/III/2014 concerning Handling of Narcotics Addicts and Victims of Drug Abuse in Rehabilitation Institutions, especially Article 3 letter a "Narcotics Addicts and Victims of Drug Abuse as suspects and/or defendants in drug abuse who are undergoing the process of investigation, prosecution and trial in court can be given treatment, care and recovery at a medical rehabilitation institution and/or social rehabilitation institution".

Technically, the Supreme Court issued a Circular Letter (SEMA) that can be a reference for judges to examine and decide on narcotics cases, namely SEMA Number 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. In essence, the SEMA regulates evidence against someone who can be sentenced to rehabilitation.

The regulations governing the handling of medical and social rehabilitation are regulated by the Minister of Health and the Minister of Social Affairs. Regulated in the Regulation of the Minister of Health Number 50 of 2015 concerning Technical Instructions for the Implementation of Mandatory Reporting and Medical Rehabilitation for Addicts, Abusers and Victims of Narcotics Abuse, as well as the Minister of Social Affairs regulating national standards for social rehabilitation for addicts and victims of narcotics, psychotropic and other addictive substances abuse.

d. Legal Protection for Children Who Abuse Drugs

Legal protection policies for children are regulated in international and national instruments.³⁰ One of them is the Convention on the Rights of the Child, which formulates the principles of children's rights aimed at protecting children's rights and is a basis for handling children in conflict with the law.³¹ The national instrument states that every child has the right not to be deprived of their liberty unlawfully.³² The crime of drug abuse is classified as a victimless crime because the perpetrator is also the victim, so that there is no clear distinction between who is the victim and who is the perpetrator.³³ Likewise, drug addicts are also self-victimizing victims, because drug addicts suffer from drug dependency syndrome due to their own drug abuse.³⁴ Therefore, legal protection for children who abuse narcotics is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). The SPPA Law stipulates that legal protection can be carried out to fulfill children's rights during the criminal justice process, as well as the resolution of cases that prioritize the interests of children. In the Juvenile Criminal Justice System, it is mandatory to prioritize the restorative justice approach.³⁵ So that the substance of legal

³⁰Molalan Zebua et al., "Legal Protection for Children as Perpetrators of Narcotics Abuse Crimes in the Juvenile Criminal Justice System," *Dipenogoro Law Review*, Vol. 5 No. 2 (April, 2016), <https://doi.org/10.14710/dlj.2016.11300>,

³¹*Ibid*

³²Law Number 39 of 1999 concerning Human Rights, Article 66 number 3

³³*Ibid*

³⁴Fauzi Rizky, "Implementation of Rehabilitation for Addicts, Abusers and Victims of Narcotics," *Riau Law Journal*, no. 1 (May, 2017): 1171-84, <http://dx.doi.org/10.30652/rjl.v1i1.4180>

³⁵*Op. Cit.*, p. 6

protection regulated in the SPPA Law is the fulfillment of the rights of children undergoing the criminal justice process.³⁶ Restorative justice can be implemented and applied by all law enforcement officers, especially in cases of criminal acts involving children who abuse narcotics.³⁷ Legal protection for children also includes the right to education for children, because if a child is sentenced to prison, they will lose various rights, one of which is the right to education.³⁸ So that the formulation of legal protection for children can be applied with the right to survival, the right to growth and development, the right to protection and the right to participate, these rights are intended to protect the welfare of children.³⁹

e. Duties and Authorities of Correctional Institutions in Criminal Cases of Children Who Abuse Drugs

Correctional Center, hereinafter abbreviated as BAPAS, is a technical implementation unit of correctional that carries out the tasks and functions of community research, guidance, supervision, and assistance. In addition, it is also tasked with forming Correctional Inmates to become whole human beings, realize their mistakes, improve themselves and not repeat criminal acts so that they can be accepted back by the community.⁴⁰

The duties and authorities of BAPAS regarding children who abuse drugs are the same as/aligned with the Integrated Assessment Team so that they can issue recommendations for children in conflict with the law, especially children who abuse drugs for the benefit of the child. BAPAS is under the auspices of the Ministry of Law and Human Rights. BAPAS was formed based on Law Number 12 of 1995 as amended by Law Number 22 of 2022 concerning Corrections in Article 1 number 20, where the Correctional Center is an Institution or place that carries out the function of Community Guidance for Clients. In BAPAS there are community counselors who have the task of carrying out community research or litmas in the form of assistance, guidance, and supervision of clients both inside and outside the criminal justice process.⁴¹ In addition, the assistance provided to children as perpetrators of criminal acts in this case is to fulfill the needs and protection of rights in the judicial process from the pre-adjudication stage to the post-adjudication stage and further guidance and provide guidance used to provide provisions in improving mental and spiritual quality, intellectual, skills and independence for Clients (Children). And ends with community research where this will be stated in the form of a correctional center report to be able to make recommendations for children who abuse narcotics and can be used as a basis for consideration for judges to make a decision.

f. Legal arrangements in the future

Discussing the legal arrangements in the future cannot be separated from legal politics. According to Prof. Soedarto, legal politics is a state policy through authorized state bodies to determine the desired regulations that are expected to be used to express what is contained in society to achieve the desired goals.⁴² Because the Narcotics Law actually states that drug abusers must be rehabilitated, but users are still imprisoned.⁴³ This is because there is no detailed definition of abusers, which is only discussed as far as victims of abuse and drug addicts. One of the causes of disruption to law enforcement can also come from the Law, namely one of which is related to the unclear meaning of words in the Law which results in confusion in its interpretation and application.⁴⁴

As explained above, to get out of the application of different laws caused by the unclear meaning of words in the Law as in Article 4 which guarantees rehabilitation efforts for Drug Abusers and addicts, but

³⁶Thesis, Sri Wahyuni, Legal Protection for Children as Drug Abusers, Medan Area University, Medan, 2021

³⁷Haposan Sahala Raja Sinaga, "Implementation of Restorative Justice in Narcotics Cases in Indonesia" Jurnal Hukum Lex Generalis, Vol. 2 No. 7 (July, 2021), <https://doi.org/10.56370/jhlg.v2i7.80>

³⁸Mila Azizah et al., "Legal Protection of the Rights of Children Who Use Drugs and Accountability According to Positive Law in Indonesia" Jurisdictie Jurnal, Vol. 2 No. 2 (2020)

³⁹Erni Agustina et al., "Legal Protection for Children as Drug Abusers in the Juvenile Criminal Justice System in Indonesia" (paper submitted to the UPNVJ Journal 2018)

⁴⁰Law Number 12 of 1995 concerning Corrections, Article 2

⁴¹Law Number 22 of 2022 concerning Corrections, Article 1 Number 23

⁴²Azmi, Armaya et.al, Islamic Legal Politics Political Struggle in Islamic Legal Legislation in Indonesia. Medan: CV. Merdeka Kreasi Group, 2021

⁴³WP, Ratna. Book of Criminal Aspects of Narcotics Abuse. Yogyakarta: 2023

⁴⁴Soekanto, Soerjono. Factors that influence law enforcement. Depok: Raja Grafindo Persada, 2022

in Article 54 it states that Drug Addicts and victims of Drug abuse are required to undergo medical rehabilitation and social rehabilitation so that there is no synchronization of norms and no legal certainty. The ideal legal regulation is a legal order that is not discriminatory and is based on national personality (religious and customary values) and is not a personality that hinders communication with the outside world.⁴⁵As for future legal regulations, they must be based on the legal ideals (Rechts idee) as stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states "Every child has the right to survival, growth and development and the right to protection from violence and discrimination."

D. Conclusion

The Bapas report can also be said to be a study in the case of a child who abuses narcotics and can be used as a basis for the judge to decide the case. This is based on the report that has been described as the child can commit a crime. So the existence of Bapas must be maintained in order to realize the interests of the child. Likewise, in his considerations, the judge must also adhere to the principles and objectives of the SPPA Law and the Narcotics Law. In addition, children who abuse narcotics can be subject to action, one of which is undergoing treatment or medication, either medically or socially at the LPKS as there is a separation of sanctions in the SPPA Law, where imprisonment is a last resort.

Responsibility for law enforcement against child drug abusers is not only the responsibility of the Judge as the last line of defense, but also the responsibility of all stakeholders. In order to realize legal certainty in law enforcement against child drug abusers and to emphasize the existence of correctional center reports, Law Enforcement Officers must truly understand the essence of the objectives of the SPPA Law and the Narcotics Law itself. However, problems are still often encountered in practice, this is due to the ambiguity of norms or legal vacuum. Such as not being explicitly regulated which includes in the editorial formulation the criteria for drug abusers, how to objectively determine the criteria for drug abusers, addicts and victims of drug abuse. So that it causes different interpretations of laws and regulations at each level of examination.

In addition, in order to reduce sectoral egos between law enforcement officers, the government must create a program to harmonize the method of taking action against drug abusers, the output of which is the certification of law enforcement officers. So it is necessary to have an update to the Narcotics Law and certification of law enforcement officers in narcotics, so that when handling cases of child drug abusers, they are those who have a high interest, attention and dedication to children and saving children from the dangers of narcotics.

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