

**CRIMINAL POLICY IN CHILDREN'S CONSTRUCTION
EFFORTS AS A NARCOTIC CRIMINAL ACTION PERSON**

Frans Simangunsong

Student of Doctoral Program of Law Faculty of Sultan Agung Islamic University,
and Surakarta University Lecturer of Law Faculty

email:frans@unsa.ac.id

ABSTRACT : Cases of narcotics abuse are increasing. This is evidenced by the almost daily press reports from newspapers and electronic media about smuggling, illegal trade, arrests and detention related to the problem of narcotics abuse. The purpose of narcotics abuse is a deviant or accidental use of narcotics. So the act violates the law and is threatened with criminality. Criminal policy in an effort to control children as perpetrators of narcotics crimes. Threats of imprisonment that can be imposed on children no later than 1/2 (one half) from the maximum threat of imprisonment for adults. This means that the criminal threat for children who become narcotics couriers is half of the criminal threats contained in the Narcotics Law. For children who become couriers or narcotics brokers, they must be based on the mechanism stipulated in the Child Protection Act and the Juvenile Justice System Law. Law enforcement for perpetrators who are still under age, there is a special provision called diversion, namely the transfer of settlement of child cases from criminal justice processes to processes outside of criminal justice.

Keywords : Criminal Policy, Children, Narcotics

INTRODUCTION

1. Background

The development of narcotics use in the early 2000 BC is as a tool for ritual ceremonies and in addition it is also used for treatment. The first type of narcotics used was opium or commonly referred to as a mandate or opium. The opium trade is growing rapidly in Egypt, Greece and several regions in the Middle East, Asia and South Africa. In line with the development of colonialization, the opium trade was growing and the use of opium was carried out on a large scale by ethnic Chinese, especially in colonial countries at that time, including Indonesia, which was under the rule of the Dutch colonial government. The huge population, exceeding

the 200 million population, certainly makes Indonesia the target of illicit drug trafficking. Whereas at first Indonesia was only a transit point for drug trafficking, due to its strategic location. But gradually these illicit drug dealers began to make Indonesia an easy target for them to distribute their drug trafficking. With the passage of time, Indonesia began to transform, not only as a place for drug trafficking but also as a place to produce drugs, as evidenced by the discovery of several drug laboratories in the Indonesian territory. This issue is certainly a very serious problem which in the end can cause disruption to national security and order.

At first narcotics was only used as a tool for religious rituals and besides that it was also used for medicine, while the first type of narcotics used in the beginning was opium commonly referred to as *madat* or opium.

Cases of narcotics abuse are increasing. This is evidenced by the almost daily press reports from newspapers and electronic media about smuggling, illegal trade, arrests and detention related to the problem of narcotics abuse. The purpose of narcotics abuse is a deviant or accidental use of narcotics. So the act violates the law and is threatened with criminality.

Judging from the danger and the level of circulation, the government finally established the Narcotics Law, namely Law Number 35 of 2009, with the issuance of the Law it is expected to prevent and suppress the increase in circulation and use of narcotics in the territory of Indonesia. With a law that specializes in narcotics, all parties hope to run well and existing sanctions can be established fairly for the perpetrators of narcotics crimes. The narcotics law is very necessary to be enforced because of the enormous influence of narcotics on the survival of a nation, especially for the young generation of the nation's successors.

In order to smuggle Narcotics into Indonesia, the syndicates will actually use various methods, including the mode of utilizing minors as drug carriers. Therefore the investigators need to be wary of the possibility of the suspected cases of Narcotics crime being faced by minors. Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA) can conflict with Law Number 35 of 2009 concerning Narcotics.

2. Problems

What is the criminal policy in the effort to tackle children as perpetrators of narcotics crime?

Research Methods

(Normative law research/normative law research) uses normative case studies in the form of legal behavior products, for example reviewing laws. The subject of the study is a law that is conceptualized as a norm or rule that applies to society and becomes a reference for everyone's

behavior. So normative legal research focuses on positive legal inventories, legal principles and doctrines, legal findings in in concreto cases, systematic law, synchronization levels, comparative law and legal history.¹ The method of approach in this paper is the regulatory approach (*statue aproach*).² A normative study certainly must use a statutory approach, because what will be examined are various legal rules that are the focus as well as the central theme of a research.

Discussion

Criminal law policy (penal policy / criminal law policy / strafrechtspolitiek) can be defined as an effort to realize criminal legislation that is appropriate to the situation and situation at a time and for the future. The word according to the meaning implies both in the sense of fulfilling the requirements of justice and usability.³

Criminal provisions are provisions of material criminal law, the scope covered in them basically covers the entire structure of the criminal law system (the structure of reasoning system), namely:

- a. Criminalization problem: formulation of criminal acts;
- b. Problems with sentencing / sentencing;
- c. The problem of implementing criminal / sanctions of criminal law (execution of punishment)

In the three scope of the criminal law system, three main problems of criminal law are included, namely the problem:

- a) What actions should be punished;
- b) What conditions should be fulfilled to blame / account for someone who committed the act;
- c) Sanctions (criminal) what should be imposed on the person.

Material criminal law, seen from a dogmatic-normative point of view, according to Barda Nawawi Arief substantiated on 3 (three) main problems of criminal law (meaning material criminal law) lies the problem of interrelated matters, namely :⁴

1 Abdulkadir Muhammad. 2004..Hukum dan Penelitian Hukum 1. Bandung: PT. Citra Aditya Bakti. P. 52

2 Peter Mahmud Marzuki. 2008. Penelitian Hukum. Cet 2. Jakarta: Kencana. P 29

3 BardaNawawiArief, Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan,, Master Library, Semarang, 2012 P. 85

4 BardaNawawiArief, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana EdisiRevisi Citra Aditya Bakti, Bandung, 2005, P. 136

1. What actions should be punished;
2. What conditions should be fulfilled to blame / account for someone doing the action;
and
3. What sanctions / crimes should be imposed on the person.

Criminal law policy essentially contains state policies in regulating and limiting power, both the authority of the community in general to act and behave as well as power or authority of the ruler / law enforcer in carrying out their duties to ensure that the community obeys and complies with the rules set. Criminal law policy is a series of processes consisting of three stages, namely:

- a. Legislative / formulative policy stage;
- b. Judicial / applicative policy stage and
- c. Executive / administrative

policy stage Based on the three descriptions of the stages of criminal law enforcement policies contained in the three powers / authorities, namely the legislative / formulative authority has the authority in determining or formulating what actions can be convicted that are oriented to the main problems in criminal law including acts that are against law, error / criminal liability and what sanctions can be imposed by lawmakers, judicial / applicative power is power in terms of applying criminal law by law enforcers or courts and executive / administrative powers in implementing criminal law by executing / executing criminal apparatus . Based on the three stages of the law enforcement policy above, crime prevention is always oriented towards efforts to achieve public welfare. As stated by Barda Nawawi Arief⁵ that policies or criminal policies are essentially an integral part of social protection efforts and efforts to achieve social welfare.

According to G. Peter Hoefnagels, criminal policy is a policy of science as part of a broader policy, namely law enforcement policies (criminal policy as a science of politics) part of a larger policy: the law enforcement policy); while law enforcement policies are also part of social policy. Whereas according to Sudarto, the definition of criminal politics is briefly a rational effort of the community in overcoming crime.⁶ Therefore, GP Hoefnagels stated that "criminal policy is a policy of designating human behavior as crime" (criminal policy is a policy in establishing human behavior as a crime or criminal act).⁷

5 BardaNawawi, Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan* , Citra Aditya Bakti, Bandung, 2002, 2nd Check, P 73

6 Sudarto, *Hukum dan Hukum Pidana*, (Alumni: Bandung), 1986, p. 30

7 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenada Media Group, Jakarta, 2011, P 299- 300

According to Lawrence Meir Friedman, there are three elements that influence the operation of the law:

- a. Legal structure (legal structure)
- b. Legal substance (legal substance)
- c. Legal culture⁸

Briefly according to Lawrence Meir Friedman to describe the three elements of the legal system as follows:

- a. The legal structure is likened to a machine.
- b. The legal substance is what the machine does and produces.
- c. Legal culture is anything or anyone who decides to turn on and turn off the engine, and decide how the machine is used.

To know the law as a system, it must be observed whether he fulfills 8 (eight) principles or eight principles of legality, such as according to Fuller as follows:

- a. The legal system must contain regulatory regulations, meaning that it must not contain merely ad hoc decisions.
- b. The regulations that have been made must be announced.
- c. Regulations may not be retroactive.
- d. The rules are arranged in an incomprehensible formula.
- e. A system must not contain rules that conflict with each other.
- f. Regulations may not contain demands that exceed what can be done.
- g. Regulations cannot be changed frequently.
- h. There must be a match between the regulations promulgated and their daily implementation.⁹

Three elements that need to be considered in law enforcement are:

- 1) Legal certainty Legal

Certainty is a legal protection against arbitrary actions, which means that someone will be able

8 Achmad Ali. *Kepurukan Hukum di Indonesia, Penyebab dan Solusinya* Ghalia Indonesia. Jakarta. 2002, p.2.

9 Esmi Warasih, *Pranata Hukum Sebagai Telaah Sosiologis* Suryandaru Utama, Semarang, 2005, p. 3.

to obtain something expected in certain circumstances. The community hopes that the legal certainty of the community will be more orderly.

2) The use of

Law is for humans, so law or law enforcement must provide benefits or benefits to the community, not to cause unrest in the community due to law enforcement or enforcement.

3) Justice

Legalis not synonymous with justice. The law is general, binding on everyone, generalizing. On the other hand justice is subjective, individualistic, and does not generalize.

Lawrence M. Friedman said that the legal system consists of legal structures (in the form of legal institutions), legal entities (statutory regulations) and legal culture or legal culture. These three components support the running of the legal system in a country. In social reality, the existence of a legal system found in society experiences changes as a result of influence, what is called modernization or globalization both in evolution and revolution.

Efforts in the context of tackling crime are a means as a reaction that can be given to perpetrators of crime, in the form of criminal means (reason) and non criminal law (non penal), which can be integrated with one another. If criminal facilities are called to tackle crime, it means that criminal law politics will be implemented, namely to hold elections to achieve the results of criminal legislation that are appropriate to the situation and situation at a time and for the future.

According to GP Hoefnagels, crime prevention efforts are pursued by:

- a. Application of criminal law (criminal law application);
- b. Prevention without crime (prevention without punishment), and
- c. Influence the views of society through crime and punishment through mass media

(influencing views of society on crime and punishment / mass mendia). Thus the crime prevention efforts in general can be divided into two, namely through the "reasoning" (criminal law) and through the "non penal "(not / outside criminal law). In the distribution of the Hoefnagels GP above, the efforts in points (b) and (c) can be included in the non-reasoning effort group.

Barnest and Teeters show several ways to tackle crime, namely:

- 1) Recognizing that there will be needs to develop social impulses or social pressures and economic pressures that can affect one's behavior toward evil deeds.

- 2) Focusing on individuals who show criminal or social potentiality, even though the potential is caused by biological and psychological disorders or lacking sufficient economic and social opportunities so that it can be a harmonious whole.

From the opinion of Barnest and Teeters, the above shows that crime can be overcome if the economic conditions or circumstances of the social environment that influence a person toward criminal behavior can be restored to good condition. In other words, improvement in economic conditions is absolutely necessary. While biological, psychological factors are only secondary factors.

Judging from the notion of a crime that violates criminal regulations, is threatened with punishment by law and carried out by someone with guilt, which person must be accountable, and the police should also be able to maintain and implement the rules that have been set, if we reviewing it further than this definition, in which there are several elements of offense, namely:

- a. There is an element of action;
- b. There is an element of violation of criminal regulations;
- c. The element is threatened with the threat of punishment;
- d. Done with an error.

The element of offense which is an element rather than the nature of being against the law is an act, because only that action is only followed by the elements of the object, which can be divided into several parts including:

- a. This act has been formulated by law;
- b. These actions are illegal;
- c. Done with error;
- d. These actions are threatened with criminal acts. Crime is an act that is prohibited by law, prohibitions accompanied by threats, or sanctions in the form of certain crimes for anyone who violates the prohibition. Determine when and in what cases those who have violated the prohibition can be charged or punished as threatened. Determine how the imposition of criminal acts is carried out if someone is suspected of violating the prohibition.

In order to smuggle Narcotics into Indonesia, the syndicates will actually use various methods, including the mode of utilizing minors as drug carriers. Therefore the investigators need to be wary of the possibility of the suspected cases of Narcotics crime being faced by minors. Law Number 11 of 2012 concerning the Child Criminal Justice System (SPPA) can conflict with Law Number 35 of 2009 concerning Narcotics. This is because the SPPA Law places more

emphasis on the diversion or transfer of sentencing penalties at the level of the investigation, prosecution and trial for the suspect. "This means that if a suspect in a Narcotics case is an underage child, it is possible that he will receive different sanctions, because the SPPA Law applies to him, a perpetrator of 14-year-old Narcotics who acts as a narcotics courier, the case is treated diversified. Darmawel said that investigators like this need to be aware of because it is possible to become a new mode used by drug syndicates. "Generally, couriers always reason that they don't know anything. Investigators need to ascertain whether the child used as a narcotics courier is aware of his actions or indeed used by the syndicate.¹⁰ The criminal threat for children who become narcotics couriers is half of the criminal threats contained in the Narcotics Law. The international narcotics network has a new mode, which involves minors as supplier couriers. This mode is revealed from the findings of the case revealed by BNN in collaboration with the Customs and Excise of Halim Perdanakus Airport on August 18, 2016. On Thursday (25/8), officers managed to secure 13 plastic bags containing 256.8 grams of marijuana leaves, which were packed in plastic lego toys. . "There were three suspects who were secured with the initials X, AML and AMM. The mode is to circulate it by ordering online and making children as couriers, "said BNN spokesman, Senior Commissioner Slamet Pribadi. The perpetrator with the initials X is a 16 year old child.

In November 2017, the abuse of shabu-shabu (SS) drugs in Bangkalan was increasingly alarming. Bangkalan police managed to arrest GagahDafi who was only fourteen years old. Stupid Dafi claimed that he was the first to discuss the SS. He was affected because he was invited by his friend to dare to consume SS (shabu-shabu).

Another case in January 2018 The ranks of the Jepara Regional Police secured the children who were still in elementary school because of being a drug courier. From the results of the information obtained, he said, the child did not know that he was carrying drugs. The child is only told by someone to deliver goods to someone else. In 2017 alone, there were 26 drug cases in Jepara. Of all the cases 33 people were declared as suspects.¹¹

Another case in April 2018 The National Narcotics Agency (BNN) is still awaiting the results of a 3.8-year-old CSA urine sample of children suspected of being narcotics after eating YUPI-branded sweets in Selatpanjang, Meranti, Riau.¹²

Drug cases involving children as couriers are not new. Actors involved in international narcotics networks using children as couriers can be charged with Article 133 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. For actors who tell by giving or promising

10 <http://jakrev.com/megapolitan/bnn-resah-dualisme-hukum-bagi-anak-sebagai-kurir-narkoba/>

11 <http://www.tribunnews.com/regional/2018/01/24/duh-drug-caught-when-being-drug-courier->

12 <https://www.suara.com/news/2018/04/04/122030/kasus-narkoba-bayi-csa-orangtua-diminta-perantikan-food-child>

something, or by forcing them with threats and violence, or by deceiving the child, the offender can be convicted with a death sentence or life imprisonment, or a minimum of 5 (five) imprisonment year and maximum 20 years and a fine of at least Rp 2 billion and a maximum of Rp 20 billion. For couriers or people who are brokers of narcotics trade chains, the penalties that can be charged are dependent on the type of narcotics they carry. For example, for intermediaries in narcotics class I transactions based on Article 114 paragraph (1) of Law Number 35 of 2009, the perpetrators can be threatened with imprisonment for life or imprisonment of at least 5 (five) years and a fine of at least Rp. 1 billion and a maximum of Rp. 10 billion. Or it can be snared with provisions regarding the control of narcotics regulated in Article 112 paragraph (1) of the Narcotics Law. That is, anyone who has no right or against the law has, holds, controls, or provides Narcotics Group I, not plants, to the perpetrators can be punished with imprisonment for a minimum of 4 (four) years or a maximum of 12 (twelve) years and a minimum fine IDR 800 million and at most IDR 8 billion. In the control of narcotics, there is a jurisprudence of the Decision of the West Sumatra High Court, that Bezit in narcotics cases must fulfill two elements, namely the power of an object and the willingness to possess it. That is, if a person does not know how to bring narcotics and does not want to own them, then the element of proof in Article 112 of the Narcotics Law is not fulfilled.

Threats of imprisonment that can be imposed on children no later than 1/2 (one half) from the maximum threat of imprisonment for adults. This means that the criminal threat for children who become narcotics couriers is half of the criminal threats contained in the Narcotics Law. For children who become couriers or narcotics brokers, they must be based on the mechanism stipulated in the Child Protection Act and the Juvenile Justice System Law. Law enforcement for perpetrators who are still under age, there is a special provision called diversion, namely the transfer of settlement of child cases from criminal justice processes to processes outside of criminal justice.

Based on Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, at the level of investigation, prosecution and examination of cases of Children in a district court must be sought diversion. However, diversion can only be done with conditions, namely in the case of a criminal offense that is threatened with imprisonment under 7 (seven) years and the act committed by the child is not a repetition of a crime.

According to Law Number 11 of 2012 concerning the Child Criminal Justice System, diversion efforts are carried out to avoid and distance children from the judicial process so that they can avoid stigmatization of children facing the law and it is hoped that children can return to the social environment fairly. The diversion process is carried out through deliberations

involving children and parents / guardians, community counselors, and professional social workers, carried out with a restorative justice approach.

Article 3 of the SPPA Law also regulates the rights of children who are legally processed through criminal justice, including: treated humanely by taking into account their needs according to their age; separated from adults; not sentenced to death or life sentence; not arrested, detained, or imprisoned, except as a last resort and in the shortest time; obtain justice in the face of the court of the child who is objective, impartial, and in a hearing that is closed to the public; unpublished identity; obtain education; and other rights in accordance with the provisions of the legislation.

The view that the use of criminal law as a means of dealing with crime cannot be attributed to the understanding that its use must still be subsidiary. That is, as long as the use of facilities outside the criminal justice system is seen as more effective, avoidance of the use of criminal justice. In addition, if criminal law is to be used as a means to reach Indonesian people as a whole, a humanistic approach must also be considered. This is important not only because the crime is essentially a humanitarian problem, but also because in essence criminal law itself contains elements of suffering which can attack the interests or values that are most valuable to human life.

Conceptually, crime prevention can be done either by using criminal justice (judicial) or other means outside criminal justice (non-judicial). Efforts to divert the process from the judicial process towards non-judicial processes in the handling of narcotics abuse by children are basically efforts to resolve narcotics abuse committed by children outside the criminal justice track. That is, the transfer of processes from the judicial process towards non-judicial processes in the response to narcotics abuse carried out by children is basically an effort to prevent children from applying criminal law and punishment.

Children need special legal protection when dealing with legal issues. Existing regulations have a number of weaknesses, these weaknesses are contained in Law Number 3 of 1997 concerning Juvenile Courts that provide the threat of punishment when children are in the judicial process. In addition, protection for children with legal problems (ABH) has also been guaranteed in the mandate of the Indonesian Constitution, namely Article 28 B Paragraph (2) of the 1945 Constitution which states that "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination ". The high number of children held in LAPAS also encouraged the birth of policies in Indonesia, the data shows that "based on data from the KPAI stated that in 2011 there were approximately 6271 children who languished in 16 (sixteen) Correctional Institutions (LAPAS) spread in the territory of Indonesia. Not only that, there are also negative effects of dehumanization in form

of punishment (declining human values), prisonization (the influence of learning about crime) and stigmatization (evil stamp) are also taken into consideration in encouraging the birth of diversion policies in Indonesia.¹³

The legal treatment of minors in the narcotics trafficking case should receive serious attention. Law enforcers and process and decide that they must be sure that the decisions taken will be a strong basis for returning and regulating children towards a good future to develop themselves as citizens who are responsible for the life of the nation.

Conclusion

Criminal policy in an effort to control children as perpetrators of narcotics crimes. Threats of imprisonment that can be imposed on children no later than 1/2 (one half) from the maximum threat of imprisonment for adults. This means that the criminal threat for children who become narcotics couriers is half of the criminal threats contained in the Narcotics Law. For children who become couriers or narcotics brokers, they must be based on the mechanism stipulated in the Child Protection Act and the Juvenile Justice System Law. Law enforcement for perpetrators who are still under age, there is a special provision called diversion, namely the transfer of settlement of child cases from criminal justice processes to processes outside of criminal justice.

Based on Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, at the level of investigation, prosecution and examination of cases of Children in a district court must be sought diversion. However, diversion can only be done with conditions, namely in the case of a criminal offense that is threatened with imprisonment under 7 (seven) years and the act committed by the child is not a repetition of a crime.

According to Law Number 11 of 2012 concerning the Child Criminal Justice System, diversion efforts are carried out to avoid and distance children from the judicial process so that they can avoid stigmatization of children facing the law and it is hoped that children can return to the social environment fairly. The diversion process is carried out through deliberations involving children and parents / guardians, community counselors, and professional social workers, carried out with a restorative justice approach.

13 Palindungan Halim Harahap. 2014. Jurisprudential Sociological Review of Diversion Policies for Children in Law Number 11 of 2012 concerning the Anal Criminal Justice System. UNNES Law Journal. Thing 1

BIBLIOGRAPHY

- Abdulkadir Muhammad. 2004. *Hukum dan Penelitian Hukum*. Cet. 1. Bandung: PT. Citra Aditya Bakti.
- Achmad Ali. “Kepurukan Hukum di Indonesia, Penyebab dan Solusinya”, Ghalia Indonesia. Jakarta. 2002
- Barda Nawawi Arief. 2012. *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Pustaka Magister, Semarang
- 2005. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana Edisi Revisi*, Citra Aditya Bakti, Bandung
- 2002. *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Citra Aditya Bakti, Bandung
- 2011. *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*”, Kencana Prenada Media Group, Jakarta
- Esmi Warasih. 2005. “Pranata Hukum Sebagai Telaah Sosiologis”, Suryandaru Utama, Semarang
- Halim Palindungan Harahap. 2014. *Tinjauan Yuridis Sosiologis Terhadap Kebijakan Diversi Bagi Anak Dalam Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anal*. UNNES Law Journal
- Sudarto. 1986. *Hukum dan Hukum Pidana*, (Alumni:Bandung)
- Peter Mahmud Marzuki. 2008. *Penelitian Hukum*. Cet 2. Jakarta: Kencana.
- <http://jakrev.com/megapolitan/bnn-resah-dualisme-hukum-bagi-anak-sebagai-kurir-narkoba/>
- <http://www.tribunnews.com/regional/2018/01/24/duh-anak-sd-di-jepara-tertangkap-saat-jadi-kurir-narkoba>
- <https://www.suara.com/news/2018/04/04/122030/kasus-narkoba-bayi-csa-orangtua-diminta-perhatikan-makanan-anak>