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**LEGAL PROTECTION AGAINST CHILDREN
COURIER AS NARCOTICS
(LEGAL PROTECTION FOR CHILDREN AS *Narcotics Couriers*)**

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Abstract

Child has an important role in the life of society and state, due to its position as the nation's future. Therefore, the child has the potential to play an active role to preserve the life of the nation, in order to realize the goal of forming a government that protects citizens. Abuse of drugs by children is now a concern of many people and constantly talked about and publicized. In fact, the problem of drug abuse to the attention of various parties, especially the involvement of children as drug couriers is a series of conspiracy in carrying illegal narcotics. In the capacity of children used as couriers is one thing that is so concerned about where the child would conflict with the law, and has committed a crime classified as narcotics. With limited ability of children and ketidaksesempurnaannya, then it should be a concern of law enforcement officers in the implementation of punishment for children narcotics criminals.

Keywords: *Legal Protection, Children, Narcotics Courier.*



A. Introduction

Child is the mandate and the gift of God Almighty, who in her inherent dignity as human beings. Therefore, children also have rights that are recognized by the nations of the world and is the foundation for freedom, justice, and peace throughout the world.

Child as defined in Article 1 of Law No. 23 of 2002 regarding Child Protection is someone who has not aged 18 (eighteen) years, including an unborn child. While in the Code of Penal (Penal Code), not dujelaskan in detail on the issue of limitation of children, only according to the Book of the Law of Criminal Law Article 45 and Article 72 paragraph (1), the Act outline the limits of age who have not adult is before age 16 years.

Child has an important role in the life of society and state, because of his position as a possible successor or successors nation. Therefore, the child has the potential to contribute actively to preserve the life of a noble nation, which base- essentially been laid the previous generation, in order to realize the goal of forming a government that protects people. As a successor executor ideals of the nation, the child has a noble obligation and a heavy responsibility for the realization of the purpose of the Republic of Indonesia.

Adolescence is a period of a child undergoing rapid change in all areas, changes in the body, feelings, intellect, social attitudes and personality. Adolescence is shaken because of the many changes and emotional instability, so that sometimes causes attitudes and actions by adults assessed as mischievous deeds.

Moment this, one of the forms of juvenile delinquency is the abuse of narcotics. Drug abuse no longer see the ages, from children, teenagers, adults to parents even if not escape from the shackles of this drug abuse. It is estimated that about 1.5 percent of the total population of Indonesia is the victim of the abuse of narcotics. The drug trafficking problem is equally alarming, because it does not only happen in big cities alone also spread to parts of Indonesia.



Narkotika are substances or drugs derived from plant or not plant, either synthetic or semi-synthetic that can cause a reduction or alteration of consciousness, loss of pain and can cause dependence (Act No.. 35 of 2009).Law Number 35 Year 2009 on Narcotics has been set on the criminal provision for anyone who may be subject to criminal penalties to be borne along by drug abusers or can be referred to as the doers. In the narcotics law itself does not distinguish specifically between the doers. Both actors were told to do, which was involved in the advocate and helper and can be termed as a criminal.

Abuse drugs by children today are the concern of many people and constantly talked about and publicized. In fact, the problem of drug abuse to the attention of various circles. Almost all elements of Indonesian society reminded to always keep and pay attention pergaulan their children against the rampant narcotics which can damage a child's future.

The problem of drug abuse in Indonesia is now perceived in an alarming state. As an archipelagic country that has a strategic location, both in terms of economic, social, political and international world, Indonesia has overcome the evil of participating substance abuse, namely the passing of Law No. 35 Year 2009 on Narcotics.

Keterinvolvement of children in criminal acts narcotics courier narcotics is a series of conspiracy in carrying narcotics illegally, but in the capacity of this category of children who became a courier, this is one thing that is so concerned about where the child has to deal with the law and classified as having committed narcotic.

However, the child's ability is still limited and not as perfect as adults must be considered by law enforcement officials in applying sentencing for children the doers, the issuance of Law No. 11 of 2012 on the Criminal Justice System Child as a substitute of Law No. 3 1997 on Juvenile Justice will provide the implementation of punishment that are more child fostering and protecting against criminals. Oleh Therefore, the protection of children is very important, since children are the future



generation. It required Legislation that protects children from various criminal acts, namely Act No. 35 of 2014 on the Amendment to Law Number. 23 of 2002 on Child Protection. The purpose of this law itself, namely to protect the rights of children from all sorts of crime.

Indonesian Child Protection Commission (KPAI) rate of drug cases even threaten children. The number of drug users in their teens rose to 14 thousand people aged 12-21 years. The amount is somewhat fantastic as recent data from the National Narcotics Agency (BNN) and the University of Indonesia said that the total Puslitkes drug users of all ages up to 5 million people in Indonesia. The figure was 2.8 per cent of the total population of Indonesia in 2015.

With the above data, we can know a lot of kids who were jailed because it's ironic terlibat narcotics cases, children are supposed to be playing and studying to be a legal issue and jailed. It certainly can affect growth and physical development, mental and social wellbeing of the child.

Pemidanaan child Liken certainly not possible in the adult nature of the psychic and intentions rather than children are different from adults, the level of skill and understanding of matters concerning the law certainly has not been understood in depth. So in terms of psychological and intent is what should be considered by the law enforcement agencies through the efforts of legal protection under the Act Number. 35 of 2014 regarding Child Protection. However, in practice, in a decision issued by the district court Pelaihari number 1 / Pid.Sus Children / 2014 / PN Pli on children caught in drug courier cases, the child gets sanctioned punishment imprisonment for 2 years 6 months. In this case the child should not be positioned as perpetrators but as victims. Therefore, it needs serious attention. Law enforcement in the process and decided to be convinced that the decision taken will be a solid basis to restore and regulate a child toward a better future to develop themselves as citizens who are responsible for the life of the nation.



As for terms of Islamic law, religious teachings declare every child born into the world in a state of fitrah or tubs like white papers. Then his parents make the child have a good personal or otherwise being a bad person. Because of circumstances his parents and because the pattern of parental education and the circumstances in which the child grows causing a change in human children that are not in accordance with nature.

Narcotics not known at the time of the Prophet Muhammad, yet it belongs to the category Khamar, even more dangerous drug than with Khamar. The term narcotics in the Islamic context, is not mentioned directly in the Qur'an or in the Sunnah. In the Qur'an only mentions the term Khamar. But because the science of Usul Fiqh theory, if a law has not yet determined its legal status, it can be resolved through the methods of qiyas (analogy of law).

B. Method

The type of research used is descriptive analytical that is describing, describing, analyzing and explaining analytically the problems raised. This study includes the type of normative legal research or library legal research that is legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. (Soerjono Soekanto and Sri Mamuji, 2004: 13-14).

C. Research Finding

In accordance with the problems and research objectives, the type of research is descriptive analysis, which describe, describe, and explain analytically examine the issues raised. The research was conducted by the research literature. Material Research obtained through normative juridical approach namely legal approach by looking at the regulations, both primary law and secondary law or approach to the problem by looking at the terms of the legislation in force, literature, scientific work and the opinions of experts and others. Soerjono Soekanto said that the normative legal research is conducted legal research to examine the



material library or a mere secondary data. Normative legal research includes studies on the systematics of law.

D. Discussion

Hak And Obligations Of Children Under Criminal Law

Child as a person that is very unique and has distinctive features. Although he can act on feelings, thoughts and his will, the neighborhood turns out to have considerable influence in shaping a child's behavior. For the guidance, supervision, and protection of parents, teachers, and other adults desperately needed a son and filial duty.

Moreover in the fulfillment of their rights, a child can not do it alone due to the ability and knowledge is still limited. In the Indonesian Constitution, the Constitution of the Republic of Indonesia in 1945 as a legal norm highest it has been outlined that "every child has the right to live, grow, and develop as well as the right to protection against violence and discrimination." It has been suggested that the status and protection of children's rights is important that should be further elaborated and implemented in everyday reality.

Effort protection of children's rights in Indonesia had been accommodated in the Constitution of the Republic of Indonesia 1945 Section 28B (2) as mentioned above, as well as in Law No. 39 Tear 1999 on Human Rights, and Law No. 23 of 2002 on Child Protection. In the convention of children's rights, children's rights can be generally grouped into four (4) categories, among others: a). The right to survival (the right to survival), namely the rights to preserve and defend life and the right to the highest attainable standard of health and care as well as possible; b). The right to protection (Protection Rights) that the rights of the child rights convention that includes the rights protection and discrimination, violence and neglect for children who do not have a family for refugee children; c). The right to grow flowers (Development Rights) that the rights of the child in the convention of children's rights which includes all forms of education (formal and informal) and the right to achieve a standard of living adequate for physical, mental, spiritual, moral, and



social development (the right of standard of living). d). Right to participation (Participation Rights), the rights of the child which includes the right unruk express opinions in all matters affecting the child (the right of a child to express her / his views freely in all matters affecting the child). The right to participate is the right child of the fundamental cultural identity for children, childhood and floating involvement in the wider community. d). Right to participation (Participation Rights), the rights of the child which includes the right express opinions in all matters affecting the child (the right of a child to express her / his views freely in all matters affecting the child). The right to participate is the right child of the fundamental cultural identity for children, childhood and floating involvement in the wider community. d). Right to participation (Participation Rights), the rights of the child which includes the right unruk express opinions in all matters affecting the child (the right of a child to express her / his views freely in all matters affecting the child). The right to participate is the right child of the fundamental cultural identity for children, childhood and floating involvement in the wider community.

Criminal Sanctions For Child As Courier Narcotics

Penerapan criminalization of children often contentious, because in this case has the consequence of a very wide both concerning the behavior and stigma in the community and also within the child, but with the issuance of Law No. 11 of 2012 concerning juvenile justice system that has been in effect since July 30, 2014, the application of punishment is more to foster and protect against the child, compared with Act No. 3 of 1997 concerning juvenile justice is irrelevant because it does not correspond with the times.

undang Law Number 11 Year 2012 regarding the juvenile justice system adheres to a double track system. What is meant by the double track system is a two-track system where in addition to criminalizing also set the action. Through the application of the two-track system (double track system), sanctions would better reflect justice for perpetrators, victims, and the community. Therefore, according to the author, through



the two-track system of judges may determine sanctions against children appropriate and ought to be accounted for by children in conflict with the law.

No general, the imposition of criminal sanctions against offenders is often regarded as the purpose of the criminal law. Therefore, if the offender has been brought before the trial and then sentenced to criminal sanctions, the lawsuit is considered to have ended. Such a view, has positioned justice in criminal law and criminal law enforcement are criminal sanctions as threatened in the articles that have been violated.

Criminality commonly applied under the Criminal Code, not educate children to be better, but rather aggravate the condition and can increase the level of sentencing Child. Application crimes against children based on Law Number 11 Year 2012 regarding the juvenile justice system is a cornerstone of sanctions against children who do criminal act. Children who become drug couriers, Act No. 35 of 2014 on narcotics is not specifically regulate the provision of criminal sanctions for children,

The law Act No. 11 of 2012 does not follow the rules of criminal sanctions as stipulated in article 10 of the Criminal Code but create its own sanctions. Here are the types of punishment that can be imposed by a judge who may be subject to criminal punishment of children is divided into basic and additional penalty that set out in Act No. 11 of 2012 on the Criminal Justice System Child Article 71 Paragraph 1, namely:

PPrincipal idana for children consists of:

1. Criminal Warning
2. Criminal with Terms
3. Criminal outside agencies
4. Pecommunity services
5. Pengrein
6. Work training
7. Coaching in institutions
8. Jail



Legislation in the regulations in force in Indonesia, the narcotic crime is classified into a particular criminal offense because it is not mentioned in the Criminal Code, its regulation is specific as stipulated in Law No. 35 of 2009 on Narcotics. Here are the articles that applied to children who qualify as drug couriers, namely Article 114 of Law Number 35 Year 2009 on Narcotics.

1. Any person who unlawfully or unlawfully offering for sale, selling, purchasing, receiving, being an intermediary in the sale and purchase, exchange, or submit Narcotics Group I, shall be punished with imprisonment for life or a term of imprisonment of five (5) years and a maximum of 20 (twenty) years and fined at least 1,000,000,000.00 (one billion rupiah) and at most 10,000,000,000.00 (ten billion rupiah).
2. If the act offers for sale, sells, buys, mediates in sale and purchase, exchange, surrender, or receive Narcotics Group I referred in verse (1) which is in the form of tanamanberatnya exceed one (1) kilogram or exceeding 5 (five) tree trunks or in the form of non plant weighs five (5) grams, the offender shall be punished by death, life imprisonment or imprisonment of at least 6 (six) years and a maximum of 20 (twenty) years and fined a maximum referred in paragraph (1) 1/3 (one third).
Porigin 115 of Law Number 35 Year 2009 on Narcotics.
 - 1) Any person who unlawfully or unlawfully carrying, sending, transporting, or mentransito Narcotics Group I, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of twelve (12) years and fined at least Rp800.000.000 , 00 (eight hundred million rupiah) and at most Rp8.000.000.000,00 (eight billion).
 - 2) In the case of actions brought, sending, transporting, or mentransito Narcotics Group I as referred to in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunk weighing exceed five (5) grams, penjaraseumur offender shall be punished by life or term of imprisonment of five (5) years and a maximum of 20 (twenty)



years and a maximum penalty referred to in paragraph (1) 1/3 (one third).

Porigin 119 of Law Number 35 Year 2009 on Narcotics.

- 1) Any person who unlawfully or unlawfully offering for sale, selling, purchasing, receiving, being an intermediary in the sale and purchase, exchange, or submit Narcotics Group II, shall be punished with imprisonment for a minimum of 4 (four) years and maximum of 12 (twelve) years and fined at least US \$ 800,000,000.00 (eight hundred million rupiah) and at most Rp 8,000,000,000.00 (eight billion rupiah).
- 2) In the case of acts offering for sale, selling, purchasing, receiving, being an intermediary in the sale and purchase, exchange, or submit Narcotics Group II referred to in paragraph (1) the severity exceeding five (5) grams, the offender shall be punished with death, criminal life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) the year and the maximum penalty as referred to in paragraph (1) 1/3 (one third).

Itnajuan Against Decision No. 01 / Pid.Sus Child / 2014 / Pn.Pli

In this discussion the author provides an analysis in positive legal review, it is necessary that the author describes the analysis based on the legislation in force as of the comparative method in accordance with the concentration of the authors take. In principle the Penal Code, any person deemed to know or understand the Act and Regulations apply. Therefore, any person who is able to provide criminal liability, can not use the excuse that he did not know of the existence of regulations or Legislation under penalty of the act that has been does. Do not know or do not understand the existence of perundang law is not a reason to exclude prosecution or even also the reason commute.

In a case heard in the District Court Pelaihari in case No. 01 / Pid.Sus Children / 2014 / PN.Pli prosecute the defendant named defendant, in the case of Children as Victims Courier Narcotics Pelaihari



City. In this case the judges deciding the case was based on Article 114 paragraph (1) of Law No. 35 Year 2009 on Narcotics, which reads:

Sach person who unlawfully or unlawfully offering for sale, selling, purchasing, receiving, being an intermediary in the sale and purchase, exchange, or submit Narcotics Group I, shall be punished with imprisonment for life or a term of imprisonment of five (5) years and 20 (twenty) years and fined at least Rp. 1,000,000,000.00 (one billion rupiah) and Rp. 10,000,000,000.00 (ten billion rupiah).

Based on the decision made by DEFENDANTS have fulfilled the elements in the aforementioned article. The elements in the article are: 25

1. Everyone:

Yang referred to every person in this case is the person alleged to have committed a criminal act and submitted as a defendant in court for the prosecution in this case are alleged to have committed a criminal act and proposed kepersidangan. Then so the element of "everyone" is fulfilled.

2. Without the right or unlawful

unsur this is an alternative, if one of the actions required in this indictment have been met, then the element is fulfilled. It is "without right" means the defendant himself no power / authority or the authority's something where there are only after a permit / in accordance with the laws / regulations that allow for it. In the incident the police found the defendant brought four (4) small packages of narcotics group I not plant the type of methamphetamine, If a person working knowledge institutes to receive a license to carry the dosage of narcotics Category I, in other words, the defendant does not have the right to bring methamphetamine , So with this, the element "without rights or against the law" is fulfilled.

3. Offer for sale, sell, buy, receive, beintermediary in the sale and purchase, exchange or surrender Narcotics Group I "This element was the alternative, if one of the actions required in this indictment have been met, then the element is fulfilled. In this third element, can be said to have fulfilled this element, which in this case is based on facts



in the trial, that the defendant refers to "elements became an intermediary in the sale and purchase of narcotics Category I" Oleh therefore, all of the elements in Article 114 Paragraph (1) of Law No. 35 Year 2009 on Narcotics have been met. So the decision is legally binding already been decided by the judge, the defendant terminated the criminal law Prison for two (2) years and six (6) months, as well as pay a fine of Rp 500,000,000.00 (five hundred million rupiah) .29 From the view of the author himself about the verdict of the District Court Pelaihari No. 01 / Pid.Sus Children / 2014 / PN.Pli contrary to the decision. In this case the child is a victim of drug couriers actors, have been described in the judgment that this child in ask for to deliver narcotics package to lure rewarded. So obviously, this child is the victim. In Act No. 35 T2014 on Child Protection cope in Article 59 paragraph (1) and (2) and Article 64, which reads: Article 59

1. Government, local government and other state institutions and is responsible for providing Special Protection to Children.
2. Special on Child Protection as referred to in paragraph (1) given to:
 - a. Child in emergency situations;
 - b. Child conflict with the law;
 - c. Child of minorities and isolated;
 - d. Child which are economically and / or sexual abuse;
 - e. Child who are victims of drug abuse, alcohol, psychotropic and other addictive substances;
 - f. Child who are victims of pornography;
 - g. Child with HIV / AIDS;
 - h. Child abduction, sale, and / or trade;
 - i. Child victims of physical violence and / or psychological;
 - j. Child victims of sexual crimes;
 - k. Child victims of terrorist networks;
 - l. Child persons with disabilities;
 - m. Child victims of abuse and neglect;
 - n. Child with socially deviant behavior; and



- o. Child who are victims of stigmatization of labeling associated with the condition tuanya.³⁰

Pspecial potential protective for children in conflict with the law referred to in Article 59 paragraph (2) letter b is done through:

- a. Treatment humanely with due regard to the needs of her age;
- b. Separation of adults;
- c. Giving legal aid and other assistance effectively;
- d. Enforcement rekresional activities;
- e. Release of torture, punishment or other cruel, inhuman and degrading treatment and ennobled;
- f. Avoidance from the imposition of the death penalty and / or life imprisonment;
- g. Avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest period of time;
- h. Giving justice before juvenile justice objectively, impartially and in a session closed to the public;
- i. Avoidance of publication of this identity.
- j. Giving mentoring Parent / Guardian and trusted by the child;
- k. Giving social advocacy;
- l. Giving private life;
- m. Giving accessibility, especially for children with disabilities;
- n. Giving education;
- o. Giving health services; and
- p. Giving other rights in accordance with the provisions of the legislation.

From the description of the contents of the above Act is clear that the government and state agencies are supposed to provide special protection to children, especially those on children in conflict with law and children who are victims of drug abuse, alcohol, psychotropic and other addictive substances. And in this case be a case of child exploitation. Kids used as drug couriers. Therefore, the author here contrasts with the verdict. Because this kid here has not yet entered the age of 18 years,



which is categorized in the age of children who should be protected and not to be punished. The judges should give judgment as discussed in Law Number 35 of 2014 on Protection of Children in article 64 of the Special Protection terhadap Children in conflict with the law, which reads: special protection for children in conflict with the law referred to in Article 59 paragraph (2) b is done through: a). Humane treatment with due regard to the needs of her age; b). Separation from adults; c). The provision of legal aid and other assistance effectively; d). Enforcement activities rekresional; e). Exemption from torture, punishment or other cruel, inhuman and degrading treatment and ennobled; f). Avoidance of the imposition of the death penalty and / or life imprisonment; g). Avoidance of arrest, detention or imprisonment, except as a last resort and in the shortest period of time; h). Giving justice before juvenile justice objectively, impartially and in a session closed to the public; i). Avoidance of the publication of his identity; j). Giving assistance Parent / Guardian and trusted by the child; k). Provision of social advocacy; l). Provision of private life; m). Granting accessibility, especially for children with disabilities; n). Provision of education; o). The provision of health services; and p). Granting other rights in accordance with the provisions of the legislation. impartially and in a session closed to the public; i). Avoidance of the publication of his identity; j). Giving assistance Parent / Guardian and trusted by the child; k). Provision of social advocacy; l). Provision of private life; m). Granting accessibility, especially for children with disabilities; n). Provision of education; o). The provision of health services; and p). Granting other rights in accordance with the provisions of the legislation. impartially and in a session closed to the public; i). Avoidance of the publication of his identity; j). Giving assistance Parent / Guardian and trusted by the child; k). Provision of social advocacy; l). Provision of private life; m). Granting accessibility, especially for children with disabilities; n). Provision of education; o). The provision of health services; and p). Granting other rights in accordance with the provisions of the legislation.

Setah mengenai exposure in previous discussions judgment of District Court Judges Pelaihari No. 01 / Pid.Sus Children / 2014 / PN.Pli



on children as victims of drug couriers offender, the defendant was sentenced to imprisonment for two (2) years and 6 (six) months, as well as pay a fine of Rp 500,000,000.00 (five hundred million rupiah) .33 Where in the process of proving the judge in deciding this case has gone through the process a lot of considerations ranging from witnesses, accompanied by an oath, and of evidence proof indictment the prosecutor, and the defendant also had to justify anything that has been directed at her and begged to give verdict seringan- light and fairly as possible.

Hukum Islamic criminal law is very different from positive law in Indonesia. In criminal law in Indonesia, the provisions regarding minors arranged when he was not quite 16 years, the judge may order that the innocent child be returned to his parents or caregivers with dropped something criminal. Or ordered that the child is at fault it submitted to the government by not dropped criminal, that is if the criminal act that makes part of a crime or offense referred to in Articles 489, 492, 496, 497, 503, 505, 514, 517, 519, 526, 531 , 532, 536, and 540, as well as the criminal act in the past just do it before two years after the decision that he did wrong to blame the offense or crime be fixed, or penalize the guilty child.

E. Conclusion

Potential protective law by Act No. 35 of 2014 on the protection of children, who referred to child protection are all activities to ensure and protect children and their rights in order to live, grow, develop and participate optimally in accordance with human dignity, as well as protection from violence and discrimination. Applicable law and protection for children who become drug couriers including the avoidance of arrest, detention or imprisonment; Giving justice before juvenile justice objectively, impartially and in a session closed to the public; Avoidance of the publication of his identity; Giving assistance Parent / Guardian and trusted by the child; and administration of social advocacy;

Liability criminal responsibility in Islamic criminal law is very different from positive law in Indonesia. In criminal law in Indonesia, the provisions regarding minors regulated in article 45 that if minors charged



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with a criminal offense when he was not quite 16 years, the judge may order that the child is at fault is returned to the parents or caregivers with dropped something criminal. However, what distinguishes the Islamic law that limits the child's age and liability criminal is under 18 years of actions children can be considered to be against the law, only the state can affect the liability criminal, so that the unlawful acts by children could be excused or could incur a penalty, but not punishment but a penalty takzir principal.



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