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Differences characteristic in judge's decision regarding child offenders of intermediary's narcotics transaction

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Abstract

This study aims to analyze the characteristics of judge's decision differences on the child offender drugs transaction. One of the problems in enforcing the law on drug trafficking crimes is the judge's different decisions.

This research is normative legal research. The materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. The research approach used consists of the Statue Approach, Case Approach, and Conceptual Approach.

The results of the study indicate that the characteristics of the difference in the judge's decision against the child offender of drug transaction crimes are casuistic, in accordance with the case itself. In every case, there are distinct issues that create differences, so that the decisions handed down cannot be equated from one case to another case. Factors that influence the difference in the judge's decision include the age or maturity, the level of involvement in the crime, the social environment, and the purpose of juvenile law.

Keywords: Characteristic, Judge's Decision, Children, Narcotics

1. Introduction

Narcotics is one of the crimes that is still becoming a national issue. The narcotic crime must be taken seriously by the entire society because it has the potential to make someone addicted and even death.

Narcotics are a kind of substance that when used (injected into the body) will affect the user's body. The effects arising from narcotics can be in the form of anaesthesia, pain relief, enthusiasm, hallucinations, or the emergence of delusions. (Dirdjosisworo, 2019) ^[1].

The spread of narcotics still cannot be prevented, considering that all groups of people can easily get drugs from irresponsible individuals, such as drug traffickers that can distribute drugs in places where young people gather. One of the children's involvements in narcotics crimes certainly does not occur with their own awareness but in the social process experienced by the child himself.

The development of society shows that the rampant spread of drugs syndicates are one of the factors in the enormous number of minors getting involved in the illegal products trade.

The discovery of a child's involvement in a narcotics crime as a courier causes a feeling of pity and sadness. Recognizing children as the successors and future pillars of parents of families and even children as part of the process and development for the growth of nations that have high aspirations and bright futures to commemorate and take over the leaders of Indonesia. (Teguh, 2018) ^[8].

Currently, children are not only used as a courier on drug trafficking transactions, but also dealers and distribute the narcotics directly. As the case of the son of *dangdut* singer, Lilis Karlina, with the initials "RD". A 15 (fifteen) year-old teenager who was arrested for the distribution and abuse of narcotics which carried out herself during 2 (two) years without his parents' knowledge.

The background of this case is because it was based on social environmental factors and economic factors. (Tionardus, 2023) ^[9].

With the issuance of Law No. 11 of 2012 Concerning the Juvenile Justice System as a replacement for Law No. 3 of Concerning Juvenile Courts, it will provide an application of punishment that is more constructive and protective towards child offenders.

The abilities of children who are considered still limited and not as perfect as adults must be considered by law enforcement officers in implementing punishment for children who commit narcotics crimes.

Law enforcement is a process for making a decision and governed by the rule of law. In addition, there is a strong tendency to interpret law enforcement as implementing judge's decisions. (Soekanto, 2022) ^[5] Justice in law enforcement is required in deciding existing cases, so that legal objectives can be carried out, especially in cases of children who are in conflict with the law.

One of the problems in enforcing the law on drug trafficking is the difference in judge's decisions regarding criminal sanctions applied to the drug trafficking intermediary crimes committed by a child.

The differences in criminal judgments arise from the underlying legal considerations that bring about their own set of issues, triggered by the forms of judicial considerations in delivering verdicts or unjust rulings. These may include relatively lenient sentences imposed on offenders, variations in the process among similar cases, differences in legal interpretation, treatment, and ultimately, the final judgments. An example of a difference in the judge's decision in the case of the criminal act of drug transaction, First, Kasongan District Court decision No. 2/Pid.Sus-Anak/2021/PN Ksn on behalf Ahmad Lentang who was sentenced to 7 (seven) months in prison and job training for 2 (two) months. Secondly, Sampit District Court No. 4/Pid.Sus-Anak/2020/PN Spt on behalf Ardika Laksamana who was sentenced to 4 (four) years and 6 (six) months and job training at the Regional Technical Implementation Unit of Job Training Center at Kotawaringin Timur for 3 (three) months. From two examples of judges decision above have almost the same characteristics of cases, such as fulfilling the delict elements Article 114 on Law No. 35 of 2009 Regarding Narcotics. but the sentences are different from one another. The judges have a difference of opinion in their considerations, so it is necessary for the writer to conduct research with the problem of the characteristics of differences in the judge's decision on the child perpetrator of the drug trafficking criminal act.

2. Research Methodology

The type of research used in this study is normative legal research, such as research on legal principles carried out on legal principles, which are standards of behaviour. (Soekanto, 2019) ^[6] Another characteristic of normative legal research is on the legal problem-solving that results from the legal opinions, which means a study of law in narrow sense or "legal dogmatic". (Muhjad, 2012) The material used consists of primary legal materials, secondary legal materials, and tertiary legal materials. The research approach used in analyzing consists of the Statue Approach, Case Approach, and Conceptual Approach.

3. Result of Research and Discussion

The application of criminal sanctions to children who commit criminal acts as drugs trafficking must be constantly implemented. The application with due regard to legal principles and human rights, including the rights of children as victims or perpetrators of criminal acts.

Children as part of a legal subject if associated with children that are used as courier for narcotics crimes can become perpetrators of narcotics crime. If studied further, a child who

is used as a courier for narcotics crime is also a victim, but the actions committed are still incorrect and the children have to be responsible. The responsibility held for the seek of education, not retaliation or punishment.

In Law No. 11 of 2012 Concerning the Juvenile Justice System, a child who commits a crime under the age of 12 is considered not to have sufficient awareness to be processed criminally. However, if the child is between the ages of 12-18, the child can be processed through the juvenile justice system.

Referring to Article 81 of Law No. 11 of 2012 Concerning the Juvenile Justice System, the child will only be punished with half of the maximum prison sentence for adults. Imprisonment as a criminal sanction against children should be used as a last resort, and if the offence committed by the child is punishable by death or life imprisonment, the punishment that can be imposed is a maximum of 10 (ten) years of imprisonment.

Article 1 Point 1 of Law No. 35 of 2009 Regarding Narcotics, stated that narcotics shall mean substances or drugs derived from plants or not plants, both synthetic and semi-synthetic and semi-synthetic, that may cause a decrease or change of consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which is divided into groups as attached to this law.

According to Bambang Gunawan, narcotics are medicines that can be used in health sciences, but if misused it will cause enormous losses. (Rodliyah, 2019) ^[4]

Some of the criminal sanctions that can be applied to children who commit drug trafficking criminal acts, include:

1. Correctional Supervision

These sanctions comprise limiting children's activities and supervision by correctional officers for a certain time. The goal is to control the child's behaviour and prevent from committing crimes in the future.

2. Parole

This sanction is in the form of releasing the child from detention. Furthermore, the children are required to comply with a number of stipulated conditions, such as reporting to officers every time, not having any contact with people related to criminal acts, etc.

3. Punishment

Children can be subject to criminal penalties, such as imprisonment if they are proven guilty of committing the crime of drug trafficking. However, this sanction can only be applied if it is confirmed that the other sanctions are not sufficient to correct the child's behaviour.

According to Rubini and Chaidir Ali, a court or judge's decision generally is a final stage of a case process. The judge's decision is also called a verdict which is the final conclusion regarding a matter and contains the consequences. (Syamsudin, 2018) ^[7]

Judges as law enforcers have broad authority to issue a decisions on the crime of drugs trafficking because there is specialization in Article 4 of Law No. 35 of 2009 Regarding Narcotics which difference between handling drug abuse and drug trafficking is significant, as a result, judges are required to dig deeper and follow the law to ensure that justice is served.

The judge has the authority to examine a criminal case,

especially in Drugs Offense as stated in Article 5 Point (1) of Law No. 48 of 2009 Concerning Judicial Power which states that Judges and Constitutional Judges are obliged to dig, follow, and understand the legal values and the sense of justice that lives in society.

Based on Article 5 Point (1), it can be understood that the aim is to ensure that judicial decisions are in accordance with the law and a sense of justice in society. Then, to realize it, the basis of the judge's authority is determined in carrying out their role as a judge.

To find out, to follow and understand the value of law is something that absolutely must be done by a judge in adjudicating cases to develop justice.

In each case, the judge's decision must be carefully considered to ensure that the sanctions applied are in accordance with the level of fault and crime committed by a child who commits a drug trafficking offence.

In this research, 2 (two) judge's decision were found, such as:

1. Kasongan District Court Decision No. 2/Pid.Sus-Anak/2021/PN Ksn on behalf of Ahmad Lentang.

The chronology of the case in this decision began when the Katingan Police Narcotics Unit (Satrese Narkoba Polres Katingan) received information from the local community that there was drug trafficking with the type of methamphetamine in Desa Telangkah.

After obtain the information, the officers Katingan Police Narcotics Unit conducted an investigation in Desa tersebut and on Monday, 17 May 2021 at 14.45 WIB (Western Indonesian Time), Katingan Police Narcotics Unit arrested the child child who commits a drug trafficking offence, Ahmad Lentang Bin Cong Riadi in Desa Telangkah. The offender was arrested because he was suspected as an intermediary in the methamphetamine transaction.

Eventually, one of the Narcotics Investigation Unit officers contacted the Telangkah Regional Secretary through call, but the Village Head (*Kepala Desa*) appointed the Telangkah Regional Secretary to witness the investigation and search. The officers also provide a task letter to the witness of the search. Afterwards, the juvenile offender was asked where the drugs were hidden, the offender immediately revealed the location. It was stored inside a cigarette box brand of Surya 16. There are 2 (two) packages of methamphetamine narcotics, 6 (sic) plastic bags in 3x5 size, 1 (one) clear-coloured drinking straw, 1 (one) glass pipette.

After that, officers of Anggota Katingan Police Narcotics Unit conducted another search operation and found 1 (one) methamphetamine inhalation device in the trouser pocket which was placed on top of the washing machine. In the pocket also found another amount of money, Rp 40.000,00 (forty thousand rupiah) owned by the child. The child received it from *Sdr. Dani / Mr. Dani* as wages on delivering the methamphetamine narcotics belongs to *Sdr. Dani / Mr. Dani*.

In addition, a black Xiaomi brand cell phone was found on the kitchen floor of the offender. According to the offender statement, the cellphone belonged to the offender which was given by *Sdr. Dani / Mr. Dani* that was used for the communication with *Sdr. Dani / Mr. Dani*. A white Xiaomi also found which was being charged under the Television. This phone was used by the offender for the communication with the buyers of methamphetamine narcotics.

During the search at the offender's house, a man came with a Yamaha N-Max motorcycle. Unfortunately, that man ran into

the forest and shouted "I am not Dani". The Narcotics unit officers chased that person. Based on the description of the child offenders, that person is Dani, so, the officers of the Katingan Police Narcotics Unit issued a Letter of Wanted List against *Sdr. Dani / Mr. Dani*. The child offender and the evidence were taken to the Subregional Police Katingan for legal proceedings.

In this case, the Public Prosecutor accused the child offender with the first accusation based on Article 114 Point (1) of Law No. 35 of 2009 Regarding Narcotics and second accusation based on article 112 Point (1) Law No. 35 of 2009 Regarding Narcotics. In the court decision, the juvenile defendant, Ahmad Lentang proved guilty and sentenced under Article 114 Point (1) of Law No. 35 of 2009 Regarding Narcotics which was sentenced to imprisonment for 7 (seven) months and job training for 2 (two) months.

2. Sampit District Court Decision No. 4/Pid.Sus-Anak/2020/PN Spt on behalf of Ardika Laksamana

The chronology of the case, Narcotics Criminal Investigation Unit Team of Central Kalimantan Regional Police (Tim Ditresnarkoba Polda Kalteng) received information from the society that around Jl. Gunung Agung Arjuno, Kotawaringin Timur Regency, there are often drugs transactions carried out by juvenile offenders. With the information, the unit Team of Central Kalimantan Regional Police conducted an investigation. On Tuesday, 18 February, around 14.00 WIB, Unit Team of Central Kalimantan Regional Police saw the child offenders suspiciously moving on di Jl. Anang Santawi, Kotawaringin Timur Regency. The police immediately arrested the defendant.

Body inquiry was carried out with the presence of locals/society. The evidence was found in the form of 3 (three) crystal methamphetamine package stores on 1 (one) cigarette box brand of Masada and 1 (one) white gold iPhone 6. Hence, the child defendant along with the evidence was taken to the Unit Team of Central Kalimantan Regional Police office for further examination.

In this case, the public prosecutor accused the child defendant with first accusation based on Article 114 Point (2) of Law No. 35 of 2009 Regarding Narcotics and second accusation based on Article 112 Point (2) of Law No. 35 of 2009 Regarding Narcotics. In the court decision, the child defendant, Ardika Laksamana and sentenced under Article 114 Point (2) of Law No. 35 of 2009 Regarding Narcotics which was sentenced to imprisonment for 4 (four) years and 6 (six) months and job training in Regional Technical Implementation Unit of Job Training Center at Kotawaringin Timur for 3 (three) months.

Based on the analysis of the Kasongan District Court Decision No. 2/Pid.Sus-Anak/2021/PN Ksn and Sampit District Court Decision No. 4/Pid.Sus-Anak/2020/PN Spt, children perpetrators as courier of drugs transactions were found guilty and sentenced for criminal act for committing crime as an perantara of narcotics crimes with the results of social research from *Pembimbing Kemasyarakatan/PK* (Community Guide) on Correctional Institution (*Balai Pemasyarakatan/BAPAS*) as follows:

1. Children are victims of drugs/narcotics transactions carried out by adults. The adults as dealers who take advantage of the child's powerlessness for the drugs transaction.
2. Children can be easily entangled into negative things due to the lack of faith. It can make them easily affected by

- the invitation of others / strangers.
3. Children do not receive supervision and guidance from parents, it can make the child dare to commit acts against the law.
 4. The child realizes, knows, and understands that their actions have violated and contrary to the government's program that actively vocally advocated in order to eradicate the narcotics abuse.

The implementation of the law applied in the two judge's decision against the child perpetrator of the criminal act of drug transactions is in the form of a prison sentence imposed as a form of responsibility for the actions committed by the child. The sentences are implement in order to provide a deterrent effect. The deterrent effect can make the defendant realizes that the actions they conducted are contrary to the law.

Hopefully, the application of penal law can make the defendant aware of the actions they have committed and not repeat the same actions in the future. Besides imprisonment, the judge imposed job training sanctions for children as an effort for the children to improve their future with the job training they received.

The Differences in judge's decisions in order for the application of the application of punishment for the same offence or for the offences of refers to the dangerous criminal act can be compared without clear justification. (Muladi, 2010).

Differences in judge's decisions have a very significant impact, because there are constitutional considerations between individual freedom and the state's right to convict. So, the differences in judge's decisions can occur due to several factors, especially the legal aspect itself. In Indonesian positive criminal law, judges have very broad freedom to choose the type of punishment that is fit and fair regarding the application of alternative systems in criminal sanctions within the law. (Muladi, 2010)

The judge's decision must contain at least two aspects of justice, namely procedural justice and substantive justice. Procedural justice is justice related to the protection of the legal rights of the parties (suspects/defendants/interested parties) in every stage of the judicial process. Meanwhile, substantive justice is related to the contents of a judge's decision in adjudicating a case that is formulated based on objectives, fairness, impartial, and rational-logical. (Syamsudin, 2018) ^[7].

In criminal cases, there are two parameters to measure procedural justice. The parameters are the fulfilment of the formal elements specified in Article 197 of Criminal Procedure Code which must be included in the sentencing decision handed down by the judge against the defendant. Secondly, the human rights fulfilment and the legal rights of the parties involved in the criminal justice system. This case is limited to the protection of the legal rights of the defendant that can be explored in the judgement of the first instance court.

The purpose of including the elements of formal requirements that must be included in the sentencing decision is to ensure that the legal process or criminal justice process runs fairly and just whether the process is in accordance with the procedures that are determined by law.

In addition, the inclusion of formal requirement elements in a criminal conviction judgement for the professionalism of the judges in carrying out their functions and duties in

adjudicating the defendant and also protecting the legal rights of defendants and public interest.

Furthermore, human rights and legal rights fulfilment of the parties involved in the criminal justice system. The limitation only on the protection of the legal rights of the accused explored in the decision of the the first instance court. The defendant's legal rights fulfilment can be explored in the judge's decision, but the information is limited. The characteristic of the judges' decision differences against the child offender of the drugs transaction based on the justice perspective can be influenced from several factors, such as:

1. Age and Maturity of the Child Offenders

Children who commit criminal act of drugs transaction tend to be young and psychologically immature. Therefore, the court must consider the age and maturity of the offender's in determining the judgement.

2. Stage of Involvement in Criminal Acts

The stage of involvement of the child offender of criminal acts of drug transaction is also a consideration in determining the judge's decision. If the child is only a broker without being involved in the transaction or use of the drugs, the decision that given less severe rather than in cases where the child is actively involved.

3. Social Environment of the Child Offenders

The social environment must also be considered in determining the judge's decision. If the environment tends to be horrible, then the decision given must consider these factors in order to avoid / prevent any negative consequences for the child's future.

4. The Purpose of Juvenile Criminal Law

The purpose of the Juvenile criminal law is to provide protection and guidance for the children in order to return the children to the society properly and not commit criminal acts in the future. Therefore, the decision that is given must consider the objectives of juvenile criminal law.

In the justice perspective, the judge's decision must be fair and based on applicable law. Therefore, judges must consider various factors such as age, level of involvement, social environment, and objectives of juvenile criminal law in determining the decision. Fair decisions can provide guidance and protection to children who commit crimes so the children can return to society properly.

With the differences of the judge's decision of Kasongan District Court decision No. 2/Pid.Sus-Anak/2021/PN Ksn on behalf Ahmad Lentang who was sentenced to 7 (seven) months in prison and job training for 2 (two) months and Sampit District Court decision No. 4/Pid.Sus-Anak/2020/PN Spt on behalf Ardika Laksamana Laksamana who was sentenced to 4 (four) years and 6 (six) months and job training.

Based on the justice perspective, the differences from two judge's decision are influenced by the factor of the the involvement level of the child offender in intermediary drugs transaction, which has been proven in the decision that defendant Ahmad Lentang only served as a courier that instructed to deliver narcotics to the buyer by someone. While, the decision of defendant Ardika Laksamana performing the drugs transaction by purchasing the drugs before delivered it to the buyer.

The differences in evidences that was also factors of

consideration of judge's decision, because in Kasongan District Court decision No. 2/Pid.Sus-Anak/2021/PN Ksn on behalf Ahmad Lentang being prosecuted as an intermediary in the drugs transaction Class I, with evidence to 0.82 grams. Meanwhile in Sampit District Court Decision No. 4/Pid.Sus-Anak/2020/PN Spt on behalf Ardika Laksamana prosecuted as a broker in a drug transaction with evidence exceeding 5 grams.

Based on the description above, the decisions imposed by the judge are already appropriate and show the justice for the defendants, considering the legal responsibility that imposed by the judge has fulfilled the child defendants rights and imposed sanctions of job training as a form of legal protection for children.

Therefore, the judge's different decision in the drug transaction has a casuistic characteristic based on the case. The existence of aggravating considerations and mitigating considerations, causing different punishments for the same case. In each case there are distinct issues that create differences, so that the decisions handed down cannot be equated from one case to another case. The decisions cannot be equally distributed. The imposition of imprisonment for child defendants is not intended to avenge the actions the child has committed, but rather for coaching so that the defendants do not repeat their actions.

4. Conclusion

Characteristic of the difference in the judge's decision on the child offenders of the criminal act of drug transaction is casuistic in accordance with the case itself. There are aggravating and mitigating considerations, resulting in different punishments for the same case. In each case there are distinct issues that create differences, so that the decisions handed down cannot be equated from one case to another case. Factors that influence the difference in the judge's decision include the age or immaturity, the level of involvement in the crime, the social environment and the purpose of juvenile law.

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