



LEGAL PROTECTION EFFORTS AGAINST MINORS IN NARCOTICS CRIMES

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ABSTRACT

Children are the future of the nation. Because they are the future of the nation, children need to receive special attention for their growth and development towards good and dignified maturity. 18 years is the determining age limit for minors according to criminal law and 21 years according to civil law. At this age, children tend to always want to commit deviant acts. For example, engaging in promiscuity, trying to drink alcohol, and even trying to use other prohibited substances such as narcotics. The government is responsible for legally protecting these children if unlawful actions occur, including if they use narcotics. The method used in this writing is a qualitative method with a juridical-normative approach, which refers to juridical sources which will focus on Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal System, and Law-Law Number 23 of 2002 concerning Child Protection. The results of the research show the benchmarks for determining the age of minors according to law and the forms of legal protection that can be applied to minors in narcotics crimes. First, the Position and Age of Children in Legislation according to Law no. 1/1974 concerning Marriage, namely 19 years for men and 16 years for women. According to Law no. 3/1997 concerning Juvenile Justice, namely that they have reached the age of 8 (eight) years but have not yet reached the age of 18 (eighteen) years and have never been married. According to Law no. 4/1979 about "Welfare of a child of a person who has not reached 21 (twenty one) years and has never been married." According to Civil Law, those who are not yet 21 years old and are not married. According to Law no. 23/2002 concerning Protection of children who are not yet 18 (eighteen) years old, including children who are still in the womb. Meanwhile, the age limit for children as crime victims is regulated in Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection.

Keywords: Legal Remedies, Child Crime, Narcotics

INTRODUCTION

Law number 23 of 2002 concerning child protection, general provisions, article 1, states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Furthermore, Law number 1 of 1974 concerning marriage only mentions the minimum limit for people permitted to enter into a marriage. Men must be at least 19 (nineteen) years old and 16 (sixteen) years old for women. Republic of Indonesia Law no. 4 of 1979 concerning child welfare states that children are those who are not yet 21 years old and are not married. Meanwhile, Law Number 23 of 2002 concerning Child Protection states that the age limit for someone who is said to be a child is 18 years. With the formulation of these various laws and regulations, it is known that the benchmarks for determining the age limit for minors are the laws and regulations of the Republic of

Indonesia. Thus, the age limit of 18 years is the determination of the age limit for minors according to criminal law and 21 years according to civil law.

At this age, children tend to always want to commit deviant acts. For example, engaging in promiscuity, trying to drink alcohol, and even trying to use other prohibited substances such as narcotics. Regarding the last thing mentioned, it happens many times in life practice that many underage children become users, even dealers of these narcotics. In various countries, up to now, the problem of narcotics use occurs many times and is disturbing the public. Especially in Indonesia, this case occurs many times. The most concrete example is in Manado in the last few years where there was a handling of a drug use case where the judge gave a pure acquittal. This caused a polemic in the community and invited demonstrations by Community Organizations such as Granat, and various other elements of society.

LITERATURE REVIEW

1. What is the benchmark for determining the age of a minor according to the law?
2. What forms of legal protection can be provided for minors involved in narcotics crimes?

METHOD

The method used in this writing is a qualitative method. According to Sugiyono, qualitative research methods are research methods that are based on postpositivism. Postpositivism is an understanding that views social reality as holistic or complete and full of meaning and the relationship between symptoms is interactive. Postpositivism is used to research the conditions of natural objects, where the researcher is the key instrument.

RESULTS AND DISCUSSION

A. The age of a minor according to the law.

Below we will discuss the age of minors according to the applicable legal system, including:

1. According to Law Number 1 of 1974 concerning Marriage, the definition of what is meant by a child is not found in Law No. 1 of 1974 concerning Marriage or in its explanation, as well as in government regulation No. 9 of 1975 concerning the implementation of Law No.1 of 1974 and the compilation of Islamic law. These two laws and regulations only touch on the minimum limit for people to be able to enter into a marriage, namely 19 years for men and 16 years for women and the position of children in a marriage.
2. According to Law Number 3 of 1997 concerning Juvenile Justice, Law Number 3 of 1997 concerning Juvenile Justice states that "a child is a person who in the case of a delinquent child has reached the age of 8 (eight) years but has not yet reached the age of 18 (eighteen) years and has never been married and is known as a naughty child. The Juvenile Justice Law determines the minimum and maximum

- age limit for delinquent children, namely at least 8 years and a maximum age of 21 years and never married (Article 1 paragraph (1) and (2)).
3. According to Law Number 4 of 1979 concerning Child Welfare in Article 1 point 2 of Law Number 4 of 1979 concerning Child Welfare, what is called a Child is: "a person who has not reached 21 (twenty one) years and has never been married" According to the Law This law is a child, and the age limit for children is classified based on their relationship with their parents.
 4. According to Civil Law, Article 370 Chapter Fifteen, Part One of the Civil Code explains about immaturity. The full text of the article is as follows: "Immatures are those who have not reached the age of 21 and have not previously married." So a child is anyone who is not yet 21 years old and is not married. If a child is married before 21 years and then gets divorced or left by her husband before she is 21 years old, then she is still considered an adult, not a child.
 5. According to Law no. 23 of 2002 concerning Child Protection Law no. 23 of 2002 concerning Child Protection, general provisions article 1 which states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Meanwhile, the age limit for children as crime victims is regulated in Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection. From this formulation it can be seen that children who are entitled to legal protection do not have a minimum age limit. From the moment he is in the womb, he has the right to receive protection.
 6. According to the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for Handling Children in Conflict with the Law. Based on the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for Handling Children in Conflict with the Law, article 1 point (1), it is explained that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. This is also confirmed in the attachment section of the General Guidelines for Handling Children in Conflict with the Law with the confirmation that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. The same thing is also said in Law Number 23 of 2002 concerning Child Protection.

B. Form of legal protection for minors in the commission of narcotics crimes.

In article 7 of Law Number 35 of 2009 concerning Narcotics, it is stated that Narcotics can only be used for the purposes of health services and/or the development of science and technology. This means that apart from the interests of health and the development of science and technology, the use of narcotics is prohibited. In today's life, it is inevitable that the use of narcotics among teenagers and children is rampant. Many cases ultimately lead many minors to fall into the use of these illegal drugs. There are various influencing factors, including, for example: the family education system, social relations system, and children's psychological development. If this is

added to the wrong learning process, children can always carry out or practice deviant behavior in life public. Regarding this problem, all elements of society must join hands to assist them in the process of protection efforts as well as guidance and learning. Specifically, the form of protection is through several stages, namely:

1. Protection Through the Juvenile Criminal Justice Process

According to article 1 point 1 of the Juvenile Criminal Justice System, the juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving the sentence. In the second point of this article, it is also explained that children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. The juvenile criminal justice system is implemented based on the principles of: Protection; Justice; Non-discrimination; The best interests of the child; Respect for children's opinions; Child survival and growth and development; Guiding and mentoring children; Proportional; Deprivation of liberty and punishment as a last resort; and Avoidance of retaliation.

With this explanation, it is known that efforts to protect children through the criminal justice process are carried out through the following stages:

- a. Investigation According to article 1 point 5 of the Criminal Procedure Code, investigation is a series of actions/investigations to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law.
- b. Investigation In article 1 point 2 of the Criminal Code, it is stated: "an investigation is a series of actions by an investigator in terms of and according to the methods regulated in this law to search for and collect evidence which will shed light on the criminal act that occurred and in order to find the suspect."
- c. Arrest Based on article 1 number 20 of the Criminal Procedure Code, it is explained that arrest is an investigator's action in the form of temporarily restraining the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and/or justice in matters and according to the methods regulated in this law.
- d. Detention Detention is the placement of a suspect or defendant in a certain place by an investigator, or public prosecutor or judge with his or her determination, in the terms and according to the method regulated in this Law. The basis for carrying out a detention includes the legal basis, circumstances and conditions that provide the possibility of carrying out detention. The elements that form the basis of detention are the juridical element, the element of concern, and fulfilling the requirements of article 21 paragraph (1) of the Criminal Procedure Code.

- e. Court Process When a case reaches the district court, the trial process is as follows: The trial day is determined by the judge appointed by the head of the court to hear the case. The prosecutor's office is responsible for ensuring that the defendant is in court when the trial begins. So the prosecutor's office is obliged to take care of all matters related to transporting the defendant from the correctional institution (prison) to court, and vice versa when the trial is over. At the District Court there are several detention rooms specifically for holding detainees before and after their cases are tried.

2. Protection Through Juvenile Criminal Regulations

Criminal law for children in the Criminal Code has been regulated, among other things, in:

- a. Article 39 paragraph (3) of the Criminal Code stipulates that: The declaration as confiscated can also be decided on objects belonging to the guilty person which are placed under government supervision, but is limited to objects which have been confiscated.
- b. Article 40 of the Criminal Code which determines that: If a person under sixteen years of age owns, imports or transports goods in violation of the regulations regarding revenue and rental of state land, the regulations regarding shipping control in certain parts of Indonesia, then the judge can declare these objects as confiscated, even if the guilty person has been returned to his parents, guardian or guardian without being sentenced to any crime.
- c. Article 45 of the Criminal Code stipulates that: In criminal prosecution of a minor for an act that was committed before the person reached the age of sixteen, the judge can:
 - 1) Order that the guilty person be returned to his parents, to his guardian or to the person taking care of him, without imposing any penalty.
 - 2) Order that the guilty person be handed over to government supervision, if his actions constitute a crime or violation of the provisions stipulated in articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 531, 532, 536 and 540 which have been committed before the period of two years has passed since the person was sentenced to a crime which has permanent legal force, for violating one of the provisions above or having committed a crime without imposing any penalty.
 - 3) Impose punishment for those who are guilty.
- d. Article 46 of the Criminal Code stipulates that: (1) If the judge has ordered that the guilty person be placed under government supervision, then he:
 - 1) Can be placed in a state educational institution, where he or she obtains education or in other ways obtains education in accordance with the wishes of the government;
 - 2) Or handed over to a certain person domiciled in Indonesia or to an association in the form of a legal entity, or to an institution or foundation

domiciled there to obtain education or to then obtain education in other ways in accordance with the wishes of the government.

- 3) One after another until they reached the age of eighteen. (2) The provisions for implementing what has been regulated in paragraph (1) are determined by an ordinance.
- e. Article 47 of the Criminal Code which determines that:
If the judge imposes a sentence on the guilty party, the highest principal penalty for the crime is reduced by one third. (2) If the act constitutes a crime punishable by the death penalty or imprisonment for a maximum of fifteen years. (3) Additional penalties as regulated in article 10 letter b numbers 1 and 3 cannot be imposed.
- f. Article 78 of the Criminal Code stipulates that: For people who before committing the act have not reached the age of eighteen years, then each expiry period mentioned above is reduced by one third. From the several articles of the Criminal Code above, it is clear that the types of punishment that cannot be imposed on children who are not yet adults are: Death penalty, additional punishment in the form of revocation of rights, and additional punishment in the form of announcement of the judge's decision.

Thus, if the judge has decided to impose a sentence on a child who is not yet an adult, then all he can impose is: imprisonment for a maximum of fifteen years, imprisonment, a fine along with imprisonment in lieu of a fine, and additional punishment in the form of confiscation of objects. -certain objects. Juridically, a criminal offense can also be imposed on children who are not yet adults, but because there is no further regulation, this will not be discussed here.

CLOSING

Conclusion

1. The benchmark for determining the age limit for minors is the entire legal system in force in Indonesia, including: Law Number 1 of 1974 concerning Marriage, Law Number 3 of 1997 concerning Juvenile Justice, Law Number 4 of 1979 concerning Child Welfare, Law Civil, Law no. 23 of 2002 concerning Child Protection, According to the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 15 of 2010 concerning General Guidelines for Handling Children in Conflict with the Law, According to Customary Law and Children According to Religious Law.
2. That the forms of protection provided for children who commit narcotics crimes are protection through the juvenile criminal justice process, protection through juvenile criminal regulations, protection through prison or juvenile correctional institutions, and protection through child rehabilitation.

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