

Application of Versioning in The Criminal Remedies of Narcotics Abuse Conducted By Children

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Abstract: Article 7 paragraph (1) of the Child Criminal Justice System Act states that: In all levels of examination both at the level of investigation, prosecution and child screening in the district court must be sought in version. The implementation of the version of children in conflict with the law will provide a new understanding of law enforcement without having to deprivation independence so that the child's settlement conflicts with the law that first made A criminal offence by emphasizing a recovery back into an alternative in the child criminal justice system in Indonesia. The foundation of thinking the District Court judge of Banda Aceh in implementing a version with a restorative justice approach and by promoting the child criminal justice system is as follows: a) The current criminal justice and pipetting systems in practice often pose problems and are assessed as ineffective. and b) imprisonment carries unfavorable consequences for inmates and their families, other than that the system is also assessed as unsatisfactory or fulfilling the victim's sense of justice in addition to burdening high country budgets and long periods of time, and its own correctional institution which in general has been over capacity. The implementation of a version inhibitor in Banda Aceh District Court, among others: a) The time Limit given by the Act on the process of perceived underversion is to be completed within 30 (thirty) days, b) Rehab facilities, which during this time the child can not be done only in the outpatient service accompanied by the party from the social department because of the unavailability of the Rehab room for children facing the law, and c) lack of understanding by the law enforcement officials and the doubts of the law enforcement officials in implementing versioning.

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I. INTRODUCTION

The son is the trust and gift of the one true God who has the haram and dignity as a whole man. The child is entitled to a special protection. To carry out coaching and provide protection to children, support is required, both concerning institutional and legal devices that are more stable and adequate. Therefore, the provisions of the Court of Justice for children need to be carried out specifically (Mohammad Taufik Makara, 2013).

In fact the child cannot protect himself from various acts that inflict mental, physical and social losses in various areas of life and livelihood, given the situation and conditions especially in the implementation of the judiciary Foreign child's criminal for himself. Children need protection from the wrongdoing of implementing legislation imposed on him, which raises mental, physical and social losses. Protection of children in this regard is called legal protection/judicial (legal protection) (Gultom, 2014).

Awareness of children's issues began to be recorded since 1920 after World War I. The result of the World War I, had a concern for women's and children's fate through various actions that urged the world to pay attention to Serious fate of women and children after the war.

The child's protective efforts eventually resulted in a tangible outcome by declared the Convention on the Right of the child unanimously by the UN General Assembly on 20 November 1989 (UN resolution NO. 44/25 dated December 1989). Since then, children around the world have gained special attention in international standards.

Protection of child rights by the International World in (1) 1959 UN General Assembly Declaration on the Rights of the Child; (2) 1966 International Covenant on Civil and Rights of the Child; (3) 1966 International Covenant on Economic, Social & Cultural Right; (4) 1989 UN Convention on the Rights of the Child (Maskur, 2012).

According to the general explanation in Law No. 11 of 2012 concerning the children's judicial system, the son is an integral part of the continuity of human life and the continuity of a nation and state. In the Indonesian constitution, the child has a strategic role which is expressly stated that the State guarantees the right of every child for the survival, growth, and growth and on the protection of violence and discrimination. Therefore, the best interest for children should be considered as the best interest for the survival of mankind. The consequences of the provisions of article 28B of the Constitution of the Republic of Indonesia year 1945 need to be followed up by making government policies aimed at protecting children.

Child criminal justice is a judiciary that specifically handles criminal matters, child investigators, child prosecutors, child judges, child prisons who constitute a single entity, including a system, called the judicial system (Juvenile justice system), which aims to cope with child mischief, is also expected to provide protection to children facing the law.

A positive law in Indonesia that adheres to the principle that criminal matters cannot be resolved outside the court, but in law enforcement is found that criminal matters are settled outside the court through the disrecept of law enforcement officials, mechanisms Customary institutions and other peace. The implications of the practice of resolving matters outside the courts have not had a formal legal basis, so there is also a case that has been informally done amicable settlement through the mechanisms of customary law, but still processed To the Court in accordance with applicable positive law.

The biggest problem for the child facing the law is that the Law No. 3 of 1997 on the Children's Court is no longer relevant, both from juridical, philosophical and sociological aspects. This law does not provide the right solution for the handling of legally conflicted children. Children in conflict with the law must be directed to be resolved to the court, consequently there will be mental and psychological pressures on the child conflicted with the law, thus disturbing the child's growth (Djamil, 2013).

The law world in recent years has undergone a reform of viewpoints in the handling of children in conflict with the law. Many countries have begun abandoning the repressive child judicial mechanisms due to the failure of the system to improve behavior and reduce the crime committed by children. Legal experts and policymakers begin to think about the child problem-resolution alternatives, which differ from the way adults are handled.

To accommodate the principle that prioritizes the best interests for children, Law No. 11 of 2012 on the Children's criminal justice system has expressly set on the intended version to keep children from judicial proceedings, The child can avoid negative stigma and can return to the environment reasonably.

The version is expressly referred to in article 5 paragraph (3) of Law No. 11 of 2012 on the Child criminal justice system that: in the child criminal justice system must be sought in version. The definition of a version is mentioned in article 1 Figure 7 Act No. 11 of 2012 concerning the Children's criminal justice system that: versioning is a transfer of the child's settlement from a criminal justice process to a process outside the criminal justice.

Child criminal justice proceedings starting from the investigation, prosecution, court and in carrying out a court order in the child correctional Institution must be conducted by a specialized educated officer or at least aware of the child's issue. Treatment during the child criminal justice process should pay attention to the principles of child protection and still uphold the dignity of children without ignoring the implementation of justice, and not to make the child's humanitarian value become lower.

Restorative justice is a process of solving criminal matters in order to achieve justice that is fully executed and accomplished by perpetrators, victims and the wider community is said to be so because of the approach or concept Restorative justice is a form of justice that emphasizes a process of involvement of all parties who are actively involved in a particular criminal act (Setiadi, 2017).

Based on the data in the table above can be concluded within the last 5 (five) years since the year 2014 to 2018 children's cases involved in the case of narcotic abuse is relatively high, but efforts in the handling of cases The version is not optimal because there is no provision on how the implementation of a version of the criminal offence settlement of narcotic abuse carried out by children.

Although it has been regulated about the ordinances and stages of the version in Law No. 11 of 2012, the Supreme Court considers the arrangement of the versioning to be unclear, particularly as it relates to the stages of versioning in the court. Therefore the Supreme Court in order to fill the legal void in a responsive follow up setting about the versioned set out in Act No. 11 of 2012 on the Child criminal justice system then on 24 July 2014 the court issued the Supreme Court Regulation No. 4 of 2014 on implementation guidelines in the Child criminal justice system.

Under Law No. 11 of 2012 on the Child criminal justice system is governed by the criminal offence criteria which are mandatory in version:

1. Threatened with imprisonment of under 7 (seven) years, and
2. Not a criminal offense.

From the implementation of a possible version there are 2 (two) things that can be generated ie the version is declared to reach an agreement or versioned not managed to get an agreement. The agreement must be approved by the victim and/or the child's families and the willingness of the child and his family as specified in article 9 paragraph (2) of Law No. 11 of 2012 on the Child criminal justice system.

The implementation of the version of the child in conflict with the law will provide a new understanding of law enforcement without having to deprivation independence so that the child settlement conflicts with the first law A criminal offence by emphasizing the restoration back into an alternative in the child criminal justice system in Indonesia.

Pay attention to the reality in the application of versioned by guidance on the parrule of the Supreme Court No. 4 of 2014 and Presidential decree number 65 year 2015 is questionable about how implementation is versioned in the settlement of narcotics abuse Conducted by the child especially in the Banda Aceh District Court, whether the substance of regulatory law on this version has been perfect so as to maximize the implementation of the version in the District Court.

II. LITERATURE REVIEW

The purpose of the pipetting is not a new thing, but the impact of the pipetting in relation to the continuation of the criminal life, particularly the impact of the stigmatisation on the convicted and family, foster the flow of criminal law More recent that create the other types of criminal that is considered more respectful of the dignity of people, in addition to achieving the purpose of the pipetting itself. The rationment of criminal sanctions should be the most important thing that judges consider, because they are concerned with these interests.

The child is a citizen's part that must be protected because they are the future generations of the nation will continue the leadership of the nation of Indonesia. Every child in addition to obtaining a formal education such as school, is also obliged to get a moral education so that it can grow into a useful figure for the nation and country. In accordance with the provisions of the Convention on the Rights of the child which is ratified by the Government of Indonesia through Presidential Decree number 36 year 1990, then also set forth in Law No. 4 year 1979 on welfare Children and Law No. 23 year 2002 on child protection and law number 11 of 2012 on the Child criminal justice system, which generally raises the general principles of child protection, which is non-discrimination, the best interest For children, survival and growth and appreciate the participation of children.

The fact of lack of concern for the problem of children conflicted with the law also appears in children who are forced to be placed together with adult prisoners, thereby increasing the risk of children to victims of violence, harassment, and of adult torture. In addition to poor quality of food, the use of alcohol and drug circulation, as well as diseases that do not get treatment deserve to be the next problem.

On the issue of narcotics and psychotropic abuse by children, both in Law No. 35 year 2009 about narcotics and Law No. 5 year 1997 about psychotropic only apply sanctions for perpetrators By narcotics and psychotropic abused.

The response to narcotic abuse by the child using criminal law means not in place. A child who commits narcotic abuse is not merely a perpetrator of a criminal act, but also as a victim, that a child who abuses narcotics is also a victim, then attempts to provide protection against children Abusing narcotics is also a priority as of article 54 of law number 35 year 2009 about narcotics stating that narcotics addicts and narcotics abuse victims are obliged to undergo medical rehabilitation and social rehabilitation.

A child who commits a criminal offence that has been threatened by imprisonment over 7 (seven) years, although not through the stage of versioning but cultivated in the level of the test must prioritize restorative justice. The consideration in sanctioned penalties in the form of criminal or the act of delegated authority to the judge except to a child under the age of 14 (fourteen) years must be subject to action.

In article 7 paragraph (1) of Law No. 11 of 2012 on the Child criminal justice system requires that any law enforcement officers be police, prosecutors and judges to conduct a version of criminal acts committed by the child mentioned that at the level of investigation, prosecution, and the subject of children in the District court must be attempted in the version.

Pursuant to Article 52 paragraph (2) of Law No. 11 of 2012 on the children's judicial system, before entering into the proceeding, the judge shall seek to pursue an earlier version 7 (seven) days after it is determined by the head of the state court as the judge. The version as referred to in paragraph (2) is carried out at most 30 (thirty) days.

Bagir Manan said that the children in the criminal law field were treated as "small adults", so that the entire process of the case except in the correctional Institution was done as an adult. Treatment is different only at the time of the examination at the Court of Session, the hearing for the child is done in a closed (Article 153 paragraph (3) of the criminal CODE) and its officers (judges and prosecutors) do not use toga. It is related to the physical, mental and social interests of the child concerned (Supramono, 2000).

The Juvenile Justice System is an element of the criminal justice system associated with the handling of cases of mischief, namely (Purnianti, 2003):

1. The police as a formal institution when the mischievous child first touches into the judicial system, which will also determine whether the child will be freed or further processed.
2. The prosecutor and the parole agency shall also determine whether the child shall be exempt or processed to a child's court.
3. Children's Court, the stage when the child will be placed in choices, ranging from exempted to inclusion in the institution of condemnation.
4. The latter, the institution of condemnation there are 2 (two) categories of child behavior that makes him face to law, namely:
 - a. Status Offender is a child's mischief behavior which when done by an adult is not considered a crime, like not according to, Fosters a school or escapes from home;
 - b. Juvenile Delinquency is a child's mischief behaviour where an adult is considered a crime or a violation of the law.

Based on the above, there are several things that become the foundation of thinking the District Court Judge Banda Aceh in applying a version with a restorative justice approach and by promoting the child criminal justice system is as follows:

1. The current criminal justice and pipetting systems in practice often pose problems and are judged ineffective. The Correctional Model procurement system (Law No. 12 of 1995 on Correctional Institution) is still deemed to be nothing more than the imprisonment for which the purpose is of Penjeraan, revenge and suffering as a consequence His actions. The current prison system, a prominent approach to security approach. The concept of coaching that can be beneficial for the survival of children after the free, consequently, the negative stigma inherent in the children of ex-convicts will actually make it difficult for them to walk the next life.
2. imprisonment carries unfavorable consequences for inmates and their families, and the system is also assessed as unsatisfactory or fulfilling the victim's sense of justice in addition to burdening high state budgets and long periods of time, and Self-correctional institutions that are generally over capacity.

III. BARRIERS TO IMPLEMENTATION OF NARCOTICS ABUSE CRIMINAL OFFENCE CONDUCTED BY CHILDREN IN BANDA ACEH DISTRICT COURT

In the law enforcement effort, according to Gustav Radbruch there are 3 (three) basic values that must be realized and need to get serious attention from the law executor is: The value of justice, the value of legal certainty and benefits. Especially the fundamental value of this benefit will direct the law to consideration of the needs of the community at any given moment, so that the law really has a real role for society. The principle approach of criminal individualization in the handling of narcotic abuse does not only prioritize legal certainty but also benefits the perpetrator and society.

The process of law enforcement can not be done thoroughly, in the sense that not all forms of criminal acts against the perpetrators who have fulfilled its formulation can be prosecuting in court. No one can be done by the prosecution of the law itself. Criminal law enforcement appeared as the application of criminal law involving various structural sub-systems in the form of police officers, prosecutors, courts and correctional. These include of course legal advisory agencies.

Furthermore, the birth of the Supreme Court Regulation No. 4 of 2014 on the Code of implementation of the diversion in the child criminal justice system is based on covering the void and legal issues in the future, although it is known that during this Perma It only governs the perpetrator of the criminal offense, while for the perpetrators of the criminal who no victim (narcotic criminal offence) itself can be known that the victim should be the victims themselves in criminal acts Narcotics.

Therefore, the implementation of the versioned by law enforcement officers is based on the authority of law enforcement officers called discretionary. The main 3 (thing) that is observed by the Banda Aceh District Court in implementing the process for this period is (Mardhiah, 2019):

- 1) does not violate the law and can be implemented.
- 2) not harm the child.
- 3) does not harm a third party.

Versioned must be sought at the level of investigation, prosecution, and child screening in the District court. The word "obliged to be sought" implies that the child law enforcement of investigators, prosecutors and also judges is obliged to make efforts in order to be executed. This is what makes a debate in the Panja of the SPPA, that for child law enforcement if not making an effort in the version must be sanctioned.

Back to the issue of versioning, that the obligation to pursue a version of the start of investigation, prosecution and examination of child cases in the District Court, carried out in the event of a criminal act that is: (a) threatened with imprisonment in Under 7 (Seven) years, and (b) is not a repetition of a criminal offense.

These terms explain that the child who commits a criminal offence is more than 7 (seven) years and is a repetition, it is not mandatory to be attempted in the version, it is important to remember that the threat of punishment more than 7 (seven) years is classified as a serious criminal act, and is a repetition, meaning that the child has committed a criminal offence both similar and insimilar including a criminal offence resolved through versioning. The repetition of a criminal offence by a child is evidence that the purpose of the version is not achieved, which instill a sense of responsibility to the child not to repeat a criminal action. Therefore, the efforts to be versioned against it may not be required to seek.

Although during this process, a version carried out by the Banda Aceh District Court resulted in many results and could be applied not regardless of the consent of the most specialized parties with the public prosecutor, but not only the process Run as it should, there are several inhibitory factors in the effort to do in the version of a child who commits a criminal offence at the Banda Aceh District Court. The implementation of this version of inhibitors are (Mardhiah, 2019):

1. The time Limit given by the Act on the process of perceived underversion is to be settled within 30 (thirty) days, starting from the investigation phase, the prosecution stage to the stage in the court,
2. Rehab facility, where when designated the child to be done rehab, so that the child is not able to be done only in the outpatient service accompanied by the party from the Social Services (PEKSOS) because of the unavailability of the Rehab room for The law.
3. Lack of understanding by the law enforcement officers and the doubts of the law enforcement officers who have never applied a version of the child facing the law.

IV. CONCLUSION

The current criminal justice and pipetting systems in practice often pose problems and are judged ineffective. The Correctional Model procurement system (Law No. 12 of 1995 on Correctional Institution) is still deemed to be nothing more than the imprisonment for which the purpose is of revenge and suffering as a consequence His actions. The current prison system, a prominent approach to security approach. The concept of coaching that can be beneficial for the survival of children after the free, consequently, the negative stigma inherent in the children of ex-convicts will actually make it difficult for them to walk the next life. Imprisonment carries unfavorable consequences for inmates and their families, but it is also assessed as unsatisfactory or fulfilling the victim's sense of justice in addition to burdening high state budgets and long periods of time, and Self-correctional institutions that are generally over capacity.

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