



# Giving Medical Rehabilitation Discretion to Children Perpetrators of Drug Abuse

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## Abstract

*Drug trafficking is a universal social phenomenon (a universal social phenomenon) in human life, and is even said to have become the oldest social problem of human kind. With the discretionary authority that is owned, it is understandable if a legal issue does not have to be resolved through the courts, but the resolution can be submitted to the decision of the police, in connection with the discretion against drug and psychotropic abuse, the police can also exercise discretion, especially against the perpetrators who are still children, discretion towards children abusing narcotics and psychotropic substances. As for the formulation of the problem in writing the journal, namely the reason for the police in providing medical rehabilitation descriptions for children who are perpetrators of drug crimes,*

**Keywords:** Description; Rehabilitation.

## A. Introduction

The use and abuse of narcotics and illegal drugs in Indonesia has penetrated all circles, including teenagers, students and even children, such conditions are of course very worrying in the long term will cause damage to the nation's next generation.<sup>1</sup>

Referring to the General Indonesian Dictionary, children are etymologically defined as humans who are still small or humans who are not yet mature (Poerwadarminta, 1984). Apart from this dictionary, Indonesia adheres to several other definitions to explain the definition of children, including the Criminal Code, Law no. 23 of 2002 concerning Child Protection, Law no. 4 of 1979 concerning Child Welfare, and Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.<sup>2</sup>

In criminal liability, there is a close relationship between the element of error and the nature of being against the law, and if the act committed is not against the law, then the act cannot be held accountable to the perpetrator. In principle, there can be no mistake without an element of violating the law. The error factor is an important element in determining criminal liability that must be proven in law enforcement.<sup>3</sup>

The modus operandi of narcotics trafficking syndicates can easily penetrate the boundaries of countries in the world through a neat management network and sophisticated technology and enter Indonesia as a transit country or even as a

<sup>1</sup>Brigjen (Pol) Bontor Hutapea, *Kejahatan Narkotika di Wilayah Sumatera Selatan dalam lima tahun terakhir (Makalah)* seminar Pemberantasan Narkotika, BNN Sumsel tahun 2020, di Palembang

<sup>2</sup> Chazizah Gusnita, Marvine Viano, Putri Puspita, Yosafat Kevin, 2018, *Analisis Keadilan Restoratif dalam Kasus Penghinaan Presiden Jokowi oleh Anak di Bawah Umur*, deviance: jurnal kriminologi Volume 2 Nomor 1 Juni 2018 Hal: 35-50

Y. A. Triana Ohoiwutun & Samsud, 2017, *Penerapan prinsip "kepentingan terbaik bagi anak" dalam kasus tindak pidana narkotika*, Jurnal Yudisial Vol. 10 No. 1 April 2017: 39 - 57

destination country for illegal narcotics trafficking (point of market). states). In the legal system in Indonesia, narcotics abuse is qualified as a crime in the narcotics sector which is regulated in Law no. 35 of 2009 on narcotics. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are distinguished into groups as attached in the Act. Invite this.<sup>4</sup>

The police is an institution that holds the main function of law enforcement, apart from this task the police also have a mandate to create security and public order, so that the police carry out activities that through the techniques and strategies they develop themselves, in carrying out their duties in the field the police have special rules for take legal action, this provision is contained among others in the Criminal Procedure Code (KUHP) and technical instructions (JUKNIS) and implementing instructions (JUKLAK) that exist within the internal police institution, these guidelines must be adhered to and serve as a working basis for the police in enforcing the law, however, this provision also authorizes the police to take deviant actions or not in accordance with the provisions in accordance with the situation and considerations of conscience, which is hereinafter referred to as discretionary action.<sup>5</sup>

Various legal instruments, both national and international, indicate that the prevention of drug abuse by children through the use of criminal law must be avoided at the expense of the interests of the child. Law enforcement against children becomes meaningless if it turns out that the negative impact it causes is bigger and more dangerous. This affirmation is needed, considering that the prevention of drug abuse by children through the use of criminal law has the potential to cause physical and mental suffering to children<sup>6</sup>

Law enforcement officers in their role in narcotics abuse cases have been given their respective powers. Judges as law enforcers are also given the authority to pass decisions on innocent abusers of narcotics crime to continue undergoing treatment and rehabilitation. From the provisions of article 127 paragraph (2) of the narcotics law, it is explained that judges in deciding cases against narcotics users must pay attention to article 54 of the narcotics law. Law No. 35 of 2009 demands that everyone report narcotics crimes.<sup>7</sup>

## B. Research methods

This research is an empirical Sociological research that seeks to understand, solve and provide explanations for problems that exist in the present (actual), by collecting data, compiling, clarifying and analyzing and interpreting the problem approach using a Juridical Sociological Approach (Socio-Legal Approach) because it discusses problems between juridical factors and sociological factors. For the police in

<sup>4</sup>.Barda Nawawie Arief, *Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan dengan pidana penjara*, CV.Ananta Semarang, 2004 , hlm, 48

<sup>5</sup>. Mulyana W Kusuma, *Diskresi terhadap pelaku tindakan criminal*, Bina Cipta Insani, Jakarta, 2009, hlm 46

<sup>6</sup> Hj. Darlisma, SH.,MH dan Nurafni, 2017, *tinjauan hukum pelaksanaan vonis pidana anak pada kasus pidana narkoba di rumah tahanan kelas II B lubuk sikaping*, Menara Ilmu, Vol. XI Jilid 2 No.76 Juli 2017,1-7

<sup>7</sup> Reki K. Koropit,2019, *penegakan hukum rehabilitasi bagi pengguna narkoba menurut undang-undang nomor 35 tahun 2009 tentang narkoba*, Lex Et Societatis Vol. VII/No. 8/Ags/2019, 1-11

carrying out their functions and authorities to enforce their law and protect human rights for people who are in trouble with the law, especially drug crimes committed by minors, are not in accordance with the processes and procedures determined by the Criminal Procedure Code and the laws and regulations. more invites

### **C. Results and Discussion**

#### **1. Reasons for the Police in providing Medical Rehabilitation Discretion to children who are perpetrators of drug crimes**

One form of transnational crime that is crucial because it transports the future generation of a nation, especially among the young generation of this country, is crime in the field of narcotics abuse. The modus operandi of narcotics trafficking syndicates can easily penetrate the boundaries of countries in the world through a neat management network and sophisticated technology and enter Indonesia as a transit country or even as a destination country for illegal narcotics trafficking (point of market). state) In the last two decades, Indonesia has become one of the main markets for a network of narcotics trafficking syndicates with an international dimension for commercial purposes.<sup>8</sup>

Narcotics crime as one of the Transnational Organized Crimes, has long threatened all countries in the world, including Indonesia. However, all countries in the world experience many difficulties in their prevention and eradication, because they are carried out by criminal organizations (syndicates) in a very closed manner, with extensive networks, high mobility, strong financial support, and very difficult to penetrate by law enforcement officers. Besides, the Narcotics criminal organization is very cruel to their opponents even killing is a common thing for them<sup>9</sup>.

#### **2. The Process of Giving Medical Rehabilitation Discretion to Children Who Do Drug Crimes:**

Therefore, it is necessary to have freedom or discretion for public officials in carrying out the duties, functions and obligations assigned to them. Freieser messen itself comes from German. Etymologically comes from the two words freies and ermessen. The meaning of Freies Ermessen comes from the words frei and freie which means free, independent, not bound, free and free people. Ermessen which means to consider, assess, suspect, judge, consider and decide. While etymologically, Freies Ermessen means people who are free to consider, free to judge, free to guess, and free to make decisions (Pouvoir Discretionare: France, Discretionary Power: England). Marbun and Ridwan HR argue that freiesermessen is an inherent freedom for the government or state administration.

Narcotics addicts are human beings who have the same rights as other humans. Addicts also have rights that must be respected and upheld in all circumstances. As formulated in the Universal Declaration of Human Rights in article 1 (one) which states: "All human beings are born free and equal in rights and dignity. They are gifted with reason and conscience and should associate with each other in brotherhood." This means that even if someone is a drug user,

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<sup>8</sup>. Kartono Muhammad, 2006, *Kejahatan Narkotika Transnasional*, PT. Ghalia Indonesia, Jakarta, hlm 46

<sup>9</sup> Adi Purnomo Santoso, 2020, disparitas putusan dalam perkara narkotika di pengadilan negeri jakarta selatan (Studi Kasus Perkara No. 221/PIDSUS/2018/PN.JKT.SEL. Dengan Perkara No. 266/PIDSUS/2018/PN.JKT.SEL.), *Jurnal Ilmu dan Budaya*, Vol .41, No. 67, Februari 2020, 1-15

Discretion in the field of law enforcement can only be exercised by investigators, therefore law enforcement requires people who have competence, intelligence, and skills in acting. In terms of discretionary investigations, this is not a new thing among the police, because the exercise of the discretionary authority possessed by the police at the time of investigation is often carried out when the police are faced with problems to be resolved immediately and so on. The benefits of this discretion make the implementation of the work of the police more efficient and effective, this is considering the limited facilities and infrastructure owned by the police in their institutions. In carrying out the investigation process, investigators are often faced with problems that can encourage discretionary action even though,

The encouragement and resistance come from both internal and external. In other words, it can be said that there are many factors that influence the consideration of discretion by police officers in dealing with various violations of the law. Several factors that influence investigators in exercising discretion during criminal investigations are:

**a. Internal factors.**

**1) The substance of the law.**

Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia in it explicitly regulates the police although it is not yet detailed and there are still shortcomings, but it is deemed sufficient to assist the police in providing guidelines when carrying out all their duties, obligations and authorities in law enforcement. . The existence of the substance of the law so far has been able to provide indirect support, because the substance contained in the law includes the investigator's authority, classification of perpetrators and other matters deemed by investigators to have been able to accommodate all needs in the investigation. The existence of this law has clarified the space for the police to move, including during investigations, so that the boundaries of what can be done and what cannot be done can be easily understood. Likewise regarding discretionary rules, even though they are only contained in a few articles, namely in Article 16 paragraph (2) of Law No. 2 of 2002 concerning the police, namely:

1. Does not conflict with a rule of law;
2. in accordance with the legal obligations that require the action to be carried out;
3. must be appropriate, reasonable, and included in the environment of his office;
4. must be appropriate, reasonable, and included in the environment of his office;
5. proper consideration based on compelling circumstances;
6. respect human rights.

The application of discretion in the field of law enforcement is also regulated in Article 5 paragraph I letter a, number 4 of the Criminal Procedure Code: what is meant by "other actions" are actions from investigations for the purpose of investigation provided that:

1. Not against the rule of law;
2. In line with legal obligations that require office action to be taken;
3. The action must be reasonable and within the scope of his office;

4. On proper consideration based on compelling circumstances.

5. Respect human rights.

Thus the law becomes one of the factors that allow discretion by the police at the time of investigation. Authority Giving discretion to investigators can influence their thinking on legal factors, whether consciously or not. In relation to the legal factors that influence the police in exercising discretion, it is impossible for the police to act rigidly in enforcing the formal law in practice. According to Faal, this is due to:<sup>10</sup>

1. No legislation is so complete that it can regulate all human behavior.

2. There are obstacles to adapting legislation to developments in society, giving rise to uncertainty.

3. Lack of costs for implementing legislation in the name desired by legislators.

4. There are individual cases that require special handling.

## **2) Investigator factor.**

The role and position of the police as an investigator has given the police the authority to exercise discretion, so that the investigating officer can use discretion in carrying out his duties. This can also be a driving factor for discretion, because the investigator already has the authority to do so. From the point of view of the investigator's assessment, prior to the discretion at the time of the investigation, the officer will measure or consider the action. The considerations made by the investigator are based on:<sup>11</sup>

### **b. External factors.**

#### **1) Public.**

The purpose of the community factor in this case is the influence of the situation of other people, groups of people or society according to the assumption or assessment of officers in law enforcement, especially in the context of granting or using discretionary authority. In the matter of discretion, the point of the problem lies in the opinion or belief of the officer himself on the problems at hand, but the problems faced cannot be separated from the person faced by the officer. The officer's assumption that the people they face are citizens who must be protected, nurtured and served, so the tendency for discretion will be greater. The opinion of the police as investigators is that if the community is an opponent or enemy and vice versa, then it is certain that the relationship between the two will be less harmonious, so the granting of discretion is relatively small. The social strata in society will also influence the police in giving their discretionary powers. In the application of the law, certain social strata that exist in society sometimes create a sense of reluctance, respect or inappropriateness for certain people and should not be processed in the criminal justice system. This proves that there is an influence on certain groups of people which in fact have more influence on the implementation of the law, including discretion.

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<sup>10</sup> M. Faal, *Penyaringan Perkara Pidana Oleh Polisi (Diskresi Kepolisian)*. Jakarta. Pradnya Paramita. 1991.hlm 102

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#### D. Conclusion

1. Narcotics addicts who are undergoing a judicial process may be placed in medical rehabilitation and/or social rehabilitation institutions.
2. Placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraph (3) is the authority of investigators, public prosecutors, or judges in accordance with the level of examination after obtaining a recommendation from the Doctor Team.
3. Provisions for placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraphs (3) and (4) also apply to victims of narcotics abuse.
4. Further provisions regarding the implementation of placement in medical rehabilitation and/or social rehabilitation institutions as referred to in paragraph (3), paragraph (4), and paragraph (5) shall be regulated by the Minister after coordinating with the relevant agencies.

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