

Maqashid Syariah Perspective on Legal Protection of Children in Narcotics Violation Cases

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Abstract

Children are the nation's next generation that needs to be guaranteed each of their rights. Ironically lately the fact that drug users are actually done more by teenagers and young people, a potential age for development. Children as narcotics abusers are only victims. So that it is not right, the state gives the punishment by looking at the same between the child abuser with the real adult criminal (dealer). Based on that reality, there are several things that become the main points in the discussion of this article, namely, First, how is the paradigm of Maqashid Shariah on the protection of child victims of narcotics abusers? Second, how is the legal protection of children as victims of narcotics abusers? Based on this study, it can be concluded that first, the goal of punishment in Islam is in the form of Recovery / Repair (al-Islah) and Restoration (al-Isti'adah) by means of rehabilitation of narcotics abusers children as a manifestation of Maqashid Shariah to safeguard the proposal of al-khamsah above which at least in this case to choose the future of a child's life and maintain a sense of dependence on narcotics. Secondly, legal protection for children who use narcotics since the enactment of Law number 11 of 2012 concerning child protection places more emphasis on the process of handling in diversion with a restorative justice orientation. During this time the rehabilitation process at the rehabilitation center has been going quite well but there are some obstacles encountered, such as human resources in the field of law enforcement that have not worked with the restoration paradigm, and the lack of facilities in remote areas for rehabilitation. Therefore, to make rehabilitation effective for children who use narcotics will be greatly influenced by the child's internal factors and external factors that must always support the child victims of narcotics abusers.

Keywords: *maqashid syariah, legal protection of children, narcotics violation*

1. Introduction

Children are the next generation of the nation who must provide education and discussion, consisting of both science and children's intelligence so that children can behave in accordance with the order of values that exist in the midst of community life. Will Considering the Environment Will have properties that will shape the character, nature and personality of children? A good environment will shape the child's personality to behave well. And vice versa, a bad environment will make children behave unfavorably and harm others such as using narcotics. Nowadays the level of narcotics abuse in Indonesia has become a concern of the community, because in reality it is actually done more by teenagers and young people, the age which is very potential for development. Even more alarming lately is known to have penetrated among the children of junior and elementary school age. As a social problem, it is realized that in responding [1].

As a social problem, it is realized that in addressing the problem of vulnerable children the government is not only required to increase social protection and social compensation or other charitable efforts. More than that, what vulnerable children need is a truly serious commitment that is in accordance with the basic principles set out in the CRC (Convention

on the Rights of the Child) [2]. Child protection in all its aspects is part of national development activities, especially in advancing the life of the nation and state [3].

Children as narcotics abusers are only victims. So that it is not right, the state gives the punishment by looking at the same between the child abuser with the real adult criminal (dealer). As a victim, children as narcotics abusers must get protection. Child protection is an effort made to create conditions so that each child can carry out their rights and obligations for the development and growth of children naturally, physically, mentally, and socially [4]. In connection with the problem of narcotics abuse, Article 54 of Law Number 35 Year 2009 concerning Narcotics in which the addict or user is required to undergo Medical Rehabilitation and Social Rehabilitation.

Rehabilitation of Narcotics Users is a treatment process to free Users from dependence, and the rehabilitation period is calculated as serving time. Rehabilitation of narcotics users is also a form of social protection that integrates narcotics users into social order so that they no longer abuse narcotics.

Islam as a religion that carries the mandate as a mercy for the universe is certainly not spared in discussing the issue of protection of children who abuse narcotics as a form of obligation in maintaining the benefit of humanity. In this paper, there are several things that become the main points in the discussion, namely, First, how is the paradigm of Maqashid Shariah on the protection of child victims of narcotics abusers? Second, how is the legal protection of children as victims of narcotics abusers?

2. Literature Review

Maqashid Shariah is a perspective used to look at fostering criminal children in Penitentiaries. Based on syntactic or language perspective, Maqashid Shariah consists of two words, namely: maqashid and Shariah. The word maqashid is plural. The singular or singular form is maqsid [5], which means then al-qasd "(direction of purpose, purpose).

The principles of Maqashid Shariah can be explained as follows. In al-Muwāfaqāt fi Usull ash-Shariah, al-Syābībī said that the main purpose of the Shariah is the creation of benefit (maslahah). Al-Syābībī said, "The Shariah is established to realize the intentions of al-sharih 'regarding their benefit (human) both in religion and the world." El-Syatbbī stated elsewhere that "laws (al-ahkam) are prescribed for benefit of servants [6]". This quote shows that maslahah is very central in the idea of al-Syatibi. Based on this theory, the implementation of Islamic criminal law (jinayah) especially in the field of narcotics abuse and illicit trafficking should be criminalized and applied in accordance with the principles, principles, and objectives of shariah law 'so that Islamic law is truly compatible with the needs of space and time.

Maslahah itself is meant by attracting or realizing the benefits (jalb al-manfa'ah) while rejecting or eliminating harm (daf 'al-madarrah). The main goal is to maintain the benefit of humans, both from the aspect of belief or religion (Hifz al-din), the aspect of the right to life (Hifz al-nafs), the aspect of caring for reason (Hifz al-'aql), the guarantee of legally legitimate descendants (Hifz al-nasl), and aspects of property ownership (Hifz al-maal). Something that can guarantee the maintenance of one of the five things can be classified as maslahah. Conversely, what can damage or disrupt the existence of one of the five can be qualified as mafsadah or madarrah. Thus, eliminating things that can damage or disturb one of the five can also be said to be maslahah. Thus, Islamic law is a comprehensive legal system that maintains all aspects of human life both spiritual and material. This provision is known as Maqashid Shariah, namely the objectives to be achieved from a legal determination [7].

With strategies and efforts to uphold and maintain the five proposals referred to above, Syatibi divides to the level of shariah objectives, namely: [1] Maqashid ad-Daruriyat, [2] Maqashid al-Hajjiyyat, and [3] Maqashid at -Tahsiniyat. Maqashid ad-Daruriyat is intended to preserve the five basic elements in human life above. Maqashid al-Hajjiyyat is intended

to eliminate difficulties or make maintenance of the five main elements even better. Maqashid at-Tahsiniyat is intended so that humans can do their best to perfect the maintenance of five basic elements (*usul al-khamsah*). Therefore, in fact these three things are interrelated with one another and cannot be separated. If the three are separated from one another, then no legal objective will not be called maximum success in achieving the preservation of the proposal of *al-khamsah*.

In connection with the understanding and dynamics of Islamic law, as a law that is enforced in a *kaffah* religion, Abdul Wahhab Khallaf, views al-Syatibi's categorization of Maqashid Shariah to these types, namely: *daruriyat*, *hajiyyat*, in truth has two good goals, namely the worldly realm and the realm of laterness, which is then called the *al-masalih al-dunyawiyyah* (the goal of world benefit) and *al-masalih al-ukhrawiyah* (the purpose of the afterlife). When explored further, the concept of the proposed experts implies that the direction of the discussion above is in accordance with the prayer contained in the Koran, namely the concept of world and hereafter happiness.

If we look carefully, in fact, the concept of punishment contained in Islamic criminal law has a clear purpose, namely the benefit, which is slightly different from the concept of punishment in state law. Among these differences is that the penalties in Islamic criminal law are based on the Shari'a and are part of the Islamic creed that must be believed. In this case, the sentence imposed on the criminal child must also refer to the basic tenets of Islam that are believed by his people that Islam is a religion that brings goodness (*rahmatan li al-alamin*), which brings mercy to the universe, as stated in the Koran Surah Al-Anbiya 'verse 107 which means: "And we sent you not, but to (be) a mercy to the worlds."

Moving on from the main objectives of Islamic law (Maqashid Shariah), then to analyze the protection of children's rights begins with the urgency of protecting Islamic law against children's rights, both material rights and immaterial rights. The material rights in question are the rights of living and inheritance rights. While the immaterial right is the right to care, guidance and guardianship rights or recognition of the people.

3. Research Method

According to Mahmood Zuhdi Abdul Majid as quoted by Octoberrinsyah, that Based on an in-depth study of religious texts, Islamic criminal law experts formulated a number of criminal objectives, namely punishment as Retaliation (*al-Jaza'*), Prevention (*az-Zajr*), Recovery/ Repair (*al-Islah*), Restoration (*al-Isti'adah*), and Redemption of Sin (*at-Takfir*).

Criminalization in the form of rehabilitation in Islamic criminal law is a form of Recovery/ Repair (*al-Islah*) and Restoration (*al-Isti'adah*) perpetrators of crime, to be a better person. Performs the function of human responsibility as servants to God and humans to fellow human beings. The process of rehabilitation in Islamic law is also a form of community disease prevention against a social crime, drug abuser is not purely a crime that requires a person to get severe punishment, but the process of spreading drug abuse becomes a separate disease in social life. Islam teaches humans to respect each other, respect and always do good to others, imprisonment penalties without rehabilitation process through an intensive approach proved to be less useful to be realized to drug abusers [8].

From this description, it can be understood that criminal punishment for rehabilitation in Islamic criminal law is recommended, with the aim of fostering and guiding drug offenders to more positive things. It is intended that future perpetrators do not repeat crime again and can live healthy and perform social functions in social life. With this effort, it is expected that efforts to maintain the benefit of the people which will be sustained.

In the Maqashid Shariah theory also explains the same thing, where the direct effect of drug use is to damage physical health and reason, as well as the potential to eliminate the belief in religion and loss of property due to the dependence on drugs. The Maqashid aspect of Shariah is guaranteeing, providing protection and preserving human benefit. In the first level, *Dharuriyah* (inevitability) has 5 (five) main points: *hifz al-din* (protecting

religion), hifz an-nafs (protecting body and soul), hifz al-aql (protecting reason) and hifz al-mal (protect property), hifz al-nasl (protect descendants).

Dharuriyah is considered as essential things for human life itself, because dharuriyah is the target behind Divine law. This is in accordance with the purpose of rehabilitation for drug abusers, namely to repair the damage caused by drug use. The aim is to restore physical health in accordance with hifz an nafs, restore health to the mind in accordance with hifz al-aql. Rehabilitation can also use a religious approach to implement the Hifz ad-din. After completing the rehabilitation process and the participants have returned to their proper lives, there have been efforts at hifz al-mal and hifz an-nasl. Thus to achieve the Maqashid Shariah, the preservation of reason from the effects of drug abuse, the most appropriate rehabilitation for dealing with drug abuse, so there is no more drug abuse.

4. Result and Discuss

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination. Based on full, comprehensive and comprehensive child protection, the child protection law lays down the obligation to provide protection to children based on the following principles: a) non-discrimination; b) the best interests of the child; c) the right to life, survival, development, and d) respect for children's opinions in developing, developing and protecting children, needs the role of the community, whether through child protection institutions, security agencies, non-governmental organizations, community organizations, social organizations, the business world, the mass media, or educational institutions [3].

Since the enactment of Law Number 11 Year 2012 concerning the Criminal Justice System for Children (SPPA Law), the settlement of child criminal cases is required through diversion, including child abuse of narcotics. Although diversion is regulated in a limitative manner. Requirements for diversion as stipulated in the SPPA Law, diversion can be carried out on children who commit a crime that is threatened with imprisonment under seven years and does not even constitute a repeat of the crime (Article 7 paragraph 2) [9].

Briefly diversion is the transfer of the settlement of the case of children from the criminal justice process to the process outside of criminal justice. Diversion is an act or treatment to divert or place the perpetrators of child crime, including narcotics abusers, out of the justice system. The diversion of children as narcotics abusers is made possible by giving back to parents / guardians or taking part in education and training and community service [9].

The spirit promoted in the juvenile justice system is a system that promotes restorative justice. In the restorative justice model, the punishment of the perpetrators remains, but the punishment is placed as part of the education process, not as revenge and punishment. Punishment in the framework of the educational process is not a punishment that weakens the spirit of life let alone kill the future of children, but rather must function morally enlighten and mature as a whole person [10].

Law No. 35 of 2009 concerning Narcotics basically has 2 (two) sides, namely the humanist side of narcotics addicts, and the hard and firm side of drug dealers, syndicates, and narcotics dealers. The human side can be seen as stated in Article 54 of Law Number 35 Year 2009 which states, Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation and Article 67 junco Article 59 of the Republic of Indonesia Number 35 of 2014 concerning Amendment of Law Number 23 of 2002 concerning Child Protection

Rehabilitation is one of the best efforts given to child offenders of drug abuse. In this case there are two forms of rehabilitation, namely medical rehabilitation and social rehabilitation, what is meant by "medical rehabilitation" is a process of integrated treatment activities to restore the physical condition of children, child victims, and / or

witness children and the purpose of "social rehabilitation" is the process integrated recovery activities, both physical, mental and social, so that children, child victims, and / or witness children can return to carrying out social functions in life in the community [11].

Rehabilitation for addicts and victims of narcotics abuse is indeed expected to save the lives of addicts and victims of narcotics abuse it. The application of rehabilitation it must be utilized as much as possible. It also received support from the government by issuing several rules governing rehabilitation itself. The rules governing and discussing rehabilitation are as follows:

- a. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics;
- b. Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning the Placement of Abusers, Victims of Abusers into Medical and Social Institutions.
- c. Government Regulation (PP) Number 25 of 2011 concerning the Implementation of Reporting Obligation for Narcotics Addicts to obtain therapy and rehabilitation services.
- d. Regulation of the Minister of Health Republic of Indonesia Number 80 of 2014 concerning technical guidelines for the implementation of medical rehabilitation for addicts, abusers, and victims of narcotics abuse who are in the process of investigation, prosecution and trial or have received a court decision / decision.
- e. Joint Regulation of the Chairperson of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the Indonesian National Police, Head of Republic of the National Narcotics Agency Number 01/ PB / MA/III/2014, Number 03 Year 2014, Number PER-005/A/JA/03/2014, Number 1 Year 2014, Number Perber/01/III/2014/BNN concerning Handling of Narcotics Addicts and Narcotics Abuse Victims into the Rehabilitation Institution.

Book In carrying out rehabilitation of drug abuse, the forms of rehabilitation are: First, Medical Rehabilitation is a process of integrated treatment activities to free addicts from drug addiction (Article 1 paragraph (16) of Law No. 35 of 2009 concerning Narcotics). So that the implementation requires medical specialists who deal with the overall handling of patients with impaired function or injury, nerve muscle structure, as well as mental, social and physical disorders that accompany these disabilities. In article 56 of Law No. 35 of 2009 concerning Narcotics). (1) Narcotics addict medical rehabilitation is carried out in a hospital appointed by the Minister. (2) Certain rehabilitation institutions organized by government agencies or the public can carry out medical rehabilitation of Narcotics Addicts after obtaining approval from the Minister.

Medical rehabilitation given to child victims of narcotics abuse is done by giving certain drugs to reduce dependence on these narcotics. Of course, this drug administration is adjusted to the needs or the level of pain experienced by hallucination. Medical rehabilitation is a field of medical specialty that deals with comprehensive management of patients with impaired function (muscles skeletal), nervous system, as well as mental, social and physical disorders that accompany the disability. For the implementation of medical rehabilitation regulated in Minister of Health Regulations No. 2415 /Menkes/ Per / XII / 2011 concerning the medical rehabilitation of Addicts, Abuse of Narcotics Abuse Victims and Minister of Health Regulations No. 50 of 2015 concerning technical guidelines on the Implementation of Report Obligation and Medical Rehabilitation for Addicts, Abusers and Narcotics Abuse Victims[12].

Second, Social Rehabilitation is a process of integrated recovery activities, physical, mental and social, so that former narcotics addicts can return to carrying out social functions in people's lives. (Article 1 paragraph (17) of Law No.35 of 2009 Concerning Narcotics) Social rehabilitation is an effort so that former drug users or addicts can build a

social life mentality and eliminate negative acts due to the effects of drug use so that former addicts can carry out social functions and can be active in life in the community.

Social rehabilitation is regulated in Minister of Social Regulations No. 26 of 2012 concerning Social Rehabilitation Standards for Victims of Drug Abuse. To determine the effectiveness of social rehabilitation for drug addicts of minors, it can be seen from several indicators including: understanding the program, targeting accuracy, timeliness, achieving targets, achieving goals and real change. If these indicators are met and implemented in practice then it can be said to be effective and vice versa if not implemented then the rehabilitation is not effective. The purpose of social rehabilitation is that drug addicts can return to carrying out their social functions in the community. Associated with social rehabilitation of drug addicts of minors, the aim is that the child can return to his world as a child and no longer use drugs.

Although normatively, the legal protection of children as narcotics abusers in the juvenile criminal justice system in Indonesia has been accommodated and regulated through statutory regulations, but in terms of their application and implementation there are many obstacles. First, the lack of understanding from law enforcement officers, that children as narcotics abusers are victims. Victims of sexual misconduct, lack of parental attention, and unhealthy environment. Thus, it is not uncommon to find a number of cases, law enforcement officers applying articles of punishment against children as narcotics abusers. Law enforcement officers in question are law enforcement officers in the juvenile justice system in Indonesia. Starting from the investigation stage, the police or national / regional narcotics agency. At the prosecution stage is the prosecutor's office. At the stage of the court hearing is a judge. At the implementation stage of the decision is a prison officer. Understanding of these law enforcement officers can be minimized by choosing officers, police, prosecutors, judges and prison officers who truly understand the philosophy of child protection. The lack of understanding of this law enforcement apparatus also affects the process of diversion or diversion of criminal cases of child narcotics abusers. Diversion that should be used is often not implemented. The child's opportunity becomes closed and has the potential to become a real criminal. It is not uncommon for articles applied to children to be articles that do not allow diversion or transfer. So the forced child must be in and follow the entire formal criminal justice process, which has a bad impact on the child.

Second, namely the lack of facilities especially in remote areas in Indonesia. Specifically at the rehabilitation stage, through the process of detoxification, mental rehabilitation, physical rehabilitation, physical development, spiritual formation, which are not all found in regions in Indonesia. This is understandable because of the geographical factors of Indonesia, which consists of islands. Thus, protection for children as narcotics abusers is not optimal. The lack of this facility is also in the form of required institutions, as regulated in the SPPA Law. Such as the Special Child Development Institution (LPKA), Temporary Child Placement Institution (LPAS), Social Welfare Organization (LPKS). Although these institutions exist in several regions in Indonesia, the existence of these institutions is uneven. Thus, the implementation of diversion which is one form of legal protection for children is not optimal [9].

Therefore, to make rehabilitation effective for children who use narcotics will be greatly influenced by two main factors as a solution. First internal factors. This internal factor is a factor from within the abuser himself to want to be free from narcotics. Second is an external factor [13]. This factor is a factor that also has an important role in the success of rehabilitation; external factors come from the victim's death and the victim's abuse environment. As well as how the Maqashid Shariah paradigm must be manifested in a coaching pattern. The mindset of the management of a rehabilitation center and all those related to the judicial process of children of narcotics abusers must have the paradigm that children are victims and must be restored, and this is where the rehabilitation program is

the main things that become Maqashid Shariah must be realized clearly to protect the future of children's lives.

Conclusion

Based on the discussion of the issues raised in this study, then there are a number of main things that can be used as conclusions, namely as follows: Maqashid Shariah paradigm to protect *usul al-khamsah*, namely choosing religion (*Hifz al-din*), aspects of the right to life (*Hifz al-nafs*), aspects of maintaining mind (*Hifz al-'aql*), guaranteeing legal legitimate descent (*Hifz al-nafs*) and the aspect of ownership of property (*Hifz al-maal*) is a perspective that should underlie the process of law enforcement. The purpose of Islamic punishment in the form of Recovery / Improvement (*al-Islah*) and Restoration (*al-Isti'adah*) by means of rehabilitation of narcotic abusers is a form of manifestation of the *Shariah Maqashid* to safeguard the above *al-khamsah* proposal which at least in this case is to choose the future of children's lives and nurturing sense of dependence on narcotics. Legal protection for children who abuse narcotics since the enactment of Law number 11 of 2012 concerning child protection places more emphasis on the process of handling in diversion with a restorative justice orientation. So that all forms of legal proceedings against children should be carried out with the aim of restoring the child's life as before. The form of the restaurant is to make efforts to rehabilitate children of narcotics abusers, both through medical rehabilitation and social rehabilitation. During this time the rehabilitation process at the rehabilitation center has been going quite well but there are some obstacles encountered, such as human resources in the field of law enforcement that have not worked with the restoration paradigm, and the lack of facilities in remote areas for rehabilitation. Therefore, to make rehabilitation effective for children who use narcotics will be greatly influenced by the child's internal factors and external factors that must always support the child victims of narcotics abusers.

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