

An Analysis of Criminal Sentencing for Juvenile Narcotics Offenders: A Review of the Juvenile Criminal Justice System Law

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Abstract

Narcotics abuse involving children constitutes a complex legal issue as children are not only positioned as perpetrators of criminal acts but also as individuals requiring protection and rehabilitation. This condition creates challenges in law enforcement, particularly in balancing the interests of criminal justice with the principles of child protection as regulated under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2009 concerning Narcotics. This study aims to analyze the legal framework governing children in conflict with the law as perpetrators of narcotics abuse within the Indonesian legal system and to examine the application of criminal sanctions against children based on Decision Number 5/Pid.Sus-Anak/2021/PN Plp. The research employs a normative juridical method using statutory, conceptual, and case approaches through library research on primary, secondary, and tertiary legal materials. The findings indicate that the Indonesian legal system fundamentally prioritizes protection, rehabilitation, diversion, and restorative justice in handling child narcotics offenders. Nevertheless, in Decision Number 5/Pid.Sus-Anak/2021/PN Plp, the court imposed a ten-month imprisonment sentence in a Special Child Development Institution after concluding that the elements of the criminal offense had been legally and convincingly proven. The decision reflects an attempt to balance child protection objectives with criminal accountability, although rehabilitative measures were not optimally prioritized. This study concludes that the implementation of the best interests of the child principle in narcotics abuse cases continues to face challenges, including the predominance of punitive approaches, the suboptimal implementation of diversion mechanisms, and limitations in rehabilitation and child development facilities for children in conflict with the law.

INTRODUCTION

Children are the nation's assets that have a strategic position in determining the sustainability of the life of the community, nation, and state in the future. The existence of children is not only seen as the successor of the generation, but also as a subject of law who has basic rights that must be guaranteed, respected, and protected by the state. Therefore, the protection of children is one of the constitutional responsibilities that must be realized through various legal and social policies. The importance of the position of children in the life of the nation and state is reflected in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which affirms that every child has the right to survival, growth and development optimally, as well as to obtain protection from all forms of violence and discrimination. The constitutional provision shows that the state places child protection as part of human rights that must be guaranteed to be implemented.¹

The principle of the *best interests of the child* is one of the fundamental principles in the child protection system. This principle requires that every action, policy, or decision related to children must prioritize the interests and welfare of children as the main consideration. Thus, all efforts made by the state, family, and community must be directed to create an environment conducive to children's physical, mental, social, and moral growth and development. However, social reality shows that children still face various problems that have the potential to hinder their development, one of which is the increasing number of juvenile delinquency and children's involvement in criminal acts.

The phenomenon of juvenile delinquency at this time shows an increasingly complex and worrying trend. Rapid social change, the development of information technology, the influence of the social environment, weak family supervision, as well as economic and educational factors are some of the factors that contribute to the increase in deviant behavior carried out by children. This condition requires preventive and repressive measures that are not only oriented towards law enforcement, but also prioritize aspects of fostering and protecting children. It is in this context that the juvenile criminal justice system exists as a legal instrument specifically designed to handle criminal cases involving children with a different approach from the criminal justice system for adults.²

One form of juvenile delinquency that is currently a serious concern is the abuse of narcotics by children. Narcotics abuse not only has a negative impact on children's physical and mental health, but also has the potential to damage the future of the younger

¹ M Ridha Ma'roef, *Narcotics: Problems and Dangers* (Jakarta: PT Bina Aksara, 1987), p. 15.

² Moh. Taufik Makarao, Suhasril, and Moh. Zakky, *Narcotics Crime*, Print to (Jakarta: Ghalia Indonesia, 2005), p. 17.

generation and threaten the nation's social resilience. Narcotics are basically substances or drugs derived from plants and non-plants, both synthetic and semi-synthetic, which can cause changes in consciousness, reduce or eliminate pain, and cause dependence for the user. In the medical world, narcotics have certain benefits for the sake of medicine and research. However, use that is not in accordance with the provisions of the law can have various adverse impacts, both for individuals and society.

One of the main characteristics of narcotics is their ability to cause high dependence. In addition to causing addiction, narcotics also have habituation and tolerance properties that result in users needing larger doses to obtain the same effect. As a result, a person who has been entangled in narcotics abuse often has difficulty stopping the use of the substance. Addiction that arises not only has an impact on health conditions, but can also encourage a person to take various illegal actions to meet the need for narcotics.

Based on the provisions of Law Number 35 of 2009 concerning Narcotics (Narcotics Law), narcotics are classified into three groups based on their risk level and usefulness. Class I narcotics are a type of narcotics that have a very high potential for dependence and are generally only intended for the purpose of research and scientific development. Some examples of narcotics that fall into this category are marijuana, heroin, cocaine, opium, and morphine. Furthermore, Class II narcotics are a type of narcotics that still have benefits in health services and research, but still have a high risk of dependence. Group III narcotics are a type of narcotic that has broader medical benefits and a relatively lighter level of dependence than other groups, such as codeine and its derivatives.³

The involvement of children in narcotics abuse raises legal problems that require special handling. In contrast to adult offenders, children who commit crimes are basically still in the stage of physical and psychological development so they require a more protection-oriented approach and rehabilitation. Therefore, the Indonesian legal system regulates a special mechanism in dealing with children who are in conflict with the law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The law prioritizes the principles of restorative justice and diversion as an effort to prevent children from the negative impact of the repressive criminal justice process.⁴

The problem of narcotics abuse involving children shows a tendency that still requires serious attention from various parties. Based on various reports by government agencies and law enforcement officials in recent years, children and adolescents are still an age group that is vulnerable to exposure to narcotics abuse. This condition shows that

³ Barda Nawawi Arief, *Potpourri Criminal Law Policy* (Jakarta: Kencana, 2010), pp. 91-93.

⁴ Yati Sharfina Desiandri et al., "Diversion of Children in Conflict with the Law at the Investigation Level (Study at the Medan Police)," *USU Law Journal* 5, no. 1 (2017): 147-57.

narcotics abuse is no longer only a problem faced by adults, but has touched the age group of children who should receive optimal protection and coaching. The high rate of child involvement in narcotics abuse indicates that the prevention efforts that have been carried out so far have not been fully effective in suppressing the rate of the spread of narcotics among the younger generation.

According to Article 1 number 2 of Law Number 11 of 2012, children who are in conflict with the law include children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts. The arrangement shows that the law does not only view children as perpetrators of unlawful acts, but also as individuals who need special protection to guarantee their rights. Therefore, in cases of narcotics abuse involving children, law enforcement officials are required to balance the interests of law enforcement with efforts to protect and coach children, so that the purpose of punishment is not only oriented towards punishment, but also on the recovery and social reintegration of children into society.

Based on this background, the formulation of the problem in this study is focused on two main things. First, how are the legal arrangements that regulate children who are facing the law as perpetrators of narcotics abuse crimes in the Indonesian legal system. Second, how to apply criminal sanctions against children who are in conflict with the law in cases of narcotics abuse, especially based on the Case Study of Decision Number 5/Pid.Sus-Anak/2021/PN Plp.

METHODS

This study uses a normative juridical method that is oriented towards legal studies through the study of various literature sources as the main material of the research. This approach places law as a norm that is studied based on laws and regulations, doctrines, legal principles, court decisions, and various scientific literature relevant to the problem being studied.⁵ The data used were not obtained through field research, but were sourced from secondary data which included primary legal materials, secondary legal materials, and tertiary legal materials.⁶ Through normative juridical methods, the research is directed to analyze the applicable legal construction, identify the suitability between norms and their application, and provide systematic legal arguments on the issues that

⁵ "Your Excellency, Your Excellency, *Legal Research Methodology* (Jakarta: Raja Grafindo Persada, 2003), pp. 27-28.

⁶ Rayhan Fiqi Fansuri dan Juan Matheus, "Enforcement of Human Rights through Criminal Law Against Environmental Destruction Due to Batik Industry Activities," *Indonesian Journal of Criminal Law Studies* 7, no. 2 (2022): 291-316, <https://doi.org/https://doi.org/10.15294/ijcls.v7i2>.

are the object of study. This approach was chosen because it is considered to be able to provide a comprehensive understanding of the normative aspects of a legal problem based on an in-depth study of various relevant legal sources.⁷

RESULTS AND DISCUSSION

1. Legal Arrangements Governing Children Facing the Law as Perpetrators of Narcotics Abuse in the Indonesian Legal System

From the perspective of national law, children are seen as a national asset that has a strategic position in ensuring the sustainability of the life of the nation and the state in the future. Children are not only positioned as individuals who are undergoing a process of growth and development, but also as the next generation who will determine the direction of national development. Therefore, the state has a constitutional obligation to provide optimal protection for every child, including when the child is in a situation that is contrary to the law. This protection is necessary considering the psychological, emotional, and intellectual condition of children who have not developed perfectly so that they are different from adults in understanding and accounting for the consequences of a legal act. Children who are facing the law are basically children who are involved in a criminal event, either as a perpetrator, victim, or witness to a criminal act.⁸

In the context of children as perpetrators of criminal acts, the terminology used in the Indonesian legal system has undergone significant development. Prior to the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), the commonly used term was "juvenile delinquent". The term refers to children who commit acts that are contrary to legal norms and social norms that live in society. However, the use of the term "delinquent child" is considered to have a tendency to give a negative stigma to children so that it has the potential to hinder their development and social reintegration process. Along with the development of the child protection paradigm, the lawmakers then changed the term to "children in conflict with the law". This change in terminology reflects a shift in approach from retributive justice to a more *restorative justice* approach.⁹

Thus, children who commit criminal acts are not solely seen as perpetrators who must be punished, but as individuals who still have the opportunity to be corrected and

⁷ Sunggono, *Legal Research Methodology*.

⁸ Devi Siti Hamzah Marpaung, "The Dangers of Drugs and Legal Protection for Children as Perpetrators of Drug Abusers in Purwakarta Regency," *Journal of Positum Law* 4, no. 1 (2019): 98–115, <https://doi.org/10.35706/positum.v4i1.3010>.

⁹ Barda Nawawi Arief, *Law Enforcement Issues and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana, 2016), p. 2015.

returned to their social environment through various coaching mechanisms that are in accordance with the best *interests of the child*). In relation to narcotics crimes, the legal arrangements in Indonesia show that there are two approaches that run simultaneously. On the one hand, the narcotics law applies a strict and repressive approach to dealers, dealers, and narcotics trafficking syndicates who are considered the main perpetrators of narcotics crimes. On the other hand, for users, addicts, and victims of narcotics abuse, including children, the law provides a more humane approach by prioritizing rehabilitation efforts over criminalization. This humanist approach is reflected in the provisions of Article 54 of the Narcotics Law which requires narcotics addicts and victims of narcotics abuse to undergo medical rehabilitation and social rehabilitation. This policy is based on the understanding that narcotics addicts are essentially individuals who experience dependency both physically and psychologically so that they need a healing process through adequate health and rehabilitation services. Therefore, for children who become narcotics addicts, the state emphasizes recovery efforts rather than providing repressive criminal sanctions. In addition, legal protection for children is also affirmed in the SPPA Law.¹⁰

Article 20 of the law stipulates that children who are not yet 18 years old at the time of committing the crime, but at the time of the examination process in court have exceeded the age of 18 years and have not reached the age of 21 years, continue to receive legal protection based on the provisions of the juvenile criminal justice system. This provision shows that the age of the child at the time of committing a criminal act is the main factor in determining the legal regime that applies to him. The arrangement is based on the principle that children are individuals who are still in the stage of developing their own capacities (*evolving capacities*). In such conditions, the legal approach applied should emphasize the aspects of education, coaching, and behavior improvement rather than providing suffering through criminality. This view is in line with modern criminal theory that distinguishes between criminal sanctions and action sanctions.

Criminal sanctions generally contain elements of reproach for the actions committed by the perpetrator, while action sanctions are more oriented towards educational, rehabilitative, and corrective goals to improve the behavior of the perpetrator so that he can return to becoming a good member of society. Regarding children who commit narcotics crimes, the Narcotics Law basically distinguishes the position of children based on their role and involvement in the crime. One of the most important categories is

¹⁰ Pranggi Siagian et al., "Imposition of Criminal Sanctions on Child Offenders," *USU Law Journal* 3, no. 2 (2015): 168–78.

children who are in a position as drug addicts. What is meant by a child as a narcotics addict is a child who uses or abuses narcotics and has been in a state of dependence, both physically and psychologically. In such a situation, children are not only seen as perpetrators of lawlessness, but also as individuals who need help and recovery due to their dependence on narcotics. Therefore, legal policies applied to children with narcotics addiction focus more on medical rehabilitation and social rehabilitation. Medical rehabilitation aims to eliminate physical dependence on narcotics through a series of measurable and sustainable medical measures. Meanwhile, social rehabilitation is directed to restore the psychological, mental, and social conditions of children so that they can return to carrying out their social functions normally in community life.¹¹

The Narcotics Law also provides legal responsibility to parents or guardians of children who experience narcotics dependence. Parents or guardians are required to report the child to a public health center, hospital, or medical and social rehabilitation institution that has been appointed by the government. This reporting obligation is a form of family participation in efforts to rescue and recover children from the dangers of narcotics. Through this mechanism, the state seeks to ensure that children have access to rehabilitation services early so that they can avoid the adverse effects of more serious narcotics abuse. On the other hand, if parents or guardians deliberately do not carry out the reporting obligation, the Narcotics Law provides a threat of sanctions in the form of imprisonment for a maximum of six months or a fine of up to one million rupiah.¹²

This arrangement shows that the state not only places the responsibility on children as narcotics users, but also on the family as the nearest environment that has the obligation to supervise, coach, and protect children. Furthermore, the law provides special protection in the form of the elimination of criminal prosecutions against children of narcotics addicts who have been reported by their parents or guardians in accordance with the mechanism determined by laws and regulations. The policy reflects a legal orientation that prioritizes a health and rehabilitation approach over a criminal approach. Thus, the main goal to be achieved is not to punish children, but to restore the physical, mental, and social condition of children so that they can grow and develop optimally and return to play a role in society.

¹¹ Rika Saraswati, *Child Protection Laws in Indonesia*, Print to (Bandung: PT Citra Aditya Bakti, 2015), p. 1.

¹² Nashriana, *Criminal Law Protection for Children in Indonesia*, Edition 1, c (Jakarta: PT RajaGrafindo Persada, 2014), p. 3.

2. The Application of Criminal Sanctions Against Children Facing the Law in Cases of Narcotics Abuse Based on the Case Study of Decision No. 5/Pid.Sus-Anak/2021/PN Plp

Law enforcement against children involved in the crime of narcotics abuse is one of the most complex issues in the criminal justice system in Indonesia. This complexity arises because of the need to balance two equally important legal interests, namely the state's obligation to protect children as the nation's next generation as well as the obligation to enforce the law against every act that meets the elements of a criminal act. In this context, children cannot always be simply positioned as perpetrators of crimes, because in many cases they are also vulnerable to the influence of the environment, society, and the wider narcotics trafficking network. Therefore, the legal approach to children who abuse narcotics requires a different perspective from the handling of adult criminal offenders.¹³

The legal framework that regulates the handling of children in conflict with the law is basically based on the provisions of the SPPA Law, which places *the best interest of the child* as a fundamental principle in every law enforcement process. The law prioritizes an educational and rehabilitative approach through diversion and *restorative justice* mechanisms, with the aim of preventing children from the negative impact of the formal justice process. On the other hand, the Narcotics Law still regulates criminal threats against narcotics abuse as a form of protection for the interests of the community and public order.¹⁴

The intersection between the two legal regimes often poses a dilemma in judicial practice, especially when judges must determine the most appropriate form of sanction for children who are proven to have abused narcotics. This dilemma can be seen concretely in the Palopo District Court Decision Number 5/Pid.Sus-Anak/2021/PN Plp. Faril Al Farizi alias Endong Muhammad Wirawan was declared legally and convincingly proven to have committed the crime of class I narcotics abuse for himself as stipulated in Article 127 paragraph (1) letter a of the Narcotics Law. Based on the legal facts revealed at the trial, the judge sentenced him to ten months in prison at the Maros Special Children's Development Institute (LPKA). In addition, the period of arrest and detention that has been served by the child is taken into account as part of the sentence imposed.

¹³ Purba, N., & Firmansyah, H. (2023). Penegakkan Hukum Pidana Terhadap Penyalahgunaan Narkotika (Studi Kasus : Sibolga Nomor 444/ /Pid.Sus/2020/Pn Sibolga). *Jurnal Ilmiah Wahana Pendidikan*, 9(17), 522-533. <https://doi.org/10.5281/zenodo.8318113>

¹⁴ R Siregar, *Child Protection in Drug Cases: A Legal Study in Indonesia* (Jakarta: Kencana Prenada Media, 2023), pp. 45-47.

The evidence in the form of methamphetamine-type narcotics with a net weight of 0.6890 grams and the tools used to consume them were ordered to be destroyed through the Public Prosecutor in accordance with the applicable legal provisions. If examined in depth, the verdict shows that the criminal orientation applied by the panel of judges still tends to be in the conventional criminal accountability paradigm. Even though this case involves a child, the judge still considers that the act committed has met the elements of a criminal act and therefore requires a response in the form of punishment.

This perspective shows that the existence of a child's status does not automatically eliminate the need to account for his actions before the law. However, the form of punishment imposed still shows that there is an effort to accommodate the principle of child protection, namely by placing children in LPKA which is normatively designed as a coaching institution, not an ordinary correctional institution as intended for adult prisoners.

Normatively, the SPPA Law actually provides various alternative sanctions that can be applied to children who are in conflict with the law. Article 71 of the SPPA Law stipulates that the principal crime for children is not only in the form of imprisonment, but also includes a warning crime, a criminal with conditions, coaching within the institution, coaching outside the institution, and job training. The arrangement shows that the lawmakers want prison sentences to be placed as the last resort (*ultimum remedium*). Meanwhile, in cases of narcotics abuse, Article 127 of the Narcotics Law also opens up space for judges to order medical rehabilitation and social rehabilitation as an alternative to prison sentences. Therefore, the judge's choice to impose a prison sentence of ten months in this case can be understood as a form of assessment that rehabilitation alone is considered insufficient to ensure the achievement of the goals of criminalization and guidance for children.¹⁵

The legal considerations used by the panel of judges in passing the verdict are based on the evidence of the elements of the criminal act charged by the Public Prosecutor. The judge considered that all the evidence submitted, both in the form of witness statements, laboratory examination results, evidence found, and the confession of the perpetrator's child, had been in accordance with each other and proved the existence of the use of class I narcotics for oneself without rights or against the law. In addition, the judge also considers aspects related to the child's personal condition, including age, family environment, social circumstances, and possible impacts that will arise from the

¹⁵ A Noble Heart, *Principles of Criminalization in the Criminal Justice System* (Jakarta: RajaGrafindo Persada, 2014), pp. 55-58.

imposition of criminal sanctions. These considerations show that the judge does not only focus on the legalistic aspect, but also tries to pay attention to the inherent humanitarian dimension in children's cases. Nonetheless, from the point of view of progressive law and child protection, the ruling can still be the object of critical evaluation. Children of narcotics abusers are in essence often in an ambiguous position between the perpetrator and the victim. They commit acts that are prohibited by law, but at the same time they are also victims of the influence of the social environment, unhealthy associations, weak family control, and easy access to narcotics. Therefore, some academics argue that a rehabilitative approach should take precedence over a repressive approach.¹⁶

Punishment in the form of prison, even though it is carried out in LPKA, still has the potential to have negative impacts in the form of social stigmatization, disruption of psychological development, and obstacles in the process of education and social reintegration of children. From a sociological perspective, this case also reflects the phenomenon of increasing involvement of adolescents in narcotics abuse which is still a serious challenge for law enforcement systems in various regions. Factors such as peer pressure, low legal awareness, weak family supervision, and the influence of a permissive social environment on narcotics are often the main causes of children's involvement in these crimes. In such a context, the ten-month prison sentence imposed by the judge can be understood as a form of compromise between the need to provide a deterrent effect and the need to maintain the future of children through more targeted coaching at LPKA. Another aspect that deserves attention is the implementation of the diversion mechanism as required in the SPPA Law.¹⁷

Diversion is an important instrument that aims to prevent children from the formal judicial process and encourage case resolution through a deliberative approach involving families, communities, law enforcement officials, and other related parties. In the case of narcotics abuse for oneself, the opportunity for the application of diversion is basically quite open because the orientation is more towards recovery than punishment. However, the fact that this case continued until the decision stage shows that the diversion mechanism was not successfully implemented or did not reach an agreement that was acceptable to the parties. This condition indicates that the implementation of the spirit of restorative justice in practice still faces various obstacles, both normative and technical. Furthermore, the principle of the best interests of children which is the main spirit of the

¹⁶ The Wisdom of Literature, *Criminal Procedure Law: An Advocate's Point of View* (Yogyakarta: Deepublish, 2022), p. 92.

¹⁷ Edwin H Sutherland, Donald R Cressey, and David F Luckenbill, *Principles of Criminology*, 11th ed. (Lanham: Rowman & Littlefield, 1992), pp. 3-5.

SPPA Law requires that every penal policy consider the long-term impact on children's growth and development. In this context, imprisonment should not only be judged from the aspect of retribution or legal accountability, but also from its effectiveness in encouraging behavior change and preventing the repetition of criminal acts. Various studies have shown that the success of child development is highly dependent on the quality of rehabilitation programs, education, psychological assistance, and family support during and after the legal process. Therefore, the effectiveness of this ruling cannot be measured solely by the length of the sentence imposed, but also by the extent to which the state is able to provide a coaching system that truly supports the process of recovery and social reintegration of children.

CONCLUSION

Based on the results of the research and discussions that have been conducted, it can be concluded that the legal arrangement regarding children who are facing the law as perpetrators of the crime of narcotics abuse in the Indonesian legal system has basically accommodated the principle of child protection comprehensively. This arrangement is reflected in the harmonization between the SPPA Law and the Narcotics Law, which both provide space for the application of rehabilitative, diversion, and restorative justice approaches. Children of narcotics abusers are not solely seen as perpetrators of criminal acts that must be punished, but also as individuals who need protection, coaching, and recovery due to the influence of narcotics dependence and environmental factors that contribute to abuse. Therefore, the main orientation of the legal system should not only focus on imposing sanctions, but also on efforts to restore the physical, mental, and social condition of children so that they can grow and develop optimally and return to carrying out their social functions in society. Furthermore, the application of criminal sanctions against children in Decision Number 5/Pid.Sus-Anak/2021/PN Plp shows that judicial practice still shows the dominance of the criminal accountability approach even though the applicable legal framework prioritizes the principle of the best interests of children.

The verdict that sentenced him to ten months in prison at the Special Children's Development Institution (LPKA) reflects the judge's efforts to balance the interests of law enforcement and child protection. However, the choice of punishment also shows that the rehabilitative approach has not been fully placed as a top priority, even though children of narcotics abusers are essentially in a vulnerable position and often at the same time become victims of an uncondusive social environment. This condition shows that there is a gap between the normative goals mandated by the Law on the Juvenile Criminal Justice System and their implementation in judicial practice. Furthermore, this study

found that the effectiveness of legal protection for children who abuse narcotics still faces various challenges, including the lack of optimal implementation of diversion, the still strong criminal paradigm in handling narcotics cases, and the limited facilities and rehabilitation programs that are able to answer the needs of children's recovery as a whole. From the perspective of child protection, the success of handling narcotics abuse cases cannot be measured solely by the implementation of criminalization or the fulfillment of elements of criminal acts, but must be assessed by the extent to which the legal process is able to prevent the repetition of acts, improve children's behavior, restore their psychological condition, and ensure the sustainability of children's future as part of the nation's next generation.

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