

An Examination of Indonesian Law on Narcotics Trafficking by Children

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ABSTRACT

In Indonesia's juvenile criminal justice system, drug abusers are subject to criminal proceedings. Despite undergoing a judicial process, children must still receive protection to maintain their rights as children. The purpose of this study is to find out the legal process against children as drug dealers in the Indonesian criminal justice system. The type of research is normative legal research, namely by using primary legal sources, such as laws and regulations on narcotics, Child Protection Act, and the Juvenile Criminal Justice System Act. Apart from that, Secondary legal materials, such as textbooks and legal journals, are referred to in this context. The results of this study indicates that in the perspective of Law Number 35 of 2009 concerning Narcotics, it is not specifically regulated regarding children as perpetrators of criminal acts of narcotics trafficking. Meanwhile, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System prioritizes the element of diversion in the provision of criminal sanctions, with the provision that if the suspect in a drug case is a minor, he/she may receive a lighter criminal sanction than the criminal sanction for adult offenders.

Keywords: *Children, Drugs, Protection Rights*

ABSTRAK

Dalam sistem keadilan jenayah juvana di Indonesia, penyalahgunaan dadah adalah tertakluk kepada prosiding jenayah. Walaupun sedang melalui proses keadilan di mahkamah, kanak-kanak tetap perlu diberikan perlindungan bagi menjamin hak mereka sebagai kanak-kanak. Kajian ini bertujuan untuk mengenal pasti prosiding undang-undang terhadap kanak-kanak yang terlibat sebagai pengedar dadah dalam sistem keadilan jenayah di Indonesia. Metodologi kajian yang digunakan dalam penulisan jurnal ini adalah kajian undang-undang normatif, iaitu dengan menggunakan sumber undang-undang primer seperti undang-undang dan peraturan yang berkaitan dengan Narkotik, Perlindungan Kanak-Kanak, dan Sistem Keadilan Jenayah Kanak-Kanak, serta bahan undang-undang sekunder seperti buku dan jurnal undang-undang. Hasil kajian ini menunjukkan bahawa di dalam Undang-Undang Nombor 35 Tahun 2009 mengenai Narkotik, tiada peruntukan khusus mengenai penglibatan kanak-kanak sebagai pesalah dalam kes pengedaran dadah. Manakala, Undang-Undang Nombor 11 Tahun 2012 tentang Sistem Keadilan Jenayah Kanak-Kanak mengutamakan elemen pengalihan (diversi) dalam pelaksanaan hukuman jenayah, dengan ketetapan bahawa jika suspek dalam kes dadah adalah di bawah umur, mahkamah boleh menjatuhkan hukuman yang lebih ringan berbanding hukuman bagi pesalah dewasa.

Kata Kunci: *Kanak-Kanak, Dadah, Hak Perlindungan*

INTRODUCTION

One of the main challenges faced by many countries is the illegal distribution of narcotics. Narcotics can be defined as substances or drugs derived from both plant and non-plant sources, including synthetic ones. These substances have the potential to jeopardize individual health, as they can have a significant negative impact, and excessive consumption can result in death. (Novita, Titania Endya, and Sari 2023). The phenomenon of drug abuse has been recognized as a very serious problem and never seems to find an endpoint. Not only in Indonesia, but in other countries as well, narcotics crimes have also been labeled as a difficult issue to eradicate, as they are considered one of the transnational crimes. (Taufiqurrahman, Ahmad, and Mappaselleng 2023). Drug trafficking is a very worrying problem because it is not only limited to urban areas but has also spread to rural areas. Narcotics crime is a crime that has a significant impact on its victims, so that narcotics abuse is included in one of the extraordinary crimes (Maysarah 2020).

Almost every day, there is news from print media or newspapers or online media reporting on drug abuse crimes. Victims of narcotics abuse are not only from the lower classes but also from the upper classes, such as officials, top artists, or entrepreneurs who are caught in narcotics. The victims are not only adults but minors are also exposed to the abuse of these illicit goods (Prayogo; and N.P 2023). The utilization of children in drug trafficking is no longer impossible today. In the development of narcotics crime, traffickers try to find various loopholes to maintain the continuity of their illegal business. One of the ways used is to involve children, especially as couriers in the drug trafficking network (Nasution 2023). The abuse of narcotics by children is currently the concern of many people and continues to be discussed both in Indonesia and Malaysia (Saputra and Setyadi 2022). Children who are not yet mature are not considered capable enough to protect themselves, so they need protection and supervision from parents, family, community and government. Protection of children is carried out in order to protect children's rights, it has been regulated in Law Number 35 of 2014 concerning child protection which states that a child is someone whose age has not reached 18 years (Zulkifli et al. 2022). Indonesia has played an active role in efforts to overcome drug abuse crimes, namely with the issuance of Law Number 35 of 2009 concerning narcotics.

There have been legal progress as to provide regulations that aim to improve child protection, including provisions related to handling children involved in criminal offenses. One such regulation is Law No. 11/2012 on the Juvenile Criminal Justice System. This law emphasizes special treatment for children who commit crimes, both in procedural procedures and in the justice system applied. In dealing with children involved in criminal offenses, law enforcement officials must always consider that children have different requirements compared to adults (Titahelu 2020). In this case, it is emphasized that a person who is still categorized as a child needs special guidance and protection-the case he is facing. So in this case, it adheres to the principle of *"the best interests of the child"*, meaning that *the "welfare"* approach can be used as a philosophical basis for handling children in conflict with the law (Laia, Ablisar, and Ikhsan 2021).

RESEARCH METHODOLOGY

Data analysis used to achieve a high validation value of the data collected and the study's final results (Suratman and Dillah 2013). The method applied in the research is normative

juridical. The data used to achieve the desired research results is mainly secondary data, which also include primary and secondary legal materials. Primary legal materials on this topic are the Law Number 35 of 2009 concerning narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 35 of 2014 concerning Child Protection. Furthermore, secondary legal materials are books and journals discussing the research topics studied (Ishaq 2017). The method of collecting legal materials is done using a literature study. Literature studies are carried out by searching and collecting, in this case, library materials. The library materials in question are usually stored and can be seen in libraries such as books, journals, and other supporting literature (Waluyo 2002). Normative legal analysis is carried out descriptively, with the interpretation of legal materials being an important step in this method. This process involves understanding, dissecting, and explaining the essential aspects of the legal material above (Irawati and Hutagalung 2023).

RESULT AND DISCUSSION

In recent decades, the development of narcotics crime has grown rapidly globally. This phenomenon involves not only adults as perpetrators but also children and teenagers. Drug traffickers often look for loopholes to run their illegal business, including by utilizing children as couriers. They see children as a group that is more vulnerable to manipulation and easier to escape the harsh law. The involvement children in drug trafficking has become a common tactic used by international drug networks (Vanaspong 2004).

According to data from the National Narcotics Agency (Indonesian: Badan Narkotika Nasional (BNN)), in 2023, there were more than 3.3 million people involved in drug abuse in Indonesia, with a prevalence rate of 1.73% of the total population. This data shows a significant increase from the previous year (BNN 2024). One of the groups most vulnerable to drug abuse and trafficking is children and adolescents, especially those living in urban areas. Based on data from Kominfo 2021 explains that drug use is among young people aged 15-35 years, with a percentage of 82.4% as users, while 47.1% act as dealers, and 31.4% as couriers (BNN 2022). This shows that drug syndicates are increasingly recruiting children to become couriers or dealers because they are considered easier to manipulate and tend to get lighter sentences.

Children are often targeted for exploitation by drug syndicates with the promise of large rewards or due to social and economic pressures. Lack of understanding of the legal consequences of their actions makes them easily tempted to get involved in drug trafficking. Children's involvement in drug networks brings them into a vortex of serious criminal activity, where they are not only perpetrators but also victims of a complex and exploitative system (Windle, Moyle, and Coomber 2020).

1. Sentencing Policy for Children Involved in Drug Trafficking Crimes in Indonesia.

In Indonesia, the procedures for handling children involved in crimes have been implemented by law enforcers through a joint decision stipulated by the Chief Justice of the Supreme Court of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of

Social Affairs of the Republic of Indonesia, and the State Minister for Women's Empowerment and Child Protection of the Republic of Indonesia with Number: 166/A/KMA/SKB/XII/2009, Number 148/A/A/JA/12/2009, Number B/45/XII/2009, Number: M.HH-08 HM.03..02 Year 2009, Number: 10/PRS-2/KPTS/2009, and Number: 02/Men.PP and PA/XII/2009, dated December 22, 2009, on Handling Children in Conflict with the Law. As a follow-up, the Technical Guidelines for Handling Children in Conflict with the Law was issued by the Deputy Attorney General for General Crimes with Number B-36/E/EJP/02/2010 on February 25, 2010 (Yundra 2022).

The above act can be held criminally responsible, and the act must contain elements of guilt, either in the form of intent (*dolus/opzet*) or negligence (*culpa*). In order to hold a perpetrator criminally responsible, it is required that the perpetrator take responsibility, which is always related to the psychological condition of the perpetrator. This ability to be responsible is one of the important elements of criminal responsibility. On the other hand, in Law No. 35/2014 on Child Protection it is emphasized that when a child commits a criminal offense, law enforcement against them must be carried out in a special manner. Law enforcement officers should not carry out intimidation, sadistic acts, ambushes, or detention. Children need strong moral support from their parents, community, and trusted individuals in their environment. This is particularly important because Law No. 11/2012 on the Juvenile Criminal Justice System (Indonesia : Sistem Peradilan Pidana Anak: SPPA) embraces the principle of restorative justice and prioritizes diversionary mechanisms in case resolution (Mahyani, 2019).

The definition of children is mentioned in several laws, including Law No. 35/2014 on the amendment of Law No. 23/2002 on Child Protection and Law No. 11/2012 on the Juvenile Criminal Justice System. According to Article 1 Paragraph 1 of the Child Protection Law, children are defined as individuals who have not reached the age of 18, including those still in the womb. Meanwhile, Article 1 Paragraph 3 of the Juvenile Criminal Justice System - Law defines a child as an individual who is 12 to 18 years old and suspected of committing a criminal offense (Negara 2024). Furthermore, the criteria for children subject to Diversion are children between 12 and 18 years suspected of being involved in a criminal offense. The Diversion process must still be carried out even though the child is or has been married (*Peraturan Jaksa Agung Nomor PER-006/A/JA/04/2015 tentang Pedoman Pelaksanaan Diversi pada Tingkat Penuntutan n.d.*).

The Criminal Code Indonesia, Article 47, stated that there are types of punishment that cannot be imposed on minors, namely the death penalty, additional punishment in the form of revocation of certain rights, and additional punishment in the form of an announcement of the judge's decision. Suppose the judge decides to punish a minor. In that case, the punishment that can be imposed is imprisonment for a maximum of fifteen years, confinement, fines accompanied by imprisonment instead of fines, and additional punishment in the form of confiscation of certain goods. In the Criminal Code, action against minors has two possibilities, namely returning the child to the parents or the party who maintains it, as well as submitting the child to forced education from the state (Sunarso 2012).

Article 45 the Penal Code of Indonesia stipulates that children who are not yet 16 years old and commit acts classified as offenses may be subject to protective punishment. The judge has the authority to order that the child be returned to his/her parents or guardian or handed over to the Government without being subject to punishment if the act is a crime or offense under Articles 489, 490, 492, 496, 497, 503, 505, 514, 517, 519, 526, 531, 532,

536, and 540 of the Criminal Code. This applies if the offense was committed within two years of the previous conviction, which indicates that the juvenile has become a recidivist, with due observance of further provisions under Article 46 of the Penal Code.

The implementation of punishment against children often triggers debate because it has a broad impact, both related to the child's behavior and the social stigma generated in the community, which in turn can affect the child's life. The Narcotics Law does not specifically regulate criminal sanctions for children. However, in principle, if a child commits a drug crime, including acting as an intermediary in the process of illicit drug trafficking, then the child can still be subject to criminal articles as regulated in the Narcotics Law. However, the special provisions stipulated in the Law on the Juvenile Criminal Justice System must still be considered.

Children who become intermediaries in the sale and purchase of narcotics can be subject to Article 112 and Article 114 of the Narcotics Law in conjunction with the Juvenile Criminal Justice System. These articles regulate the offense of being an intermediary in the sale and purchase of narcotics, while the Narcotics Law does not specifically regulate children as perpetrators of narcotics crimes. Imprisonment that can be imposed on children is regulated in Article 81 paragraph (2) of the Juvenile Criminal Justice System Act as a last resort and is placed in a special location, namely in the Special Development Institute for Children (Indonesian : *Lembaga Pembinaan Khusus Anak / LPKA*), with the maximum duration of imprisonment that can be imposed on children is half the threat of imprisonment that applies to adults. This is because Law No. 11/2012 on the Juvenile Criminal Justice System adopts a double track system, which means that in addition to regulating criminal sanctions, it also regulates actions. Therefore, the sanctions imposed will better reflect justice both for the perpetrators, victims, and society (Pratasik 2020).

2. Diversion for children who have committed crimes as drug couriers

In the context of drug possession charges in accordance with Article 112 of the Narcotics Law, there are two crucial elements that need to be proven. First, there must be an element of power over the object, and second, there must be an intention or will to possess the object. If the suspect or defendant is unaware of how he or she arrived with the narcotics, and furthermore, if he or she does not have the desire to possess the object, then the elements of Article 112 of the Narcotics Law cannot be considered proven.

Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which contains an offense of narcotics possession.

"Every person who without the right or against the law owns, stores, controls, or provides Narcotics Group I not plants, shall be sentenced to a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).

Sanctions applied to children who act as couriers or drug intermediaries are determined based on the type or class of narcotics involved in their actions. For example, for intermediaries in class I narcotics transactions, the perpetrator may be subject to punishment in accordance with Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics which reads:

"Every person who without the right or against the law offers for sale, sells, buys, receives, becomes an intermediary in the sale, purchase, exchange, or delivery of narcotics Group I, shall be punished with life imprisonment or imprisonment for a

minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah) "

In Law Number 35 of 2009 concerning Narcotics, there are three classes of narcotics, including the following (Athallah, Izza, and Rizky 2024):

Group I: In this group, these narcotic drugs can only be used for the development of science, cannot be used as a medium of treatment. This is because these drugs have a very high potential to cause dependence. Common examples include heroin, cannabis, cocaine, opium, and methamphetamine.

Group II: In this class, these narcotic drugs can be used as a medium of treatment for last resort, as well as used in the development of science, because the following drugs have a high potential to cause dependence. Common examples include morphine, petidine, and methadone.

Group III: In this group, these narcotic drugs can be used as a medium of treatment and scientific development, because the following drugs have a mild potential to cause dependence. A commonly known example is codeine.

The threat of imprisonment that can be imposed on children in the Special Development Institution for Children is a maximum of one-half of the applicable prison sentence for adults, following Article 81 paragraph (2) of the Law on Juvenile Criminal Justice System, which is imposed based on the ultimum remedium principle. Meanwhile, the adult who instructed the child may be subject to criminal sanctions in the form of the death penalty, life imprisonment, or imprisonment with a minimum term of 5 years and a maximum term of 20 years, as well as fines ranging from Rp 2 billion to Rp 20 billion (Negara 2024). In the case of children who act as drug couriers, they can be viewed as criminal offenders. However, on the other hand, these children can also be considered victims. Therefore, a restorative justice approach can be applied to achieve diversion in handling these cases.

The application of diversion by law enforcers such as police, prosecutors, and judges in handling cases of law violations involving children is carried out without going through formal justice to reduce the negative impact of the judicial process. Law No. 11/2012 on the Juvenile Criminal Justice System explicitly regulates restorative justice and diversion, which are expected to protect children's best interests in conflict with the law. Investigators must make diversion efforts within a maximum of 7 days after the investigation begins. The implementation of the diversion must be completed by 30 (thirty) days after the diversion process begins. Diversion deliberations are attended by the offender or child, investigator, parent or guardian, the Correctional Center/ Balai Pemasyarakatan (BAPAS), National Narcotics Agency (BNN), and community leaders or representatives from the school. If the diversion process is successful, the investigator must submit the diversion minutes and the agreement to the Head of the District Court for a determination. If the diversion process is unsuccessful, then the investigator is obliged to continue the investigation and submit the case to the Public Prosecutor, attaching a community research report (Article 29 Law No. 11/2012).

Upon receipt of the file, the Head of the Attorney General's Office will appoint a Public Prosecutor responsible for handling juvenile cases. The Public Prosecutor must seek diversion within 7 days after the investigator receives the case file. The diversion process must be completed within 30 days. The diversion deliberation is attended by the police, the Correctional Center/ Balai Pemasyarakatan (BAPAS), the child offender, parents or guardians, and legal counsel. If the diversion is successful, the Public Prosecutor will

submit the minutes and the agreement reached to the President of the District Court for a determination. However, if the diversion process is unsuccessful, the investigator must continue the investigation and submit the case to the Court, attaching a community research report (Peraturan Jaksa Agung Nomor PER-006/A/JA/04/2015 tentang Pedoman Pelaksanaan Diversi pada Tingkat Penuntutan n.d.)

The examination of children's cases in court is conducted by a judge appointed by a decree of the Chief Justice of the Supreme Court or by another official appointed by the Chief Justice of the Supreme Court based on the proposal of the Chairman of the District Court concerned through the Chairman of the High Court (Article 43 Law No. 11/2012). In its implementation, the examination of cases involving children is carried out in a special room, with top priority, and is closed. This step aims to protect children and create a more familial atmosphere, not to provide a psychological burden for children.

1. The child will undergo examination in a courtroom specifically reserved for children (Article 53, paragraph 1).
2. The waiting room for the juvenile court is separated from the waiting room for the adult court (Article 53 paragraph (2)).
3. The trial schedule for juveniles has priority over the trial schedule for adults (Article 53 paragraph (3)).
4. Judges examine children's cases in a hearing that is declared closed to the public, except when reading the decision (Article 54).

CONCLUSION

The policies of punishing children involved in drug offenses, such as being couriers, has been regulated in several laws in Indonesia, especially in the Law on Juvenile Criminal Justice System. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System prioritizes the element of diversion in the provision of criminal sanctions, with the provision that if the suspect in a drug case is a minor, they may receive a lighter criminal sanction than the criminal sanction for adult offenders. Although children can be sentenced to criminal sanctions, these sanctions are more protective than those imposed on adults. Sanctions for children who act as drug couriers must adhere to the principle of restorative justice, which emphasizes the recovery and reintegration of children into society.

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