

Legal Protection for Children Who Commit Narcotics Abuse Crimes

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Abstract

Children are the nation's main investment and hope for its future sustainability. Therefore, the government is very concerned with the development of children, especially in providing them with the most comprehensive education. However, one of Indonesia's shortcomings is its drug laws, which are still laden with various flaws. As a result, children's involvement in drug addiction and trafficking is often the result of imitation or the influence of adult persuasion. This research employs a normative methodology, using materials from library research, various literary journals, books, magazines, and other online media, with reference to Law No. 11/2012 on the Juvenile Justice System. This article aims to discuss the form of legal protection for children involved in drug-related abuse activities and the sanctions they will face if involved in the situation. It is hoped that through this research the public can understand how important it is to protect children's relationships so that they are not involved in drug abuse and these children will not experience losses in their youth.

Keywords: legal protection, children, criminal offenses, abuse, narcotics

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A. Introduction

Children are the nation's main assets and hopes, which ensure the survival of the state and nation in the future. Therefore, the government prioritizes the development of children by providing various services and opportunities². To encourage the overall growth and development of children, both physically, mentally, and spiritually. The government must prioritize child development, as infancy is a crucial phase in the formation of a person's personality, character and temperament that will greatly affect their abilities as an adult. This focus involves all stakeholders, both directly and indirectly, to ensure that children are protected from physical and psychological pressure, thus avoiding becoming victims or perpetrators of criminal acts³.

A person can face consequences for their actions if they are found to have violated the law, as stated in the Criminal Code (KUHP). In order for a criminal offense to be considered valid under the Criminal Code, the criminal offense must meet the following requirements: (1) there is a prohibited act, (2) the human act constitutes a criminal offense; (3) the act must be in accordance with the provisions of the law; (4) there has been a mistake; and (5) the perpetrator of the criminal offense must face consequences. Adolescents who have been involved in criminal activities or are suspected of criminal activities, such as drug abuse, require strong legal protection. This is due to the fact that children, despite their physical and cognitive limitations, are an important component of society⁴.

Laws and regulations on drugs in Indonesia show some shortcomings. In addition, individuals with substance use disorders have great challenges in overcoming their addictions and are increasingly entangled in the dangerous realm of narcotics. Ultimately, drug laws and regulations should provide severe punishment to users. Until now, drug users have been viewed as perpetrators of illegal activities rather than victims. The Narcotics Law regulates consequences that currently fail to

² Molalan Zebua, *Perlindungan hukum Bagi Anak Sebagai Pelaku Tindak Pidana Penyalahgunaan Narkotika Di Dalam Sistem Peradilan Anak (Studi Putusan PN Semarang No 05/PID.Sus/2015/PN SMG)*, Jurnal Diponegoro Law Review, Vol 5, No 2, 2016, Hal 2.

³ Sri Wahyuni, "Perlindungan Hukum Terhadap Anak Sebagai Penyalahgunaan Narkotika", Medan, , 2021, Hal 2

⁴ MS. Shodig, *Perlindungan Hukum Anak Berhadapan Dengan Hukum Dalam Tindak Pidana Narkotika*, Jurnal Penelitian Bidang Hukum, Gresik, November, Vol 11, No.4, 2022, Hal 328



distinguish between drug users, dealers and sellers. The Narcotics Law needs to prioritize health and social considerations before criminal law enforcement. Substance abuse is classified as a criminal offense by Law No. 35/2009 on Narcotics⁵.

According to the law, those who use or depend on drugs are classified as criminal offenders as specified in Article 127 paragraph (1) of Law Number 35 Year 2009 on Narcotics, and in general, everyone is responsible for their own actions⁶. Many people see drug users and those suffering from substance abuse as victims of drug syndicates and distribution networks. In addition, there has been increasing concern in recent years about the possibility of young people developing drug addictions or becoming involved in substance abuse.

Children inadvertently become involved in substance abuse due to adult involvement. Adolescent involvement in drug addiction and trafficking often stems from adult emulation or coercive influence. The increasing prevalence of youth participation in drug-related crimes requires swift action from all relevant stakeholders, particularly law enforcement agencies. Minors involved in the justice process require special consideration to protect their future⁷.

The main concern for children facing legal issues related to drug use is their best interests, as mandated by Law No. 11/2012 on the juvenile justice system⁸. The author aims to examine the form of regulation towards the protection of children involved in drug abuse cases, along with the form of legal sanctions faced by children who violate drug abuse laws⁹.

B. Methods

The author used a research method with a normative approach to compile this work. This strategy is closely related to the writing that follows, which requires the

⁵ Anang Iskandar, *Penegakan Hukum Narkotika*, (Jakarta: Elexmedia Komputindo, 2015), Hal 9.

⁶ Fahmi, *Perlindungan Hukum Terhadap Anak Dari Penyalahgunaan Narkotika Di Kota Pekanbaru Berdasarkan Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika*, *Jurnal Gagasan Hukum*, Vol 3, No 1 ,2021, Hal 35

⁷ Fahmi, *Perlindungan Hukum Terhadap Anak Dari Penyalahgunaan Narkotika Di Kota Pekanbaru Berdasarkan Undang-undang Nomor 35 Tahun 2009 Tentang Narkotika*, *Jurnal Gagasan Hukum*, Vol 3, No 1 ,2021, Hal 35.

⁸ Benihermoni Harefa, *Perlindungan Hukum Terhadap Anak Sebagai Penyalahgunaan Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia*, *Jurnal Perspektif*, Vol 22, No 3, 2017, Hal 223.

⁹. Sri Wahyuni, *“Perlindungan Hukum Terhadap Anak Sebagai Penyalahgunaan Narkotika”*, Medan, , 2021, Hal 4



use of secondary sources and library sources. These legal documents can be accessed through several periodicals, books, magazines, and online sources. Desk research entails the examination, citation, and analysis of laws and regulations pertaining to the data collection methodology and legal sources used in this research.

C. Discussion

Drug offenses in society are showing a significant increase in both frequency and severity, particularly impacting younger demographic groups. The incidence of substance abuse among children and adolescents is a growing concern because of its far-reaching implications for the future generations of this country. In this situation, children are not only victims; they are also involved as perpetrators of drug offenses. Statistics show that about 1.6 million teenagers participate in drug trafficking or distribution operations. This poses a serious problem, as young people who should be protected from harmful influences are, in fact, entangled in criminal networks that jeopardize their future.

1. Forms of Legal Protection for Children who Abuse Narcotics.

Indonesia has several laws that explicitly regulate child safety, as the country adheres to Pancasila and upholds the values of compassion and nationhood. Article 34 of the 1945 Constitution mandates that “the state is obliged to care for children who are incapacitated and neglected,” while Article 28B paragraph (2) of the Human Rights Act affirms that “every child has the right to survival, growth, development, and protection from violence and discrimination.” Article 1 point 2 of Law No. 11/2012 on the Juvenile Criminal Justice System (SPPA Law) defines Children in Conflict with the Law as children involved in legal disputes, victims of criminal acts, and witnesses to criminal acts.

The purpose of child protection according to Article 1 paragraph (2) of Law Number 35 Year 2014 on Child Protection is to ensure that every child is protected from violence and discrimination while living, growing, and developing naturally in an environment that respects and upholds human values. Child protection is an effort to ensure that every child has the opportunity to grow and develop in a healthy and happy manner, both physically, psychologically, and socially. Every aspect of national and state life must include child protection efforts because it is one of the principles of social



justice. The following are some of the things that are regulated in the Criminal Justice System Law¹⁰ :

1. Article 1 paragraph 3 defines children in conflict with the law, hereinafter referred to as children, as every person aged 12 (twelve) to 18 (eighteen) years who is suspected of committing a criminal offense.
2. Article 1 paragraph 4 stipulates that a child, defined as a person under the age of eighteen, who experiences physical, mental, and/or economic pressure as a result of a criminal act, is recognized as a victim.
3. Article 1 paragraph 5 defines a child witness as a person under the age of 18 who is able to provide information related to the investigation, prosecution, and trial in a criminal case that he/she has heard, seen, or experienced.

Children involved in drug abuse as regulated in the Narcotics Law are regulated in Article 127 Paragraph (1)¹¹ that regulates: Every abuser:

1. Any person who possesses class I narcotics shall be punished with a maximum imprisonment of four years.
2. Any person who possesses narcotics of class II shall be punished with a maximum imprisonment of two years.
3. Any person who possesses narcotics group III shall be punished with a maximum imprisonment of one year¹².

The National Narcotics Agency (BNN) organized the commemoration of the 2024 International Anti-Narcotics Day (HANI) which is celebrated every June 26. All Indonesian citizens participated in this event, either in person or through electronic media, on Wednesday, June 26, at SKA Convention & Exhibition, Pekanbaru, Riau. The HANI 2024 commemoration was organized

¹⁰ Gultom, M, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Anak Di Indonesia*, Bandung, Refika Aditama, 2008, Hal 65.

¹¹ Undang-Undang No 35 Tahun 2009 Pasal 127 ayat 1 tentang Narkotika.

¹² Rachmadhani Mahrufah Riesa Putri, *Tindak Pidana Penyalahgunaan Narkotika Pada Anak dalam Hukum Positif di Indonesia*, Jurnal Recidive, Vol 8, No 3, 2019, Hal 204.



to tackle the rampant abuse and illicit drug trafficking. The aim is to evaluate the various national and international strategies and measures used to address this problem.

Global figures show that the number of drug users has risen to 296 million, which is an increase of 12 million from the previous year. This makes up 5.8% of the global population aged 15 to 64. A national study conducted in 2023 revealed a drug addiction prevalence of 1.73%, which is equivalent to 3.3 million Indonesians aged 15 to 64. The study showed a significant increase in substance dependence among the 15-24 age group¹³.

As of October 2024, the cumulative number of drug cases in Indonesia reached 38,786. Within this demographic group, there has been a marked increase in the involvement of students and adolescents as perpetrators of drug-related crimes. The National Narcotics Agency (BNN) reports that approximately 13.73% of drug offenders are children, highlighting their increased vulnerability to substance abuse, which significantly jeopardizes their future. The increasing incidence of these cases underscores the difficulties faced by authorities in combating drug trafficking and emphasizes the need for increased awareness among communities and families to protect children from the adverse effects of drugs.

The importance of prevention and rehabilitation programs is more evident due to the increasing incidence of juveniles involved in drug-related criminal acts. Communities, governments and educational institutions must collaborate to provide a safe and supportive environment for children. Furthermore, it is important to increase understanding of the dangers of drugs within educational institutions and households, enabling children to identify and avoid possible threats. These strategic measures aim to reduce the incidence of drug-related cases among children and adolescents, facilitating their development into healthy and productive adults¹⁴.

¹³ Humas BNN HANI 2024 : *Masyarakat Bergerak, Bersama Melawan Narkoba Mewujudkan Indonesia Bersinar*, diakses dari link <https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/> pada 6 Desember 2024 pukul 19.40 WIB.

¹⁴ Mulyadi, M, *Criminal Policy: Pendekatan Integral Penal Policy Dan Non Penal Policy Dalam Penanggulangan Kejahatan Kekerasan*. Medan: Pustaka Bangsa Perss, 2008.



In the juvenile justice system law in article 4 of law number 11 of 2012 it is stated that, children who are serving a criminal period are entitled to:

1. Receive a reduction in the criminal period.
2. Obtain assimilation.
3. Obtain leave to visit family.
4. Obtaining parole.
5. Obtaining leave before release.
6. Obtaining conditional leave.
7. Obtaining other rights in accordance with the provisions of laws and regulations¹⁵.

2. Forms of Legal Sanctions Against Children Who Commit Criminal Acts of Narcotics Abuse.

Children involved in drug offenses will undoubtedly face consequences to ensure accountability for their actions. Children classified as minors under the Criminal Code require protection during the judicial process and in relation to the punishment imposed, which as previously mentioned, is lighter than the punishment for adults. Based on Law No. 11/2012, Chapter V, Article 71, the penalties that can be imposed on children are as follows:

1. Basic punishment for juvenile shall consist of:
 - a. warning punishment
 - b. punishment with conditions
 - a) coaching outside the institution
 - b) community service
 - c) supervision.
 - c. job training
 - d. coaching in an institution
 - e. imprisonment.
2. Additional punishment consists of:
 - a. forfeiture of profits obtained from criminal offense.
 - b. fulfillment of customary obligations.

¹⁵. Undang-undang No. 11 Tahun 2012 Pasal 4 tentang Sistem Peradilan Anak.



3. If the laws and regulations regulate imprisonment and punishment together, then monetary punishment shall be replaced with vocational development.
4. Criminal punishment imposed to children must not degrade their dignity.
5. Further provisions regarding the procedures for the implementation of punishment as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be regulated by Government Regulation.

The legal consequences for minors involved in drug offenses in Indonesia are regulated in many laws and regulations, including Law No. 35/2009 on Narcotics and Law No. 11/2012 on the Juvenile Justice System. Under these regulations, minors involved in drug abuse may face less severe legal consequences than adults. The maximum sentence for minors is fifty percent of the sentence imposed on adults. If a minor is found guilty of a drug offense that requires a 12-year prison sentence for an adult, the maximum sentence for the minor is 6 years in prison. In addition, in some cases, juveniles involved in drug abuse must attend medical and social rehabilitation as part of their recovery process¹⁶.

Legal procedures for minors involved in drug offenses emphasize the idea of diversion, which diverts the resolution of cases from the criminal justice system to other out-of-court alternatives. Diversion aims to remove negative stigma and provide rehabilitation to juveniles instead of imprisonment¹⁷. Nonetheless, diversion is only allowed if the offense is non-recurring and carries a potential prison sentence of less than seven years¹⁸.

Courts are authorized to evaluate the appropriateness of diversion for a case by examining variables such as the age of the child, the nature of the offense, and the impact on the child's psychological and social development. By law, certain minors (often under 18) are exempt from the same criminal sanctions as

¹⁶ Luh Putu Gita Dharmaningtyas, *Perlindungan Hukum Diversi dan Rehabilitasi Bagi Anak Korban Penyalahgunaan Narkotika*, Jurnal Jatiswara, Vol 35, No 1, 2020, Hal 57.

¹⁷ Mochammad Anwar, *Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana Narkotika Dalam Sistem Peradilan Anak*, Jurnal Syiar Hukum, Vol 1, No 1, 2019, Hal 32.

¹⁸ Marlina, *Peradilan Pidana Anak Di Indonesia : Pengembangan Konsep Diversi Dan Restorative Justice*, (Bandung, Refika Aditama, 2012), Hal 12.



adults. Therefore, Indonesia's legal system aims to protect and counsel minors involved in drug offenses, while at the same time providing fair punishment.

D. Conclusion

Based on the Law on Juvenile Criminal Justice System (UU SPPA) No. 11/2012, Article 1 point 2, children in conflict with the law include those who commit criminal offenses, become victims of criminal offenses, or become witnesses to criminal offenses. In accordance with applicable laws and regulations, children who are serving a sentence are entitled to assimilation, reduction of detention period, family visitation leave, parole, pre-release leave, and other privileges, as stated in Article 4 of Law No. 11/2012.

Children involved in drug abuse will inevitably face the consequences of their behavior. However, as these children are still minors under the Criminal Code, they require protection during the trial and sentencing process. The penalties for minors are lighter than those for adults. Law No. 11/2012, Chapter V, Article 71 on the Juvenile Justice System stipulates that children may be subject to disciplinary measures which include warnings, detention in correctional institutions, vocational training, and counseling in institutions and detention centers.



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