

## THE COMPARATIVE STUDY OF CHILD DRUG ABUSE CASES

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### **Abstract**

*The inconsistency of law enforcement in implementing the substance of the narcotics law has led to a polemic in the community, especially against cases of drug abuse committed by minors, it becomes unclear, the approach method used in this study uses a normative juridical approach. The research found that children as perpetrators of narcotics crimes, if they are not proven to be dealers, which can be dangerous as a basis for imprisonment for children, it is necessary to be rehabilitated as regulated in the narcotics law. Considering that children who are perpetrators of narcotics crimes are only users and are affected by bad environmental conditions both in the family and the environment. Narcotics in the Islamic perspective is analogous to the prohibition of drinking alcohol. This prohibition is carried out because narcotics cause hatred, hostility, disaster and dangerous disasters, both for users, families, communities and the nation and state. Narcotics are prohibited in Islamic law and producers, dealers and users will be subject to Had or Ta'zir sanctions.*

**Keywords** : Child; Comparative Study; Narcotics Abuse; Law Enforcement; Protection.

### **A. INTRODUCTION**

Talks about children and legal protection of children will never stop throughout the history of human life, because children are the next generation of the nation and the successor of development, namely the generation that is prepared as the subject of implementing sustainable development and controlling the future of a country, Indonesia is no exception. Protection of Indonesian children means protecting the potential of human data sources and building Indonesian people as a whole, towards a just and prosperous society, materially and spiritually based on *Pancasila* and the Constitution.<sup>1</sup>

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1 Nashriana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2012, page.1

One of the ways in which the Unitary State of the Republic of Indonesia guarantees the welfare of its citizens is to provide protection for children's rights, which is one of human rights. The Indonesian government in its efforts to guarantee and realize the protection and welfare of children is through the establishment of Act No. 23 of 2002 concerning Child Protection. And in the context of adjustments to several provisions, several changes were made to certain articles, then Act No. 35 of 2014 concerning amendments to Act No. 23 of 2002 concerning Child Protection was promulgated.<sup>2</sup>

Based on research conducted by Anisa Nur Fitri in Indonesia itself, there are still many children who are far from prosperous. There are still many legal cases involving children, even though there are laws that clearly regulate this. Children in conflict with the law, every year there are more than 4,000 cases of law violations committed by children under the age of 16 years. In 1994 there were 9,442 cases, decreased in 1995 (4,724 cases). Of all the children who were arrested only about half were brought to court and 83% of them were later imprisoned.<sup>3</sup>

Protection of children in a nation, becomes a benchmark for the civilization of that nation, therefore it must be endeavored in accordance with the capabilities of the homeland and nation. Child protection activities are a legal action that has legal consequences.<sup>4</sup> Therefore, there is a need for legal guarantees for child protection activities. Legal certainty needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection activities.<sup>5</sup> Therefore, child protection activities have at least two aspects. The first aspect relates to the policies of the laws and regulations governing the protection of children's rights. The second aspect concerns the implementation of these policies and regulations.

In the current era, the circulation of Narcotics shows an increasing and widespread trend, without exception to children, adolescents and the younger generation in general. Children are the next generation of the nation who must be given education and character so that children can behave in accordance with the order of values that exist in the midst of community life. In the current circulation of narcotics, children are often victims of exploitation by adults to deceive the authorities, and use minors as bait. The existence of factors such as the promise of large rewards to improve the family's unfavorable economic situation, on the orders of his parents who were involved in drug trafficking, and various other factors.<sup>6</sup>

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2 Rini Fitriani, Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak, *Jurnal Hukum Samudra Keadilan*, Volume 11, Number 2, July-December 2016, page.250-258

3 Anissa Nur Fitri, Agus Wahyudi Riana, & Muhammad Fedryansyah, Perlindungan Hak-Hak Anak Dalam Upaya Peningkatan Kesejahteraan Anak, *PROSIDING KS: RISET & PKM*, Vol 2 No 1 2015, page.46-50

4 Abdul G. Nusantara, *Hukum dan Hak-Hak Anak*, Rajawali, Jakarta, 2004, page.23

5 Arief Gosita, *Masalah Korban Kejahatan*, Akademika Preesindo, Jakarta, 1993, page.222

6 Aziz Syamsuddin, *Tindak Pidana Khusus*, Sinar Grafika, Jakarta, 2004, page. 90.

Children who are not yet mature tend to be easily influenced to take actions related to narcotics, because their souls are not yet stable due to physical and psychological development. Children are legal subjects of a special nature, whose rights are protected and regulated in laws and regulations special too. In relation to cases of children committing narcotics crimes, the Law on Child Protection and the Law on the Juvenile Criminal Justice System regulates the legal protection of children in conflict with the law. So in this case the sanctions for adults and children are different.<sup>7</sup>

The Indonesian government also has sought to provide protection to children perpetrators of drug abuse as mandated in Article 67 of the Law on Child Protection which states: "Special protection for Children who are victims of drug abuse, alcohol, psychotropic and other addictive substances and Children involved in the production and distribution is done through the efforts of surveillance, prevention, treatment, and rehabilitation."<sup>8</sup>

With the article that provides protection for children of drug abusers, treatment should be done through the efforts of treatment, and rehabilitation (medical and social) by the government and the role of the community. In Article 54 Narcotics Act was elaborated that Addicts Narcotics and victims of abuse of narcotics are required to undergo medical rehabilitation and social rehabilitation, the article as a form of protection of children who experienced abuse of drugs, it is very relevant when the Court decision establishes doing rehabilitation in children perpetrators criminal drug abuse.

Writing objective of this study is to identify and analyze the ratio of law enforcement drug abuse committed by children based on a positive outlook on Indonesia's Law and Islamic Law. It is expected that this study could provide new knowledge related to law enforcement in combating narcotics originating from a comparative perspective of positive criminal law and Islamic law, so it is useful for practitioners and academics.

## **B. RESEARCH METHODS**

The method used in this study is a normative legal research methods. Normative legal research methods is a method of research seeking the facts through the variables derived from the legislation under review the implementation and effectiveness and shortcomings that do repairs and improvements to the legislation.<sup>9</sup> Legal research is basically a scientific activity that is based on methods, systematic and specific rationale that aims to study one or more of the symptoms of certain laws by way of analyzing it, except that it also held the examination in depth the legal facts are then generated in symptoms concerned. Judging from its nature, this study is a descriptive analysis, which describe all the symptoms and the facts and analyzing the existing problems related to the criminalization of children as

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7 Sunarso Siswantoro, *Penegakan Hukum Psikitropika*, Rajawali Pers, Jakarta, 2004, page.142.

8 Yuliana Primawardani, Pendekatan Humanis Dalam Penanganan Anak Pelaku Tindak Pidana Penyalahgunaan Narkoba Studi Kasus Di Provinsi Sulawesi Selatan, *De Jure*, Vol. 17 No. 4 , December 2017, page. 411-427

9 Johny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya, 2008, page.294

perpetrators of abuse of drugs based on the provisions of Act No. 35 of 2009 concerning Narcotics and Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.

## C. RESEARCH AND DISCUSSION

### 1. Narcotics abuse by children in the Criminal Law Positive

Drugs are one of the harmful substances and if consumed can harm the human body, and even cause death. However, today is rife that have touched the students that were still considered a child. Minors tend to be easily influenced to do something related to narcotics, because his soul is not stable due to the physical and psychological development.<sup>10</sup>

Imposition of criminal abuse of narcotics by a judge is not a wrong thing but should the judge should reconsider whether the sentence imposed has provided protection against the interests of the child earlier. This question arises because the child after the convict finished serving his sentence, he can be a good person and would not commit a crime again.<sup>11</sup>

Law enforcement against children in the trial process in general with narcotics cases, the difference lies in the testimony of witnesses in narcotics cases can be heard and attended by child defendants and then on punishment based on Act No. 35 of 2009 concerning narcotics and the provision of rehabilitation for child defendants in narcotics cases.

With regard to handling children who are victims of narcotics abuse, diversion must be sought by taking into account Article 127 of Act No. 35 of 2009 concerning Narcotics. Article 127 paragraph (1) letter a of Act No. 35 of 2009 concerning Narcotics states that every abuser of class I narcotics for oneself is sentenced to a maximum of 4 years in prison and is required to carry out medical or social rehabilitation or can be returned to his parents for treatment nurtured and educated. At the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought as referred to in Article 7 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. The diversion is only carried out in the case of a criminal offense which is punishable by imprisonment for under 7 (seven) years; and is not a repetition of a crime, according to Dwidja Priyatno diversion can be carried out at every level of decision-making, both at the police, prosecutor and court level.<sup>12</sup>

Meanwhile, according to Maidin Gultom, Diversion aims to provide the best for children, without sacrificing the interests of society and upholding justice. In addition, to re-educate and improve the attitude and behavior of the child so that he can leave the bad behavior he has been doing. Narcotics abuse committed by children can be resolved through a diversion process at the investigation stage. In legal practice in the field, not all narcotics cases committed by children can be applied to diversion efforts at the investigation

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10 Nyoman Krisna Yudha, *Anak Agung Sri Utari, Perlindungan Hukum Terhadap Anak Sebagai Pelaku Tindak Pidana Narkotika*, Vol 9 No 2 2020, page.1-15

11 Marlina, *Peradilan Pidana Anak di Indonesia: Pengembangan Konsep Diversi dan Restorative Justice*, Refika Aditama, Bandung, 2009, page.16

12 Dwidja Priyatno, *Wajah Hukum Pidana, Asas dan Perkembangan*, Gramata Publishing, Bekasi, 2012, page. 303

stage, for articles on narcotics abuse that can be attempted diversion. There are still cases of child perpetrators of narcotics abuse that are resolved through ordinary courts such as the provisions of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Law enforcement in cases of children as perpetrators of criminal acts of narcotics abuse in the process always involves the Police, Prosecutors, Corrections, and Courts just like other criminal cases, but the handling of criminal acts of narcotics abuse requires more special attention than other criminal cases.

Law enforcement is an attempt to bring the ideas of justice, legal certainty and social benefits into reality. So law enforcement is essentially a process of embodiment of ideas. Law enforcement is the process of making efforts to enforce or actually function legal norms as a guide for actors in traffic or legal relationships in social and state life. Law enforcement is an effort to realize the ideas and legal concepts that the people expect to become a reality.<sup>13</sup> Based on the theory of law enforcement Soerjono Soekanto,<sup>14</sup> states that there are several factors that affect law enforcement among other factors own law, the law enforcement apparatus, means or facility factors, community factors and cultural factors of society.

Good law enforcement is a consequence of the legal system adopted by the Indonesian state as a country based on law (*rechtstaats*). No exception with law enforcement in the field of narcotics, where law enforcement applied to perpetrators and victims must also pay attention to legal protection, especially for children as perpetrators of narcotics abusers. Law enforcement against victims of narcotics abuse is carried out through a mechanism regulated by Act No. 35 of 2009 concerning Narcotics and the Criminal Procedure Code as provisions of the Criminal Procedure Code. Furthermore, in the juvenile criminal justice process, the court in addition to the Criminal Procedure Code also refers to the provisions of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.

Narcotics Act No. 35 of 2009 in its implementation related to the law enforcement process against narcotics abusers, not only related to the provision of criminal sanctions, but also regulates how to provide protection for victims of narcotics abuse which in this case is the provision of rehabilitation to victims. The guarantee of legal protection for narcotics abusers is regulated explicitly in Article 54 which reads: "Narcotics addicts and victims of Narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation".

The protection guarantee is reaffirmed in Article 127 paragraph (3) which reads: "In the event that the abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation".

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13 Hasaziduhu Moho, Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan, *Jurnal Warta*, Edition 59 January 2019, page.6

14 Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Raja Grafindo persada, Jakarta, 2008, page.11-60

Based on the two editorials of the article above, it is understood that everyone who can prove that he is a victim of narcotics abuse must undergo medical and social rehabilitation. In its implementation, these articles raise several problems, including the obligation for the victim to prove that he or she is a victim. So in reality, the judge's decision that resolves the case is sometimes not in accordance with the mandate of the law. Victims who should receive medical rehabilitation or social rehabilitation are actually subject to criminal sanctions as well as narcotics criminals.

The implementation of law enforcement against child victims of narcotics abusers should run effectively, where victims are required to obtain legal protection in the form of rehabilitation. Unlike the previous narcotics legislation, namely Act No. 22 of 1997 on narcotics and Act No. 5 of 1997 on Psychotropics. The lack of firmness in law enforcement in narcotics crimes as regulated in Act No. 35 of 2009 concerning narcotics, which concerns the implementation of rehabilitation. In the narcotics law, it is not stated that there is a rehabilitation center for victims of narcotics users. This makes it difficult for victims to escape from drug addiction. There are no regulations regarding the rehabilitation fees charged to the government or victims. If one observes the substance of the articles of Act No. 35 of 2009 concerning narcotics, it will cause a polemic among law enforcement, especially judges in deciding a case that is brought to him.

Law enforcement against children in the trial process in general with narcotics cases, the difference lies in the testimony of witnesses in narcotics cases can be heard and attended by child defendants and then on punishment based on Act No. 35 of 2009 concerning narcotics and the provision of rehabilitation for child defendants in narcotics cases. Criminal penalties for children in narcotics cases are sentenced to imprisonment for child perpetrators of narcotics crimes, the threat of punishment is high because the narcotics case is not a light case so that half of the adult threat is imposed, for example a maximum of 10 (ten years) at least 5 (five) years. The half of them, if the indictment controls possession of narcotics, the penalty is a maximum of 4 (four years) and a minimum of 2 (two) years. Of all the decisions given by judges for narcotics cases children are in the form of imprisonment, so the decisions given are lighter than the demands in the indictments submitted by the public prosecutor.

Related to law enforcement against children as victims of narcotics abuse, here law enforcers can be wise and wise in implementing the substance of the Narcotics Law. Although in the Narcotics Law there is confusion from the articles that regulate narcotics crimes, but regarding the sentencing of children as perpetrators of narcotics abuse, it is necessary to pay close attention and consider the future and development needs of children.

Law enforcers must prioritize restorative justice solutions or maximize the provision of rehabilitation sanctions as guaranteed by Act No. 35 of 2009 concerning Narcotics for narcotics abusers. Especially for

children as narcotics abusers, this law must be maximally applied without having to question the provisions of Article 127 of Act No. 35 of 2009 concerning Narcotics.

Law enforcement should not be based solely on normative thinking, but also through other considerations such as internal and external factors from a judge in deciding every case, especially if the perpetrator is a child. Because children are state assets that must be taught and mentally matured, not objects of momentary gratification from braggarts who only think about the sense of justice from one side. Law is a human work in the form of norms and contains behavioral instructions. Law is also a new reflection of human will about how society should be nurtured and directed. For this reason, a legal rule made by the Legislature should pay attention to the needs and interests of community members and provide protection for them.

## **2. Narcotic Abuse by Children in Islamic Law**

Child is a term for people who are still small, including those who are still in the cradle of a mother. Children are the next generation born from the love of a husband and wife, who can preserve the reward for their mother and father when they die. Children are the gift of Allah SWT and the most beautiful gift for their parents to be grateful for. In addition, children are also a mandate from Allah SWT who must be treated and managed properly. Because in her inherent dignity, dignity and rights as a servant of God that must be maintained and upheld. Meanwhile, from the aspect of nationality and statehood, children are the next generation of the nation and state in the future.

Basically all children born into the world are in a state of nature "*Kullu mauludin yuuladu 'alal fitrah*". The duties and obligations of parents are to educate, guide and protect them from various threats and violence. Remembering that the most basic right for human children is the right to life. This most basic human right is stated in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. Human rights are a matter of principle that must be fulfilled in order to maintain human existence and dignity.

In Islam, various concepts of punishment have been established, the concept not only stipulates the prohibition of consuming drugs of various types, but further than that Islam also commands to stay away from oneself, family and society from drugs, orders to stay away from drugs contain a broad dimension.

In addition to the order to eradicate, the order to stay away from drugs also means making efforts to save victims of abuse from dependence on drugs, one of which is healing and rescuing victims of drug abuse through rehabilitation. The rescue of convicted child victims of narcotics abuse through rehabilitation is in accordance with the objectives of Islamic Shari'a, namely to guarantee and maintain life, religious property, and generations.

Thus, according to the author in the Islamic perspective, the ideal punishment for convicts of child victims of abuse is not imprisonment but is rehabilitation, the rehabilitation time must be determined by the judge based on the level of addiction of the convicted child. Thus, the verdict handed down is no longer based on the existing evidence, but the judge must impose a verdict on undergoing rehabilitation based on the addiction experienced by the child convict.

If the convict child victim of narcotics abuse is sentenced to prison for 1 year or 6 months or within a certain period, then there is no guarantee of recovery for the child when he gets out of prison, he may still use drugs. Various facts prove that a child who has finished serving a prison sentence in a correctional institution does not have a guarantee of recovery from narcotics, even though he has been proven to be a victim of narcotics abuse, thus a child who is initially sick is sentenced to prison for a certain time and comes out sick, meaning no recover from drug addiction. Even though in prison the convicted child undergoes rehabilitation, there is still no guarantee of recovery, because the child undergoes rehabilitation only within the limit of the detention period, not measured by whether or not he is cured.

This condition is certainly not in line with the mandate of the law and legislation. So, on the basis of this consideration, the author stipulates that the convicted child victim of narcotics abuse must be given a rehabilitation sentence for a certain period until he recovers, so that the measure that he has undergone punishment in the form of *ta'dib* (rehabilitation) is determined based on his recovery. This is of course very much in line with the *Maqashid Asy-Syari'ah* theory.

In the perspective of *Maqashid Asy-Syari'ah*, rehabilitation is an effort to guarantee the safety of the soul (*hifz an-nafs*), guarantee the safety of the mind (*hifz aql*), guarantee the safety of the next generation (*hifz Nasal*). The dimension of *hifz an-nafs* in drug abuse rehabilitation is an effort to heal and save victims of drug abuse from surgery that can result in death. The *hifz* side of reason in drug abuse rehabilitation is an effort to save his mind from various effects that can cause damage to his mind. While the *Hifzu Nasal* side is an effort to save the younger generation for their future, their families and even their nation and country. Thus, from the perspective of *Maqashid Asy-Syari'ah*, rehabilitation is a necessity that aims to achieve safety and victory, both for oneself and for the safety and victory of the nation and state.

Maqasid ash-syariah is the value and target of syara' which is implied in all or the largest part of Islamic laws. These values and goals are seen as the goals and secrets of sharia, which are determined by al-syari' in every legal provision.<sup>15</sup> *Maqasid Asy-Syariah* is defined as the intent or purpose of the law in Islam. Ulama make *Maqasid Asy-Syariah* as an important part in the study of *usul al-fiqh*. Over time, this study

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15 Wahbah al-Zuhaili, *alwajis al-Ushul al-fiqh al-Islami*, Dar al-Fikr, Beirut, page. 84



experienced developments which then made *Maqasid Asy-Syariah* the main object in the field of Islamic legal philosophy.<sup>16</sup>

Imam al-Syatibi divides *Maqasid Asy-Syariah* into three categories, namely dharuriyyah, hajiyat and tahsiniyyah, and contains five principles of syara' law, namely: (a) maintaining religion/*hifzh al-din*; (b) maintaining the soul/*hifzh al-nafs*; (c) maintain offspring/*hifzh al-nasl*; (d) maintain the mind/*hifzh al-aql*; and maintain property/*hifzh al-maal*.<sup>17</sup>

*Maslahah can be categorized into three, First, the problem of mu'tbarah is the benefit that is recognized and explained by the texts. Both maslahah mulgah, benefits that are not recognized and contradicted by the texts. The three mursalah maslahahs are maslahahs that are allowed by the texts, namely maslahahs that are not prescribed in their implementation and there are no arguments that explicitly justify and blame them. This maslahah is called absolute maslahah because there is no argument that states right or wrong.*

*Among the fuqaha there is an error about the validity of the benefit of mursalah. Those who reject the benefit of mursalah include the dzahiriyah, Shia, some Hanafi and Shafi'iyah groups. The argument of this group first opens up opportunities for the rulers to form new laws with lust and tarnish religion. Both Shari'a maintain benefit through texts and qiyas. These three benefits are between two benefits (mu'tbarah and mulgah) which are the result of mere guesswork. Those who accept them include Imam Malik, Imam Ahmad Bin Hanbal and Imam Shafi'i in qaul qadim.*<sup>18</sup> The arguments of this group are first from the Qur'anic texts in sound al-Maidah verses 4 and 6. The second Shari'a maintains problems through texts and qiyas. The three benefits of mursalah are between two benefits which are a form of suspicion or dhan as the science of *fiqh* comes from a strong suspicion. The three problems of mursalah have a requirement that the benefits are accessible to reason, are general in nature, do not conflict with texts and ijma'.

Given how important it is to know the *maqashid al-syari'ah* that can explain the true wisdom, purpose or reason of a law, it is natural for scholars to think that *maqashid al-syari'ah* is the essence of *fiqh*. Therefore, knowledge of *maqashid* becomes a necessity compared to knowing *ushul fiqh*. In principle, knowing *Maqashid Asy-Syari'ah* means understanding religion and knowing the rules of shari'ah.

The *Maqashid Asy-Syari'ah* approach in relation to rehabilitation for victims of drug abuse is an urgent thing to do, because from the perspective of *Maqashid Asy-Syari'ah* it will be possible to find the benefit side in the rehabilitation of victims of drug abuse. In theory, the most basic and effective methods of preventing and eradicating drug abuse are promotive and preventive. The most practical and real efforts are repressive. Humane efforts are curative and rehabilitative.

16 Hasbi Umar, *Nalar Fiqh Kontemporer*, Gaung Persada Press, Jakarta, 2007, page.120

17 Al-Syathibi, *al-Muawafaqat fi Ushul al-Syari'ah*, Juz. II, Dar al-Kutub al-Ilmiyah, Beirut, page.7.

18 Imam Syaukani, *Irsyadul al-fukhul al-Haq Min Ushul*, dar al-Fikr, Beirut, page.67-70.

Rehabilitation is an effort to restore to make Narcotics addicts live physically and mentally healthy so that they can adjust and improve their skills, knowledge, and intelligence in the environment.<sup>19</sup> This is in accordance with the objectives of the Shari'ah as explained by al-Syatibi, namely to guarantee and maintain the safety of the soul (*hifz annafs*). Taking care of the soul is not only limited to keeping it alive, but also to ensuring that the soul must be healthy both physically and spiritually (mentally). Thus, the handling of victims of drug abusers with rehabilitation is carried out to ensure their physical and spiritual mental health and this is the first goal of the Shari'a. Because people who are not physically and mentally healthy will not be able to carry out religious orders properly and cannot maintain good relations with all elements of society.

Narcotics naturally, both synthetic and semi-synthetic, are not specifically mentioned in the Qur'an and the hadith of the prophet. Starting from the intoxicating effect of *khamr* Some scholars make an analogy of psychoactive substances (narcotics) with *khamr* because of the same ilat, namely intoxication. Narcotics are something intoxicating with various types, namely heroin or putaw, marijuana or marijuana, cocaine etc. Something intoxicating in the Qur'an is called *khamr*. It means something that can eliminate the mind. Although the shape is different, the way alcohol and narcotics work is the same. Both are intoxicating, destroying the function of the human mind.<sup>20</sup>

In Islam, law enforcement against narcotics, Islam has clearly and unequivocally regulated the forms of punishment for any violation of Allah's prohibition, either in the form of *Had* punishment. Ibn Taymiyya argues that the punishment for *Had*, is like the penalty for drinking alcohol. People who abuse it, as imposed a limit for those who drink *Had khamr*.<sup>21</sup>

The definition of punishment (*Had*) is a prohibition to do actions that are forbidden by Allah by being beaten or killed (the culprit). Hududullah means the prohibitions of Allah which are ordered to be shunned and forbidden to be approached. The law on drugs and the abuse of illegal drugs is *haram* other than for medical purposes in conditions of necessity or necessity and other than for mixing cooking spices in small amounts, such as a little pepper to mix cooking spices and food delicacy to stimulate the taste buds The prohibition of drugs and the abuse of illegal drugs is the same as the prohibition of liquor which is forbidden based on the texts of the Qur'an and hadith that are *qath'i* (definitely).<sup>22</sup>

Because these commands and prohibitions come from syara', then the commands and prohibitions are only addressed to people who are

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19 Sudarsono, *Etika Islam Tentang Kenakalan Remaja*, Rineka Cipta, Jakarta, 1990, page. 87.

20 Ahmad Syafii, *Penyalahgunaan Narkoba Dalam Perspektif Hukum Positif dan hukum Islam*, *Jurnal Hunafa*, Vol 6 No 2 August 2009, page.219-232

21 Ibnu Taimiyah, *Majmu al-fatawa*, Dar al-arabiyyah, Beirut, page.35

22 Wahab al-Zuhaili, *Fiqh Islam Wa Adillatuhu*, print-10, Gema Insan dan Darul Fikri, Jakarta, 2007, page. 454

intelligent and can understand the burden (taklif), because the burden means a call (*khitab*), and other than people such as animals and inanimate object cannot understand, thus it is impossible to become the object of the summons.<sup>23</sup>

In law enforcement against narcotics abuse, especially with the victims of children, the scholars have different opinions (*ikhtilaf*) regarding the sanctions for narcotics abusers, namely:

- a. The punishment is *Had*, as is the case with witnesses who drink alcohol. This opinion is the opinion of Ibn Taimiyah, as follows:

ان الحشيشة حرام متناولها كما يحد شارب الخمر

Meaning: "Indeed, marijuana is *haram*, sanctions will be imposed on those who abuse it, as for those who drink *khamr*."<sup>24</sup>

A similar opinion was also expressed by Azt Husni, as follows:

يحد متناول المخدرات كما يحد شارب الخمر

It means: "*Had* sanctions imposed on people who abuse narcotics as a limit imposed for alcohol drinkers".

Ibn Taimiyah and Azat Husnain think so, because he analogizes drug sanctions with alcohol sanctions, both of which can damage reason and health, even according to him drugs are more dangerous. Prophet Muhammad has struck equally against people who drink anything that can corrupt the mind and intoxicate without discrimination, no matter whether it is food or drink as long as *khamr* is present. So all kinds of *khamr* that is drunk or eaten, plants that are eaten or drunk, all of it is unlawful. Only the old people did not specifically mention the name of an object because the issue of drugs only arose at the end of six hundred years after the Prophet Muhammad. died, and everything is actually covered in the Qur'an and Sunnah. The conditions for the perpetrators who are subject to *Had* alcohol are: the person affected by *Had khamr* is required to be Muslim, reasonable, mature, drinking alcohol voluntarily, knowing the prohibition, and in good health. *Had khamr* does not fall from sick people, but its implementation is postponed until healed. If he has recovered, then *Had khamr* applied to him.

- b. Sanctions penalty is *Ta'zir*

*Ta'zir* is linguistically meaningful *al-man'u* which means deterrence, according to the terms it means *al-ta'dib* (rehabilitation) and *al-tankil* (restraint) while *Ta'zir* in syar'i is a sanction imposed on immoral acts in it no limit and kifarati.<sup>25</sup>

And as for the various sanctions appraiser is:

23 Mardani, *Penyalahgunaan Narkotika dalam Perspektif Hukum Islam dan Hukum Pidana Nasional*, print-1, Raja Grafindo Persada, Jakarta, 2008, page. 15

24 *Ibid*.

25 Asbulloh Al-faruq, *Hukum Pidana dalam Sistem Hukum Islam*, print-1, Ghalia Indonesia, Jakarta, 2009, page.54.

- 1) *Ta'zir* sanctions related to the body
  - a) Death Punishment
  - b) *Jilid*
- 2) *Ta'zir* sanctions related to one's independence
  - a) Imprisonment (*al-habsu*)
  - b) Throw away penalty
- 3) The *Ta'zir* sanction is in the form of property
  - a) Destroy it
  - b) Change it
  - c) Have it
- 4) Other sanctions
  - a) A stern warning and presented before the court
  - b) be reproached
  - c) be excommunicated
  - d) Fired from his post
  - e) Announced mistakes

Furthermore, Syeikhul Islam Ibn Taimiyah said: according to the *syara'* rules, all illicit goods that can disturb the soul such as wine, adultery, and others are subject to *hadd* punishment.<sup>26</sup> If Caliph Umar was based on the *ijma'* of friends, he imposed a penalty on alcohol drinkers of 80 lashes, whereas based on the practice of the Prophet Muhammad, the sanction was 40 lashes, even this 80 (eighty) lashes is the opinion of the majority of the priests of the *madhhab* (*al-mazdhab al-Islam*). *Arba'an*), except for *Shafi'iah*, who later agreed with this opinion, with the opinion that the sanction of 40 lashes is a limit of 40 lashes and another is *Ta'zir*. Even Umar *Had* imposed sanctions on alcohol drinkers by cutting their hair, exiled them, deported them and fired their officials when they became Caliph.

The reason for the difference in the determination of this law is because the *qath'i* text that regulates the *hadd* punishment for this wine drinker does not exist. In addition, there is no history that confirms the existence of *ijma'* friends in determining the *hadd* punishment for alcohol drinkers, as stated by one group. Although the Qur'an forbids *khamr*, which was later strengthened by the hadith of the Prophet, the punishment is not at all determined with certainty. The Messenger of Allah punished those who drank alcohol with a few or many strokes, but not more than forty strokes. Abu Bakr did the same. During the reign of Caliph Umar, he was confused about the people who drank more alcohol. He held deliberations with his companions to determine the punishment. That the lightest (lowest) *hadd* punishment was 80 (eighty) lashes. Sayidina Umar finally agreed with this opinion and it was determined as a joint decision, which was then sent to areas including Sham, whose rulers were Khalid and Abu Ubaidah.<sup>27</sup>

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26 Yusuf Qardawi, *Halal Haram dalam Islam*, print-1, translation H. Mu'ammal Hamidi, Bina Ilmu, Surabaya 1980, page.102

27 Ahmad Wardi Muslich, *Hukum Pidana Islam*, Sinar Grafika, Jakarta, 2005, page. 77

#### **D. CONCLUSION**

Children as perpetrators of narcotics crimes, if they are not proven as dealers, which can be dangerous as the basis for carrying out imprisonment for children, it is necessary to be rehabilitated as regulated in the narcotics law. Considering that children who are perpetrators of narcotics crimes are only users and are affected by bad environmental conditions both in the family and the environment. Narcotics in the Islamic perspective is analogous to the prohibition of drinking alcohol. This prohibition is carried out because narcotics cause hatred, hostility, disaster and dangerous disasters, both for users, families, communities and the nation and state. Narcotics are prohibited in Islamic law and producers, dealers and users will be given *Had* or *Ta'zir* sanctions.

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