

## The Application of Criminal Sanctions against Children Perpetrators of Narcotics Abuse Crimes

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**Abstract.** *The purpose of this study is to find out and analyze the application of criminal sanctions to children who commit crimes of narcotics abuse. To find out and analyze the process of investigating children who commit crimes of narcotics abuse. The approach method used in this research is normative legal method or library legal research, namely legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials. The type of research used is analytical descriptive. The data obtained by qualitative analysis. Based on the results of the study that the Application of Criminal Sanctions against Children Perpetrators of Narcotics Abuse Crimes, theoretically and juridically it is possible, although very strict conditions are specified. This means that the imposition must be very selective and its implementation must be adapted to the child's psychological condition. Various negative impacts due to children coming into contact with the world of justice are the main considerations for implementing diversion as an alternative solution to narcotics abuse by children, especially at the investigation level at the police. The process of investigating children who commit criminal acts of narcotics abuse is carried out by investigators, both Polri investigators, and Semarang National Narcotics Agency investigators. Investigation of a suspected perpetrator of narcotics abuse, known through: reports or complaints, press releases, being caught red-handed. Investigators in carrying out investigations have the authority to carry out: arrest, detention, search, confiscation and examination of letters.*

**Keywords:** *Application; Criminal; Sanctions.*

### 1. Introduction

Children and their protection will never stop throughout the history of 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. Indonesian child protection means protecting the

potential of human resources and building Indonesian people as a whole, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution.<sup>1</sup>

Children in their development towards adulthood enter adolescence which is very easily influenced by the environment around them. In adolescence, a child is in a sensitive atmosphere or state, because his emotional life often changes. Deeper curiosity about something good, sometimes leads them to things that are negative.<sup>2</sup>

Teenagers at this age, which is a transition from childhood to maturity, still have a very low ability to reject negative invitations from their friends. Deviations in behavior or unlawful acts committed by children are caused by various factors, including the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in the style and way of life of some parents. , has brought about fundamental social changes in people's lives that greatly affect the values and behavior of children.<sup>3</sup>

Special protection for children is provided by the state as outlined in laws or regulations relating to this contrary to the law in the field of criminal law given to children who are victims of criminal acts, witnesses and perpetrators of criminal acts, meaning that these three elements receive special protection.<sup>4</sup>

Narcotics abuse by children is a deviant behavior or unlawful act. However, based on Article 1 number (1) of the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, that "child protection is all activities to ensure and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with dignity and human dignity, and receive protection from violence and discrimination."<sup>5</sup>Every abuser is "everyone" which means as a subject in a narcotics crime, in which the element "everyone" is synonymous with "whoever" (Hijdie), is every person or anyone as a legal subject referring to the subject of the perpetrator crime (subject strafbaar feit) or

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<sup>1</sup>Nashriana, 2011, Criminal Law Protection for Children in Indonesia, Raja Grafindo Persada, Jakarta, p.1

<sup>2</sup>Bambang Mulyono, 1989, Analysis of Juvenile Delinquency and its Countermeasures, Kanisius, Yogyakarta, p. 24.

<sup>3</sup>Sudarsono, 1991, Juvenile Delinquency, cet. 2nd, Rineka Cipta, Jakarta, p. 10.

<sup>4</sup>Muhammad Zubaidi, Sri Kusriyah, and Peni Rinda Listyowati, 2022, The Law Enforcement against Criminal Acts of Violence by Children, Law Development Journal, Volume 4 Issue 3, Unissula, p. 435

<sup>5</sup>Republic of Indonesia, Article 1 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Supplement to State Gazette Number 5332

supporters of rights and obligations that apply to him and/or can be applied Provisions of Indonesian Criminal Law

The objectives of this study are: To find out and analyze the application of criminal sanctions to children who commit crimes of narcotics abuse. To find out and analyze the process of investigating children who commit crimes of narcotics abuse.

## **2. Research Methods**

The approach method used in this research is normative legal method or library law research, namely legal research conducted by examining library materials consisting of primary legal materials, secondary legal materials and tertiary legal materials.<sup>6</sup> The type of research used is analytical descriptive. The data obtained by qualitative analysis.

## **3. Result and Discussion**

### **3.1. Application of Criminal Sanctions against Children Perpetrators of Narcotics Abuse Crimes**

Of course, children involved in narcotics abuse are not born suddenly, but through a process of consideration from criminal organizations or narcotics syndicates, where these crimes do promise quite lucrative benefits. In the recent development of society, there are several things that are increasingly encouraging the acceleration of the rampant crime organizations or narcotics trafficking syndicates to expand their network and move across countries or internationally, especially those involving advances in communication and transportation technology so as to facilitate human mobility throughout the world, in besides,

1. Strong and large demand from the black market for prohibited goods, including narcotics;
2. Free trade advancement;
3. Orderly global financial system;
4. Easy and smooth transportation;
5. Progress and development of increasingly sophisticated communications.<sup>7</sup>

The implementation of criminal sanctions in a general sense is part of the legality principle which states that *nullum delictum, nulla poena, sine preavia lege*

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<sup>6</sup>Soerjono Soekanto and Sri Mamuji, 2004, Normative Legal Research (A Brief Overview), Rajawali Press, Jakarta. p. 13-14

<sup>7</sup>Nitibaskara and T. Ronny Rahman, 2001, When Crime is Sovereign: An Approach to Criminology, Law and Sociology, Civilization, Jakarta, p. 145

(poenali).<sup>8</sup>With the law, criminal law is born. The formation of statutory sanctions is determined by the legislators who require the embodiment of an agency in ways that can actually apply or implement the intended criminal rules. To realize this crime, infrastructure is needed.

Narcotics are the number one enemy for children and adolescents. However, many children and adolescents do not yet know about drugs as their main enemy.<sup>9</sup>The proof, more and more teenagers fall into the seduction of drug death. Ignorance of children and adolescents about the dangers of narcotics is indeed a tough task for parents and teachers to explain. Especially now that narcotics are very easy to get and the dealers are always attached to the world of children and the dealers are always attached to the world of children and adolescents.

The importance of the distribution of narcotics is strictly monitored because currently many of them are used for negative things. In addition, through the development of information and communication technology, the spread of narcotics has reached almost all regions of Indonesia, even to remote areas. Areas that were previously untouched by narcotics circulation are gradually turning into centers of narcotics circulation. Likewise, children who were initially unfamiliar with these illicit goods, have turned into addicts who find it difficult to let go of their addiction.

Narcotics abuse crimes are criminalized through legal instruments that regulate Narcotics, namely Act No. 35 of 2009 concerning Narcotics Abuse Crimes. This law explicitly requires several acts that can be categorized as criminal acts of drug abuse. Several articles in the law on narcotics which are criminalized are used as legal provisions regarding prohibited acts and are accompanied by criminal threats for anyone who violates the prohibition.<sup>10</sup>

Children who receive less or no attention physically, mentally or socially often behave and act asocially, even anti-socially which is detrimental to themselves, their families and society. Behavior of drug use which is a deviant behavior. The rampant deviations in the behavior of the younger generation can endanger the survival of this nation in the future. Because young people as the generation that is expected to be the nation's successor, are increasingly vulnerable to being eaten by addictive nerve-destroying substances, so that these young people cannot think clearly. As a result, the generation of hope for a nation that is tough and intelligent

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<sup>8</sup>Sholehuddin. 2003. Sanctions System in Criminal Law. Raja Grafindo Persada. Jakarta

<sup>9</sup>M. Wresniwiro, 2005, Drugs are the Enemy of the Nation, Bintibmas Partners, Jakarta, p. 33

<sup>10</sup>Hera Saputra, Munsyarif Abdul Chalim, 2018, Application of the Penal System for Drug Abuse Offenders (Case Study in the Central Java Regional Police) Journal of Daulat Hukum Vol. 1.No. 1, Unissula

will only be a distant memory. The target of the spread of this drug is young people or children and adolescents.<sup>11</sup>

Narcotics crimes committed by children as criminal actors or as victims of criminal acts should not be imprisoned. Facing and handling the juvenile justice process as a perpetrator of a crime, the first thing that must not be forgotten is to look at his position as a child with all his special characteristics and characteristics, thus his orientation, starting from the concept of protection of children in the process of handling them, so that this will be based on the concept of welfare and the interests of the child. Handling children in the legal process requires a special approach, service, treatment, care, and protection for children in an effort to provide legal protection for children who are in conflict with the law.

Act No. 35 of 2009 concerning Narcotics which is considered to be lacking in exploring the psychological side and future of children by not regulating the threat of sanctions for children who commit crimes of narcotics abuse. The law must focus on children's rights in general and in the criminal justice process in particular which will be highlighted as a social study of children who commit crimes (child delinquency) so that the background and causes of criminal offenses can be studied individually.<sup>12</sup> Then the best sanction can be determined for the child as the perpetrator of the crime of narcotics abuse and not ensnaring the child with criminal threats without regard to the interests of the child's future.

The involvement of children in the criminal justice process has the potential to cause various complex negative impacts. One of them is the involvement of children with narcotics, where narcotics abuse by children has led children to various physical and psychological suffering.<sup>13</sup>

Apart from being a user, a child who is heavily addicted to narcotics does not rule out the possibility of being involved in illicit narcotics trafficking, where the position of the child is involved as a courier or delivery of narcotics to other addicts. This happens because children are addicted to narcotics, where from an income perspective, of course, no one will be willing to be a narcotics delivery person or courier in order to get wages in the form of money that will be used to buy narcotics or wages in the form of narcotics.

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<sup>11</sup>Panut Panuju and Ida Utami, 1999, *Adolescent Psychology*, Cet. 1st,,: Tirta Discourse Yogya, Yogyakarta, p. 142.

<sup>12</sup>Bismar Siregar, Abdul Hakim GN, Suwantji Sisworahardjo, Arif Gosita, Mulyana W. Kusuma, 1986, *Law and Children's Rights*, Rajawali, Jakarta, p.26

<sup>13</sup>Kusno Adi, 2009, *Criminal Policy in Combating Narcotics Crime by Children*, UMM Press, Malang, p. 2.

If a child is involved in drug trafficking regardless of whether he is an addict or not, then when a child is caught red-handed distributing or as a drug dealer he can be charged with the provisions stipulated in Article 114 paragraph (1) of Act No. 35 of 2009 concerning Narcotics, which states that:

Everyone who without rights or against the law offers to be sold, sells, buys, receives, becomes an intermediary in buying and selling, exchanges, or delivers Narcotics Category I, shall be punished with imprisonment for life or imprisonment for a minimum of 5 (five) years and a maximum a maximum of 20 (twenty) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

Narcotics abuse by children is actually a case that must be handled specifically because it threatens the next generation of the nation. Children who become drug dealers cannot be separated from adult narcotics networks so they can be positioned as victims of exploitation.<sup>14</sup>

A law enforcer in carrying out legal procedures for sanctioning children who are in conflict with the law or in this special situation, must use a special paradigm. This really needs to be done because the sanctions given must be able to provide educational value, and the nature of the sanctions must be in accordance with the meaning of philosophy. Therefore, these sanctions must provide the best way out of existing problems, and in the best interest of the child, which is in accordance with the *ultimum remedium* principle. However, on a different side, the imposition of sanctions on children as perpetrators of psychotropic drugs is directed at the goals of the Indonesian legal system from the point of view of legal objectives that provide a deterrent effect, and forms of disapproval of the actions taken by the child. Then this will be a separate dilemma for law enforcers. Based on this condition, it is necessary to formulate criminal law policies against children as perpetrators of psychotropic crimes so that the dynamics of psychotropic crimes committed by children can be resolved in accordance with the legal objectives in Indonesia.<sup>15</sup>

Application of Criminal Sanctions Against Children Perpetrators of Narcotics Abuse Crimestheoretically and juridically it is possible, although it is determined by very strict conditions. This means that the imposition must be very selective and its implementation must be adapted to the child's psychological condition. Various negative impacts due to children coming into contact with the world of justice are

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<sup>14</sup>Elisabeth Juniarti, 2014, *Diversion and Restorative Justice*, Indonesian Heritage, Medan, p. 17

<sup>15</sup>Rendy Surya Aditama, Munsharif Abdul Chalim, 2018, *Criminal Law Policy Against Children as Actors of Psychotropic Crimes at the Magelang Resort Police*, *Journal of Daulat Hukum* Vol. 1.No. 1, Unissula

the main considerations for implementing diversion as an alternative solution to narcotics abuse by children, especially at the investigation level at the police.

### **3.2. The Investigation Process of Child Offenders of Narcotics Abuse Crimes**

Investigation of criminal acts of narcotics abuse is part of law enforcement in an effort to protect the state from the dangers arising from narcotics abuse which is a serious threat to the resilience and integrity of the state, especially through the destruction of the nation's next generation. Enforcement of criminal law on narcotics abuse in Indonesia has experienced overlapping authorities, causing problems in its implementation which is an implication of the problem of legal substance, namely Act No. 35 of 2009 concerning Narcotics where there is overlap between investigators from the Indonesian National Police and the National Narcotics Agency.

Narcotics abuse is qualified as a criminal offense in Act No. 35 of 2009 concerning Narcotics. The application of the penal system to the perpetrators of criminal acts of drug abuse puts forward a humanistic approach that pays attention to the principle of criminal individualization in the use of criminal sanctions as a means of overcoming crime. In essence, narcotics abusers are also victims who need medical assistance. The application of action in the form of medical and social rehabilitation aims to improve the self-condition of narcotics abusers so that they are free from narcotics dependence so that they can return to society normally.<sup>16</sup>

Investigations into criminal acts of narcotics abuse committed by children, investigators must be guided by Act No. 11 of 2012 concerning the Juvenile Criminal Justice System in this law the entire process of settling cases is regulated. ABH from the investigation stage to the guidance stage after serving a crime, as in the Act regulates procedures, provisions and steps or efforts in handling juvenile criminal cases.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System expressly stipulates that investigations of juvenile criminal cases are carried out by Polri investigators based on Article 26 paragraph (1) Number 11 of 2012 concerning the Juvenile Criminal Justice System. However, not all Polri investigators can carry out investigations of children, the Law on the Juvenile Criminal Justice System already stipulates that child investigators have the right to carry out investigations. Child investigators are appointed by the National Police Chief, and for this a special decree has been issued. The Law on the Juvenile Justice System stipulates that investigators must have the following requirements: have investigative

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<sup>16</sup>Dafit Supriyanto Daris Warsito, 2018, The Penal System Against Narcotics Abuse Offenders, Journal of Daulat Hukum Vol. 1.No. 1, Unissula

experience; have interest, concern, dedication, and understanding of children's problems.

Efforts to eradicate criminal acts are carried out through the criminal justice system. The criminal justice system or criminal justice system in a nutshell can be interpreted as a system in society to deal with crime, so that it is still within the tolerance limits of society.<sup>17</sup>In general, in the criminal justice process, a person who has committed a crime against him will be investigated by the police if there is a complaint or he is caught committing a crime.<sup>18</sup>

Children who are in conflict with the law get legal protection since the judicial process is carried out starting from investigations, investigations, prosecutions, trial examinations to the implementation of court decisions. Legal protection is a protection provided by government legal entities to each individual legal subject with a guarantee that any rights they have will be protected from interference and actions that can eliminate or impair the rights of the legal subject.<sup>19</sup>

The process of investigating children who commit criminal acts of narcotics abuse is carried out by investigators, both Polri investigators, and Semarang National Narcotics Agency investigators. Investigation of a suspected perpetrator of narcotics abuse, known through: reports or complaints, press releases, being caught red-handed. Investigators in carrying out investigations have the authority to carry out: arrest, detention, search, confiscation and examination of letters.

#### **4. Conclusion**

Application of Criminal Sanctions against Children Perpetrators of Narcotics Abuse Crimes, theoretically and juridically it is possible, although very strict conditions are specified. This means that the imposition must be very selective and its implementation must be adapted to the child's psychological condition. Various negative impacts due to children coming into contact with the world of justice are the main considerations for implementing diversion as an alternative solution to narcotics abuse by children, especially at the investigation level at the police. The process of investigating children who commit criminal acts of narcotics abuse is carried out by investigators, both Polri investigators, and Semarang National Narcotics Agency investigators. Investigation of a suspected perpetrator of

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<sup>17</sup>Rizky Adiyanzah Wicaksono and Sri Kusriyah, 2018, Implementation Of Restorative Justice Approach In Legal Protection Against Lightweight Crime By The Children, Journal of Daulat Hukum Volume 1 Issue 4, Unissula

<sup>18</sup>Hadi Noor Cahyo and Maryanto, 2019, Implementation Of The Settlement Of The Case Restorative Justice In Fights By Children Because The Effect Of Liquor (Case Study In The Kudus Police), Journal of Daulat Hukum Volume 2 Issue 1, Unissula

<sup>19</sup>Philipus M. Hadjon. 1987. Legal Protection for the People in Indonesia. Science Development, Surabaya, p. 1-2.



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