

## **Protection of Children as Perpetrators in Criminal Acts of Narcotics Abuse: a Case Study at the Pasuruan District Prosecutor's Office**

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**Abstract.** *This study examines legal protection for children as perpetrators of drug abuse crimes at the Pasuruan District Attorney's Office. Children are viewed as a vulnerable group requiring special treatment in the criminal justice system. The study employed an empirical juridical approach with primary data through interviews and secondary data from laws and regulations and academic literature. The results indicate that legal protection is provided through diversion and rehabilitation, particularly for cases with little evidence. The main obstacles include limited legal norms (a criminal sentence of more than seven years limits diversion), a lack of rehabilitation facilities, and a repressive paradigm of the authorities. The solutions adopted are inter-institutional coordination, the implementation of restorative justice, and strengthening the role of the community. Going forward, regulatory reforms, increased capacity of officials, and child rehabilitation facilities are needed so that legal protection is more preventive, rehabilitative, and restorative in accordance with the principle of the best interest of the child.*

**Keywords:** *Children Legal; Narcotics; Protection.*

### **1. Introduction**

Children are a trust from God who have dignity, honor, and basic rights that must be protected by the state, society, and family. The Indonesian Constitution through Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia has emphasized that "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination." This constitutional norm is the main foundation that under any conditions children must be placed in a position that receives legal protection.

Children are the future of the nation, marking the nation's continued existence in the future. Therefore, children are a valuable asset to a nation. It would be a terrible tragedy if a nation lost its younger generation. Therefore, children must receive special attention so they can grow and develop into dignified and dignified adults.<sup>1</sup>

The definition of a child according to Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter abbreviated as the Child Protection Law) states that: "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb." Therefore, every child needs protection from various crimes that can threaten the child. Criminal law regulations regarding various forms of crimes against children are contained in the Child Protection Law. As written in the section considering one of the considerations for the formation of the Child Protection Law.<sup>2</sup>

Handling various crimes, both conventional and transnational, is carried out by professional officers who are highly skilled and have practical experience in their respective fields. Balanced legal protection is essential for the community. In recent years, there has been an increase in thefts accompanied by violence, with perpetrators often being children.

Criminal acts committed by children, also known as juvenile delinquency, are becoming more widespread and diverse, both in frequency and in the seriousness of the quality of the crimes.<sup>3</sup> This is evident in the numerous cases that occur, including drug abuse, assault, fights, and so on. The Indonesian Child Protection Commission (KPAI) revealed that 23% of inmates in Special Child Development Institutions (LPKA) are thieves, another 17.8% are involved in drug crimes, followed by 13.2% for immoral acts. The KPAI also revealed that survey results on drug abuse cases by children have increased annually until 2025.<sup>4</sup>

The figures above show that many children are still being imprisoned for drug abuse. Even when children become dealers, they are immediately prosecuted. We all understand that drug abuse can have devastating consequences and threaten the lives of users. Furthermore, drugs can endanger the future of the nation and state, damaging young people from all walks of life. The issue of drugs and its consequences has become an international problem due to its massive and global

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<sup>1</sup> Marhayani Cik et al., "Legal Analysis of the Definition of Children in Positive Law in Indonesia," *Jurnal Legalitas* 2, no. 02 (2024): 1, <https://ojsstihpertiba.ac.id/index.php/jle/article/view/122>.

<sup>2</sup> Aziz Syamsuddin, *Special Crimes* (Jakarta: Sinar Grafika, 2014).

<sup>3</sup> Hari Subeno, "The Crime of Extortion with Threats Committed by Minors," *Journal of Legal Studies "THE JURIS"* 3, no. 1 (2019), [48-Article-Text-67-1-10-20190708.pdf](https://doi.org/10.21907/48-Article-Text-67-1-10-20190708.pdf)

<sup>4</sup> BNN Public Relations, "BNN RI and KPAI Seek Solutions to Address Drug Abuse Among Youth," National Narcotics Agency of the Republic of Indonesia, 2021, <https://bnn.go.id/bersama-kpai-bnn-cari-solusi-tangani-penyalahgunaan-narkoba/>, accessed on September 24, 2025.

distribution, requiring special attention from governments and countries worldwide.<sup>5</sup>

One form of child involvement in drug crimes certainly doesn't occur voluntarily, but rather through the social interactions they experience. Developments in society, which demonstrate the increasing prevalence of drug syndicates, are also contributing to the high number of children involved in drug abuse. Furthermore, the advancement of information technology and the shift away from conventional practices have also made the drug trade increasingly rampant, especially among teenagers. Drug trafficking not only promises extraordinary profits for sellers and dealers but also becomes a daily habit for survival and meeting daily needs.<sup>6</sup>

The involvement of children in drug crimes, whether as users or couriers, naturally creates a sense of sadness and grief regarding their activities. Considering that children are the future leaders and pillars of their parents, families, and even the nation itself, this situation diminishes children's potential and can impact their learning process, the quality, and quantity of their development. This also places a significant burden on the government to protect the future of the Indonesian nation, which rests on the shoulders of Indonesian children, preventing them from being dragged into actions that are detrimental to themselves and the nation.

In addition to targeting children as drug users, drug dealers have also increasingly used children as couriers to evade authorities. Factors such as promises of substantial rewards and a lack of knowledge about narcotics make children targets for drug dealers in their widespread and covert distribution. This is a serious problem that can lead to children falling prey to drug abuse. Therefore, regulations must be in place regarding firm and appropriate sanctions while still providing protection for children who abuse drugs. Children's limited and imperfect mindsets, coupled with their susceptibility to adult influence, must be taken into account by law and law enforcement officials, particularly judges, when imposing sanctions on child drug offenders.

Evidence of the Indonesian government's concern and seriousness in overcoming narcotics abuse has been realized with the birth of Law Number 35 of 2009 concerning Narcotics which was ratified on October 12, 2009. Law Number 35 of 2009 concerning Narcotics has had good objectives such as ensuring the availability of Narcotics for the benefit of health services and/or the development of science and technology, preventing, protecting, and saving the Indonesian nation from Narcotics abuse, eradicating the illicit trafficking of Narcotics and Narcotics Precursors, imprisonment, life imprisonment, and guaranteeing the

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<sup>5</sup> Gilza Azzahra Lukman et al., "Drug Cases in Indonesia and Prevention Efforts Among Adolescents," *Journal of Research and Community Service (JPPM)* 2, no. 3 (2022): 405, <https://doi.org/10.24198/jppm.v2i3.36796>.

<sup>6</sup> Adi K, *Diversification of Child Narcotics Crimes* (Malang: Setara Press, 2014), p. 37

arrangement of medical and social rehabilitation efforts for Narcotics Abusers and Addicts.<sup>7</sup>

Undeniably, the enactment of this law has created problems in its implementation. This problem arises from the perceived ineffectiveness of Law Number 35 of 2009 concerning Narcotics in combating drug abuse. This is further compounded by the implementation of law enforcement, which emphasizes criminal penalties for both drug dealers and addicts.

The situation is different when discussing the crime of drug abuse committed by children. Indonesia has also ratified the Convention on the Rights of the Child (CRC) through Presidential Decree No. 36 of 1990, which emphasizes the principle of the best interest of the child as the primary guideline in all policies and actions concerning children. This principle requires law enforcement officials to prioritize the interests of children, including when children come into contact with the law as perpetrators of crimes.

This commitment is manifested in various laws and regulations, including Law Number 35 of 2014 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The SPPA Law introduces diversion and restorative justice mechanisms, which aim to ensure that children in conflict with the law are not always processed through formal courts, but are directed to out-of-court settlements that prioritize the interests of the child's growth and development.

Problems arise when children come into contact with the law as perpetrators of drug abuse. Law Number 35 of 2009 concerning Narcotics does indeed explicitly impose criminal sanctions on drug abusers, including children. However, this law also provides opportunities for addicts or victims of drug abuse to receive medical and social rehabilitation. This dualism creates a dilemma in law enforcement practices: whether child drug abusers are treated as perpetrators of criminal acts who must be punished, or as victims who should be rehabilitated. This is because children's nature and psychological state in certain cases require special treatment and protection, especially against actions that can be detrimental to a child's mental and physical development.<sup>8</sup>

It's important to note that there are many disparities in sentencing children who abuse drugs. Disparity is an inequality or difference in quantity or quality between

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<sup>7</sup>Ida Bagus Angga, et al, The Role of KepoLisian in Law Enforcement Against Narcotics Crimes in Buleleng Regency, E-Journal of the Yustisia Community, Ganesha University of Education, Vol 1, No. 3, 2018.

<sup>8</sup> MA Maskur, "Legal Protection for Delinquent Children in the Indonesian Criminal Procedure Process," Pandecta: Research Law Journal 7, no. 2 (2012).

two or more things.<sup>9</sup>Differences in judges' sentencing decisions are undeniable. However, this inequality in decisions will have dire consequences for managing inmates' development. Convicts who, after comparing their sentences and then feeling like victims of judicial caprice, will become convicts who disrespect the law, even though respect for the law is one of the goals of sentencing.<sup>10</sup>

In the practice of handling cases in various regions, including the Pasuruan District Attorney's Office, this problem is evident. For example, in the past five years, several cases of children caught in drug abuse in the Pasuruan jurisdiction have been processed through the Pasuruan District Court, resulting in verdicts. For example, in 2022, with Decision Number 2/Pid.Sus-Anak/2022/PN Psr, in 2021 with Decision Number 4/Pid.Sus-Anak/2021/PN Psr, Decision Number 3/Pid.Sus-Anak/2021/PN Psr, in 2020 with Decision Number 3/Pid.Sus-Anak/2020/PN Psr, and so on. These cases demonstrate the gap between the principles of child protection stipulated in the Child Protection Act (SPPA) and law enforcement practices that are still oriented towards punishment. Instead of being directed towards rehabilitation or diversion, children are still often processed through formal criminal justice mechanisms.

Sociologically, this phenomenon has serious implications for children's lives. Children sentenced to prison not only lose educational opportunities but also face the risk of social stigmatization, severing family ties, and a high likelihood of falling back into the cycle of drug abuse upon release. In fact, children involved in drug abuse are more accurately viewed as victims of adult-controlled drug trafficking, requiring a protective and rehabilitative approach, not just punishment. According to Gustav Radbruch's theory of legal certainty, the law must ensure clear norms and fair treatment so that society feels protected.<sup>11</sup>However, in practice, legal certainty for child drug abusers is often lacking due to the overlap between child protection and law enforcement interests in extraordinary drug crimes. Consequently, law enforcement officials, including prosecutors, face challenges in balancing restorative justice approaches with deterrent demands.

Based on the background that has been described, it has become an attraction for the author to study this matter in more depth by conducting research, to find out the form of legal protection for children as perpetrators of narcotics abuse crimes at the Pasuruan District Attorney's Office, the obstacles and solutions taken, as well as efforts to protect children as perpetrators of narcotics abuse crimes in the future.

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<sup>9</sup> Suparman Marzuki, *Disparity in Judges' Decisions: Identification and Implications* (Yogyakarta: Judicial Commission, 2014), p. 17

<sup>10</sup> Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 2010), p. 54

<sup>11</sup> Gustav Radbruch, *Rechtsphilosophie* (Leipzig: Quelle & Meyer, 1932), p. 107

## **2. Research Methods**

This study uses a sociological juridical approach to examine positive legal provisions and their application in practice at the Pasuruan District Attorney's Office. The research specification is descriptive analytical, aiming to describe the effectiveness of legal protection for child perpetrators of narcotics crimes. The data used include primary data from interviews with prosecutors, judges, investigators from the PPA Unit, community guidance counselors, and parents of child perpetrators, as well as secondary data including laws and regulations, books, journals, and court decisions. Data collection was conducted through interviews, documentation studies, and field observations of the child case handling process. Data analysis was conducted qualitatively with grammatical, systematic, and teleological interpretations to produce conclusions that describe the application of child protection principles in the criminal justice system comprehensively.

## **3. Research and Discussion**

### **3.1. Forms of Legal Protection for Children as Perpetrators of Narcotics Abuse Crimes at the Pasuruan District Attorney's Office**

Legal protection is a fundamental principle in the national legal system, its existence inseparable from the concept of a state based on law (*rechstaat*). Within the concept of a state based on law, law is understood not only as an instrument for creating order and certainty, but also as a means to protect the rights of every individual, especially those in vulnerable positions. Children, as the nation's future generation, are one group that desperately needs special protection from the state. As emphasized in the doctrine of the best interest of the child, every legal policy should be oriented towards the best interests of children, including when the child is faced with criminal law.<sup>12</sup>

The question that then arises is how to apply these principles in practice, particularly in cases of child drug abusers. Based on a case study at the Pasuruan District Attorney's Office, it is known that not all child cases can be resolved through diversion or rehabilitation mechanisms. Some cases even proceed to the judicial stage and result in prison sentences. For example, decisions Number 2/Pid.Sus-Anak/2022/PN Psr, which in its decision imposed a prison sentence on a child for a fixed term of (1 year), Number 4/Pid.Sus-Anak/2021/PN Psr, which in its decision imposed a prison sentence on a child for a fixed term of (1 year), and Number 3/Pid.Sus-Anak/2020/PN Psr, which in its decision imposed a prison sentence on a child for a fixed term of (10 months) and an additional penalty. These cases demonstrate the gap between the normative idealism of child

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<sup>12</sup> UNICEF, *The Best Interests of the Child in Juvenile Justice* (New York: UNICEF, 2018), p. 15

protection and the reality of law enforcement practices that are still oriented towards punishment.

This phenomenon has serious consequences. Children imprisoned for drug abuse are at risk of experiencing psychological trauma, losing educational opportunities, and facing social stigma. It's not uncommon for children to relapse into drug abuse after leaving correctional institutions due to a lack of adequate rehabilitation. In fact, criminologically, children caught in drug trafficking are more accurately viewed as victims of a drug trafficking network controlled by adults. In the context of the Pasuruan District Attorney's Office, research results, including interviews with Functional Prosecutors at the Pasuruan District Attorney's Office, indicate that legal protection for child drug abusers is implemented through several mechanisms. First, procedural protection, in the form of guarantees that children have the right to be accompanied by legal counsel or parents, trials held behind closed doors to maintain the child's identity, and non-discriminatory treatment at every stage of the examination. Second, substantive protection, in the form of diversion efforts starting from the prosecution stage. Prosecutors attempt to divert children's cases from the formal judicial process to out-of-court settlements through a restorative justice approach. Diversion involves the child, parents, community counselors, and social workers. If diversion is successful, the child will not need to undergo further criminal justice proceedings. Third, rehabilitative protection, which involves placing the child in a medical and social rehabilitation program in collaboration with the National Narcotics Agency (BNN) and the Department of Social Services.<sup>13</sup>

Interviews with functional prosecutors at the Pasuruan District Attorney's Office revealed that not all cases involving juvenile drug offenders can be resolved through diversion. The resolution of cases involving juveniles caught in drug abuse is heavily influenced by the size of the evidence recovered. If the seized evidence is relatively small, prosecutors tend to seek resolution through diversion mechanisms or direct the juvenile to rehabilitation programs. This is based on the consideration that diversion is more in line with the educational and restorative objectives of juvenile sentencing, rather than punitive ones.

A different situation arises when the case involves a moderate to substantial amount of evidence. In such situations, prosecutors face limitations because positive law stipulates that diversion can only be implemented for crimes punishable by imprisonment under seven years. Consequently, even though prosecutors substantially recognize that rehabilitation is the best approach for the child, the case must still proceed to a formal trial in court. This reality

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<sup>13</sup>Results of Interview with Functional Prosecutor of Pasuruan District Attorney's Office on October 1, 2025.



demonstrates the limitations of rigid legal norms, which mean that legal protection for child drug abusers cannot always be optimally realized.<sup>14</sup>

The practice of legal protection for child drug offenders in the Pasuruan jurisdiction is not solely the responsibility of the prosecutor's office, but also involves other institutions such as the Correctional Center (Bapas) and the Social Services Agency. Field research revealed that Bapas consistently directs assessments of child drug offenders toward rehabilitation efforts. This demonstrates that, normatively, the legal protection paradigm for children has begun to focus on recovery, rather than simply punishment. However, its implementation still faces structural obstacles. The limited availability of specialized child rehabilitation facilities in Pasuruan means that not all children who should be placed in rehabilitation programs can be accommodated. As a result, some still have to go through the court process and be placed in the Special Child Development Institution (LPKA). This situation clearly does not fully align with the principle of the best interest of the child, because what children need in the context of drug abuse is not simply a restriction of freedom, but rather medical, psychological, and social recovery that allows them to return to their family and school environments.<sup>15</sup>

A similar perspective comes from the Pasuruan Regency Social Services, which emphasizes that the majority of children caught up in drug cases are actually victims of unfavorable social and environmental conditions. Many come from dysfunctional families, parents working outside the region or even abroad, or lack adequate supervision. These factors make children vulnerable to negative social influences that can lead them to drug abuse. In such circumstances, conventional criminal justice approaches that emphasize imprisonment have the potential to damage children's futures. Therefore, in the view of social workers, the ideal treatment is through a rehabilitative approach and psychological recovery, emphasizing the child's development and social reintegration.<sup>16</sup>

While the paradigm of protection and rehabilitation is beginning to develop, the facts on the ground show that a number of cases involving child drug abusers continue to the trial stage and result in court decisions. Several cases, including Cases 2/Pid.Sus-Anak/2022/PN Psr, 4/Pid.Sus-Anak/2021/PN Psr, and 3/Pid.Sus-Anak/2020/PN Psr, have all resulted in criminal convictions. These decisions demonstrate the gap between child protection norms as stipulated in the Juvenile Criminal Justice System Law (UU SPPA) and law enforcement practices, which are still focused on punishment.

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<sup>14</sup>Results of Interview with Functional Prosecutor of Pasuruan District Attorney's Office on October 1, 2025.

<sup>15</sup>Results of Interviews with Members of the Correctional Center (Bapas) and the Social Services on October 1, 2025.

<sup>16</sup>Results of Interviews with Members of the Pasuruan Regency Social Service on October 1, 2025.



From a sociological perspective, the consequences of criminalizing children in drug cases are very serious. Children sentenced to prison lose the opportunity to continue their education normally, experience social stigma from their communities, and even risk falling back into the cycle of drug abuse after release. This phenomenon aligns with what criminologists have argued, stating that imprisoning children often does not have a deterrent effect but instead reinforces negative labeling, making it even more difficult for children to break free from deviant behavior.

From a theoretical perspective, the practice of sentencing child drug abusers in Pasuruan appears to contradict the modern paradigm, which emphasizes rehabilitative and educational purposes. Imprisonment reflects a retributive approach that emphasizes retribution rather than rehabilitation. In fact, the purpose of sentencing children under the Child Protection Act and modern criminal law doctrine is to foster, educate, and reintegrate children into society. From a theoretical perspective, particularly restorative justice, the treatment of child drug abusers should be directed toward restoring social relationships and reintegration, rather than simply imposing formal punishment.

It is formulated that the form of legal protection for children as perpetrators of drug abuse crimes in the Pasuruan District Attorney's Office consists of three main layers. First, procedural protection, which is realized through guarantees of the right to a closed trial, legal assistance, and non-discriminatory treatment at every stage of the judicial process. Second, substantive protection, which includes diversion efforts, the application of restorative justice principles, and the transfer of children to medical and social rehabilitation programs. Third, rehabilitative protection, which is realized through health recovery programs, psychological, and social development so that children can return to their roles as part of the family, school, and community. These three layers of legal protection demonstrate that even though children are perpetrators of criminal acts, the state remains obliged to prioritize the child's best interests, while also protecting the future of the younger generation from the dangers of narcotics.

Legal protection for child drug abusers at the Pasuruan District Attorney's Office is not only interpreted in a juridical-procedural sense through diversion, but also encompasses social and psychological dimensions. This protection includes efforts to ensure that children continue to receive their rights to education, health care, and social guidance during the legal process. In this context, the prosecutor's office plays a role not only as a law enforcer but also as a facilitator of rehabilitation and social reintegration of children to prevent them from falling back into drug abuse. This multidimensional approach is a concrete manifestation of the implementation of the principle of the best interest of the child in the juvenile criminal justice system. The paradigm of legal protection for children emphasizes the rehabilitative aspect, but this protection is not intended to eliminate children's

responsibility for their actions. From the perspective of modern criminal justice theory, particularly treatment and rehabilitation theory, the deterrent effect is not always realized through imprisonment, but rather through a process of guidance that fosters moral awareness and social responsibility. Therefore, providing legal protection for child drug offenders is a form of just law enforcement, because it still provides legal consequences and opportunities for children to improve themselves without losing their future.

Normatively, there are still weaknesses in the existing legal framework, particularly regarding the limitation of diversion to only crimes punishable by imprisonment under seven years. This provision prevents many juvenile drug abusers from receiving optimal protection because their cases are considered serious. Therefore, a reformulation of juvenile criminal law policy is needed to better accommodate drug abuse cases so that the principle of legal protection can be consistently applied.

### **3.2. Obstacles Faced and Solutions Adopted by the Pasuruan District Attorney's Office in Providing Legal Protection to Children as Perpetrators of Narcotics Abuse Crimes**

The Pasuruan District Attorney's Office's implementation of legal protection for children involved in drug abuse cannot be separated from various obstacles, both structural, cultural, and instrumental. Normatively, the Child Criminal Justice System Law (UU SPPA) mandates that children must be treated specially, upholding their best interests. However, in practice, based on interviews with Functional Prosecutors at the Pasuruan District Attorney's Office regarding the implementation of this principle in Pasuruan, it faces quite complex challenges, as follows:<sup>17</sup>

#### **a) Disparcity of Judges' Decisions**

Disparities in judicial decisions are a common occurrence in the handling of juvenile offenders for drug abuse. Although all judges adhere to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), differing interpretations of the facts of a case can lead to varying criminal sanctions being imposed. Factors influencing this disparity include the judge's assessment of the child's motivation, level of awareness of the offense, family background, and the social impact of the crime.

The quality and availability of psychological reports or rehabilitation recommendations also influence judges' decisions. Children who have complete reports from psychologists or rehabilitation institutions tend to receive more constructive sentences, while those without such supporting documentation are

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<sup>17</sup>Results of Interview with Functional Prosecutor of Pasuruan District Attorney's Office on October 1, 2025.

at greater risk of imprisonment. The judge's consideration of the application of diversion is also an important factor; judges who emphasize alternative approaches tend to issue lenient sentences, while judges who emphasize legal formalities are more inclined to impose imprisonment.

This inconsistency in decisions not only impacts formal justice but also the child's psychology. Children who feel they have been treated unfairly can experience frustration and a loss of trust in the legal system, a phenomenon known as "judicial caprice." This situation has the potential to diminish children's respect for the law, thus subverting the goals of punishment, such as guidance, rehabilitation, and social reintegration.

Disparities in judicial decisions also have social and systemic implications. Public perceptions of legal injustice can increase, leading to decreased support for child rehabilitation programs. In other words, inconsistent judicial decisions not only create dissatisfaction among children but also undermine the effectiveness of the overall juvenile criminal justice system. Therefore, efforts to reduce disparities, through stricter sentencing guidelines and inter-agency coordination, are crucial for achieving justice and the overall goal of child development.

#### b) Limited Facilities and Infrastructure for Special Rehabilitation for Children.

As stated by officials at the Pasuruan Correctional Center (Bapas), assessments for juvenile drug offenders are generally geared toward rehabilitation, but medical and social rehabilitation facilities are still very limited. As a result, not all juveniles who should be placed in rehabilitation programs are accommodated. In many cases, these juveniles are ultimately processed through formal judicial mechanisms and sentenced to prison in Special Juvenile Correctional Institutions (LPKA). This situation creates a paradox: on the one hand, there is a clear normative mandate regarding rehabilitation, but on the other hand, limited facilities make this principle difficult to implement.

#### c) Regulatory Factors

Article 7 of the Child Protection and Child Protection Law limits the application of diversion to crimes punishable by less than seven years and not by repetition. In the context of narcotics crimes, many cases of abuse involving children are actually punishable by more than seven years because the amount of evidence exceeds the statutory limit. As a result, prosecutors often lack the opportunity to implement diversion, even though the case is more appropriately handled with a rehabilitative approach. This creates a gap between the philosophy of child protection and the definition of offenses in the Narcotics Law.

#### d) The Strength of the Punishment Paradigm in Society.

Most people still view children caught in drug cases as criminals who must be punished, not victims who must be rehabilitated. This kind of public pressure often influences the law enforcement process, leading law enforcement officials to be more cautious about adopting policies deemed too "lenient." Rather than prioritizing restorative justice, a punitive orientation remains evident in a number of juvenile cases that have resulted in prison sentences at the Pasuruan District Court.

e) Limited Number of Prosecutors Handling Child Crimes

The limited number of prosecutors handling juvenile cases who truly possess specialized expertise in handling juvenile cases. Although the Attorney General's Office has institutionally appointed juvenile prosecutors, in practice their number is relatively limited compared to the caseload. This impacts the quality of assistance and handling of juvenile cases, including diversion efforts, which require communication skills, mediation, and an understanding of child psychology.

The Pasuruan District Attorney's Office is not remaining silent in the face of these obstacles. Several solutions are being implemented to minimize the negative impact and continue to provide maximum legal protection to children, particularly to address disparities in judicial decisions and their impact on children. The Pasuruan District Attorney's Office, along with other law enforcement officials, needs to implement several strategies, including:<sup>18</sup>

a) Strengthening Coordination with Related Institutions

Strengthening relevant institutions such as the National Narcotics Agency (BNN), the Correctional Center (Bapas), and the Social Services Agency. Through this coordination, prosecutors are seeking alternative rehabilitation options for children, including utilizing rehabilitation facilities outside the region if those in Pasuruan are inadequate. This effort demonstrates the flexibility and commitment of law enforcement officials to prioritizing children's interests.

b) Maximizing the Implementation of Restorative Justice

Although diversion cannot be implemented in cases with sentences exceeding seven years, prosecutors still strive to emphasize a humane approach in the prosecution process. Demands are directed more toward rehabilitation and rehabilitation programs at the LPKA (Correctional Institution), rather than simply imprisonment. In some cases, prosecutors have also taken the initiative to recommend that judges issue rehabilitation sentences in accordance with Article 54 of the Narcotics Law.

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<sup>18</sup>Results of Interview with Functional Prosecutor of Pasuruan District Attorney's Office on October 1, 2025.

In the long term, the Prosecutor's Office recognizes that legal protection for child drug offenders cannot be supported solely by law enforcement officials. Synergy with the community and families is essential. Therefore, the Prosecutor's Office, in collaboration with the Social Services Agency and educational institutions, is working to promote legal education and drug literacy programs among adolescents. The goal is to help children understand the dangers of drugs from an early age and prevent them from becoming victims of illicit drug trafficking.

The main obstacles faced by the Pasuruan District Attorney's Office in providing legal protection for children convicted of drug crimes can be categorized into four aspects: limited rehabilitation facilities, limited regulations, particularly regarding diversion, the paradigm of punishment in society, and limited resources of law enforcement officers. The solutions adopted include strengthening inter-agency coordination, optimizing restorative justice approaches, utilizing alternative rehabilitation facilities, and providing legal counseling to the community. These efforts demonstrate that despite the significant obstacles, the Attorney General's Office remains committed to providing legal protection in accordance with the principle of the best interests of children and the long-term goal of saving the younger generation from the dangers of narcotics.

Linked to legal protection theory, this solution reflects efforts to ensure that children continue to receive substantive protection, even while in the criminal system. From a criminal justice theory perspective, rehabilitation and development efforts represent a shift from a retributive paradigm to a rehabilitative and utilitarian one, emphasizing social benefit. From a justice theory perspective, these steps demonstrate efforts to provide restorative justice that restores children, families, and communities, although in practice, they still face structural limitations.

It can be emphasized that the main obstacles in providing legal protection for child drug offenders at the Pasuruan District Attorney's Office include normative dimensions (regulations that limit diversion), instrumental (limited rehabilitation facilities), cultural (legal culture that is still retributive), and sociological (family background/environment of the child). The solutions adopted are more pragmatic, but they demonstrate the authorities' awareness of shifting the paradigm from punishment to child protection and rehabilitation.

It is important to note that legal protection efforts for child drug abusers should not be overly interpreted to the point of eliminating the deterrent effect. Protection is not synonymous with exemption from responsibility, but rather proportional and educational law enforcement. In this context, modern criminal justice theory positions deterrence and rehabilitation as two sides that must be balanced. If protection is provided without effective monitoring and development mechanisms, there is concern that a perception of impunity will emerge, which could actually increase the number of child drug abusers. Therefore, protection

policies must be accompanied by measurable rehabilitation programs, regular evaluations, and strengthening the role of families and communities in the process of children's social reintegration.

The legal protection approach for child drug offenders must combine three main dimensions: legal certainty, to ensure protection is not misinterpreted; legal justice, to ensure children continue to have the opportunity to improve; and legal utility, to ensure the policy is not counterproductive to the goal of preventing drug use among children. This approach aligns with law enforcement theory, which demands a balance between the values of certainty, justice, and utility, as taught by Gustav Radbruch.

### **3.3. Legal Protection Efforts for Children as Perpetrators of Narcotics Abuse Crimes in the Future**

When designing future legal protection measures for children facing drug abuse crimes, it is important to consider international practices that have developed alternative models for child care: models that emphasize prevention and rehabilitation, models that rely on diversion mechanisms and therapeutic courts, and models that still prioritize severe criminal sanctions. Lessons learned from this comparison are useful in formulating applicable policy recommendations for the Pasuruan District Attorney's Office and policymakers at the provincial and national levels.

In Western European countries, a harm-reduction and treatment-oriented policy approach is characteristic of many jurisdictions that pragmatically address drug abuse, including among children and adolescents. Countries that adopt this model tend to strictly differentiate between users/addicts and large-scale traffickers; the focus is on access to health services, harm reduction programs, and referral to addiction treatment services rather than automatically diverting cases to the criminal justice system. Relevant lessons for the Pasuruan context include the importance of community health service networks, easy access to evidence-based rehabilitation programs, and policies that allow for administrative treatment or treatment as alternatives to criminal proceedings for personal use cases. These principles align with recommendations from international bodies that emphasize the need for a health-based approach to responding to drug use, particularly for vulnerable groups such as children and adolescents.<sup>19</sup>

Countries like Australia have more systematic experience combining diversion mechanisms, court-based treatment (e.g., drug diversion courts or problem-solving courts), and cross-sector interventions that integrate justice, health, and social services. This model prioritizes multidisciplinary assessment (psychology, social work, and health) so that law enforcement decisions are guided by evidence

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<sup>19</sup> Alex Stevens, "Harm Reduction, Drug Use and Health: An International Comparative Perspective," *International Journal of Drug Policy* 25, no. 2 (2014).

of the child's therapeutic needs. This approach demonstrates that the role of prosecutors and judges is not simply to decide whether to prosecute, but also to facilitate access to structured rehabilitative programs implemented in collaboration with the National Narcotics Agency (BNN), the Department of Social Affairs, and hospitals. For the Pasuruan District Attorney's Office, this underscores the importance of multidisciplinary assessment capacity and formal referral mechanisms to treatment facilities—as well as administrative arrangements that allow for the use of facilities outside the region if local capacity is limited.<sup>20</sup>

Conversely, in several Southeast Asian jurisdictions that still view narcotics as a serious criminal issue, the emphasis on high criminal penalties makes it easier for children to be entangled in formal criminal proceedings. The experiences of these countries highlight the detrimental consequences of a punitive orientation on children's futures: a high risk of educational interruption, social stigma, and the possibility of recidivism. The lessons learned are not merely criticisms of harsh sanctions, but calls for a policy balance through strengthening rehabilitation programs, revising norms that allow for broader diversion, and mitigating the social impact on children after intervention. At the national policy level, this recommendation implies the need for harmonization between the Narcotics Law and the Child Protection and Child Protection Law so that rehabilitation opportunities for children are not easily hindered by the construction of offenses that carry very high criminal penalties.

Moving on to the empirical realm, experience in the Pasuruan jurisdiction provides a picture that reinforces the urgency of policy reform and capacity building. Recent recorded cases of child drug abusers, such as Pasuruan District Court decisions No. 3/Pid.Sus-Anak/2020/PN Psr, No. 3 and 4/Pid.Sus-Anak/2021/PN Psr, and No. 2/Pid.Sus-Anak/2022/PN Psr, allow for pattern analysis: some cases involve substantial evidence that precludes formal diversion, while others demonstrate delayed assessments and a lack of rehabilitation referral options, making LPKA or criminal justice options the last resort. These records not only illustrate the authorities' compliance with substantive regulations but also demonstrate the impact of structure (availability of facilities) and culture (community expectations) on enforcement practices. This empirical evidence confirms that future change efforts must be simultaneous: arranging regulations to provide space for pro-rehabilitation policies, increasing and standardizing child care service facilities, and conducting cultural interventions through literacy campaigns and social reintegration.<sup>21</sup>

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<sup>20</sup> Lorana Bartels, "Courts and Diversion in Australia: Therapeutic Jurisprudence in Practice," *Australian Journal of Criminal Law* 39, no. 1 (2015).

<sup>21</sup> Bagus Prasetyo & Riska Amalia, "Implementation of Diversion for Children in Narcotics Crimes in Indonesia," *Ius Quia Iustum Law Journal* 27, no. 2 (2020).



Linking empirical findings and international comparisons to theoretical frameworks clarifies the direction of improvement. Legal protection theory demands that the state guarantee children's rights to growth and development and protection; thus, policies that hinder children's access to rehabilitation (for example, due to the threat of punishment) can be seen as a failure to fulfill constitutional and human rights obligations. Modern criminal justice theory (rehabilitative/therapeutic jurisprudence) places corrective and utilitarian goals as the basis for legitimizing criminal interventions for children: punishment should prioritize care and reintegration so that long-term social benefits can be optimized. Restorative justice theory adds a normative dimension: the law should facilitate the recovery of victims (in the context of child drug abuse: victims of the environment/abuse) and repair damaged social relationships, rather than simply disciplining perpetrators in a way that sever their social networks. These three theoretical frameworks, if consistently adopted, encourage changes in policy and practice toward broader diversion, therapeutic justice, and strengthening community-based rehabilitation services.<sup>22</sup>

For the Pasuruan District Attorney's Office, the practical implications of this theoretical analysis and international comparison can be formulated in several interrelated strategic steps. First, there is a need for internal policy reformulation that prioritizes diversion when a multidisciplinary assessment indicates a need for rehabilitation, even if the material charges appear serious. This formality can be facilitated by procedurally binding assessment recommendation standards so that judges and prosecutors consider the assessment results as a determinant in determining charges. Second, strengthening cross-sector assessment and intervention capacity is crucial: the Prosecutor's Office must have rapid access to a psychosocial assessment team (child psychologists, social workers, and medical personnel) that can develop individualized therapeutic plans for each child. This collaborative model has been shown to reduce juvenile detention in jurisdictions that promote court-based treatment.

Third, it is necessary to develop and/or map a network of rehabilitation facilities, both government and partner institutions (hospitals, NGOs, mental health foundations) that can accommodate children from Pasuruan without having to wait for local capacity to become available. Experience in other countries shows that such a network, supported by clear referral protocols, minimizes delays in intervention and reduces the likelihood of formal criminal proceedings. Fourth, substantive legal aspects must be reviewed: legislators and policymakers need to consider changing norms that allow for more flexible diversion for children, or at least establish specific mechanisms that accommodate rehabilitation decisions despite the threat of high penalties under substantive articles, for example

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<sup>22</sup> Arie Afriansyah, "Child Protection from the Perspective of Criminal Law and Restorative Justice," *De Jure Legal Research Journal* 20, no. 2 (2020).

through provisions that prioritize rehabilitation for offenders under a certain age if an assessment indicates a therapeutic need.

These efforts should not be confined solely to law enforcement; the community needs to be actively involved. Local experience shows that social stigma is a significant barrier to children's reintegration after rehabilitation. Therefore, reintegration programs must be supported by public awareness campaigns, school involvement in receiving and facilitating children after rehabilitation, and family support through parenting and mentoring programs.<sup>23</sup>

Institutionally, the Prosecutor's Office could consider establishing a special unit for handling juvenile and narcotics cases, which would serve not only as prosecutors but also as coordinators of juvenile cases with a protective focus. This unit could manage case data, facilitate multi-layered assessments, establish service contracts with rehabilitation facilities, and develop standard operating procedures (SOPs) for rehabilitation recommendations. The existence of such a unit would facilitate the translation of national policies into consistent local practices.<sup>24</sup> From a long-term perspective, the most effective policies are those that combine primary prevention (family/school education and strengthening), secondary prevention (early screening and rapid intervention for at-risk youth), and tertiary prevention (rehabilitation and reintegration for users/addicts). Integrating these three lines will shift the focus of treatment from criminal reactivity to a proactive child health and welfare system—a vision that aligns with the aspirations of the Child Protection and Child Protection Law and international recommendations on the protection of children and drugs/psychotropic substances.

To ensure meaningful policy changes, indicator-based monitoring and evaluation are also needed: the frequency of successful diversion, the average time from arrest to rehabilitation assessment/placement, the proportion of children returning to school after rehabilitation, and the medium-term recidivism rate.<sup>25</sup> These indicators enable the Pasuruan District Attorney's Office and stakeholders to assess the effectiveness of interventions, address implementation gaps, and make evidence-based arguments for policy advocacy at the provincial or national level.

Combining international lessons, local findings, and theoretical frameworks for legal protection, modern criminal justice, and restorative justice, future legal protection efforts for child drug abusers must be comprehensive, cross-sectoral, and grounded in the principle of the child's best interests. This transformation

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<sup>23</sup> Sri Wulandari, "Diversion in the Juvenile Criminal Justice System: Between Normative and Implementative," *Journal of Law & Development* 50, no. 1 (2020).

<sup>24</sup> Marlina, *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice* (Bandung: Refika Aditama, 2009).

<sup>25</sup> Hadijaya, "Evaluation of Diversion as an Effort to Protect Children in Narcotics Cases," *Responsive Law Journal* 6, no. 2 (2021).

requires political courage, a commitment of resources, and a shift in legal culture, but the long-term benefits of safeguarding the future of the younger generation and reducing the negative social impacts of drugs will far outweigh the costs of implementation.

The direction of legal protection for children who commit narcotics abuse crimes must be placed within the framework of state responsibility as mandated by Article 28B paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The state is obliged to guarantee the rights of children to grow and develop and to receive protection from violence and discrimination, including from a disproportionate legal system. Therefore, legal policy reform that places rehabilitation as the main form of punishment for children is not only a practical need, but also a constitutional and moral imperative for a civilized state based on the rule of law.

#### **4. conclusion**

Legal protection for children involved in drug abuse crimes at the Pasuruan District Attorney's Office has been implemented through three main forms: procedural, substantive, and rehabilitative protection. These three aspects demonstrate that the juvenile criminal justice system in Pasuruan is shifting from a punitive paradigm to a restorative approach. However, the implementation of the best interest of the child principle still faces structural obstacles, including limited rehabilitation facilities specifically for children, a limited number of juvenile prosecutors, disparities in judicial decisions, and normative barriers such as the limitation of diversion to crimes punishable by imprisonment under seven years. As a result, some juvenile drug abusers continue to undergo formal judicial proceedings and experience imprisonment, which negatively impacts their psychological and social development. To ensure more effective legal protection in the future, a reformulation of juvenile criminal law policies is needed to be more accommodating to drug abuse cases, by expanding diversion opportunities and strengthening community-based rehabilitation programs. The Prosecutor's Office needs to strengthen cross-institutional coordination, build multidisciplinary assessment capacity, and develop cross-regional rehabilitation referral mechanisms. The approach to legal protection for children must integrate the values of legal certainty, justice, and benefit, as proposed by Gustav Radbruch, so that law enforcement not only upholds the rules but also restores the lives of children as part of the nation's future generation.

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