



# Implementation of Criminal Jurisdiction Against Children as Narcotic Users Research Study at the Mungkid District Court

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**Abstract.** Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a decision that can be handed down by a judge against a criminal act of narcotics abuse committed by a child is to impose a crime or action on the child concerned. Judges' considerations play a very important role in giving decisions against child perpetrators in narcotics abuse crimes. This study aims to examine and analyze: (1) regulatory policies in criminal law against children as Narcotics users, (2) the judge's consideration in the decision against narcotics abuse by children, (3) the concrete form of the effectiveness of law enforcement that must be realized by the State to prevent children from falling into narcotics abuse. The approach method used in this research is sociological juridical. The specification of this research is descriptive analytical. Sources of data used are primary data and secondary data. Primary data is data obtained directly from the field or from the first source and has not been processed by other parties. While secondary data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the results of the research and discussion, it can be concluded: (1) The form of depenalization given by the judge to children who are perpetrators of narcotics crimes can be in the form of actions where positive criminal law is also known as the type of sanctions in the form of actions listed in Article 82 of Law Number 11 of 2012 concerning the System Juvenile Criminal Justice. (2) In the criminal justice process in case Number 2/Pid.Sus-Anak/2021/PN Mkd, the judge will still consider first the principle of expediency, the principle of justice and the principle of legal certainty to children. According to the judge, the imposition of sanctions/punishments on children is not only a form of accountability for their actions, but the imposition of sanctions on children is also intended as a form of coaching so that children can improve their attitudes and behavior in the future. (3) On the one hand, a child who uses narcotics is a perpetrator of a narcotic crime regulated in the Narcotics Law, but on the other hand he is also a victim of a criminal act he commits himself. In the case of child victims, the protection provided by the government to children who are in an emergency situation is special protection as regulated in Article 59 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

**Keywords:** Juvenile Criminal Justice · Children · Narcotics Users

## 1 Background

One of the areas of law in order to maintain order and security for Indonesian citizens is criminal law.<sup>1</sup> Renewal of criminal law which is an attempt to reorient and reform criminal law in accordance with the central sociopolitical, sociophilosophical and socio-cultural values of Indonesian society which underlies social policy, criminal policy and law enforcement policy in Indonesia.<sup>2</sup>

Children are those who are immature and who become adults due to certain mental, physical regulations are still immature.<sup>3</sup> The meaning of the child itself, if reviewed further from the point of view of chronological age according to law, can vary depending on the place, time and for what purpose, this will also affect the limits used to determine the child's age.<sup>4</sup> According to positive law, a child is defined as a person who is immature (*minderjarig/person under age*), a person who is underage or underage (*minderjarigheid/inferiority*) or commonly referred to as a child who is under the supervision of a guardian (*minderjarige onder voeding*).

Crime is essentially a social process, so that criminal politics/criminal policy/criminal policy must be seen within the framework of social politics, namely the efforts of community groups to improve the welfare of their citizens. The use of criminal law as a means of overcoming crime, including overcoming narcotics abuse, is currently under intense scrutiny as well as being a topic of long conceptual debate. Although this conceptual debate still gives rise to pros and cons of the use of criminal law as a means of overcoming crime.

Regulations related to Narcotics in Indonesia are regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The law regulates criminal punishment for narcotics users contained in article 127, narcotics users can be sentenced to a minimum of 4 years to 20 years in prison.<sup>5</sup>

Matters that mitigate punishment are divided into three, namely, probation (*poering*), assistance (*medeplectige*), and not being old enough (*minderjarig*). For children who are in conflict with the law, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that for children who are threatened with imprisonment, the threat is reduced by ½ of the principal punishment intended for adults.<sup>6</sup> Imprisonment does not mean that it is the most appropriate sanction for children, it should be seen from the problem of policies against children that it is actually more important, especially when viewed from the point of view of criminology, that children who commit delinquency are more motivated by influences from the environment.

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<sup>1</sup> Saviera Chntyara, *Peranan Visum Et Repertum Pada Tahap Penyidikan Dalam Mengungkap Tindak Pidana Penganiayaan*, Fakultas Hukum, UMS, Surakarta, 2018, page 2.

<sup>2</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, 2010, page 29.

<sup>3</sup> Shanty Dellyana, *Wanita Dan Anak Di Mata Hukum*, Yogyakarta: Liberty, 1988, page 50

<sup>4</sup> Abdussalam, *Hukum Perlindungan Anak*, Jakarta, Restu Agung, 2007, page 5

<sup>5</sup> Uyat Suyatna, *Evaluasi Kebijakan Narkotika Pada 34 Provinsi di Indonesia*, *Jurnal Ilmu-Ilmu Sosial dan Humaniora*, Vol.20, No.2, 2018, page 169

<sup>6</sup> Pasal 81 Ayat (2) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak

Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a decision that can be handed down by a judge for a criminal act of narcotics abuse committed by a child is to impose a crime or action on the child concerned. The judge's considerations play a very important role in giving decisions against child perpetrators in narcotics abuse crimes. The judge in his decision must still be based on the consideration that giving the decision is the best decision for the interests of the child himself, and for the judge's decision in the form of a crime that can be imposed on the child, in Law Number 11 of 2012 contained in Article 71. Meanwhile, the judge's decision in the form of an action is contained in Article 82 of Law Number 11 of 2012.

Law Number 35 of 2009 does not provide an exception for child offenders, but the decision handed down by the judge regarding what punishment is imposed and the severity of the sentence imposed must take into account the social circumstances regarding the facts of the child offender. The judge before passing a decision on a child who commits a crime, there are several things that become the basis for the judge's consideration. The judge's decision will affect the child's life in the future, therefore the judge must be sure that the decision to be taken is the most appropriate and fair.<sup>7</sup>

## 2 Research Methods

In the research carried out, writing uses a Juridical Sociological approach, namely research that uses an approach to the problem by looking at the norms or laws that apply as positive provisions, the following is a theory that is relevant to this paper by linking its implementation to the facts found in the field.<sup>8</sup>

## 3 Discussion

Indonesia is currently carrying out the process of reforming the criminal law.<sup>9</sup> Renewal of criminal law includes renewal of formal criminal law, material criminal law and criminal law enforcement.<sup>10</sup> These three areas of law are jointly or integrally improved so that there are no obstacles in their implementation.<sup>11</sup> One of the triggers for changes in criminal law is the advancement of technology and information.<sup>12</sup> As part of criminal law

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<sup>7</sup> Sri Widowati Wiratmo Soekito, *Anak Dan Wanita Dalam Hukum*, Jakarta: LP3ES, 1983, page 16

<sup>8</sup> Andri Winjaya Laksana, *Sociological Analysis Of Narcotics Circulation Treatment On Students*, *Jurnal Pembaharuan Hukum*, Vol 8, No 1 (2021), page 105-117

<sup>9</sup> Sepha Dwi Hananto, Anis Mashdurohatun, *Penegakan Hukum Pidana Terhadap Terdakwa Pengguna Narkoba Yang Menjalani Rehabilitasi Di Polda Jateng*, *Jurnal Khaira Ummah*, Vol 13, No 1 (2018), page 161-170

<sup>10</sup> Andri Winjaya Laksana, *Tinjauan Hukum Pidana Terhadap Pelaku Penyalahguna Narkotika Dengan Sistem Rehabilitasi*, *Jurnal Pembaharuan Hukum*, Vol 2, No 1 (2015), page 74-85

<sup>11</sup> Lilik Mulyadi, *Kapita Selekta Hukum Pidana, Kriminologi Dan Victimologi*, Jakarta: Djambatan, 2007, page 38

<sup>12</sup> Yesmil Anwar & Adang, *Pembaharuan Hukum Pidana*, Jakarta: Grasindo, 2008, page 1

policy, criminal law reform essentially aims to make criminal law better in accordance with the values that exist in society.<sup>13</sup>

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Children who abuse narcotics, both dealers and users, have regulated the provisions in Law Number 35 of 2009 concerning Narcotics, where children who abuse narcotics are victims of adult games who want to gain big profits by using children under them. Age. If traced, it is impossible for minors to design a drug distribution system in a very secret, neat and sophisticated way.

Children who abuse narcotics start with juvenile delinquency, where the trigger factors for juvenile delinquency in general include them:

1) Hereditary factors (inherited from birth or congenital)

*Hereditary is an individual aspect that is innate since the child is still in the mother's womb which starts from the genes that the child receives at the time of conception, and these genes have the potential to continue to develop in the child. This hereditary factor is a combination of parents' characters that affect the intellectual abilities and personality of children. According to the flow of nativism pioneered by Schopenhauer stated that the child's development has been determined by factors that are brought from birth.*

<sup>13</sup> Tongat, Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia, (Jakarta: Djambatan, 2002, page 20

<sup>14</sup> Lilik Mulyadi, Kapita Selekta Hukum Pidana, Kriminologi Dan Victimologi, Jakarta: Djambatan, 2007, page 38

<sup>15</sup> Yesmil Anwar & Adang, Pembaharuan Hukum Pidana, Jakarta: Grasindo, 2008, page 1

<sup>16</sup> Tongat, Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia, (Jakarta: Djambatan, 2002, page 20

<sup>17</sup> Lilik Mulyadi, Kapita Selekta Hukum Pidana, Kriminologi Dan Victimologi, Jakarta: Djambatan, 2007, page 38

<sup>18</sup> Yesmil Anwar & Adang, Pembaharuan Hukum Pidana, Jakarta: Grasindo, 2008, page 1

<sup>19</sup> Tongat, Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia, (Jakarta: Djambatan, 2002, page 20

*Therefore, the potentials possessed by children from birth determine the development of children in the future.*<sup>20</sup>

## 2) Environmental factors that are detrimental or beneficial

Adverse and beneficial environmental factors mean that environmental factors affect the development of children's character, a bad environment can be detrimental to children, where children will be affected towards delinquency but a good environment will lead children to good paths, and it is difficult to be influenced to become bad children.

## 3) Maturity of organic functions and psychological functions

Maturity of children's organic and psychological functions affects the development of children to digest which things are good and allowed to do and which are bad things that are forbidden to do. If it continues, the child will get certain sanctions.

## 4) Children's activities as free subjects who are willing, have the ability to select, can reject or approve, have emotions and try to build themselves.<sup>21</sup>

Law Number 35 of 2009 concerning Narcotics has provided different treatment for children who abuse narcotics, before this law came into force there was no difference in treatment between dealers, dealers, and narcotics manufacturers. Narcotics users or addicts on the one hand are perpetrators of crimes, but on the other hand they are victims. Children who are users or addicts of narcotics according to law as perpetrators of narcotics crimes are the existence of statutory provisions governing prison sentences given to perpetrators of narcotics abuse. Then on the other hand it can be said that the child of the perpetrator of the narcotic crime is a victim is shown by the provision that narcotics addicts can be sentenced to rehabilitation.

Juvenile justice is a trial held specifically within the general court environment. The specificity of juvenile justice is very clear if we look at Article 6 of the SPPA Law which states that "in juvenile trials, judges, public prosecutors, lawyers and police and other officers do not wear gowns or uniforms." Law Number 11 of 2012 concerning the Juvenile Criminal justice system also regulates the separation of trials between adults and children or members of the military and children who commit crimes together. In the elucidation of the article it is stated that the provision for separation of trials is meant to show that this gives special treatment to children. The principles contained in juvenile court as a step to protect children's rights are:

- 1) There is an age limit;
- 2) Juvenile court is the absolute competence of the general court;
- 3) The Juvenile Court examines children in a family atmosphere where in a juvenile trial it is necessary to examine the child so that it creates a family atmosphere, and with a family atmosphere it is hoped that the child can immediately express his feelings, events, background of the incident honestly, openly, without pressure and fear.

<sup>20</sup> Liza Agnesta Krisna. *Hukum Perlindungan Anak*. CV Budi Utama, Yogyakarta, Maret 2016, page 12.

<sup>21</sup> Nur Amin dan Naimah. *Faktor Hereditas Dalam Mempengaruhi Perkembangan Intelegensi Anak Usia Dini*. *Jurnal Buah Hati*, Vol.7 No.2, September 2020, page 111.

- 4) Juvenile court requires “splitting cases”, if a child commits a crime together with an adult, then the child must be tried at the trial of the child and the adult at the trial of the adult.
- 5) Sit with a single judge and a juvenile judge.
- 6) Sentence to a lighter sentence than adults. In essence, naughty children in child trials can be subject to criminal or action. The punishment is the main punishment in the form of imprisonment, confinement, fines or supervision and additional punishment in the form of confiscation of certain goods and or payment of compensation as well as actions in the form of returning to parents, guardians or foster parents, handing over to the state to attend education, coaching and job training or submitting it to the social department or social organization engaged in the field of education coaching and job training.
- 7) The presence of parents, guardians, or foster parents is required as well as the recognition of social advisers. Especially in procedural law before the court, the presence of parents, guardians or foster parents is very important and necessary. With their presence it is hoped that children will be open, honest and able to convey their feelings without pressure on the one hand, while on the other hand it is hoped that parents, guardians or foster parents can listen to children’s complaints, burdens and problems more carefully and thoroughly.
- 8) The presence of legal advisors, where the presence of legal advisors is not imperative, therefore the article only states that “the right to obtain legal assistance from one or more legal advisers.”
- 9) The detention of children is shorter than that of adults.<sup>22</sup>

Based on Article 56 of Law Number 11 of 2012 it is stated that "after the judge opens the trial, and declares the trial closed to the public, the child is called in along with their parents or guardians, advocates or other legal aid providers, and community advisers." The principle of examining a child accused before a court hearing requires the public prosecutor to present a child accused in questioning. Of course, the presence of parents in the trial of this child is closely related to the summons made by the public prosecutor. If the parents are still not willing to attend without a clear reason, the judge should give a warning to the public prosecutor, so that the parents can be present at the trial.<sup>23</sup> Of course, the presence of parents in the trial of this child is closely related to the summons made by the public prosecutor. If the parents are still not willing to attend without a clear reason, the judge should give a warning to the public prosecutor, so that the parents can be present at the trial.

After knowing these conditions, it is expected that the judge will be able to give a decision that is not only fair, but useful and guaranteed legal certainty, as the ideals of law, where the ideal judge’s decision is that the decision contains elements of justice, benefit and legal certainty.<sup>24</sup> The purpose of giving parents the opportunity to express

<sup>22</sup> Lilik Mulyadi, *Pengadilan Anak Di Indonesia (Teori, Praktek Dan Permasalahannya)*, Bandung: Mandar Maju, 2005, page 15-23

<sup>23</sup> M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan KUHAP*, Jakarta: Sinar Grafika, 2010, page 116

<sup>24</sup> Hari Widya Pramono. *Upaya Perlindungan Terdakwa Anak Dalam Proses Persidangan Di Pengadilan*. *Varia Peradilan*, Vol XXVII Nomor 319, 2012, page 86

things that are beneficial to children is so that children get protection from imposition of inhumane punishment. Giving or imposing punishment in child cases should have educational purposes for children, for this reason criminal acts committed by minors are not subject to criminal responsibility, but they can be subject to instruction.<sup>25</sup>

According to the source, the child's actions were considered to endanger society, so the child was sentenced to imprisonment at LPKA. Imprisonment sentences that can be imposed on children are no longer than ½ of the maximum sentence for adults. Training at LPKA is carried out until the child is 18 years old. If the child has undergone ½ of the duration of coaching at LPKA and has good behavior, then he is entitled to parole. Imprisonment in the law on the Juvenile Criminal Justice System adheres to the principle of *Ultimum Remedium*, which means that imprisonment for children is only used as a last resort. This law states that a crime committed by a child is a crime punishable by death or life imprisonment, the prison sentence imposed is a maximum imprisonment of 10 years.<sup>26</sup>

Criminal restrictions on freedom are carried out in the event that a child commits a serious crime or a crime accompanied by violence. In Article 79 paragraph 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that the penalty for restricting freedom is imposed on a child for a maximum of half of the maximum prison sentence that is threatened by an adult. The meaning of the maximum sentence of imprisonment for an adult is the maximum sentence of imprisonment for a crime committed in accordance with the provisions of the Criminal Code or other laws. Special minimum imprisonment does not apply to children. The provisions regarding imprisonment in the Criminal Code also apply to children as long as they do not conflict with the Law on the Juvenile Criminal Justice System.<sup>27</sup>

Law Number 11 of 2012 concerning the juvenile justice system continues to provide legal protection efforts for children who are in conflict with the law in the case of serious crimes, namely children who become narcotics couriers through a restorative justice approach in order to achieve diversion. Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. Restorative justice offers the best solution in solving crime cases by giving priority to the core problem of a crime. In fact, the juvenile criminal justice system must prioritize a restorative justice approach, in order to achieve diversion for children who are in conflict with the law, in this case children who become narcotics couriers.<sup>28</sup>

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<sup>25</sup> Hosianna M. Sidabalok. *Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan Yang Dilakukan Oleh Anak*. *Varia Peradilan*, Vol XXVII Nomor 325, 2012, page 53-54

<sup>26</sup> Hasil Wawancara dengan DNP, Hakim di Pengadilan Negeri Mungkid, Dilaksanakan Wawancara Pada Tanggal 14 Juni 2022 Pukul 10.00 WIB

<sup>27</sup> Hasil Wawancara dengan DNP, Hakim di Pengadilan Negeri Mungkid, Dilaksanakan Wawancara Pada Tanggal 14 Juni 2022 Pukul 10.00 WIB

<sup>28</sup> Hasil Wawancara dengan DNP, Hakim di Pengadilan Negeri Mungkid, Dilaksanakan Wawancara Pada Tanggal 14 Juni 2022 Pukul 10.00 WIB

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the definition of diversion is contained in Article 1 Paragraph (7) states that: "Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice." In essence, diversion also has the aim that children are protected from the negative effects of criminal law enforcement. Diversion also has the essence of ensuring that children grow and develop both physically and mentally. Thus, it can also be said, that basically diversion has relevance to the purpose of punishing children.

## 4 Conclusion

1. The form of punishment in the form of this action can be determined by the judge by looking at the point of view of protecting children's rights, where the judge views that children can change, correct their mistakes and become better in the future. Law Number 35 of 2009 Concerning Narcotics has given birth to a legal reform, in which the provisions of this law contain the decriminalization of perpetrators of narcotics abuse. Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation. Law Number 35 of 2009 concerning Narcotics has provided different treatment for children who abuse narcotics, before this law came into force there was no difference in treatment between users, dealers, dealers, and narcotics producers. Narcotics users or addicts on the one hand are perpetrators of crimes, but on the other hand they are victims. Children who are users or addicts of narcotics according to law as perpetrators of narcotics crimes are the existence of provisions in the law governing prison sentences given to perpetrators of narcotics abuse. Then on the other hand it can be said that the child of the perpetrator of the narcotic crime is a victim which is shown by the provision that narcotics addicts can be sentenced to rehabilitation. The shift in the form of punishment from corporal punishment to action punishment is a process of depenalization. Depenalization is an act that was originally subject to a criminal penalty and then this criminal threat is removed, but it is still possible to claim in other ways, for example through civil law or administrative law. The form of depenalization given by judges to children who commit narcotics crimes can be in the form of actions where positive criminal law is also known as the types of sanctions in the form of actions listed in Article 82 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
2. Crime is a product of interaction due to the interrelation between existing and influencing phenomena. In general, the relationship between the victim and the crime is the party that becomes the victim as a result of the crime. The party becomes a victim because there are other parties who commit crimes. The most important thing agreed in this relationship is that the victim is the party that is harmed and the perpetrator is the party that benefits or harms the victim. If we want to find the right crime prevention efforts, then our point of view should not only focus on matters related to the factors that cause crime or what method is most appropriate to use in crime prevention. The most important thing that must not be overlooked is the problem of the victim of the crime itself which in certain circumstances can trigger the emergence of a crime or even become the perpetrator of the crime itself. On the one hand, children who use



narcotics are perpetrators of narcotics crimes regulated in the Narcotics Law, but on the other hand they are also victims of crimes they have committed themselves. In the case of child victims, the protection provided by the government to children in emergency situations is special protection as stipulated in Article 59 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection can be maximized.

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