



Drug Sentencing Towards Child as a Drug Mules: A Perspective from Child Rights Protection

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Abstract. The number of drug cases has increased compared to other traditional crimes. According to the Corrections Directorate General, as of 2021, 96% of prisons are filled with drug offenders. Drug-related crimes involve individuals of various ages, from adults to children. Juveniles are often coerced or manipulated into becoming victims of drug use and trafficking. Additionally, the application of criminal sanctions and sentencing is similar for both adults and children, with little focus on rehabilitating child drug offenders. Despite laws under Laws pertaining to juvenile criminal justice and child protection stating that children should receive reduced sentences and non-penal measures, in some drug cases, children receive minimum sentences and are imprisoned for years, especially if convicted for drug-related offenses. A study examines the considerations made by judges when dealing with four (4) drug offenses committed by child offenders, such as drug mules.

Keywords: Drug Sentencing, Child, Child Rights Protection

Findings

The research examines four cases where district court judges made different decisions regarding child offenders involved in drug-related cases. Law no. 11 of 2011 and Law no. 35 of 2014, which pertain to the Criminal Juvenile Justice System and Child Protection, respectively, address broad issues related to child offenders. However, with regards to drug offenses, the research demonstrates that judges often overlook child protection principles and instead impose penalties based on the war on drugs perspective. The study reveals that most child drug offenders are incarcerated rather than being redirected to non-penal sanctions. In some instances, they are given minimal prison sentences, which significantly violate the rights of the children involved. In the cases studied, it was found that although the Indonesian Supreme Court applies rehabilitation treatment for people who use drugs based on drug thresholds, none of the children who use drugs received rehabilitation when needed. Instead, they were imprisoned for drug possession. Moreover, when a judge sentences a child to prison, it has a detrimental impact on the child's social, educational, psychological, and economic well-being.

1 Introduction

The Corrections Directorate General (Dirjenpas) has stated that 96% of inmates in prisons are detained for narcotics-related offenses, totalling 145,413 individuals. Among them, 116,930 are convicted as drugs dealers [7]. Disturbingly, this data reveals that a considerable number of minors are involved in drugs-related crimes, both as users and as couriers or mules. In accordance with the Law of the Republic of Indonesia Number 35 of 2014, a child is defined as someone under the age of 18, including those still in the womb [8]. This definition aligns with the Convention on the Rights of the Child, which also regards anyone under the age of 18 as a child [9]. However, under Indonesia's criminal laws, a child can be held accountable for offenses committed as young as 12 years old [10], but not beyond 18 years old [11].

Under Law No. 35 of 2009 concerning Narcotics, narcotics couriership is considered a severe offense with stringent penalties. Despite these strict provisions, the number of children involved in narcotics-related crimes, including serving as couriers, continues to rise each year. For example, in 2017, there were 22 reported cases of children serving as drugs couriers. This number doubled the following year to 46 cases [10]. Those charged as narcotics couriers, whether children or adults, are subject to specific articles within Law Number 35 of 2009 concerning Narcotics, such as Articles 114, 115, and 119 [11]. It's important to note that Law No. 35 of 2009 regarding Narcotics follows a minimum criminal system, which imposes limitations on judges' decision-making freedom [12].

The regulation of the special minimum criminal system is not formally defined in the guidelines or laws and regulations in circulation in Indonesia. A special minimum penalty is a criminal threat that imposes restrictions on the minimum sentence period within a specific time frame [13]. When it comes to handling narcotics crime cases at the judicial level, it greatly depends on the judge's discretion. According to Sudikno Mertokusumo, judges always consider 3 (three) principles when deciding a case: the principles of justice, usefulness, and legal clarity, which is based on balance and proportionality [14]. These principles of criminal law are crucial in determining the imposition of a criminal penalty, but they are often constrained by the provisions in the regulations that apply a special minimum penalty.

One of the problems that hinders the principles of criminal law, such as legal certainty or proportionality, is found in Article 114, paragraph (1) of Law No. 35 of 2009, which states:

"Any person who, without right or against the law, offers to sell, sell, buy, receive, act as an intermediary in the sale, purchase, exchange, or delivery of Class I Narcotics, shall be sentenced to life imprisonment or a minimum of 5 (five) years and a maximum of 20 (twenty) years of imprisonment, along with a fine of at least Rp1,000,000,000.00 (one billion rupiahs) and a maximum of Rp10,000,000,000.00 (ten billion rupiah)."

This provision imposes a minimum penalty for individuals who engage in drug-related offenses, but the clarity between offenses is not very clear.

This paper will examine the imposition of criminal sanctions in four criminal cases involving children acting as drug couriers with minimal criminal involvement. All cases fall under Law Number 35 of 2009 concerning narcotics, and unfortunately, not all of

them consider the principle of child protection. The research will analyse the judge's rationale for sentencing a child as a drug courier or drugs mules from the perspective of child protection law and the child's reaction to the judge's ruling.

2. Method

The research will use empirical and juridical methods to gather both primary and secondary data through case studies. We will analyse four judicial decisions focusing on the principle of child protection. The findings from the case studies will be supported by interviews with the Community Legal Aid Institutions (LBHM) and the National Child Protection Commission Soetrisno Hadi explained that research is an endeavor using scientific methods to discover, create, and evaluate the veracity of knowledge [1]. This study employs an empirical juridical research design. Empirical juridical research, also known as field research, describes or produces a descriptive legal analysis as a factual state or phenomenon in social life [2]. As research aiming to find the necessary facts and data, the collected data will be processed to identify and solve problems [3]. Primary data comes straight from the original source of the research topic [4]. The author will conduct structured interviews with officials or officers of the Community Legal Aid Institute (LBHM) and the National Commission for Child Protection (Komnas PA).

Secondary data is a method of data collection through literature studies on research materials. The data sources used in this paper are sourced from national and international laws and regulations about drug offenses, child protection within the criminal justice system and the juvenile justice system and legal principles of child protection in correctional institutions. This provision is to answer the issue of a special minimum penalty that should not be applied to children in any case, particularly when it comes to youngsters who are entangled in narcotics trafficking or as narcotics couriers. This research will collect data through previous research [5] and be processed to answer the problems in this research related to narcotics crimes. A qualitative descriptive method of data analysis is employed. The research will produce descriptive data (both written and spoken words) [6]. The data is processed by processing information that has been gathered, both primary and secondary.

To evaluate the effects of the judge's ruling on the child drugs courier or mules is a provision necessary to address the issue of a special minimum penalty enshrined in Narcotic Law No. 35 Year 2009 that should not be applied to children in any case, particularly when it comes to kids that are entangled in drugs trafficking or as drugs couriers. The data sources used for this paper are extracted from national and international laws and regulations regarding drug offenses, the juvenile court system, child protection in criminal justice system, and legal principles of child protection in correctional institutions.

3. Results and Discussion

The issue of legal certainty in Indonesia due to inconsistent court decisions has stumped law enforcement. The varying sentencing by judges is attributed to the lack of clear

rules on regulated offenses or prohibited acts, particularly in the Narcotics Law Number 35 of 2009. Additionally, the application of special minimum penalties without proper consideration or regulation has led to injustice and failed to deter criminal acts [15]. In a study on the treatment of children relates to the case of narcotics couriers in four case decisions in line with Law Number 35 of 2014 on the Protection of Children, it was suggested that the punishment for these children should prioritize preventive principles rather than punitive policies, in line with child protection principles. Lack of child protection and rights principles appeared in all judgements, moreover the Judges focus on the war on drugs narrative that leads on stigma and discrimination towards drugs offenders. Disparities were found in the criminal penalties given to children involved in drugs crimes, which goes against various principles of criminal law and the purpose of punishment [16]. This also violates the human rights of the children and the principles of child protection.

3.1 Juvenile Justice System and Children with Drug Cases

As per the Convention on the Rights of the Child's (CRC) definition of a child, a child is any person younger than eighteen,, unless their legal majority is reached earlier [17]. It is similar to Indonesian Law on Child Protection No. 35 the Year 2014 on the amendment of Law No. 23 the Year 2002 on the Child Protection Law aside from the age, it includes the as well child in the mother's womb. The definition of the child's age in Indonesia is debatable and depends on the perspective of the law used. The Private Law adds the definition with "as long as someone is not yet married". Therefore, it is important to view the Decision of the Constitutional Court No. 1/PUU-VIII/2010 that examined Law No. 3 Year 1997 on the Juvenile Court on the age of criminal responsibility that allows criminal responsibility towards children of the age of 12 years old. The Constitutional Court increased the age of criminal responsibility to ensure the guarantee of child development and protection as stated in Article 28B (2) of the Indonesian Constitution. Furthermore, for the child who are in the criminal proceeding, the Constitution obliges the State to uphold rule of law and justice towards both children as an offender and protect children as the victims [18]. Based on the Juvenile Criminal Justice System article 1 (2), the child who conflicts with law can be as an offender or witness.

At a practical level, there are various regulations that can be employed to ensure the rights of children. Judges are required to handle cases involving children in conflict with the law using diversion processes with a restorative justice approach under Supreme Court Regulation No. 4 of 2014 about Guidelines for the Implementation of Diversion in the Child Criminal System. Article 2 of the Guidelines specifies that diversion applies to children aged 12 to 18, or those who are married at 12 but not yet 18 and are thought to have committed a crime. [19].

Law No. 35 Year 2014, article 1: (2) characterizes kid protection as "All activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, as well as receive protection from violence and discrimination." According to Arif Gosita, child protection is a manifestation of social justice in the social order and a collective effort to safeguard children in exercising their rights and responsibilities in a kind and

constructive way [20]. Based on four principles—nondiscrimination, the child's best interests, the right to life, survival, and growth, and respect for the child's opinions—the Convention on the Rights of the Child lays forth the duty to defend children's rights. [21]. These principles serve as a guide for defining policies or regulations according to human rights standards, in the youth criminal justice system, among other places. The criminal justice system for adolescents in Indonesia the concept of restorative justice allows for the governance and viewing of the system with the principles of child rights, such as diverting from the criminal justice system to non-criminal measures.

The Juvenile Law on the Juvenile Justice System, specifically Article 5 (2), emphasizes the use of restorative justice, which involves seeking diversion. The process of moving cases is referred to as diversion involving child offenders from the formal criminal justice system to a peaceful resolution between the perpetrator and the victim so call restorative justice. Article 6 of the Law on the Juvenile Justice System outlines the goals of diversion, which include settling disputes outside of the legal system, bringing victims and children together, preventing children from losing their autonomy, promoting community service, and encouraging the child to take responsibility for their actions.

The Indonesian drug law, based on the 35th Law of 2009 regarding Narcotics, is unable to differentiate between people who use drugs and those involved in drug trafficking or supply. According to Article 1, paragraph 13 of Law No. 35/2009, a drug dependance is described as an individual who abuses or uses drugs and is dependent on them, both physically and psychologically. Furthermore, according to the same law's Article 1, Paragraph 15, a drug abuser is someone who consumes drugs illegally or without authorization.

In the Indonesian narcotics law, the protection of individuals who are victims of narcotics abuse is not clearly defined. Although Article 54 of Law No. 35 of 2009 concerning Narcotics outlines situations in which a person may be considered a victim of narcotics abuse, such as being coerced, threatened, tricked, or convinced to use drugs, there is still ambiguity. Additionally, while the law allows for the medical use of certain narcotics under specific conditions, it does not extend this provision to Class I Narcotics. As a result, individuals who use narcotics for legitimate medical reasons can still face the same societal stigma as those who abuse narcotics. It is similar with the situation of legal uncertainty on drug mules of couriers. Narcotics couriers do not have a precise definition in the Narcotics Law No. 35 of 2009. According to Article 1 number 9, narcotics couriers are considered as the party that transports narcotics. Fleetwood defines a narcotics courier as someone who transports narcotics and is paid, or unpaid, for the number of narcotics carried, as determined by the person who pays. It is important to note that many narcotics couriers may not know the contents of the goods they are transporting and could be deceived by the sender. [22]

As stated above, narcotics couriers do not have a precise definition in the Narcotics Law No. 35 of 2009 [23]. According to Article 1 number 9, narcotics couriers are considered as the party that transports narcotics. Fleetwood defines a narcotics courier as someone who transports narcotics and is paid, or unpaid, for the number of narcotics carried, as determined by the person who pays [24]. It is important to note that many

narcotics couriers may not know the contents of the goods they are transporting and could be deceived by the sender.

The research discusses the difference between narcotics dealers and couriers. It emphasizes that not everyone transporting narcotics should be automatically classified as a dealer. It points out that while dealers transport narcotics for economic reasons, couriers who don't benefit economically often face harsher penalties than dealers if caught. The text also discusses the criminal penalties for narcotics couriers, including the Narcotics Law's minimum and maximum jail terms as well as fines.

3.2 The Impact of Children as Drug Couriers

With various methods of narcotics trafficking, not everyone who carries narcotics can immediately be considered a dealer. The element as a narcotics dealer is that it should contain the element that they carry the narcotics purely with the aim of obtaining economic benefits from the proceeds of the distribution. However, in many cases it was found that narcotics dealers who carried narcotics in small quantities were assumed to be punished lightly if caught [25] but many death sentences were imposed by involving narcotics couriers who did not have economic benefits in line with the profits received by the dealers, while narcotics dealers or dealers were not seen in the criminal investigation and were immune from the law [26].

Criminal sanctions for narcotics couriers are listed in Article 114 paragraph 1 of the Narcotics Law, explaining that buying narcotics or narcotics transactions is a prohibited offense and can be subject to a minimum sentence of 5 (five) years in prison to 20 (twenty) years in prison and Rp10,000,000,000 (ten billion rupiah) is the maximum fine, with a minimum of Rp1,000,000,000 (one billion rupiah).

Larry J. Siegel outlines the factors that lead children to become involved in the illicit drug market, including [27]:

- a. Living in disorganized areas characterized by high levels of hopelessness, poverty, and despair, leading some children to turn to drugs.
- b. Peer pressure to use drugs and alcohol.
- c. Increased likelihood of drug abuse among children whose parents are drug users.
- d. Some children may use drugs and alcohol simply for the enjoyment of the experience.

Other factors that contribute to children being at risk of involvement in the illicit drug market include [28]:

- a. An environment that fosters opportunities for criminal behaviour.
- b. Exposure to examples of drug use in their social environment.
- c. Varied social environments.
- d. Economic hardships such as poverty and destitution.

These factors should bear in mind regard to decision that made by the State in order to be able to analyse the root cause of children relates to the drugs crimes [29]. Therefore the judgement will follow according the need of child as offender whether who are in the treatment facilities or other closed setting.

Study in 4 juveniles on drug offenders.

Decision Number 1/Pid.Sus-Anak/2019/PN.Msh

Moh. Gufran Marasabessy (Opan), 17 years old, was charged with two offenses related to narcotics. The first charge was for the unlawful possession, storage, control, or provision of Class I Narcotics, and the second charge was for offering to buy, sell, receive, or serve as a middleman in the purchasing process and selling of Class I drugs. The prosecutor sought a 4-month prison sentence, reduced by a period of detention, and a fine of Rp. 1,000,000,000.00, along with a 3-month job training program at the Social Welfare Implementation Institution (LPKS) in Ambon. The case began when Moh. Gufran received a call from Abdul Rahman Marasabessy on September 17, 2018, instructing Opan to pick up a pack of cigarettes from Abdul's house. Upon retrieving the pack, Opan discovered that it contained 1 package of methamphetamine. Opan had unknowingly carried out this task three times on Abdul's orders before realizing the pack's contents on September 17, 2018.

During the examination, Opan tested negative for narcotics use. However, the judge found Opan guilty of possession of narcotics and sentenced him to 2 (two) months in the Ambon Special Children's Correctional Institution (LPKA) and a fine of Rp. 1,000,000,000. The judge also ruled that not paying the fine would result in a 1-month job training program at the Social Welfare Implementation Institution (LPKS) in Ambon.

Decision Number 28/Pid.Sus-Anak/2020/PN.Mre

A 17-year-old child named Andesta Bin Rusimin (Andesta) was charged with a subsidiary charge, namely the primary indictment of article 114 paragraph 1 of Law Number 35 of 2009 concerning Narcotics that, "without the right to offer to sell, sell, buy, become an intermediary in the buying and selling, exchange, delivery or receipt of Class I narcotics that do not plant" and the supplemental indictment of Law Number 35 of 2009 concerning Narcotics, Article 112, Paragraph 1 that: "Any person who without rights or against the law possesses, stores, controls, or provides Class I Narcotics other than plants". The prosecutor charged Andesta with a prison sentence of 4 (four) years with a reduction while the child was in custody and ordered the child to remain detained and job training for 3 (three) months.

This case began on August 26, 2020, Andesta was told by Candra to deliver methamphetamine-type narcotics to Rizal who was waiting at Simpang Airport with a wage of Rp50,000 (US\$ 3). Then, Andesta approached Pebri Siswanto who was sitting in Asep's salon, and invited him to buy fried food. When he arrived at Simpang Airport, Andesta stood on the side of the road and the police arrested and examined Andesta. Methamphetamine-type narcotics were found as much as 1 (one) plastic bag weighing 1,920 grams in the cigarette box. Andesta also consumed methamphetamine narcotics because he was curious and wanted to act as a middleman in the purchase and sale of drugs since he needed cash to purchase smokes. The judge stated that Andesta had been found guilty of the offense by a court of "Without the Right to Be an Intermediary in

the Buying and Selling of Class I Narcotics Not Plants" and was sentenced to 2 (two) years in prison and 6 (six) months in job training at LPKS (Social Welfare Implementation Institution) Marsudi Putra Dharmapala Indralaya Ogan Lahir.

Decision Number 3/Pid.Sus-Anak/2020/PN.Pms

Pandu Trika Febrianta (Pandu), 16 years old, was threatened with the following charges:

1. First Indictment: violation of Article 114 paragraph (1) Jo. Article 132 of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics.
2. Second Indictment: violation of Article 112 paragraph (1) Jo. Article 132 of Law No. 35 of 2009 concerning Narcotics.
3. Third Indictment: violation of Article 127 paragraph (1) letter a of Law No. 35 of 2009 concerning Narcotics.

The Public Prosecutor has advocated for a one-year prison term minus the detention period, and an 8 (eight) month job training program.

On May 2, 2020, Pandu was asked by Ariga to buy 2 pieces of methamphetamine. Pandu waited at the bus stop and gave Rp150,000 (US\$10) to Yunus for the drugs. Yunus provided Pandu with only 1 package of methamphetamine instead of 2. Pandu then splits the single package into 3 smaller packages because one package was taken by Yunus. Later, Pandu asked his friend Rayhan to hold onto one package, but Rayhan refused.

Pandu had two methamphetamines, one in each of his pockets. He gave one package of methamphetamine to Ariga, but Ariga refused and returned it because it wasn't what he had ordered. The police arrived and arrested Pandu and Rayhan. They found two pieces of methamphetamine on Pandu, which led to the judge ruling that Pandu Trika Febrianta was guilty of being involved while buying and selling class I drugs without authorization and sentenced him to three months of work training and six months in jail.

Decision Number 5/Pid.Sus-Anak/2021/PN.Skt

Muhammad Ridwan (Ridwan), 17 years old, is accused of committing criminal acts under the Narcotics Law. The first indictment is under Article 114, paragraph (1) of the Narcotics Law, the second indictment is under Article 112, paragraph (1) of the Narcotics Law, and the third indictment is also under Article 112, paragraph (1) of the Narcotics Law. The public prosecutor has requested a 1-year prison sentence and 3 months of job training at BRSMAPK (Social Rehabilitation Center for Children in Need of Special Protection) in Magelang, Central Java.

On May 25, 2021, Ridwan was approached by Novian Gilang Permana, who had 5 packages of methamphetamine. Novian invited Ridwan to consume the methamphetamine in Ridwan's house, to which Ridwan agreed. Additionally, Ridwan received 2 (two) packages of shabu from Novian with the intention of selling them. On May 27, 2021, when someone wanted to buy 0.5 grams of shabu, Ridwan made the transaction on the side of the road. However, it turned out that the person was a police

officer who then searched Ridwan and found 1 (one) small transparent plastic package containing shabu wrapped in candy. The police also found 1 package of shabu in a cigarette packet and a set of shabu suction devices at Ridwan's house. In conclusion, 2 (two) plastic packages containing shabu and a set of methamphetamine suction devices were found in Ridwan's possession.

The judge's decision stated that Ridwan was validated and found guilty of committing the offense of "Without the right or against the law to receive, become an intermediary in the sale and purchase, or hand over Class I Narcotics" in violation of article 114 paragraph (1) of Law of the Republic of Indonesia No.35 of 2009 concerning Narcotics with the threat of imprisonment for 7 (seven) months at BRSMAPK (Social Rehabilitation Center for Children in Need of Special Protection), Magelang, Central Java.

Case Analysis

Neglected young people who use drugs and the non-discrimination principles.

In both cases, there were two instances of children with parents who were children who use drugs. However, the charges in these cases focused on narcotics trafficking, as the individuals were found in possession of narcotics intended for sale. In Indonesia, specific limits for narcotics users and non-narcotics users are outlined in the Supreme Court Circular Letter (SEMA) No. 4 of 2010. According to this circular, individuals found in possession of a certain number of narcotics, such as methamphetamine (more commonly known as meth), can be sent to a rehabilitation facility. Despite this, none of the four children in these cases were found in possession of methamphetamine exceeding 1 (one) gram, and only two of the four were found to have used narcotics. This illustrates that the understanding of narcotics users and the non-penal approach, which has been in place since 2010, has not been fully implemented by law enforcement, from the investigation phase to the imposition of criminal sentences by the court.

Disproportionality of actions in judgments for the best interest of the child.

In Opan's case, the panel of judges first found that the second charge specified in Article 114 (1) of Law No. 35 of 2009 on Narcotics had been proven. However, in reaching a verdict of 2 (two) years in prison, the judges did not take into account Law No. 11 of 2012 on the Juvenile Criminal Justice System. Despite recommendations for Opan to receive institutional coaching based on the Litmas Report, his parents' application, and legal advice, the judges did not consider alternative forms of punishment such as work training at LPKS Ambon for a month, which would have been a more implementable option than the fines that were imposed.

The Punitive approach violated the rights of the child.

The judge's decision in the second trial, regarding Andesta, was based on the consideration that if the requirements of the primary accusation under article 114 (1) of Law Number 35 of 2009 concerning Narcotics were met, then the subsidiary accusation would not need to be proven again. The criminal penalty decided by the court should take into account the principles of child protection. However, the judge unfortunately handed down a criminal verdict against the child, solely based on the fact that The child's behavior contradicted the government's plan to eliminate the circulation and abuse of narcotics. In the second decision, Judge Andesta first considered the main accusation. If the main accusation under Article 114 (1) of Law Number 35 of 2009 concerning Narcotics was proven, then the secondary accusation did not need to be proven again. The criminal penalty decided by the court should be based on the principles of child protection. Unfortunately, the judge sentenced the child based solely on the fact that the child's actions did not align with the government's efforts to eliminate drug circulation and abuse and were considered to have disrupted the community. This punitive approach violated the rights of the child.

When making sentencing decisions, judges must take into account the social issues affecting children, as social determinants play a crucial role in determining the best approach for addressing the legal issues faced by children. In some cases, judges may consider directing and guiding the child. However, in the case of Andesta, for example, it was deemed necessary to raise the child's awareness because the parents or guardians were unable to provide proper care and supervision due to their busy schedules, even though Andesta is considered an adult accountable for his actions. The two-year prison sentence was deemed appropriate. In Andesta's case, it was deemed necessary for him to receive treatment or health intervention for his drug dependency.

In the Pandu case, the judge first considered the first indictment, namely Article 114, paragraph (1) of the Narcotics Law and Article 132 of the Narcotics Law. The mitigating element in this case is that Pandu is still relatively young and is easily influenced by environmental factors, and the child still has the opportunity to improve and live in society normally. The judge's consideration in this case is also the same, namely, narcotics crimes can threaten the nation's generation, so eradication must be carried out. Again, the narrative of the War on Drugs dominates the judge's evaluation when making a decision about the child's case.

The judge considered the war on drugs narrative in the fourth verdict for Ridwan. One of the charges considered was Article 114, paragraph (1) of the Narcotics Law. The judge emphasized the deterrent effect in their consideration. In Ridwan's case, the judge argued that punishment serves as a form of prevention to deter the child from repeating the offense. Therefore, the judge found that the imposed punishment was appropriate and commensurate with the mistake made by the child.

Based on the four decisions cited by the author in this study, there are differences in judges' considerations in deciding on sanctions for kids acting as narcotics couriers. The criminal act being tested for its elements is a similar one, namely Article 114 paragraph (1) of Law No. 35 of 2009. The judge assesses both juridical and non-juridical factors, which include indictments from the Public Prosecutor, statements from the defendant, witness statements, expert testimony, and *Visum Et Repertum* evidence. However, the assessment of non-juridical factors such as psychological

impacts and material losses on children, especially children involved in narcotics courier activities [30], did not significantly influence the judge's decisions.

When judges consider cases involving children, they must adhere to specific laws and regulations, like the Child Justice System Law and the Child Protection Law. These laws offer children who are in legal trouble with legal protection because children are considered special legal subjects and their rights must be safeguarded. It's important to note that the sanctions for adults and children differ [31]. However, based on the four decisions mentioned, it appears to contradict Article 64, paragraph (2), letter (e) of Law Number 35 of 2014, which states that children need extra protection in conflict with the law includes exemption from harsh, inhuman, or degrading treatment, including torture and punishment that goes against their dignity and well-being [32].

Moreover, according to article 64, paragraph (2), letter (g), except in extreme cases and for the shortest amount of time, arrest, custody, or incarceration should be avoided [33]. The two-year and six-month imprisonment, along with job training, in the second conviction seems excessively long and burdensome for a child. Such a sentence can significantly impact the growth and development of children at a young age [34]. When considering the principles outlined in Article 2 of Law Number 11 of 2012 regarding Juvenile Criminal Justice, it is apparent that all four sentences have disregarded the principle of using deprivation of liberty and criminalization as a last resort. From the four judgments, it is evident that none of the parties attempted any diversion efforts before resorting to court as a last option.

Diversion is the process used to resolve cases in the juvenile criminal justice system court. Diversion involves transferring the case from the court process to an outside settlement process. According to Article 9, paragraph (2) of the Law on the Juvenile Criminal Justice System, diversion must be pursued for juvenile criminal justice cases. According to the legislation, diversion can be used for crimes like drug offenses that have no victims. which are considered as crimes without victims. In this context, the child as the perpetrator is also considered a victim [35]. Additionally, according to Article 3 of Perma No. 4 of 2014, the Judge must seek diversion if the child is charged with a prison sentence of less than seven years or if the child is charged with either as a cumulative, alternative, subsidized, or combination indictment for a period of seven years or longer. Implementing the Diversi agreement in cases of children as narcotics couriers serves as a preventive effort and can be carried out through social rehabilitation. Social rehabilitation aims to restore the physical, mental, and social well-being of children, thereby creating a more beneficial future for the child.

Child as a drug mule

Data obtained from interviews with law enforcement agencies [36] shows that children aged 14 to 17, with junior high school (SMP) to high school (SMA) education, are involved in narcotics courier activities. This falls within the category of a child under the Child Protection Law, defined as a person under 18 years old. When accompanied by LBHM, the adults' role in children's involvement as narcotics couriers cannot be overlooked. Children play a small role in the circulation or distribution of illegal narcotics compared to adults. However, in the four cases mentioned, special investigation techniques were employed by law enforcer. The law enforcer, mainly the

police or prosecutor detained children caught carrying narcotics through surveillance methods, without arresting other individuals involved in convincing the child to store, use, or transport narcotics. In all four cases, there was no indication that the larger dealer or seller escaped punishment.

Indonesia has established drug possession limits through the Supreme Court Circular Letter (SEMA) No. 4 of 2010. It sets thresholds for both narcotics users and non-narcotics users. If an individual is found with narcotics such as methamphetamine (meth) weighing 1 (one) gram or less, they can be sent to a rehabilitation center. However, in four recent cases, none of the individuals were found with more than 1 gram of methamphetamine, and only two of the four individuals were found to be using narcotics. This indicates that law enforcement has not fully adhered to the approach towards narcotics users and the non-penal approach that has been in place since 2010, from the investigation stage to the criminal sentencing by the Judge. Among the four cases, the children involved in narcotics trafficking cannot be considered as dealers because the economic benefits they obtained were not substantial enough to classify them as such.

During the interview, the respondent stated that the child got involved in this situation because he was acting as a courier for someone involved with the law. He was either lured by money, cigarettes, or other valuable items to deliver narcotics, not fully understanding that it was illegal, or he was forced to do so under duress. In some cases, the child faced bullying and coercion if he did not comply with the adults' demands [37].

According to the respondent, children who work as narcotics couriers are also abusers. This happens because they use narcotics supplied by adult abusers. There is no specific timeframe for how long a child continues to be an abuser because they are considered passive abusers [38]. Representatives from the National Commission for Child Protection (Komnas PA) [39] have said that kids turn to drug trafficking because they can't distinguish between good and bad, and economic factors also play a role. In cases of narcotics trafficking involving children, they are usually rewarded with money, even though the amount may not be substantial. This money is often used by children to buy snacks. Additionally, respondents have stated that children are often threatened or coerced by adults to deliver narcotics, and if they do not comply, they may face violence. This highlights the crucial role of law enforcement and judges in cases involving children engaged in narcotics trafficking.

Children who become couriers also become users in the cases analyzed. This is often caused by curiosity and association, as they frequently associate with adults who are also users or drug dealers. It was reported that the most commonly used narcotics are marijuana and methamphetamine. In contrast, children who do not become couriers tend to use drugs that are sold over-the-counter in pharmacies or are misused, such as inhaling glue. [40]

Based on data obtained from the two respondents, children become narcotics couriers due to several factors: economic, environmental, and psychological. The economic factor involves children receiving rewards, such as money or valuable objects, from adults when they deliver narcotics. The environmental factor pertains to children living in a social environment lacking knowledge about narcotics and being accustomed to

associating with narcotics abusers. Meanwhile, the psychological factor involves children being threatened by adults to become couriers, facing violence if they do not comply, and lacking the capacity to distinguish actions that violate the law.

Furthermore, children who become couriers are often users themselves, commonly involving marijuana and methamphetamine due to curiosity and lack of supervision from parents or family. It is important to note that children who become narcotics couriers are rarely acting purely out of their own volition, as they are heavily influenced by adults.

4. Conclusion

The use of a criminal approach for the purpose of criminalization is no longer appropriate. Modern punishment aims to rehabilitate rather than seek revenge. This is especially important in cases involving children, as punishment goes against the principle of child protection. When judges consider cases involving children in drug trafficking, they should recognize that children's actions do not align with the global opposition to the war on drugs, which is due to its implications for human rights violations.

In the judicial system, the judge's decision prioritizes imposing criminal penalties against children as a solution for dealing with the issue of narcotics trafficking. However, the juvenile justice system prioritizes the diversion process, a non-criminal approach, and ensures that children's rights are fulfilled in all stages of the criminal justice process. Imposing a criminal sentence against a child with a prison term of 2 years or less violates the principles of children's rights. For example, not all child prisons provide proper access to education for child convicts, thus violating the Education Act and the principles of growth and development and the Convention on the Rights of the Child prohibits discrimination Komnas PA emphasized that juvenile offenders cannot continue their formal education, even though they will receive guidance in the correctional institution (LAPAS). As a result, when they finish serving their sentence and are released, they are no longer categorized as children and may struggle to reintegrate into society and continue their formal education due to the age gap [41].

Sanctioning children with imprisonment as a result of their crimes can have a significant impact on their education, psychology, and social development. It can hinder their educational progress and cause delays in their formal education. Although educational services are provided in prisons, they are not as effective as those available in traditional educational institutions. Additionally, children with inmate status often face negative stigma from the public, making it hard for them to readapt to their environment after release. Furthermore, subjecting children to punishment that disregards child protection principles can lead to psychological trauma and hinder their

growth and development, as well as their best interests, due to the limitations on their rights and lack of proper assistance during the criminal legal process.

Sanctioning children with prison sentences for acting as drug couriers is not in line with modern criminal justice principles, and it does not effectively deter children from getting involved in drug-related activities. Instead of focusing on children, the authorities should use investigation, monitoring, and supervision techniques to target drug dealers. Children who are caught with amounts of drugs below the threshold should be treated differently.

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