

## THE EFFECTIVENESS OF PUNISHMENT AGAINST CHILDREN WHO COMMIT CRIMINAL ACTS OF NARCOTICS DISTRIBUTION

ALFIAN PRATAMA <sup>1</sup>, HAERANAH <sup>2</sup> and AUDYNA MAYASARI MUIN <sup>3</sup>

<sup>1,2,3</sup>Hasanuddin University, Indonesia. Email: <sup>1</sup>alfianpratamaaaaa@gmail.com, <sup>2</sup>haeranahnurdin1966@gmail.com, <sup>3</sup>audyna.mayasari@unhas.ac.id

### Abstract

The development of the times is a factor related to the number of child delinquency increasing as well as the level of seriousness, this delinquency usually begins with deviant behavior caused by various internal and external factors. One of the most frightening problems is the number of cases of children dealing with the law of criminal acts of distributing narcotics. This has brought fundamental social changes in people's lives and greatly influenced the values and behavior of children. However, a child as a perpetrator of a criminal offense applies special protection to protect the interests of the child and the child's future. Therefore, this research aims to examine in-depth criminal actions for children caught in drug trafficking cases with a legal approach method. This paper uses normative legal research which functions to provide answers to all questions and problem formulations by helping to help explain briefly the discussion of research results. In this research, it discusses the concept of punishment for children who distribute narcotics has not been effective, because when children become perpetrators in a criminal offense it is not impossible to find the same handling as adults, therefore it is very necessary and mandatory for law enforcement officials who handle children's cases to be given a corridor of limitation of rules and guidelines.

**Keywords:** Sentencing, Human Rights, Children, Narcotics

### 1. INTRODUCTION

Children's rights are part of human rights that are guaranteed and protected by international and national law, which are universally protected in the Universal Declaration of Human Rights (UDHR) and the International on Civil and Political Rights (ICPR). The differential treatment of children's human rights from adults is set out in specific international conventions. As stated in the Declaration of the Rights of the Child: "...the child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth..." The 1993 Vienna Declaration, produced by the World Conference on Human Rights, re-emphasized the principle of "First Call for Children," emphasizing the importance of national and international efforts to promote children's rights to "survival protection, development, and participation."

In Indonesia, legislation has been made that upholds and pays attention to the rights of children, namely the ratification of the Convention on the Rights of the Child (KHA) with Presidential Decree Number 36 of 1990. Other laws and regulations made by the Indonesian government include Law No. 39/1999 on Human Rights, Law No. 3/1997 on Juvenile Courts, Law No. 23/2002 on Child Protection, and Law No. 11/2012 on the Juvenile Criminal Justice System. In substance, the Law regulates the rights of children in the form of, the right to life, the right to a name, the right to education, the right to basic health, the right to worship according to their religion, the right to expression, to think, to play, to be creative, to rest, to associate and

the right to social security (Yusriana, 2013). The issuance of the Children's Law and until now, the welfare and fulfillment of children's rights are still far from expected. This can be seen from the current situation and conditions of children. The situation and conditions of children now when viewed in terms of education, Indonesian children are said to have not been prosperous and cannot be said to have fulfilled their rights in full, there are still many children in Indonesia who drop out of school. In addition to dropping out of school, many children are victims of violence and experience mistreatment, such as child abuse and obscene acts against children. It is not only victims of violence that occur against children, the most concerning now is when the child himself becomes the perpetrator of a criminal offense (Gultom, 2008).

The development of the times is also a factor related to the increasing number of juvenile delinquency as well as the seriousness of the delinquency usually begins with deviant behavior caused by various internal and external factors. Deviant behavior caused by external factors can be influenced by the swift flow of globalization in the fields of technology, information communication, and economic needs that can make children commit various criminal crimes. Meanwhile, when viewed from the point of view of internal factors, the cause is the unstable condition of the child's personality which is the basis for deviant behavior. Thus, children in conflict with the law need to get special protection so that the rights of children are still complied with. In general, the protection aspects of children in conflict with the law are more emphasized on children's rights rather than children's obligations, because children in general have not been burdened with obligations (Saputra & Miswarik, 2021).

Not a few children in Indonesia are brought to court every year for minor crimes, such as theft and others. It is not surprising that nine out of ten children who commit criminal offenses are sent to prison or detention centers. They should receive support from both lawyers and social services for protection. The current condition is very concerning because many children have to deal with the law and they are placed in detention and imprisonment with adults so that they are prone to violence. Various cases of criminal acts involving children having to deal with the law are actual and factual problems as social and criminal symptoms that have raised concerns among parents and society in general and law enforcement officials (Sosiawan, 2017).

Indonesia itself has quite a variety of crimes committed by children, ranging from sexual violence, murder, and narcotics abuse, the most frightening thing is children who conflict with the law, as recorded in the Directory of Decisions of the Supreme Court of the Republic of Indonesia, in recent years there have been 11163 decisions regarding children who are directly dealing with the law where this number is very alarming where deviations in behavior or unlawful acts committed by children are caused by various factors including the negative impact of rapid development, globalization in the fields of communication and information, advances in science and technology as well as changes in style and way of life as parents. This has brought fundamental social changes in people's lives and greatly influenced the values and behavior of children. Behavioral deviations committed by adolescents in the sense of juvenile delinquency is an act or action committed by someone who is not yet an adult who deliberately violates the law and is aware of the child himself that his actions can be subject to sanctions or punishment (criminal) (Widodo, 2016). According to Law No. 11 of 2012 concerning the

Juvenile Criminal Justice System Article 1 Paragraph 3, a child in conflict with the law, hereinafter referred to as a child, is a child who has reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal offense. The 1945 Constitution Article 27 paragraph (1) states that all citizens are equal before the law and government and must uphold the law and government with no exceptions. However, for a child as a perpetrator of a criminal offense, special protection applies intending to protect the interests of the child and the child's future. In Article 1 paragraph (2) of Law Number 23 of 2002 concerning child protection, that "child protection is all activities to ensure and protect children and their rights so that they can live, grow develop and participate optimally by the dignity and dignity of humanity, as well as receive protection from violence and discrimination. Every child has the right to freedom by the law. Arrest, detention, or imprisonment of children is only carried out if by applicable law and can only be done as a last resort. Legal protection of children is an effort to protect the law against various freedoms and human rights of children.

The Narcotics Agency noted that the number of narcotics abuse among students in 2018 (from 13 provincial capitals in Indonesia) reached 2.29 million people. One of the groups of people who are prone to drug abuse is those in the age range of 15-35 years or the millennial generation (Arief, 1998). The identity of children in conflict with the law must be kept confidential by the provisions of the Juvenile Criminal Justice System Law. So it is difficult to find data on the number of children who have been convicted and caught again either when the child is still a minor or he has grown up. However, from the results of the author's pre-research. Several children were recaptured after they faced the law with narcotics cases either by conviction or by diversion. From the description above, an in-depth study of the criminal acts of children who distribute narcotics needs to be studied in depth with a legal approach method, especially regarding law enforcement using laws and regulations and using the juvenile criminal justice system.

## **2. METHOD**

This paper uses normative legal research which functions to provide answers to all questions and problem formulations by helping to help explain briefly the discussion of research results (Irwansyah, 2020). Legal science research with a normative approach, which focuses on studying legal issues on the issue of norms. This approach will focus on examining legal reality from the perspective of the governing legal substance. The collection of legal materials in this research will be carried out through literature studies, namely, legal materials will be collected, both primary, secondary, and tertiary. These legal materials can be in the form of official documents, reports, and publications in print and electronic forms.

## **3. RESULTS AND DISCUSSION**

The problem of drug abuse in Indonesia is currently felt in an alarming situation. As an archipelago that has a strategic location, both in terms of economic, social, and political aspects in the international world, Indonesia has participated in overcoming narcotics abuse crimes, namely by passing Law Number 35 of 2009 concerning Narcotics (Mardani, 2008). The

purpose of the Narcotics Law is to ensure the availability of narcotics and psychotropic substances for the benefit of health services and science, prevent the abuse of narcotics and psychotropic substances, and eradicate illicit trafficking of narcotics and psychotropic substances. The existence of children's participation in the form of narcotics crimes, as couriers of these illicit goods, certainly raises a sense of sadness and sadness for the activities carried out by children. Considering that children are the successors and also the foundation of the future of parents and families and even this nation itself. This situation makes the potential of children decrease and can have an impact on the learning process, quality, and quantity in developing themselves. This also makes the government's heavy duty to protect the future of the Indonesian nation on the shoulders of Indonesian children, so as not to be dragged into actions that are detrimental to themselves and the Indonesian nation. In its circulation to trick the authorities, it is not uncommon for narcotics dealers to use minors as couriers to deliver drugs from one place to another. Factors such as the promise of hefty rewards and the lack of knowledge about narcotics make minors the target of drug dealers in distributing narcotics widely and covertly. This is a very serious problem, which makes children included in the criminal act of narcotics abuse. With the involvement of children as couriers in drug trafficking, the position of children is already dealing with the law and has become a criminal act. This is inseparable from the evil conspiracy made by the narcotics syndicate to facilitate the process of circulating illicit goods.

Criminal law enforcement is the concrete application of criminal law by law enforcement officials. In other words, criminal law enforcement is the implementation of criminal regulations. Thus, law enforcement is a system that concerns the integration of values with rules and real human behavior. These rules then become guidelines or benchmarks for behavior or actions that are considered appropriate or should be. The behavior or attitude aims to create, maintain, and maintain peace. Law enforcement does not merely mean only the implementation of legislation or the form of judicial decisions. The main problem that plagues law enforcement is the factors that influence it directly or indirectly.

#### **A) Law Enforcement against Child Drug Dealers Using the Narcotics Law**

Legal protection of children is an obligation for all of us considering that children are the next generation of the nation who have a strategic role in realizing the ideals of the nation, therefore children must receive guidance and protection so that they can grow and develop properly. Children are a group that is vulnerable to the occurrence of a criminal offense either as a victim, witnesses, or a perpetrator of a criminal offense. In various documents and international meetings, it can be seen that the need for legal protection for children can cover various aspects, namely: protection of children's human rights and freedoms, protection of children in the judicial process, protection of children's welfare (in the family environment, education and social environment), protection of children in matters of detention and deprivation of liberty, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, drug trafficking/abuse, using children in committing crimes and so on), protection of street children, protection of children from the effects of war / armed conflict, protection of children against acts of violence.

The International Instruments or Conventions that serve as references/guidelines are: (Menajang Timothy, Rainaldy. Walukow, Rudy. Anis, 2020)

- 1) Universal Declaration of Human Rights, Resolution No. 217 A (III) of December 10, 1948.
- 2) International Covenant on Civil and Political Rights.
- 3) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 4) Convention on the Rights of the Child, Resolution No. 109 of 1990.
- 5) Standard Minimum Rules for the Treatment of Prisoners (Resolution No. 663 C (XXIV) of July 31, 1957.
- 6) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Resolution No. 40/ 33, of November 29, 1985.
- 7) The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Resolution No. 45/112, of December 14, 1990.
- 8) The United Nations Standard Minimum Rules for Non-Custodial Measures, Resolution No. 45/110, of December 14, 1990.
- 9) The United Nations Rules for the Protection of Juveniles Deprived of the Liberty, Resolution No. 45/113, dated December 14, 1990. Especially for international instruments that have not been ratified, they apply only as moral appeals and have not officially become positive laws in Indonesia.

Efforts to protect children finally yielded tangible results with the unanimous declaration of the Convention on the Rights of the Child by the UN General Assembly on November 20, 1989 (UN Resolution No. 44/25 of December 5, 1989). Since then, children around the world have received special attention in international standards. The 1989 Convention on the Rights of the Child is an international legal instrument in the form of a convention that regulates the protection of children's rights in detail and is a benchmark that must be used as a whole in the implementation of children's human rights (Saraswati, 2015). The Convention on the Rights of the Child came into force in September 1990 and was ratified by Indonesia through Presidential Decree No. 36 of 1990. In this Convention, the state must respect and guarantee the rights of every child without discrimination of race, color, sex, language, religion, political or other opinion, nationality, national or social origin, wealth, disability, birth, or other status. The concept of child protection consists of several aspects including; the protection of children's human rights and freedoms, protection of children in the judicial process, protection of children's welfare (in the family environment, education, and social environment), protection of children in matters of detention and deprivation of liberty, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, drug trafficking/abuse, using children in committing crimes and so on). Legal protection for children has a fairly broad spectrum.

About formulating the rules of the Juvenile Criminal Justice System. Child protection can be divided into 2 (two) parts, namely:

- 1) Juridical child protection, which includes: protection in the field of public law and the field of civil law.
- 2) Non-juridical child protection, including protection in the social sector, health sector, and education sector.

About the juvenile criminal justice system, several national legal instruments serve as the legal basis or guidelines in its implementation, namely:

- 1) The 1945 Constitution.
- 2) Law No. 35 the Year 2014 on the Amendment to Law No. 23 the Year 2002 on Child Protection.
- 3) Law No. 39 of 1999 on Human Rights.
- 4) Law No. 11 of 2012 on the Juvenile Justice System.
- 5) Law No. 4 of 1979 on Child Welfare.
- 6) Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia.
- 7) Law No. 12 of 1995 concerning Corrections.
- 8) Law No. 2 of 2002 on the Police.
- 9) Law No. 31 of 2014 on Witness and Victim Protection.
- 10) Government Regulation No 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children who are not yet 12 years old.
- 11) Supreme Court Regulation No 4 of 2014 on Diversion Guidelines.
- 12) Presidential Regulation 175 of 2014 Integrated Training Education for Law Enforcement Officers related to SPPA.
- 13) Minister of Social Affairs Regulation on Rehabilitation of Children in Trouble with the Law.
- 14) Regulation of the Attorney General on Guidelines for the Implementation of Diversion.

There are differences in the criminal justice process for adults and children who commit criminal offenses, namely, the law mitigates criminal offenses committed by children, because there are children's rights that must be protected. One of the differences in the judicial process can be seen in the provisions of Article 3 of the SPPA Law which regulates the rights of every child in the criminal justice process, including:

- a) Treated humanely by taking into account their needs by their age;
- b) Separated from adults;
- c) Receive effective legal and other assistance;
- d) To engage in recreational activities;
- e) Free from torture, punishment, or other cruel, inhuman, and degrading treatment;
- f) Not sentenced to the death penalty or life sentence;
- g) Not arrested, detained, or imprisoned, except as a last resort and for the shortest time;
- h) Obtain justice before a juvenile court that is objective, impartial, and in a hearing that is closed to the public;
- i) Not to have his/her identity published;
- j) Obtaining assistance from parents/guardians and people trusted by the child;
- k) Obtaining social advocacy;
- l) Obtaining a private life;
- m) Obtaining accessibility, especially for disabled children;
- n) Obtaining education;
- o) Obtaining health services; and
- p) Obtaining other rights by the provisions of laws and regulations.

Furthermore, the principle of protection in the SPPA Law can be seen in terms of sanctions. Children as perpetrators of criminal offenses can be sentenced to 2 (two) kinds of sanctions, namely action sanctions (criminal offenders under 14 years of age) and criminal sanctions (Article 69 of the SPPA Law). a. Action sanctions include, return to parents/guardians, handover to someone, treatment at a mental hospital, treatment at LPKS, obligation to attend formal education and/or training held by the government or private entities, revocation of driver's license and/or repairs due to criminal acts (Article 82 of the SPPA Law). b. Criminal sanctions include main and additional crimes (Article 71 of the SPPA Law).

Basic punishment includes warning punishment, punishment with conditions (which consists of coaching outside the institution, community service, or supervision), vocational training, coaching in an institution, and imprisonment. Additional punishment includes deprivation of profit obtained from a criminal offense or fulfillment of a customary obligation.

The legal protection of children in the criminal justice system in Indonesia can be seen from the entire legal process, starting from the stages of investigation, arrest and detention, prosecution, trial, and guidance. The entire process must be carried out based on the provisions of the SPPA Law and must prioritize the needs, development, and growth of children, both mental, physical, and social children and the interests of society.

## **B) Law Enforcement against Child Drug Dealers Using the Juvenile Criminal Justice System**

The juvenile justice process often loses its essence, as a mechanism that must end with efforts to protect the best interest of the child. Juvenile criminal justice is often a process that is only oriented toward formal law enforcement and not oriented toward the interests of children (Ratomi, 2013). In Restorative Justice Theory, the process of resolving violations of the law that occur is carried out by bringing victims and perpetrators (suspects) together to sit in one meeting to talk together. In the meeting, the mediator provides an opportunity for the perpetrator to provide a clear description of the actions he has taken.

Restorative justice is a process where all parties involved in a particular criminal offense together solve the problem of how to deal with future consequences. In the development of criminal law, there has been a paradigm shift in the philosophy of juvenile criminal justice, which initially was retributive justice, then changed to rehabilitation, then finally to restorative justice (Edyanto, 2017). The diversion of the settlement of children's cases outside the formal channels of justice through diversion regulated in international children's instruments has juridical implications for Indonesia to accommodate the provisions of diversion in children's legislation in Indonesia. Indonesia has a concept of diversion that was first regulated in Law No. 11/2012 concerning the Juvenile Criminal Justice System, which is a breakthrough in the juvenile justice system in Indonesia. The concept of diversion is a transfer of settlement of cases of children suspected of committing certain criminal offenses from the formal criminal process to an amicable settlement between the suspect/defendant/criminal offender and the victim facilitated by the family and/or community, child community advisors, police, prosecutors, judges. In juvenile criminal justice in Indonesia, by applying in every stage of examination. Diversion is carried out to find a form of settlement that is a win-win solution, where the concept of diversion was born based on the fact that the criminal justice process against criminal offenders through the conventional criminal justice system causes more harm than good.

- 1) Achieving peace between the victim and the child;
- 2) Resolving children's cases outside the court process;
- 3) Avoiding children from deprivation of liberty;
- 4) Encourage community participation; and
- 5) Instilling a sense of responsibility in children.

Law No. 11/2012 on the Juvenile Criminal Justice System explicitly states that in handling children in conflict with the law, investigators, prosecutors, and judges are obliged to seek diversionary measures. By Article 7 paragraph (2) of Law No. 11/2012 on the Juvenile Criminal Justice System, diversion can be applied if the child offender is punishable with imprisonment under 7 (seven) years and is not a repeat offender. This is done by considering the category of the criminal offense, the age of the child, the results of community research from Bapas, and the support of the family and community environment (Article 9 of Law No. 11 of 2012 concerning the Child Criminal Justice System).



Every criminal case in this case where children participate or are commonly called children dealing with the law (ABH), especially children as perpetrators of criminal acts, must be protected where in this case diversion is regulated as a form of protection, diversion itself which means a process outside of justice which does not carry out criminal justice which will make the child perpetrator feel discriminated against, diversion itself as a diversion of the judicial process is required in every juvenile criminal justice process starting from the investigation, prosecution and judicial processes. This has been regulated imitatively by the law on the juvenile criminal justice system, but seeing that the conditions for diversion must be criminal offenses with a threat of fewer than 7 years and not a repetition of the crime, it is not impossible that specifically for narcotics crimes where children are perpetrators it is impossible to do diversion considering the threat of narcotics crimes exceeds the provisions of the diversion requirements, if children are to be protected it is not impossible to reassess the rules related to diversion. In this case, diversion as a form of legal protection for children who commit narcotics crimes in the Indonesian juvenile justice system can be said to have failed. The author's analysis in terms of child protection that has been implemented in Indonesia is inseparable from previous regulations based on international legal instruments, Indonesia is also a country that has ratified the Convention on the Rights of the Child in this case also contains very basic child protection principles.

#### 4. CONCLUSION

The concept of punishment against children who distribute narcotics has not been effective, because children as creatures of God who have limitations in many ways and need to be specially guarded and protected because children are also the next generation of human civilization, especially the state and in themselves are given great responsibility, Protection of children, especially children in conflict with the law, is considered very urgent/necessary, because when children become perpetrators in a criminal offense it is not impossible to find the same treatment as adults, therefore it is very necessary and mandatory for law enforcement officials who handle children's cases to be given a corridor of limitation of rules and guidelines. Moreover, Indonesia as a member state has ratified the Convention on the Rights of the Child, in which four principles must exist as the basis for the protection of children, especially as perpetrators of narcotics crimes.

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