

**INDONESIA'S POLICY ON CHILDREN AS PERPETRATORS OF
CRIMINAL ACT OF NARCOTIC ABUSE**

**KEBIJAKAN INDONESIA TERHADAP ANAK SEBAGAI PELAKU
TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA**

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ABSTRAK

Artikel ini bertujuan untuk menganalisis penyalahgunaan narkoba yang dilakukan oleh anak-anak. Dengan hasil penelitian;. Terdapat beberapa faktor yang menyebabkan anak melakukan tindak pidana penyalahgunaan narkoba. Faktor-faktor tersebut tidak terlepas dari pengaruh lingkungan dan dari dalam diri anak (faktor internal dan faktor eksternal). Selanjutnya dalam proses peradilan pidana terhadap anak yang melakukan tindak pidana penyalahgunaan narkoba, terlebih dahulu harus diupayakan diversifikasi sebagai upaya perlindungan hukum dan bentuk pertanggungjawaban hukum terhadap anak penyalahgunaan narkoba, guna menghindarkan anak dari dampak buruk proses peradilan pidana.

Kata kunci: Anak, Penyalahgunaan Narkotika, Sistem Peradilan Pidana Anak

ABSTRACT

This article aims to analyze drug abuse committed by juveniles. With the results of the research;. There are several factors that cause juveniles to commit criminal acts of narcotics abuse. These factors are inseparable from the influence of the environment and from within the child (internal factors and external factors). Furthermore, during the criminal justice process against juveniles who commit criminal acts of narcotics abuse, diversion must first be pursued as an attempt at legal protection and a form of legal responsibility for juvenile drug abusers, in order to avoid children from the adverse effects of the criminal justice process.

Keywords: Children, Drug Abuse, Juvenile Justice System

A. INTRODUCTION

Indonesia is a country that upholds the legal protection toward children, since the legal protection of children by the State is a concrete implementation in order to ensuring the rights of every child for survival, growth, and development,

as well as protection from violence and discrimination.¹ Based on Republic of Indonesia Regulation Number 35 of 2014 on the Amendment of Republic of Indonesia Regulation Number 23 of 2002 concerning Child Protection (hereinafter referred to as Child Protection Regulation), its stated that a person who could be classified as a “child and/or children” is a person who is under 18 years old. Furthermore, within the age range of 18 years, a person can be classified as a “child” is a person who is under the age of 13, while the age range of 13-18 years shall classify as a teenager. In this range of ages, a child particularly needs positive guidance from their parents and their environment. However, there are frequently actions that deviate from the law and norms committed by the child and or teenager which caused them caught in a legal case, and often requires a legal protection during judicial. The scope of legal protection of children is aimed at ensuring the protection of children from all possibilities that could harm their growth and development of children and is given to protect the rights of children from all kinds of criminal acts conducted by the child.²

Furthermore, one of the unlawful acts which is often committed by children now days is using those illegal drugs or narcotics. Moreover, Indonesian law forbids the use of narcotics as stipulated in article 1 point (15) of Law Number 35 of 2009 concerning Narcotics, which stated “Narcotics abusers are people who use Narcotics without rights or against the law.” Those regulation is also made it clear that by importing, exporting, producing, planting, keeping, distributing and using narcotics without strict control and supervision, and contrary to applicable laws and regulations shall considered as a crime. In those regulation also give a definition about narcotic in the article 1, that stated: “narcotics are compounds or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are divided into groups as attached to this regulation”³

¹ Maulana Hasan Wadong, *Advokasi dan Hukum Perlindungan Anak*, Gramedia Widiasarana, Jakarta, 2010). p.1

² Amin Suprihatini, *Perlindungan terhadap Anak*, Cempaka Putih, Jakarta, 2014, p.41

³ Pasal 1 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

In the current situation of narcotics trafficking, children are often becoming the main target of both distributors and users of the illegal drugs, considering that children's curiosity is particularly high about new things that are utilized by syndicates or individuals in distributing these illegal drugs, which could lead the children to become a victims of narcotics abuser. The children that committed a narcotic crime are often influenced by several aspects which but not limited to the environment, social media, and lack of education.⁴

According to the national research survey conducted in 2023 that officially published in early 2024 by National Narcotics Board of The Republic of Indonesia (hereinafter referred to as BNN), the result shown that in a year of 2021 the prevalence of drug abuse in Indonesia increased by 0.15%, which in 2019 the percentage of drug abuse was 1.8%, followed by an increase to 1.95 percent in 2021. Moreover, the prevalence rate of past year drug abuse in 2023 is 1.73% This figure shows a decrease of 0.22 from 1.95% in 2021 to 1.73% in 2023. This decrease is quite large when viewed from the absolute number of populations, namely drug abusers who are estimated at 3,337,911 residents aged 15-64 years during the past year (2023), a decrease of 324,735 people compared to the number in 2021 (3,662,646 residents).⁵ Moreover, the prevalence rate of drug abuse in the 15-24 age group as shown in the survey result tends to be stable in 2023 compared to 2021. This needs to be noted because there has been relatively no decrease in the prevalence rate in this young age group. Indonesian Child Protection Commission (hereinafter KPAI), by the Division of Monitoring and Evaluation, hereby explained that in 2021 a total of 82.4% of children caught in drug cases are users. Meanwhile, 47.1% of children act as dealers, and 31.4% of children act as couriers. Based on Indonesia Drugs Report in 2024, the top 5 most consumed drugs for the first time in society, would be (1) cannabis/hasish in total 44.69%, (2) Methamphetamine, ecstasy, amphetamine, dex in total 22.06%, (3) Nipam, lexotan, rohypnol etc in total 11.17%, (4) Thrihexyphenidyl/Trihex/THP/Pil in total 3,49% and (5) other drugs in total 4.57%.

⁴ M. A. M. S. Fatoni, *Criminal Aspects Of Child Victims Of Narcotics Crime In The Perspective Of Restorative Justice*, JCH (Jurnal Cendekia Hukum), Vol.9, No.1 (2023).

⁵ Badan Narkotika Nasional dan Badan Pusat Statistik, *National Survey of Drug Abuse 2023*, Badan Narkotika Nasional dan Badan Pusat Statistik, Jakarta 2024.

A children who are narcotics couriers are considered to be one of the most concerning issues as they are in conflict with the law and are classified as a criminal which committed a narcotic abuse.⁶ The existence of Regulation Number 39 of 2009 concerning about Narcotics has made the abuse of narcotics both in the form of trafficking and as a user an unlawful act or criminal offense. Both adults and children involved in drug abuse shall be subject to punishment. The children who are involved in drug abuse crimes must receive protection both psychologically and legally to avoid psychological disorders that may occur in children, and prevent stigmatization of children in conflict with the law.

Considering that children are individuals who are emotionally unstable but have committed criminal offenses, especially drug abuse crimes, as for resolving the legal issues regarding the drug abuse committed by children, shall requires special attention and protection from the state. based on Article 28B paragraph (2) Indonesia Constitution of the 1945 stipulates that “Every child has the right to survival, growth and development and has the right to protection from violence and discrimination” shall become is the basic rule that children must be protected, as part of the younger generation as well as potential human resources for national development.⁷ In order to protect the right of a children who committed a crime, Indonesia has a policy as reflected in the Regulation Number 11 of 2012 concerning the Juvenile Justice System, the children who committed a crime shall be prosecuted in a special judicial system to obtain criminal punishment, the application of juvenile justice system is very different from the ordinary justice system implemented by Indonesia to be responsible for those who committed crimes. The juvenile justice system shall provide legal protection for the rights of children who commit criminal offenses.

⁶ J. A Badu, L. W. Kaluku, *Restoratif Justice In the Perspective of Customary Law: A Solution to the Settlement of Narcotics Crimes Committed by Children*, Jambura Law Review, Vol.4, No.2 (2022).

⁷ S. Putri, Somawijaya N. N. dan Takariawan, *The Correctional Institution Recommendation As Judge's Consideration In Making A Decision Against Child Narcotics Abuser*, Jurnal Ilmiah Galuh Justisi, Vol.9, No.2 (2021).

The research method used in this article is normative legal research, which focuses on the study find legal norms as the basis for justifying a legal phenomenon.⁸ The use of normative legal research in the writing of this article aims to analyze the factors that cause a juvenile to commit criminal acts of narcotic abuse and legal policies related to the protection and legal responsibility of juvenile who commit these criminal acts. According to this matter, the use of normative legal research is appropriate to examine legal issues based on legal norms, using legal theories and reasoning at the level of legal norms, doctrines, legal principles and laws and regulations, as well as jurisprudence.

As a comparison, this study refers to four (4) previous research works that discuss similar topics related to drug abuse and juvenile offenders:

The first relevant study was conducted by Gomgom T.P. Siregar and Muhammad Ridwan Lubis, entitled "Analysis of the Factors Causing Children to Commit Narcotics Crimes." This study examined the underlying causes of narcotics abuse among minors and the legal responses applied under Law No. 9 of 1976 on Narcotics. The findings categorized the motivations for children's involvement in narcotics abuse into three groups: (1) experience seekers, who are curious and seek new sensations; (2) oblivion seekers, who aim to escape from reality; and (3) individuals seeking personality change, who use narcotics to alter their character or behavior.⁹

The second study was conducted by I Gede Darmawan Ardika, et al., titled "Law Enforcement on Narcotics Abuse Crimes." This research focused on how the judicial system enforces narcotics laws and the role of community participation in addressing drug-related offenses. The study found that sanctions for narcotics abuse are regulated under Law No. 35 of 2009 on Narcotics, specifically Articles 111 to 148. The punishment system adopts a double track system, whereby both criminal penalties (such as imprisonment and fines) and rehabilitative measures are simultaneously applied to offenders.¹⁰

⁸ T. A. S Negara, *Normative Legal Research In Indonesia: Its Originis And Approaches*, *Audito Comparative Law Journal (ACLJ)*, Vol.4, No.1 (2023).

⁹ Gomgom TP Siregar dan Muhammad Ridwan Lubis, *Analisis Faktor-Faktor Penyebab Anak Melakukan Tindak Pidana Narkotika*, *JPPSH*, Vol.4, No. 2 (2019).

¹⁰ I. Gede Darmawan Ardika dkk., *Penegakan Hukum Terhadap Penyalahgunaan Tindak Pidana Narkotika*, *Jurnal Konstruksi Hukum*, Vol.1, No.2 (2020).

The third study, authored by Ozi Saputra and Yusuf Setyadi, titled "Narcotics Crimes Involving Minors," explored narcotics-related offenses committed by children under the age of 18. The study aimed to identify the causes behind juvenile involvement in drug abuse and examined the legal treatment of child offenders. The findings showed that Law No. 35 of 2009 does not specifically regulate children as narcotics offenders. However, through the application of diversion mechanisms, children who abuse narcotics may receive legal protection. Diversion may take the form of returning the child to parental supervision, enrolling them in educational or rehabilitation programs, or engaging them in community service.¹¹

The final study contributing to the originality of this research was conducted by Abdul Halim Lubis and Ania Galuh Margaini, titled "The Relevance of the Death Penalty for Narcotics Crimes in the Perspective of Criminal Law Reform." This research addressed the implementation of the death penalty in narcotics-related offenses in Indonesia and the concept of capital punishment in the context of criminal law reform. The study argued that the idea of reform, particularly in the Draft of the New Criminal Code (RKUHP), is based on the principle of balance in criminal policy. The existence of the death penalty is viewed as a necessary deterrent to restrict the illegal circulation and misuse of narcotics. The authors concluded that applying capital punishment to narcotics offenders could serve to protect the broader public interest by eliminating individuals who pose significant threats to society.¹²

However, while past research focused on the justification of severe punitive measures such as the death penalty, this study highlights the need for further examination, especially given the increasing number of cases of minors involved in drug-related crimes. The involvement of children in such offences raises important legal and ethical questions regarding the appropriate form of criminal responsibility and the extent to which punitive measures, including the death penalty, are consistent with the principles of child protection and juvenile justice.

¹¹ Ozi Saputra dan Yusuf Setyadi, *Tindak Pidana Narkotika terhadap Anak Dibawah Umur*, Journal Of Law And Nation, Vol.1, No.2 (2022).

¹² Abdul Halim Lubis dan Ania Margaini, *Relevansi Pidana Mati terhadap Tindak Pidana Narkotika dalam Prespektif Pembaharuan Hukum Pidana*, Sanskara Hukum Dan HAM, Vol.1, No.2 (2022).

This study thus aims to fill a critical gap by analysing the specific legal protections and forms of criminal responsibility applicable to minors within the framework of the juvenile criminal justice system.

Based on the aforementioned studies, the commonality found in this research lies in the focus on drug abuse offenses involving minors, as well as the importance of fair and proportionate legal treatment for children as perpetrators. Previous studies have explored the causal factors leading children to become involved in narcotics offenses and examined the application of existing legal frameworks in addressing such cases.

What distinguishes this research as a novel contribution is its specific and comprehensive focus on two key issues: first, the nature and characteristics of narcotics abuse committed by minors; and second, the legal protection and criminal liability applicable to minors involved in such offenses. This research critically examines how the juvenile justice system under Law Number 11 of 2012 on the Juvenile Criminal Justice System applies a distinct approach from the general criminal justice system—particularly through mechanisms such as diversion and the principle of restorative justice, which aim to rehabilitate rather than merely punish the child.

Furthermore, this research takes into account prior studies discussing the implementation of the death penalty in narcotics-related crimes, such as the study by Abdul Halim Lubis and Ania Galuh Margaini. Although the death penalty is perceived as a stringent measure to combat drug trafficking, it necessitates further examination, especially considering the recurring involvement of minors in narcotics abuse cases. In such contexts, the imposition of excessively severe penalties may conflict with the principles of child protection as enshrined in the Constitution and relevant legislation.

Therefore, the urgency of this research lies in the need to formulate a just and proportionate model of criminal liability for minors involved in narcotics-related offenses—one that does not neglect the aspects of protection, rehabilitation, and the future development of the child as part of the nation's next generation.

Based on the matters as mentioned above, this research is aim to analyze the factors that cause a juvenile to commit criminal acts of narcotic abuse and the Indonesia's policy towards children as criminal in narcotic abusers in connection within the legal protection that provide by the regulation and the and legal responsibility for criminal offenses committed by Juveniles, which is written in the research topic: **INDONESIA'S POLICIES TOWARDS CHILDREN AS CRIMINAL IN NARCOTIC ABUSERS.**

B. RESULT OF STUDY

1. Criminal Act of Narcotic Abuse by Underage Children

If studied from a legal point of view, narcotic abuse is an act that may lead to special legal sanctions. This is based on the provision of article 28H Point (1) Constitutions of Republic of Indonesia Year 1945 which can be concluded its content that everyone has the right to live prosperously body and soul, and having good and healthy environment. This content of provision if translated through the stipulated provision through The Constitution Number 35 Year 2009 concerning Narcotics, can be concluded that narcotics are not only causing addiction, but can cause death quickly and unusual. Humans are essentially needing a clean and healthy place for their sustainable life, with the abuse of narcotics making a person's life unhealthy because it can damage physical, psychic or mental of the user,¹³ so as contrary to the provisions in the article as mentioned above. This is what causes narcotics abuse as a crime against humanity and is classified as an extraordinary crime.

Basically the abuse of narcotics which is often carried out by children is as a dealer in narcotics circulation. This is because, narcotics producers are eyeing children considering the psychology side of children who are still vulnerable and are still lay on the applicable legal rules, children tend to obey and follow the orders of adults to distribute narcotics. In addition, they took advantage of the legal gap contained in Law No.11 of 2012 concerning the Children's Justice System which suggested that in the case of the crimes committed by children, must seek diversion first, so that children can be free from imprisonment / fine.

¹³ Anton Sudanto, *Penerapan Hukum Pidana Narkotika di Indonesia*, Adil Jurnal Hukum, Fakultas Hukum-Universitas 17 Agustus 1945, Vol.8, No.1 (2017).

This is reinforced by the results of research conducted by KPAI (National Commission for Child Protection) with the results of an increase in the number of children as dealers reaching a number of 300%.¹⁴

In reviewing the factor the cause of the crime of narcotics abuse, can be analyzed through a victimology point of view, so that it can be understood aspects that have a connection with the victims, such as things behind the occurrence of criminal acts, things that trigger someone commit a crime or become a victim in narcotics abuse.¹⁵ In this regard, Lutfi Baraja said there were three approaches used as a driving factor of a study to understand the background of criminal acts of narcotics abuse, namely organobiologics, psycho-dynamic, and psycho-social approaches. These three approaches are not standing alone but interrelated between one another. From an organobiologics point of view (central nerve/brain) the mechanism of addiction (addiction) to dependencies (dependence) is known as two terms, namely organic mental disorders or organic brain syndrome such as rowdy, restless, and chaos in Cognitive function (natural mind), effective (natural feelings/emotions) and psycho-motor (behavior), which is caused by the direct effect on the central nervous system (brain).¹⁶ In addition, there are also two factors the cause of criminal acts of narcotics abuse carried out by children, theoretically can be classified into two things, namely internal factors (internal) and external factors (external). Internal factors are a factor or cause that arises in the perpetrator through his thoughts to take action against the law, while external factors are a factor that influences from the actors both in terms of environment or the association of the perpetrators. In the case of criminal acts of narcotics abuse carried out by children, things that are the driving factor to carry out against the law is inseparable from internal factors and existing external factors.

¹⁴ David Setyawan, *KPAI: Jumlah Pengedar Narkoba Anak Meningkatkan Hingga 300 Persen*, accessed from <https://www.kpai.go.id/publikasi/kpai-jumlah-pengedar-narkoba-anak-meningkat-hingga-300-persen>., accessed on 1st April 2024 at 19.00 Wita

¹⁵ R. Rusniati dan S. Mardiyati, *Penyalahgunaan Narkotika dan Psicotropika Menurut Undang-Undang Nomor 35 Tahun 2009 dari Perspektif Victimologi*, Disiplin: *Majalah Civitas Akademi Sekolah Tinggi Ilmu Hukum Sumpah Pemuda*, Vol.28, No.3 (2022): 161–178, <https://doi.org/https://disiplin.stihpada.ac.id/index.php/Disiplin/article/view/90/92>.

¹⁶ Yosua Prima Arihta Sitepu, *Upaya Kepolisian Resor (Polres) Sleman dalam Proses Pencegahan dan Pemberantasan Tindak Pidana Narkotika di Kabupaten Sleman*, Universitas Atma Jaya, Yogyakarta, 2018.

Internal Factors

a. Age Factors

In the case of criminal act carried out by children, can be done by the under 17 year old child. This action is driven by a lack of supervision and attention from both children in monitoring association or children's environment. This leads to the possibility of 10 year old children can be used as drug distributor by the adults in their environment. Child who is still little and lay in this case would obviously just obey if he is asked for help to take the narcotics to someone that he does not know. This makes the importance of attention and supervision of parents in the child's growth process, considering that in the age range under 17 years children tend to want to negate and new things.

b. Individual Factors

In this factor, it is inseparable from the age factor as previously explained, because it is based on what curiosity is narcotics from the child, to make the child carry out the deviant one of the laws. This factor is also driven in terms of psychological children who have curiosity or curious, to try to use narcotics, because children if it is increasingly prohibited, the child's curiosity is increasingly rising. This is what triggers children to be a narcotics user and make dependence on the use of the drug. Things such as emotional instability are used by producers and drug dealers, to circulate the drugs so that it causes underage children to fall into narcotics abuse.

c. Personality Factors

Internal factors that emerge from within children, have links between one and more, child's personality factors tend to have no difference from individual factors. The personality of a teenager who is classified as still very labile is influenced by the presence of inferiority so that he wants to be considered more by his friend in association encourage children or adolescents to abuse narcotics. This is actually starting from drinking liquor in groups that lead to narcotics use in order to look active in the environment and recognized their courage.

External Factors

In addition to internal factors there are also external factors that come from outside the perpetrators, this external factor can be affected by:

a. Family Factors

As a small environment that is very close to children, the family is one of the factors who if not accompanied by a good condition such as divorce of parents who cause broken home, can be a child's trigger to commit acts against the law. A bad family environment will be the basis of the many negative influences that will have a negative effect on the development of the soul and psychological child, due to lack of attention and the affection obtained by children in the family. So that a child who does not get sufficient affection from his family's environment will be a trigger for children often taking actions that are deviant and can disturb the community.

b. Economic Factors

Economic factors are basically a factor that has a big influence as a cause of children to commit criminal acts of narcotics circulation. This is due to the economic situation of the family that is lacking so that children feel their needs cannot be fulfilled by their parents, then in order to get money quickly and instant, children will tend to violate the law, one of them is willing to be a paid narcotics dealer where the money is quite much for them. In this case, most children do not know what items they circulate, which the only thing they know is to earn money.

c. Environmental Factors/Child Association

The environment or child association is a determining factor of the good or poor nature of the child. The role and guidance of the parents are very necessary in terms of child association. A bad or not good environment will cause a child to fall into a criminal act of narcotics abuse, this environmental factor if it is supported by economic factors as described above will cause children to easily want to commit an act against the law to achieve the child's personal purpose.

d. Educational Factors

The main task of the child is basically learning. The educational facilities provided by the state will certainly be the key to children's development, the lack of adequate education will be the forerunner of children to commit criminal acts of narcotics abuse. The lack of education obtained by a child will greatly affect the mindset and child deed, and will mold their understanding of the norms or rule of law in the form of things that are prohibited, if it is done, criminal sanctions will be imposed to them. Therefore, children who are still lay on legal rules tend not to know the consequences and impacts of the behavior or actions taken.

e. Social Media Factors

In the current era of globalization, social media is an inseparable part of the lives of children who are able to influence children's development. It is easy to access information from various worlds is one of the positive impacts of social media use. However, if this is being used unproductively, it will have a negative impact on the use of social media. With the number of negative contents on social media if they are watched by children will encourage children to think and carry out crime actions coupled with the psychological side and the emotions of children who are still unstable. Especially in the circulation of narcotics, almost all people can easily obtain narcotics from irresponsible individuals. This factor has a close connection with environmental factors and economic economic factors, because children grow in poor environment with less economic needs, then by utilizing social media negatively children easily make money by narcotics and communicating privately

f. Job Factors

The job factor has a close connection with the education factor, this is because a child who broke up education has to work in order to support himself. The difficulty of finding work these days and if it is not equipped with a good hard skill and soft skill, it will make criminal offenders increasing. If the child is influenced by this factor, then it is possible that the child is one of the perpetrators of the crime of narcotics circulation. Narcotics circulation is actually one of the crimes committed by the perpetrators with a high level of risk but provide large income and the process of work carried out is also fast. This is what underlies most children choosing to commit criminal acts of narcotics, for the sake of the fulfillment of the child's needs.

2. The Children Legal Protection and Criminal Liability of Narcotics Abuse Carried Out by Children

As contained in the provisions of the Law Number 35 Of 2009 concerning Narcotics explained that the existence of this rule is as the foundation of the arrangement to ensure the availability of narcotics for the health interests or research and development of science. This makes the use of narcotics is legal if it is functioned for certain purposes as stipulated in the law. But practically,

narcotics existence is not only used for positive purposes, but is used for personal interests against the law, causing narcotics abuse. Whereas the crime of narcotics abuse is a special crime that is classified as extraordinary crimes or extra ordinary crime, as stipulated in Law Number 35 Of 2009 concerning Narcotics certainly has a severe criminal threat. Criminal threats are actually given based on the theory of the reasons that justify the punishment.¹⁷ A child who committed a crime of illegal drugs is juridically classified as a criminal actor, However, conceptually the crime is categorized as crime without victim or a crime that without the presence of the perpetrator categorized as a victim of the crime he has done.¹⁸ A child who is a perpetrator of narcotics crime, in the judicial process will apply some specificity which according to law in Indonesia is attached to children through the Juvenile Justice System regulated in Law Number 11 Of 2012 concerning the Juvenile Justice System (hereafter referred to as *UUSPPA*), therefore the judicial mechanism that children will be undertaken by a different mechanism with adults.

Based on this, in the case of narcotics criminal act carried out by the child, not using the legal provisions of the criminal event as stipulated in the Criminal Code Procedure, but in the judicial process will refer to *UUSPPA*. Theoretically, the child's criminal system is *lex specialist* (Special Provisions), which in the rules of special provisions can be able to recruit the general provisions. The implementation of justice to children based on the Juvenile Justice System, is a form of legal protection provided by the government to both children who will or are undergoing legal proceedings in Indonesia. The *UUSPPA* guarantees that the rights of children must be fulfilled during the legal process to avoid psychological damage to the child. This practice has continuity with Article 59 verse (1) of Act Number 35 Of 2014 concerning the protection of children which regulates that the government, local government, and other state institutions are obliged and responsible for providing special protection to children.

¹⁷ Leden Marpaung, *Asas Teori Praktek Hukum Pidana*, Cetakan Pertama, Sinar Grafika, Jakarta, 2005, p.4.

¹⁸ I. Hapsari, E. Sopyonono dan R. B. Sularto, *Kebijakan Hukum Pidana dalam Upaya Penanggulangan Tindak Pidana Narkotika Pelaku Anak*, Diponegoro Law Journal, Vol.5, No.3, (2016), p.1-14.

Special protection to children is a form of protection received by children in certain situations and conditions to get guaranteed security for threats that harm themselves and soul in their development.¹⁹ Based on the guarantee of protection provided by the Child Protection Act, it is in the process of the criminal justice accommodated by the *UUSPPA*, regarding the resolution of children's delinquency cases must first be sought for diversion. Diversion is a process of transferring the settlement of the child's case from the formal criminal justice process to the process outside of criminal justice. This is useful for avoiding the negative effects of subsequent judicial processes in child justice administration, such as labeling due to guilty statements and sentences.²⁰ In the implementation of the diversion must pay attention to several aspects, between other interests of the victims, welfare and child responsibility, negative stigma avoidance and revenge aversion, as mandated in Article 8 verse (3) of the Act of Juvenile Justice System. Application of diversion by law enforcement apparent will provide opportunities for children to improve and learn from their mistakes so that they can become new individuals who do not have a crime record and not become recidivists. Diverse is actually thing that must be sought by investigators to children who conflict with the law, provided that the crime committed: a) is threatened with imprisonment below 7 (seven) years, and b) is not a repetition of a crime.²¹ Therefore, the diversion is one of the efforts of legal protection for narcotics abuse children, to avoid children from the adverse effects of the criminal justice process, as stipulated by the *UUSPPA*. The form of diversion against children as narcotics abusers is possible with the regret to parents/guardians or participation in education and training and community services.²²

¹⁹ G. P. Kaban et al., *Perlindungan Hukum Terhadap Anak Sebagai Pelaku Penyalahgunaan Narkotika*, Locus Journal of Academic Literature Review, Vol.2, No.3 (2023): 281–91, <https://doi.org/10.56128/ljoalr.v2i3.144>.

²⁰ S. Wahyuni, *Lindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika (Studi Putusan Nomor 44/Pid. Sus-Anak/2019/Pn. Mdn)*, Disertasi, Universitas Medan Area, Medan, 2021.

²¹ Pengadilan Negeri Lasusua, *Syarat Dan Tujuan Diversi*, accessed from <https://pn-lasusua.go.id/v/hukum/layanan-diversi/syarat-dan-tujuan-diversi.html>. accessed on 14th October 2024.

²² A Munim, *Perlindungan Hukum terhadap Tindak Pidana Penyalahgunaan Narkotika yang Dilakukan oleh Anak*, Skripsi, Universitas Islam Sultan Agung Semarang, Semarang, 2022.

In addition to diversion, the juvenile justice system also incorporates the principle of “restorative justice”, which emphasizes the restoration of the original condition, involving the offender, victim, their families, and the community in the resolution process. This approach prioritizes rehabilitation over retribution. Restorative justice is particularly relevant in cases of juvenile drug abuse, as its core focus lies in recovery, education, and the social reintegration of the child into the community. While it does not eliminate the child's criminal liability, the case resolution process is oriented more toward guidance and rehabilitation rather than mere punishment.

Related to this case, for children who are in the middle of the criminal justice process must be based on the Juvenile Justice System, which in the essence of the Juvenile Justice System is to prioritize restorative justice, namely the settlement of a criminal case by involving actors, victims, families of perpetrators/victims, and other parties related to jointly seek a fair settlement by emphasizing recovery back in its original state and not retaliation. In the Juvenile Justice System, Restorative Justice has been adopted to help children of criminal acts to change and are responsible for their actions. This approach focuses on rehabilitation and recovery efforts rather than only imposing punishment. Restorative justice can also be defined as a form of justice that in the process of settlement of criminal act involving perpetrators, victims and related parties to jointly seek a fair settlement by emphasizing recovery in the original state, and not retaliation.²³ Therefore, it is conceivable that restorative justice is basically a type of settlement of a criminal case by prioritizing recovery of victims, which can be realized through mediation and deliberation between the perpetrators by focusing services in the recovery community in the victims and perpetrators.²⁴ This principle positions the criminal process as a last attempt.

²³ Alex Argo Hernowo Anggara dan Napitupulu Erasmus A. T, *Studi Implementasi Penanganan Anak Di Pengadilan Berdasarkan UU SPPA*, accessed from <https://icjr.or.id/studi-Implementasi-penanganan-anak-di-pengadilan-berdasarkan-uu-sppa/>., accessed on 14th October 2024.

²⁴ I Made Wahyu Chandra Satriana, *Kebijakan Formulasi Keadilan Restoratif dalam Sistem Peradilan Pidana Anak*, Jurnal Magister Hukum Udayana, Vol.2, No.3 (2013), p.3, <https://doi.org/10.24843/JMHU.2013.v02.i03.p09>.

Basically the settlement of the case through Restorative Justice does not eliminate criminal liability against children. If it is reviewed through the principle of criminal accountability, a person who conflict with the law, both adults and children are required to take responsibility for his actions in advance by not overriding the errors made and the fulfillment of elements of crime. Based on this, a child must continue to account for a crime he committed as a form of responsibility from the child. The provision of criminal liability against children in his conviction must pay attention to the development of the child. The diversion process is actually also a form of criminal liability intended as a form of planting responsibility to children, is located in children threatened with imprisonment below 7 (seven) years, and not a repetition of criminal acts. However, it is necessary to understand that the application of diversified efforts can not be implemented for every child who deal with the law, this is because if the narcotics crime committed by the child is a repetition (has been done before), the diversion process cannot be implemented in the child. So that other legal efforts will be applied without carrying out divers efforts. In this case, a child will be imposed by a sanction for committing a crime of drug abuse in accordance with Articles 112 and 127 Law Number 35 of 2009 concerning narcotics. The law regulates that everyone who suffers from the use of drugs of group I can be sentenced to a maximum imprisonment of 4 years and victims of abuse must carry out medical and social rehabilitation. As for children who abuse drugs, the handling of criminals is regulated in Article 71 of the Juvenile Justice System Law. However, the length of criminal is limited by Article 79 in the act of the Juvenile Justice System that the maximum criminal can be imposed on a child at least $\frac{1}{2}$ (a half) of the maximum criminal for a child with adults. The policy adopted by Indonesia will provide protection against the rights of children who face the law, while providing opportunities for children to account for their mistakes.

The legal treatment of minors involved in narcotics abuse reflects a nuanced approach under Indonesian law. Juridically, children who engage in narcotics-related offenses may still be classified as perpetrators of special criminal acts under narcotics law. However, it is essential to emphasize that conceptually,

minors involved in drug abuse are more appropriately regarded as victims “a crime without a victim” given that they are often exploited due to their vulnerability, either by others or as a result of their own circumstances. Therefore, the Indonesian legal system provides special treatment for minors involved in narcotics offenses through the “Juvenile Criminal Justice System Law” (Law No. 11 of 2012 on SPPA) and the “Child Protection Law” (Law No. 35 of 2014). These legal frameworks aim to ensure that children are approached not merely as offenders, but as individuals in need of protection, rehabilitation, and reintegration into society.²⁵

In the context of law enforcement, minors involved in narcotics offenses are not processed under the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or KUHAP) as adult offenders are. Instead, they are subject to the Juvenile Criminal Justice System, which operates as a *lex specialis*. This specialized legal framework prioritizes the protection of children's rights, seeks to prevent psychological harm, and upholds the principle of the best interests of the child.²⁶ One of the primary legal instruments for ensuring child protection is the application of diversion, which involves redirecting the resolution of a child's case away from formal criminal proceedings toward alternative processes such as mediation, deliberation, or rehabilitation programs. Diversion is mandatory in cases where the offense carries a sentence of less than seven years and does not involve recidivism. The purpose of diversion is to mitigate the negative effects of criminal proceedings such as stigmatization and labeling while providing the child with an opportunity for personal reform and reintegration.²⁷

In cases where a child must undergo legal proceedings, the imposition of criminal sanctions is limited by Article 79 of the Juvenile Criminal Justice System Law (UU SPPA), which stipulates that the maximum sentence imposed on a child may not exceed half of the maximum sentence applicable to adults. Furthermore,

²⁵ Rizky Ade Agustin, Andika Wijaya dan Satriya Nugraha, *Kajian Hukum terhadap Penyalahgunaan Narkotika oleh Anak di Bawah Umur dalam Sistem Peradilan Pidana Anak*, Innovative: Journal Of Social Science Research, Vol.5, No.3 (2025).

²⁶ Berman Sitanggang dan Yusuf Hanafi Pasaribu, *Peranan Penyidik dalam Penerapan Diversi pada Tahap Penyidikan terhadap Anak yang Melakukan Tindak Pidana Narkotika (Studi Kasus Pada Polrestabes Medan)*, YUSTISI, Vol.9, No.2 (2022).

²⁷ Ani Triwati dan Doddy Kridasaksana, *Pijakan Perlunya Diversi Bagi Anak dalam Pengulangan Tindak Pidana*, Jurnal USM Law Review, Vol.4, No.2 (2021).

children who are victims of narcotics abuse are required to undergo medical and social rehabilitation, as mandated by Article 127 of the Narcotics Law. The government is also obligated to provide special protection to children under Article 59(1) of the Child Protection Law, including guarantees of safety and protection from threats that may hinder their physical and psychological development.

However, in practice, the implementation of legal protections for children involved in drug abuse cases continues to face significant challenges. These include limited understanding among law enforcement officers, insufficient rehabilitation facilities, and obstacles in the application of diversion and restorative justice mechanisms. As a result, there is an urgent need for continuous efforts to strengthen legal protection, ensure the fulfillment of children's rights throughout the legal process, and optimize rehabilitative and restorative approaches in all drug-related juvenile cases. Thus, while Indonesia's legal framework provides specific protections and mechanisms for children involved in narcotics-related offenses, their classification as perpetrators of special crimes remains possible. Nevertheless, their legal proceedings must be conducted within the juvenile justice system, emphasizing the principles of protection, restorative justice, and the best interests of the child, rather than applying punitive measures akin to those used for adult offenders.

C. CONCLUSION

In studying the Criminal Act of Abuse of Narcotics by the underage children, it may be analyzed based on the factors that lead to the occurrence of criminal acts of abuse of narcotics, through the perspective of victimology, to understand the aspects that are related to the victim, such as the background of the criminal act, the things that trigger a person to commit a criminal act or become a victim in the abuse of narcotics. Factors that lead to drug abuse crimes committed by children can theoretically be classified into two things, such as internal factors (internal) and external factors (external). Internal factors are factors or causes that arise within the perpetrator through their thoughts to commit acts against the law,

while external factors are factors that influence from outside the perpetrator both in terms of the environment or the association of the perpetrator. In the case of criminal acts of narcotics abuse committed by children, the things that become the driving factor for committing acts against the law are inseparable from the internal factors and external factors that exist.

Children who are going through the criminal justice process must be based on the juvenile criminal justice system, where the core of the juvenile criminal justice system is to prioritize the restorative justice. UUSPPA will ensure the fulfillment of rights during the legal process to avoid psychological damage to the child. Therefore, in the criminal justice process accommodated by the UUSPPA, diversion must first be sought as an effort to protect the law and one form of legal accountability for children who abuse drugs, in order to avoid children from the adverse effects of the criminal justice process, as stipulated in the UUSPPA, provided that the act is not a repetition. If the criminal offense committed by the child is a repeat offense (has been committed before) then the diversion process cannot be implemented on the child. So that other legal remedies will be applied without implementing diversion efforts. In this case, a child will be sanctioned for committing a criminal offense of drug abuse in accordance with Articles 112 and 127 of Law No. 35 of 2009 concerning of narcotics.

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