

Legal Enforcement and Protection for Child Victims of Drug Abuse from Legal Perspective

Getri Antinto

Universitas Islam As-Syafi'iyah, Indonesia

Getriken@gmail.com

Abstract

This research examines the legal framework and protection efforts for children involved in drug abuse in Indonesia. With the increasing prevalence of drug users, including children, the issue has become a significant concern for national security and development. Environmental, psychological, genetic, and curiosity-related factors contribute to children's involvement in drug abuse, highlighting the need for comprehensive protection measures. The legal framework governing drug abuse and juvenile justice in Indonesia involves various laws, including the Narcotics Law, the Juvenile Criminal Justice System Law, and the Child Protection Law. However, potential conflicts exist between these laws regarding the treatment of children involved in drug abuse within the criminal justice system. The principle of diversion, outlined in the Juvenile Criminal Justice System Law, offers an alternative approach to traditional criminal justice for children involved in drug abuse, focusing on rehabilitation rather than punishment. Rehabilitation efforts encompass medical, psychological, and social treatment, emphasizing the child's physical and mental well-being. Recommendations include enhancing prevention efforts, harmonizing legal frameworks, emphasizing diversion and rehabilitation, fostering community collaboration, and empowering youth to take an active role in drug prevention efforts. By implementing these recommendations and strengthening collaboration among stakeholders, Indonesia can effectively address the challenge of drug abuse among children, ensuring their protection, rehabilitation, and future well-being.

Keywords: *Legal Enforcement; Child Victims; Drugs Abuse; Juvenile Criminal*

I. INTRODUCTION

The National Narcotics Agency uncovered 49 international and national narcotics networks that have targeted all groups in villages and cities in Indonesia. The prevalence of drug users has shown an increase reaching 4.8 million people. In the first semester of 2023 alone, Indonesian National Police succeeded in uncovering 24,300 cases and around 2,300 of them involved children as drug abusers or dealers.¹

There are several factors that cause children to be more targeted as drug dealers. Firstly, environmental factors, children usually join their friends in trying drugs to gain social

¹ <https://www.kompas.id/baca/metro/2023/03/25/peringatan-ada-48-juta-penduduk-terpapar-narkotika>

acceptance, and eventually become addicted. Then also because the family environment does not pay attention so that drugs become an escape. Secondly, psychological factors, teenagers are at risk of drug addiction because they experience severe stress, behavioral disorders, depression and anxiety disorders. Third, genetic factors, teenagers whose parents are drug or alcohol addicts are at risk of being blamed for drugs. Lastly, the curiosity factor makes children want to try drugs. When addicted, the perpetrator cannot control his desires and behavior.²

Children as drug abusers are only victims. So it is not appropriate for the state to give punishment by looking equally at child abusers and actual adult criminals (dealers). As victims, children as drug abusers are obliged to receive protection. Child protection is an effort made to create conditions so that every child can carry out their rights and obligations for the sake of the child's natural development and growth, both physically, mentally and socially.³

The government has issued regulations governing the handling of criminal offenses related to narcotics use through Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Article 1 paragraph 15 of Law Number 35 of 2009 concerning Narcotics (Narcotics Law), a narcotics abuser is a person who uses narcotics without rights or against the law.

Meanwhile, children involved in criminal acts are regulated by Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), emphasizes that children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old. who is suspected of committing a criminal act. As for cases where children are victims, the state has regulated this in Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. Therefore, every criminal act committed by a child is resolved through a judicial process that uses a different mechanism from the courts in general.

Basically, there is a potential conflict between Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Law Number 35 of 2009 concerning Narcotics. This difference is mainly related to different approaches in handling cases, where the SPPA Law tends to place more emphasis on diversion or diversion of criminal sentences at the stages of examination, prosecution and trial for minor suspects. Thus, in

²<https://goodstats.id/article/ribuan-kasus-narkoba-libatkan-anak-anak-pelajar-dan-mahasiswa-jadi-tertinggi-keempat-doCKj>

³ Maidin Gultom, *Perlindungan Hukum Terhadap Anak - Dalam Sistem Peradilan Pidana Anak di Indonesia*, Rafika Aditama, Bandung, 2014, hlm.40

cases where a narcotics suspect is a minor, it is likely that the legal process applied to him will be subject to the provisions contained in the SPPA Law.

This research aims to answer the question, to what extent is law enforcement and what protection efforts are provided by the law for children who are victims of drug abuse in Indonesia?

II. METHODOLOGY

The method used in this research is the normative juridical research method. This type of research is included in the library research category, namely research on secondary data. Secondary data as the basic material in this research can be various legal materials, both primary legal materials and secondary legal materials.⁴

Primary legal material consists of legislation, especially legislation related to narcotics, child protection and the juvenile criminal justice system. Secondary legal materials consist of textbooks, legal journals, especially books and journals related to narcotics, child protection and the juvenile criminal justice system. The collected data will be analyzed descriptively and prescriptively.

III. RESULT AND DISCUSSION

Article 1 point 15 of Law Number 35 of 2009 concerning Narcotics stipulates that "narcotics abusers are people who use narcotics without rights or violate the law." Narcotics abusers may be subject to Article 127 of the same Law, which states as follows:

1. Any Abuse:
 - a. Class I narcotics for oneself can be punished with imprisonment for a maximum of 4 (four) years;
 - b. Class II narcotics for oneself can be punished with imprisonment for a maximum of 2 (two) years; And
 - c. Class III narcotics for oneself can be punished with imprisonment for a maximum of 1 (one) year.
2. In deciding a case in accordance with paragraph (1), the judge is obliged to consider the provisions contained in Article 54, Article 55 and Article 103.
3. If the abuser in accordance with paragraph (1) is proven to be a victim of narcotics abuse, he or she is required to undergo medical and social rehabilitation.

Article 54 of the same law stipulates that "narcotics addicts and victims of narcotics abuse are obliged to undergo medical and social rehabilitation." In the context of this article, a

⁴ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, Kencana Prenada Media Grup, Jakarta, 2010, h.181

victim of narcotics abuse is defined as "someone who accidentally uses narcotics because they are influenced, deceived, deceived, forced, and/or threatened to use narcotics." Therefore, drug abusers are considered victims who need medical and social rehabilitation.

The use of the term "every abuser" in the article implies that children are also included in the category of narcotics abusers. Therefore, children who abuse narcotics can be subject to Law Number 35 of 2009 concerning Narcotics. However, in the judicial process, children must comply with the Juvenile Criminal Justice System Act as a special regulation that applies to them. This is a consequence of the principle of *lex specialis derogat lex generalis*.⁵

In efforts to enforce the law against perpetrators of criminal acts, the imposition of sanctions must be relevant to the objectives of punishment which include the fulfillment of justice and legal certainty. Therefore, understanding the purpose of punishment is important in enforcing this law. The nature of this punishment is not merely to provide punishment or find fault with children, but also to correct children's behavior and prevent them from being involved in criminal acts in the future.⁶

To avoid the negative impact of the justice process on children, the SPPA Law accommodates a program called diversion. In short, diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside of criminal justice.⁷

Diversion is an action or treatment to divert or place child criminals, including child drug abusers, out of the justice system. Diversion can take the form of peace with or without loss, handing back to parents/guardians, participation in education or training and community service.⁸ The conditions for diversion are that diversion can be carried out on children who have committed a crime which is punishable by imprisonment for less than 7 (seven) years and is not a repetition of the crime.⁹

If children who abuse drugs are placed in the formal criminal justice system, they will certainly experience negative impacts. This clearly violates children's rights. Through diversion, children who abuse drugs receive protection. Diversion provides protection for children's human rights. Therefore, diversion is one of the legal protection efforts for

⁵ Koesno Adi, *Diversi Tindak Pidana Narkotika Anak*, Setara Pess, Semarang, 2014, hal. 23.

⁶ Harrys Pratama Teguh, *Teori dan Praktek Perlindungan Anak dalam Hukum Pidana*, AndiOffset, Jakarta, 2018, hal. 40.

⁷ Article 1 paragraph 7 the Juvenile Criminal Justice System Law

⁸ Article 11 the Juvenile Criminal Justice System Law

⁹ Article 7 paragraph 2 the Juvenile Criminal Justice System Law

children who abuse narcotics, to prevent children from the negative impacts of the criminal justice process, as regulated in the SPPA Law.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System as a special criminal justice system applied to children, Article 2 states that the juvenile justice system is implemented based on:

1. Protection of children's rights;
2. Justice;
3. Non-discrimination;
4. Best interests of the child;
5. Respect for children's opinions;
6. Child survival and growth and development;
7. Development and guidance of children;
8. Proportional;
9. Deprivation of liberty and criminalization as a last resort; And
10. Avoidance of retaliation.

By paying attention to these things, children who abuse narcotics should not be subject to imprisonment, which means children are equated with adults. In an effort to distance children from attempts at deprivation of liberty and retaliation, Article 5 of the Juvenile Criminal Justice System Law is obliged to prioritize a restorative justice approach. Restorative justice is a diversion process, namely all parties involved in a particular criminal act together to overcome problems and create an obligation to make things better by involving victims, children, the community and related parties to find the best solution for children without there is an element of retribution.¹⁰

Apart from diversion, legal protection for children who abuse narcotics who are in the juvenile criminal justice system in Indonesia can be carried out through rehabilitation. If a child is declared to have abused narcotics, then based on statutory regulations, the child is required to be rehabilitated. As stated in Article 59 jo. Article 64 of Law Number 35 of 2014 concerning amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection. This is in line with efforts to provide rehabilitation for narcotics abusers in accordance with Law Number 35 of 2009 concerning Narcotics. Parents or guardians of Narcotics Addicts who are minors must report to a public health center, hospital, or medical and social rehabilitation institution appointed by the Government to receive treatment and care through medical and social rehabilitation.

¹⁰ Dheny Wahyudi, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Pendekatan Restorative Justice." *Jurnal Ilmu Hukum Jambi*, vol. 6, Nomor 1, 1 Feb. 2015. Retrived from <https://www.neliti.com/publications/43318/perlindungan-terhadap-anak-yang-berhadapan-dengan-hukum-melalui-pendekatan-resto#cite>, hal. 151

Rehabilitation efforts are usually divided into three stages: detoxification to eliminate narcotic substances from the body, mental and physical rehabilitation with guidance from experts such as doctors and psychiatrists, as well as coaching after the victim recovers to improve attitudes and behavior disturbed by the influence of narcotics and prepare to return to life. reintegration into society.

The government provides social rehabilitation facilities for former narcotics addicts in social rehabilitation institutions. Apart from that, the government also provides special legal protection for children who abuse narcotics. This special protection includes prompt treatment, including physical, psychological and social treatment and rehabilitation, as well as prevention of disease and other health problems. Psychosocial assistance from treatment to recovery is also provided. Social assistance is provided to children from disadvantaged families, and protection and assistance is provided at every stage of the judicial process. Efforts to protect children who abuse drugs involve supervision, prevention, treatment and rehabilitation by the government and society.

Thus, even if a child involved in narcotics abuse commits a crime, it is important to continue to provide protection and rehabilitation to the child by the National Narcotics Agency. Special protection is given to children as victims of drug abuse, recognizing that they need appropriate physical, psychological and social recovery, as well as protection in the judicial process. Child protection in cases of drug abuse has an important role in ensuring the child's safety, recovery and welfare.

Preventing and dealing with drug abuse is the responsibility of all Indonesian people, not just the police or government. All sectors of society are expected to play an active role in this effort, as regulated in various state laws, including Law no. 22 of 1997 concerning narcotics. In this context, several parties have an important role, including the Indonesian National Police (POLRI). POLRI, according to its legal role, has the authority to enforce the law, protect and serve the community together with other components of the nation. POLRI is fully responsible for preventing and overcoming the problem of drug abuse in Indonesia. In the context of prevention, there are two strategic steps that need to be taken:

1. Pre-emptive: Preventive measures are carried out through teaching and educational activities with the aim of influencing opportunity and motivation factors, which are often referred to as "correlative criminological" factors of drug crime. The aim is to increase awareness, vigilance, self-control, and establish behavior and norms for a life free from hard drugs. This strategy also aims to encourage and create a simple lifestyle and useful activities, especially for young people, to carry out productive, constructive and creative activities. Through an educational communication strategy that includes various channels such as family, education, religious institutions and community organizations, preventive education is carried out.

2. Protective: So that the risks posed by drugs do not become a serious threat, efforts are made to prevent the emergence of drug crimes through controlling and monitoring official routes as well as direct supervision of illegal traffic routes

It is important to recognize that the drug problem is a complex challenge for the country that can threaten national security and hinder the development process. Therefore, overcoming the threat of drugs requires cooperation between the government and society, as regulated in Article 57 of the Narcotics Law and Article 54 of the Psychotropics Law. Parents play an important role in protecting young people, and proactive action can be taken through responsibilities in the workplace, daily life and family.

Deviant behavior is often influenced by social aspects and the environment around a person. Drug use is often triggered by family members who also use drugs, such as one or both parents or even close acquaintances. The best education in a family environment can be hampered by a lack of parental attention, leading to a large gap between parents' expectations and their children's actions, making it difficult for the two to communicate effectively.

In the family context, informal parenting has a significant impact on a child's trajectory and level of achievement. Establishing solid mental role models for children requires consistent parental involvement. The high number of drug users among the younger generation is caused by their lack of knowledge about drugs, which often stems from a lack of education and information conveyed by their families. Therefore, drug education needs to be carried out as a preventive measure so that the younger generation is not exposed to drug use.

Health promotion, especially among teenagers, needs to be encouraged to reduce the negative effects and risk of death due to drug abuse. Drug education must be able to change the knowledge, attitudes and behavior of the younger generation so that they can avoid drug use.

The role of various parties, especially in involving the younger generation, is very important in fighting drug abuse. Even though it is not easy, continuous efforts will create a strong and creative generation, which will have a positive impact on growth in various aspects of life. The participation of the younger generation in fighting drug use shows their seriousness in changing the negative image directed at them and acting as a productive group with the spirit of "Say No to Drugs".

Apart from that, this also reflects the younger generation's concern about the condition of the nation which is faced with the problem of drug abuse. The success of the younger generation in fighting drugs will be more likely if they are well organized. Therefore, the first step that needs to be taken is to form an organization and utilize the role of local youth organizations in drug prevention programs. The existence of youth organizations initiated

by the younger generation will facilitate outreach to young people at risk of drug abuse, and through these groups, potential cadres can be formed who can support youth efforts as peer educators who are still actively avoiding drugs. Drug abuse prevention involves three main stages: primary, secondary, and tertiary prevention:¹¹

1. Primary prevention is targeted at individuals, groups or communities who have not experienced drug abuse. Through information, education and other activities, this prevention aims to strengthen their understanding and capacity to refuse drug use.
2. Secondary prevention is aimed at individuals, communities or organizations who are at risk or have shown indicators of drug dependence. This involves training, counseling, and education to stop drug abuse behavior, as well as encouraging them to prioritize health and participate in constructive activities.
3. Tertiary prevention focuses on stopping drug use or dependence among individuals who have begun using drugs. It involves medical treatment and rehabilitation to aid recovery from addiction and prevent recurrence of abusive behavior

These three stages have different goals, targets and implementation strategies, which can be tailored to specific needs. However, additional, more effective strategies may be necessary, based on applicable regulations and the characteristics of the individuals and groups involved. Collaboration between students, school staff and parents is also important in creating a drug-free school and community environment.

V. CONCLUSION

The issue of drug abuse among children in Indonesia is a significant concern, as evidenced by the increasing prevalence of drug users, including children, as reported by the National Narcotics Agency. Factors contributing to children's involvement in drug abuse include environmental, psychological, genetic, and curiosity-related factors. Children involved in drug abuse are primarily victims and should be treated as such, receiving protection rather than punishment.

The legal framework governing drug abuse and juvenile justice in Indonesia is complex, with laws such as the Narcotics Law, the Juvenile Criminal Justice System Law, and the Child Protection Law providing different approaches and protections for children involved in drug abuse. There is a potential conflict between these laws, particularly regarding the treatment of children involved in drug abuse within the criminal justice system.

The principle of diversion, as outlined in the Juvenile Criminal Justice System Law, provides an alternative approach to traditional criminal justice for children involved in

¹¹ Jamal, I. M. *Upaya Pencegahan Dini Penyalahgunaan Narkotika. Jurnal Hukum Keluarga Dan Hukum Islam*, 2020, hal. 4

drug abuse, focusing on rehabilitation rather than punishment. Diversion aims to protect children's rights and prevent negative impacts on their development.

Rehabilitation efforts for children involved in drug abuse encompass medical, psychological, and social treatment, emphasizing the child's physical and mental well-being. Special legal protections are provided to ensure that children receive prompt treatment, rehabilitation, and support throughout the judicial process.


From the conclusions above recommendations that can be given include:

1. Enhanced Prevention Efforts: Strengthen primary, secondary, and tertiary prevention strategies to address drug abuse among children. This includes increasing awareness, providing education, and promoting constructive activities to discourage drug use.
2. Harmonization of Legal Frameworks: Address potential conflicts between laws governing drug abuse and juvenile justice to ensure consistent and effective protection for children involved in drug abuse.
3. Emphasis on Diversion and Rehabilitation: Prioritize diversion programs and rehabilitation efforts for children involved in drug abuse, focusing on their physical, psychological, and social recovery rather than punishment.
4. Community Collaboration: Foster collaboration between government agencies, law enforcement, schools, parents, and community organizations to create a supportive environment for preventing and addressing drug abuse among children.
5. Youth Empowerment: Empower young people to take an active role in drug prevention efforts through peer education, community involvement, and participation in youth organizations dedicated to drug prevention.

It is expected that by implementing these recommendations and strengthening collaboration among stakeholders, Indonesia can effectively address the challenge of drug abuse among children, ensuring their protection, rehabilitation, and future well-being.

REFERENCE

- Dheny Wahyudi, "Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Pendekatan Restorative Justice." *Jurnal Ilmu Hukum Jambi*, vol. 6, Nomor 1, 1 Feb. 2015.
- Harrys Pratama Teguh, *Teori dan Praktek Perlindungan Anak dalam Hukum Pidana*, Andi Offset, Jakarta, 2018
- Jamal, I. M. *Upaya Pencegahan Dini Penyalahgunaan Narkotika*. *Jurnal Hukum Keluarga Dan Hukum Islam*, 2020
- Koesno Adi, *Diversi Tindak Pidana Narkotika Anak*, Setara Pess, Semarang, 2014
- Maidin Gultom, *Perlindungan Hukum Terhadap Anak - Dalam Sistem Peradilan Pidana Anak di Indonesia*, Rafika Aditama, Bandung, 2014

 <p>2nd ICLESS 2024 International Conference on Law, Economy, Social and Sharia</p>	<p>Proceeding 2nd International Conference on Law, Economy, Social and Sharia 2024 Vol. 2 https://icless.net/ ISSN: 2985-4679 Page: 246-255</p>
---	--

The Law Number 23 of 2002 concerning Child Protection.

The Law Number 35 of 2009 concerning Narcotics

The Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA)

<https://www.kompas.id/baca/metro/2023/03/25/peringatan-ada-48-juta-penduduk-terpapar-narkotika>

<https://goodstats.id/article/ribuan-kasus-narkoba-libatkan-anak-anak-pelajar-dan-mahasiswa-jadi-tertinggi-keempat-doCKj>