

A JURIDICAL REVIEW OF THE CRIMINAL OFFENSE OF NARCOTICS ABUSE BY MINORS UNDER LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS, IN CONJUNCTION WITH LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE AND LAW NUMBER 11 OF 2012 CONCERNING THE JUVENILE CRIMINAL JUSTICE SYSTEM

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Abstract

Drug abuse involving minors has become an increasingly complex legal issue because it concerns not only criminal law enforcement but also the protection of children's rights as a vulnerable group. In Indonesia, the legal regulation of juvenile narcotics abuse is governed by Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 1 of 2023 concerning the Indonesian Criminal Code. The coexistence of these regulations has created normative disharmony, particularly between the punitive approach under the Narcotics Law and the restorative justice approach promoted by the Juvenile Criminal Justice System Law. This research employs normative legal research using statutory, conceptual, and case approaches. Legal materials were collected through library research consisting of legislation, legal doctrines, scientific journals, and the Decision of the Amlapura District Court Number 2/Pid.Sus-Anak/2023/PN Amp. The findings indicate that legal enforcement against juvenile narcotics offenders has not yet achieved legal certainty due to conflicting legal norms. Punitive sanctions continue to dominate judicial practice, often overlooking the principle of the best interests of the child. Therefore, harmonization of legislation is necessary by prioritizing the Juvenile Criminal Justice System Law as the principal legal framework in handling juvenile narcotics cases through rehabilitation, diversion, and restorative justice.

Keywords: Narcotics, Juvenile, Legal Protection, Juvenile Justice System, Legal Harmonization.

INTRODUCTION

Narcotics abuse has evolved into a form of transnational crime with serious impacts on society, affecting health, social, and economic spheres as well as national security. Advancements in information technology and the expanding reach of illicit drug trafficking networks have made children a primary target for narcotics syndicates. Children are no longer viewed solely as victims of drug abuse; in many instances, they are also involved as users, couriers, and even as participants within illicit trafficking networks. This situation poses a serious challenge for the Indonesian legal system, as children are legal subjects possessing

special rights—as guaranteed by the 1945 Constitution of the Republic of Indonesia, the Convention on the Rights of the Child, Law Number 35 of 2014 concerning Child Protection, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. These various instruments establish the "best interests of the child" as the paramount principle in any law enforcement process involving a child.

On the other hand, Law Number 35 of 2009 concerning Narcotics mandates the eradication of narcotics-related crimes through a repressive approach, imposing severe penalties on offenders. Although the law acknowledges the concept of rehabilitation for addicts and victims of narcotics abuse, in law enforcement practice, the punitive approach remains more dominant than the rehabilitative one. Issues arise when the provisions of the Narcotics Law are applied to children in conflict with the law. The Juvenile Criminal Justice System Law mandates that the resolution of cases involving children prioritize diversion, rehabilitation, guidance, and restorative justice. Conversely, in some cases, law enforcement officials continue to employ a repressive approach based on the penal provisions of the Narcotics Law, thereby leading to sentencing disparities and legal uncertainty.

This normative disharmony became increasingly apparent following the enactment of Law Number 1 of 2023 concerning the Criminal Code, which champions a modern sentencing paradigm—emphasizing the individualization of punishment, the protection of human rights, and a balance between legal certainty, justice, and utility. While this paradigm aligns in principle with the philosophy of the Juvenile Criminal Justice System Law, its implementation faces various obstacles due to a lack of synchronization among provisions governing narcotics offenses committed by children. A concrete example is found in Amlapura District Court Decision Number 2/Pid.Sus-Anak/2023/PN Amp, which highlights the dilemma between imposing criminal sanctions and adopting a rehabilitative approach for children involved in narcotics abuse. The decision demonstrates the need for judges to balance law enforcement interests with the protection of the child's future as part of the nation's next generation. These issues underscore the importance of harmonizing Law Number 35 of 2009 concerning Narcotics with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System to ensure legal certainty that upholds justice.

Based on the foregoing, this study examines two primary issues: the legal regulation of narcotics abuse offenses committed by children under Indonesian legislation, and the nature of the normative disharmony between the Narcotics Law and the Juvenile Criminal Justice System Law, along with efforts to harmonize them. This research is expected to contribute to the development of a national criminal law framework that is more oriented toward child

protection without compromising the effectiveness of efforts to combat narcotics-related offenses.

METHODS

This study employs normative legal research, examining the positive legal norms governing the misuse of narcotics by minors. This approach was selected because the research focuses on analyzing the synchronization and harmonization of various laws and regulations regarding the handling of minors who commit narcotics-related offenses, as well as examining the application of these norms in court rulings.

The approaches employed include the statute approach, the conceptual approach, and the case approach. The statute approach involves identifying and examining various provisions related to narcotics-related criminal offenses and the juvenile criminal justice system—specifically Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 1 of 2023 concerning the Criminal Code. The conceptual approach is used to examine theories regarding the rule of law, legal protection, legal certainty, and legislation as analytical frameworks. Meanwhile, the case approach is applied by analyzing Amlapura District Court Decision Number 2/Pid.Sus-Anak/2023/PN Amp, which serves as a representative example of the application of the law to a juvenile offender involved in narcotics abuse.

The legal materials utilized consist of primary, secondary, and tertiary legal sources. Primary legal sources comprise legislation and court rulings, while secondary sources include books, scholarly journals, research findings, and expert opinions relevant to the research subject. All legal materials are analyzed qualitatively using techniques of legal interpretation, legal argumentation, and norm harmonization to derive a conclusion that addresses the research problem.

RESULTS AND DISCUSSION

Legal Regulation of Narcotic Abuse Offenses by Minors

The issue of narcotics abuse in Indonesia constitutes an "extraordinary crime" that requires comprehensive countermeasures involving both penal and non-penal approaches. Illicit narcotics trafficking threatens not only public health but also the continuity of national development, as the majority of victims belong to the productive age group, including children. This situation has prompted the state to establish various legal instruments as a foundation for combating narcotics-related crimes.

Article 127 of Law Number 35 of 2009 stipulates that individuals who abuse narcotics for personal use may be subject to criminal penalties based on the classification of the narcotic used. However, Articles 54 and 103 allow judges to order medical or social rehabilitation for addicts and victims of narcotics abuse. These provisions demonstrate that the legislature has effectively balanced repressive and rehabilitative functions in addressing narcotics-related crimes. Issues arise when narcotics abuse is committed by a child who is legally entitled to special protection under Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This law shifts the paradigm for handling children in conflict with the law by implementing the principles of restorative justice and diversion as the primary mechanisms for resolving juvenile criminal cases. This philosophy is grounded in the view that children lack physical and psychological maturity; consequently, the objective of sentencing is directed more toward rehabilitation than retribution.

Article 5 of Law Number 11 of 2012 mandates that the juvenile criminal justice system prioritize a restorative justice approach. Furthermore, Article 6 stipulates that diversion aims to achieve reconciliation between the victim and the child, avoid depriving the child of their liberty, encourage community participation, and instill a sense of responsibility in the child. Consequently, imprisonment should serve as a measure of last resort (*ultimum remedium*) rather than the primary option for resolving juvenile criminal cases. Recent developments in Indonesian criminal law, specifically through Law Number 1 of 2023 concerning the Criminal Code, also reflect a shift in the sentencing paradigm. The National Criminal Code no longer views punishment solely as a means of retribution but also as an instrument for rehabilitation, social reintegration, public protection, and the restoration of balance among the offender, the victim, and the community. This concept aligns with the child protection philosophy underpinning the Juvenile Criminal Justice System Law and should therefore serve as the foundation for handling cases involving children who abuse narcotics.

When examined through the lens of legal protection theory, a child who abuses narcotics cannot inherently be classified simply as a criminal offender. In many instances, the child is actually a victim—exploited by narcotics networks or influenced by their social environment, a lack of parental supervision, or psychological factors that render them susceptible to the influence of adult offenders. Consequently, a rehabilitative approach is more appropriate than a repressive one that focuses primarily on criminal punishment. Nevertheless, law enforcement practices reveal a prevailing tendency among officials to rely heavily on the penal provisions of the Narcotics Law, often failing to give optimal consideration to the principle of the "best interests of the child," as mandated by the Juvenile Criminal Justice

System Law. This situation leads to sentencing disparities and legal uncertainty in the resolution of narcotics cases involving children, demonstrating that the harmonization of norms between these two laws has yet to be fully realized.

Normative Disharmony between Law Number 35 of 2009 concerning Narcotics and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

A fundamental issue in law enforcement regarding child offenders involved in narcotics abuse lies in the lack of harmonized legal norms between Law Number 35 of 2009 concerning Narcotics and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). While both regulations govern the handling of narcotics offenders, they are grounded in differing paradigms: the Narcotics Law emphasizes combating crime through a repressive approach, whereas the SPPA Law treats the child as a subject requiring special protection through a restorative approach. This difference in orientation gives rise to a conflict of norms in law enforcement practice. Investigators, public prosecutors, and judges are often faced with a choice between applying the penal provisions of the Narcotics Law and prioritizing the principle of diversion as stipulated in the Juvenile Criminal Justice System (SPPA) Law. Consequently, the handling of cases involving child drug abusers lacks uniformity and carries the potential for sentencing disparities.

Theoretically, this conflict of norms can be analyzed using the principle of **lex specialis derogat legi generali**. The Juvenile Criminal Justice System (SPPA) Law specifically regulates the procedures for handling children in conflict with the law, whereas the Narcotics Law governs narcotics-related offenses in general terms without providing detailed regulations regarding specific mechanisms for children. Therefore, in cases involving children, the provisions of the SPPA Law should take precedence. However, in practice, some law enforcement officials still prioritize the criminal penalties stipulated in Articles 111, 112, 114, and 127 of Law Number 35 of 2009, without first considering the possibilities of diversion or rehabilitation as mandated by the SPPA Law. This approach demonstrates that a repressive paradigm continues to dominate the narcotics criminal justice system in Indonesia.

According to Barda Nawawi Arief, modern criminal law policy is no longer solely oriented toward punishment; instead, it must take into account the objectives of protecting society, rehabilitating offenders, and preventing future crime. Consequently, a rehabilitative approach is more effective than imprisonment for children involved in narcotics abuse, as it spares them from social stigma and prevents recidivism. This normative disharmony can also be analyzed through the lens of legal certainty theory. Legal certainty requires not only clear rules but also consistent application of norms by law enforcement officials. When two statutes

offer differing orientations regarding the same subject matter, achieving legal certainty becomes difficult. Such a situation creates the potential for disparate treatment of children in cases sharing similar characteristics.

Furthermore, from the perspective of legal protection theory, children constitute a vulnerable group legally entitled to special protection. Such protection applies not only when a child is the victim of a criminal offense but also when the child is the alleged perpetrator. The legal protection approach mandates that judicial proceedings take into account the child's future as the nation's next generation; consequently, imprisonment must strictly be regarded as a measure of last resort (*ultimum remedium*). This paradigm aligns with the Beijing Rules, the Convention on the Rights of the Child, and the Riyadh Guidelines, all of which have become integral to the evolution of international law regarding child protection. These instruments emphasize that judicial proceedings involving children must prioritize rehabilitation, education, social reintegration, and restoration over retribution. Consequently, the normative conflict between the Narcotics Law and the Juvenile Criminal Justice System (SPPA) Law is not merely a technical issue of legislative drafting; it also reflects a fundamental philosophical difference regarding how children who commit offenses are perceived. As long as a punitive paradigm remains more dominant than a child-protection paradigm, the objectives behind the enactment of the SPPA Law cannot be optimally achieved.

Analysis of Amlapura District Court Judgment Number 2/Pid.Sus-Anak/2023/PN Amp

A case illustrating the complexities of law enforcement regarding a juvenile involved in narcotics abuse is the Amlapura District Court Decision Number 2/Pid.Sus-Anak/2023/PN Amp. In this case, a juvenile under the age of eighteen was proven to have abused crystal methamphetamine alongside several associates after obtaining the drug through a transaction with an individual listed on the Wanted List (DPO). Trial facts revealed that the juvenile not only used the narcotics but also participated in acquiring, storing, and possessing the illicit substance, as detailed in the ruling. From the perspective of criminal elements, the juvenile's actions satisfied the criteria for narcotics abuse as stipulated in Law Number 35 of 2009 concerning Narcotics. However, when analyzed from the perspective of child protection, circumstances indicate that the juvenile was also a victim—influenced by their social environment, a lack of family supervision, and exploitation by a narcotics network. Consequently, the juvenile held a dual legal status in the case: that of both a perpetrator and a victim (a "self-victimizing victim"). Such circumstances should serve as a basis for the judge's consideration when applying the "best interests of the child" principle, as stipulated in the Juvenile Criminal Justice System (SPPA) Law. Approaches involving rehabilitation, guidance,

and diversion ought to be prioritized over imprisonment, provided that the statutory requirements are met. An analysis of the ruling reveals that, while the judge attempted to consider aspects of child protection, the reasoning remained dominated by a focus on proving the elements of the criminal offense as defined in the Narcotics Law. This indicates a need to strengthen the harmonization of the application of these two laws, whether through the enactment of new regulations or the formulation of joint guidelines for law enforcement officials.

Efforts to Harmonize Legal Regulations Concerning Children Who Abuse Narcotics

The disharmony between Law Number 35 of 2009 concerning Narcotics and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System demonstrates that Indonesia's legal system still faces challenges regarding the synchronization of norms in handling children in conflict with the law. The differing orientations of these two laws mean that legal implementation often relies on the interpretation of law enforcement officials, potentially leading to legal uncertainty. Therefore, harmonizing these laws is essential to ensure uniform legal application that guarantees child protection while simultaneously supporting efforts to combat narcotics-related crimes. Legal harmonization can be achieved through either vertical or horizontal harmonization. Vertical harmonization aims to ensure that all provisions within Law Number 35 of 2009 concerning Narcotics align with the principles of child protection mandated by the 1945 Constitution of the Republic of Indonesia, the Child Protection Law, and various international conventions ratified by Indonesia. Meanwhile, horizontal harmonization focuses on synchronizing the Narcotics Law with the Juvenile Criminal Justice System Law to prevent regulatory overlaps or conflicts of norms in law enforcement practice.

When analyzed through the lens of legislative theory, the resolution of conflicting legal norms can be approached using the principle of *lex specialis derogat legi generali* (special law overrides general law). In the context of cases involving minors, the Juvenile Criminal Justice System Law (Undang-Undang SPPA) constitutes the specific regulation governing the handling of children in conflict with the law. Consequently, all stages of the process—from investigation, prosecution, and trial proceedings to the execution of the verdict regarding a child who has abused narcotics—should primarily adhere to the Juvenile Criminal Justice System Law, while the Narcotics Law serves as the regulatory basis for defining the specific criminal offense. Beyond the harmonization of legal substance, harmonization regarding institutional aspects is also required. The Police, the National Narcotics Agency, the Public Prosecutor's Office, the Courts, Correctional Centers, Special Development Institutions for

Children, and rehabilitation facilities need to establish joint guidelines for handling cases involving children who abuse narcotics. Such guidelines are essential to prevent disparities in treatment among children whose cases share similar characteristics.

Enhancing the capacity of law enforcement officials is also a crucial aspect of legal harmonization. Investigators, public prosecutors, and judges must possess an adequate understanding of the principle of the "best interests of the child," restorative justice, diversion, medical and social rehabilitation, and developments in national criminal law following the enactment of Law Number 1 of 2023 concerning the Criminal Code. Consequently, the orientation of law enforcement will shift from a sole focus on punishment to prioritizing the child's recovery and the protection of their future. From the perspective of criminal policy, combating narcotics abuse among children cannot rely solely on a penal approach. Non-penal measures—such as legal education, family guidance, school environment monitoring, awareness-raising regarding the dangers of narcotics, enhanced community involvement, and social rehabilitation—are integral components of the policy for addressing narcotics-related crime. This approach aligns with modern sentencing objectives, which positions criminal punishment as a measure of last resort (*ultimum remedium*) to be employed only when other methods prove ineffective. Moving forward, lawmakers should consider amending Law Number 35 of 2009 concerning Narcotics to provide more explicit regulations regarding the handling of children who abuse narcotics. Such regulations are expected to eliminate ambiguity and provide legal certainty for law enforcement officials when applying rehabilitation, diversion, or criminal penalties to children, in accordance with the specific circumstances of each case.

CONCLUSION

1. The legal framework governing the criminal offense of narcotics abuse by minors in Indonesia is established through Law Number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 1 of 2023 concerning the Criminal Code. While these three regulations share the common goal of effective law enforcement, they employ different approaches. The Narcotics Law emphasizes a repressive approach involving criminal penalties, whereas the Juvenile Criminal Justice System Law prioritizes child protection through diversion, rehabilitation, and restorative justice.
2. Normative disharmony between these laws has hindered the realization of legal certainty in the enforcement of the law against minors involved in narcotics abuse. This

divergence in orientation has resulted in disparities in court rulings and inconsistent application of the law by law enforcement officials. Consequently, there is a need for the harmonization of legal substance and institutional frameworks, capacity building for law enforcement officials, and the formulation of joint guidelines to ensure that the application of the law regarding minors better reflects the principles of child protection, legal certainty, and justice.

1. Suggestion

1. The government and the House of Representatives (DPR) need to amend Law Number 35 of 2009 concerning Narcotics to ensure alignment with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 1 of 2023 concerning the Criminal Code.
2. The handling of any narcotics case involving a child must prioritize the principle of the "best interests of the child" through rehabilitation, guidance, and diversion prior to the imposition of a prison sentence.

REFERENCES

- Arief, Barda Nawawi. 2010. *Selected Essays on Criminal Law Policy*. Kencana Prenada Media Group, Jakarta.
- Asshiddiqie, Jimly. 2006. *On Legislation*. Konstitusi Press, Jakarta.
- Atmasasmita, Romli. 2010. *Theory and Selected Topics in Criminology*. Refika Aditama, Bandung.
- Criminal Code; Law Number 1 of 2023 concerning the Criminal Code, State Gazette of the Republic of Indonesia Year 2023 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6842.
- Ibrahim, Johnny. 2019. *Theory and Methodology of Normative Legal Research*. Bayumedia Publishing, Malang.
- Indrati, Maria Farida. 2020. *The Science of Legislation: Types, Functions, and Content*. PT Kanisius, Yogyakarta.
- Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, State Gazette of the Republic of Indonesia Year 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332.

Law Number 35 of 2009 concerning Narcotics, State Gazette of the Republic of Indonesia Year 2009 Number 143, Supplement to the State Gazette of the Republic of Indonesia Number 5062.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, State Gazette of the Republic of Indonesia Year 2014 Number 297, Supplement to the State Gazette of the Republic of Indonesia Number 5606.

Marlina. 2012. Juvenile Criminal Justice in Indonesia. Refika Aditama, Bandung.

Marzuki, Peter Mahmud. 2019. Legal Research. Kencana, Jakarta.

Mertokusumo, Sudikno. 2019. Understanding Law: An Introduction. Liberty, Yogyakarta.

Rahardjo, Satjipto. 2014. Legal Science. PT Citra Aditya Bakti, Bandung.

Soekanto, Soerjono, and Sri Mamudji. 2015. Normative Legal Research: A Brief Overview. PT RajaGrafindo Persada, Jakarta.

Sunarso, Siswanto. 2012. Legal Policy in Narcotics Legislation. Rineka Cipta, Jakarta.

The 1945 Constitution of the Republic of Indonesia.