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**LEGAL PROTECTION OF CHILDREN AS PERPETRATORS OF NARCOTICS CRIMES  
AS AN EFFORT TO REFORM THE LEGAL SYSTEM IN INDONESIA  
(Study Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj)**

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**Abstract**

The involvement of children in narcotics crimes who become narcotics couriers is a series of malicious agreements in carrying out illegal narcotics trafficking, but in the capacity of the category of children who help in terms of trade or distribution by accompanying the owner of the goods by being promised or lured has often hit children of that age, this is a very concerning thing where the child has been dealt with and are classified as having committed narcotics crimes. In this case, the child has committed an act, malicious consensus without rights or against the law offering to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange or hand over Class I Narcotics which in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant forms weighing more than 5 (five) grams. As a result of this incident, the child was charged as regulated and threatened with criminal punishment in Article 114 Paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The type of research in writing this thesis is carried out with a type of normative legal research in the form of literature research that uses 3 legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. This legal research focuses on literature studies which means that more will be studied and reviewed existing and applicable legal rules. The results of this study show that the Legal Protection of Children as Intermediaries in the Legal System in Indonesia in Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj. namely by referring to Article 114 Paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Child Criminal Justice System, Legally and convincingly proven guilty of committing a criminal act "Without the right to make a malicious conspiracy to sell Class I narcotics that are not plants weighing more than 5 grams, the Judge of the Binjai Court has imposed an action on the child, in the form of an action to be returned to the parents and ordered the child to be released from the custody of the Temporary Child Placement Institution (LPAS). The basis for the judge's consideration is the Juvenile Criminal Justice System as stipulated in article 69 paragraph (1) of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System. This Criminal Policy is a *grand design* of the Indonesian Government's legal politics which recognizes the human rights of children with the aim that children are the nation's asset capital that can be useful in the future so that special arrangements are needed in the settlement of cases that befall

them. With the hope that the child can return to society as the nation's asset capital in the future.

**Keywords:**

Legal Protection, Child Crime, Narcotics

**A. Introduction**

Law enforcement in Indonesia is in the spotlight by the public and the media because law enforcement is considered a weapon to fight all kinds of crimes that are increasingly developing day by day where law enforcement officials are required to resolve legal disputes so that what is the goal of the law, namely legal certainty, justice and usefulness can be achieved. Including criminal acts committed by children. Nowadays, various types of crimes have involved children as perpetrators of crimes or crimes.

One of the phenomena that often occurs today is narcotics abuse. This is very worrying because drug abuse by children does not only occur in Indonesia, the same thing hits many countries in the world. Narcotics circulation in Indonesia continues to increase and has even reached a very worrying level. As is known, narcotics are currently not only circulated in big cities but have reached the rural level and the perpetrators of narcotics abuse are not only those who have grown up but have expanded to all levels of society ranging from students, students, entrepreneurs, officials, street children and so on.<sup>1</sup>

The spread of drugs among children has reached a stage that is very difficult to control, this reality is very worrying because children are the next generation of the nation in the future. Children need special coaching and protection. Children in general have a great sense of curiosity, so information or something new is worth trying without realizing the consequences of the new thing leading to good or vice versa.<sup>2</sup>

In dealing with and coping with children's actions and behaviors, it is necessary to consider the position of children with all their characteristics and special characteristics. Although children can determine their own actions based on their thoughts, feelings and wills, but the surroundings can influence their behavior. The development of narcotics abuse is increasing day by day and the government has issued a regulation regulating the handling of children who are perpetrators of narcotics abuse, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Meanwhile, children who are perpetrators of criminal acts or crimes are regulated in Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System, while children as victims are regulated 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.<sup>3</sup>

In Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, article 59 states that: "Article 59 (1) The Government, Regional Governments, and other state institutions are obliged and responsible to provide Special Protection to Children. (2) Special Protection for Children as intended in paragraph (1) shall be given to: a. Children in emergency situations b. Children who are confronted with the law c. Children from minority and isolated groups d. Children who are economically and/or sexually

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<sup>1</sup> Barda Nawawi Arif, *Some Aspects of Wisdom in the Enforcement and Development of Criminal Law*, PT Citra Aditya Bagti, Bandung 1998, page, 153

<sup>2</sup> Abdussalam, *Child Protection Law*, Restu Agung, Jakarta, 2007, page 5.

<sup>3</sup> Maidin Gultom, *Legal Protection for Children*. Bandung PT Refika Aditama 2018. Pages 113-135.



exploited e. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances etc.<sup>4</sup>

Law Number 35 of 2009 concerning Narcotics has regulated criminal provisions for anyone who can be subject to criminal penalties along with fines that must be borne by narcotics abusers or can be referred to as perpetrators of narcotics crimes. The Narcotics Law itself does not specifically distinguish between perpetrators of narcotics crimes. Both the perpetrator who ordered the perpetrator to do it, the organizer and the assistant can be called the perpetrator of the criminal act.<sup>5</sup>

In Law Number 35 of 2009 concerning narcotics, article 112 reads, namely:

- (1) Any person who without rights or unlawfully offers to sell, sell, buy, receive, become an intermediary in the sale, sale, exchange, or delivery of Class I Narcotics, shall be sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000, 00 (ten billion rupiah).
- (2) In the event of the act of offering to sell, selling, buying, becoming an intermediary in the sale, exchange, delivery, or receipt of Class I Narcotics as intended in paragraph (1) which in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in the form of non-plants weighing 5 (five) grams, the perpetrator shall be sentenced to death, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1) plus 1/3 (one-third).

On the other hand, currently in Indonesia, the implementation of the juvenile criminal justice system is based on or based on the Law on the Juvenile Criminal Justice System (Law No. 11 of 2012). Where in the Law emphasizes the Implementation of Restorative with Diversion.<sup>6</sup> Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is:<sup>7</sup>

1. At the level of investigation, prosecution, and examination of children's cases in the district court, Diversion must be sought.
2. Diversion as intended in paragraph (1) is carried out in the event of a criminal act committed:
  - a. Threatened with imprisonment under 7 (seven) years; and
  - b. It is not a repetition of a criminal act.

Regarding the decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj. which states that children are guilty of committing narcotics crimes as regulated and criminally threatened in Article 114 paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Child Criminal Justice System.<sup>8</sup>

That because the child is charged by the Public Prosecutor with an alternative charge, the Judge by taking into account the legal facts directly chooses the first alternative charge as stipulated in Article 114 Paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law Number 11 of 2012 concerning the Child Criminal Justice System.<sup>9</sup>

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<sup>4</sup> Lilik Mulyadi. Children's Court in Indonesia and its Theory, Practice and Problems. Bandung. Mandar Maju. 2005 page 133.

<sup>5</sup> Rosidah, Nikmah and Rini Fathonah. 2019. Juvenile Justice Law. Bandar Lampung: Zam-Zam Tower. Page 91.

<sup>6</sup> The Diversion process is carried out through deliberation involving the Child and their parents/guardians, victims and/or parents/guardians, community advisors, and professional social workers based on the Restorative Justice approach.

<sup>7</sup> Samosir, Djisman. 1982. The Function of Prison Crimes in the Prisoner Development System in Indonesia. Jakarta : Pradnya Paramita page 72.

<sup>8</sup> Siregar, Bismar. 1986. Legal Justice in Various Aspects of National Law. Jakarta: Rajawali.

<sup>9</sup> Usman, A. H. (2015). Legal awareness of the community and the government as a factor the establishment of the rule of law in Indonesia. *Journal of Juridika Insights*, 30 (1), pages 26-53.

According to Article 2 of UURI Number 11 of 2012 concerning the Child Criminal Justice System says that Children in Conflict with the Law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts then Article 3 says Children in Conflict with the Law which hereinafter referred to as Children are children who have reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal act and if it is related to the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "barangai" or "hij" as anyone who must be made a child.

Basically, everyone as a subject of the law (supporter of rights and obligations) can be made as a child who is in conflict with the law. This is because everyone is considered capable of taking legal action unless the law specifies otherwise.<sup>10</sup>

As for whether or not he can be held accountable, it will be further proven based on the facts in the trial regarding the subject matter of the case and about the child. Therefore, related to this element, it is only necessary to prove whether the child is a subject of law (supporter of rights and obligations) and he has been properly made a child in this case, in the sense that he is the person referred to as a child who is in conflict with the law in the Public Prosecutor's Indictment. As for whether or not he can be held accountable, it will be further proven based on the facts in the trial regarding the subject matter of the case and about the child. Therefore, related to this element, it is only necessary to prove whether the child is a subject of law (supporter of rights and obligations) and he has been properly made as a child in this case, in the sense that he is the person referred to as a child in the Public Prosecutor's Indictment.<sup>11</sup>

then to comply with the provisions of Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that the Judge **is obliged** to consider the community research report from the Community Supervisor before making a case decision, then the Judge after hearing the recommendations and conclusions of the Medan Class I Community Supervisor which was read at the trial which basically is so that the child is given the right punishment or the child is returned to his parents in accordance with articles 71 and 82 of Law Number 11 of 2012 concerning the Children's Criminal Justice System.<sup>12</sup>

In this case, it was revealed at the trial that the child was only a victim of the trap of law enforcement officials who took refuge under the legal basis of Article 24 of the National Police Chief's Regulation Number 14 of 2012 concerning Investigation Management with covert purchases in the investigation of narcotics crimes, namely the technique of disguise as a potential buyer (undercover buy) which is carried out to find and collect evidence that with that evidence makes the narcotics crime light and to find suspects.

It is appropriate that covert purchases target the arrest of narcotics sellers and especially on a large scale and do not target narcotics crimes on a small scale, especially based on the legal fact that children are not the target that has been investigated, but children are only affected by the invitation of adults, namely witness Teguh with the promise of being invited to dugem for free so that the child agrees to accompany the witness Teguh to take the narcotics that will be sold by the witness Teguh to the police witnesses.<sup>13</sup>

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<sup>10</sup> Sutarto, S. (2021). The application of medical rehabilitation and social rehabilitation to victims of narcotics abuse is reviewed from the theory of relative criminality. *Indonesian Journal of Law Enforcement*, 2(1) pages 115-135.

<sup>11</sup> Mukri, S. G. (2019). Educational Actions for Handling Drug Abuse. *IS*, 3 (1), pp. 25-30.

<sup>12</sup> Eka Rose Indrawati. 2018. *Job Training as a Criminal Sanction for Children in Conflict with the Law*. Rechtidee, Vol. 13, No. 1, June 2018. page 14.

<sup>13</sup> Supriyanta. 2012. *Democratization in Law Enforcement*. Journal of Legal Discourse. Vol. VII No. 1 of 2012. page 81.

The child in this case was also not directly involved in the crime of selling the narcotics, because the child only agreed and agreed that the witness Teguh would first pick up and then deliver the ecstasy type of narcotics to the buyer and after that they would be free of charge, so it is very unfortunate that the technique was used to make the child a suspect who in fact was not a narcotics dealer or dealer but a child is only a third grade student of SMK and Narcotics which was used as evidence in this case also does not belong to Anak but to the witness Teguh who will be sold to police witnesses.

In the decision of the Judge who handled this case by considering Article 114 paragraph (2) jo Article 132 paragraph (1) of Law number 35 of 2009 concerning Narcotics, Law Number 11 of 2012 concerning the Child Criminal Justice System and Law Number 8 of 1981 concerning the Criminal Procedure Law and other relevant laws and regulations, the Judge issued a decision by ordering the Child, released from the custody of the Temporary Child Placement Institution (LPAS) as soon as this verdict was pronounced.

From the description above, the author's desire arises to conduct a journal review with the title Legal Protection of Children as Perpetrators of Criminal Crimes as an Effort to Reform the Legal System in Indonesia (Study Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj)

## **B. Problem Formulation**

From the description of the problems above, problems that will be discussed in this study can be drawn, namely:

1. How is the Legal Protection of Children as Intermediaries in the Legal System in Indonesia?
2. What are the legal considerations of the Judge in the crime of narcotics against children Study Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj?

## **C. Research Methods**

In conducting a scientific research, it is clear that methods must be used as a characteristic of science. Method contains meaning as a way to search for information in a planned and systematic way. The steps taken must be clear and there are strict boundaries to avoid too broad interpretation.

### **1. Type of Research**

The type of research used is normative legal research, which is research that focuses on norms and this research requires legal materials as the main data.

### **2. Nature of Research**

While the nature of the research used by the author is descriptive *analytical* research in the sense that all legal materials obtained by the author will be described and elaborated and then analyzed.

### **3. Legal Materials**

- a. Primary legal materials are legal materials that have binding force, namely in the form of laws and regulations such as:
  1. the 1945 Constitution of the Republic of Indonesia;
  2. Criminal Code
  3. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
  4. Law Number 35 of 2014 concerning Child Protection
  5. UURI Number 35 of 2009 concerning Narcotics
  6. Law Number 8 of 1981 concerning the Criminal Procedure Law
  7. Decision Number: 18/Pid.Sus-Anak/2023/PN.Bnj
- b. Secondary legal materials are those that provide explanations of primary legal materials,



including books, research results, legal opinions, and other documents that have a relation to the problem being researched.

- c. Tertiary legal materials are supporting legal materials that provide guidance and understanding of primary and secondary legal materials, including legal dictionaries or dictionaries of other languages.

#### 4. Legal Material Collection Techniques.

To answer the existing problems, the researcher collects legal materials through document studies (literature studies) including primary legal materials, secondary legal materials and tertiary legal materials, namely by conducting an inventory and identification of a number of laws and regulations, legal documents, legal records, scientific works and reading materials/literature derived from legal science in the form of books, articles, journals and research results related to the research raised.

### D. Discussion Analysis

#### 1. Legal Protection of Children as Intermediaries in the Legal System in Indonesia

To get answers in this legal issue related to legal arrangements in criminal cases that befall children in particular, on this occasion the author will elaborate among them:

##### 1. Criminal Policies in Indonesia's Penal System

- 1) According to Muladi and Barda Nawawi<sup>14</sup>, policies or efforts to overcome crime which are an integral or integral part of efforts to protect the community (*social defence*) and efforts to achieve community welfare (*social welfare*) are connected to each other in a criminal justice system with the aim of protecting the community in achieving welfare. <sup>7</sup>Furthermore, Sudarto gave the understanding that criminal policy or criminal policy is a rational and organized effort of a society to overcome crime, this definition is taken from Marc Ancel's thought which formulated as "*the rational organization of the control of crime by society*".<sup>15</sup> Furthermore, Mustofa<sup>16</sup> said that legal policy or legal politics From the description above, it can be understood that *criminal* policy is the government's effort to regulate policies on the law, including *criminal* policies in criminal law, so that government *criminal* policies are *an integral* part of government legal politics in the life of the state.
- 2) *Implementation* of Criminalization of Child Delinquency in the Formulation of Crime Delicacy in the Law on the Juvenile Justice System

*Scholten* said *Het recht is er, doch het moet worden gevonden*", which means an illusion when it is considered a positive law or the law has completely regulated all life problems.<sup>9</sup>The adagium when interpreted means that a law cannot completely regulate problems, so in this case related to the regulation of delinquent law outside the Criminal Code is a policy of fulfillment of legal needs and ideals.

Criminal Policy Efforts by formulating a child act, in this case, for example against a child delinquency into a criminal offense, is an effort known as *Criminalization*<sup>10</sup>, on the other hand, efforts to eliminate criminal acts into an ordinary act are commonly known as *decriminalization*<sup>11</sup>. Sudarto said as quoted by Muladi, the pouring of a type of crime or *Criminal* is an effort to criminalize or the process of determining a person's act as a

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<sup>14</sup> Barda Nawari Arief, 2001, *Law Enforcement Issues and Crime Prevention Policies*, Citra Adiitya Bakti, Bandung, page 2.

<sup>15</sup> Eddy O.S. Hiariej, 2009, *The Principle of Legality and Legal Discovery in Criminal Law*, Erlangga, Jakarta. Page 55.

<sup>16</sup> Sudarto, 1981, *Law and Criminal Law*, Bandung, Alumni, page 38.



punishable act. The process ended with the formation of a law, where the act was threatened with a sanction in the form of a criminal penalty.<sup>12 reviews</sup>

In an effort to *criminalize* an act or act into a criminal act, two fundamental questions arise, namely: 1). What acts should be criminal acts and 2). What sanctions should be imposed on the violator.<sup>13 reviews</sup>

Another thing that is also very *important* or important to be considered in the formulation of criminal offenses in laws outside the Criminal Code is that the formulation must be in accordance with *the genus of norms* or general norms in the Criminal Code<sup>14:1</sup>) The nature of the act whether it is unlawful or a criminal act; 2). Criminal liability or wrongdoing and 3). Sanctions, both criminal and other actions that can be imposed along with the underlying criminal law principles.<sup>17</sup>

Based on the description above, the author can conclude that the legal regulation of an act or action as a criminal offense outside the Criminal Code or commonly known as *Criminalization* is a form of government *criminal* policy. where in the formulation must be in accordance with the *Genus Norm* or general norms, namely the Criminal Code which indicates the formulation of crime offenses in a law outside the Criminal Code, including in this case the Law on the Child Criminal System (SPPA) and the Narcotics Law which have been specifically regulated which are integral parts of the criminal sub-system (*Criminal justice System*) and the implementation of *this government* criminal policy is *the implementation* of Or the embodiment of the principle of criminal legality *nullum delictum nulla poena sine praevia lege poenali*.

In understanding the application of criminal sanctions to children, in this case, the basic things that need to be understood are:

1. The Age Limit for Child Criminal Responsibility, referring to article 1 number (3) of the Law on the Juvenile Criminal Justice System, states that "A child in conflict with the law, hereinafter referred to as a child, is a child who has been 12 (twelve) years old, but has not yet reached the age of 18 (eighteen) years old who is suspected of committing a criminal act" from the formulation of *Adressat* The norms of the article can be understood as the minimum and maximum limits that the age of children who are confronted or in conflict with the law is 12 years to 18 years old or at least has not reached the age of 18 years, the minimum and maximum limits are an *affirmation* of the norm order to the age limit of criminal liability in children where the minimum and maximum limits in the content of the norm material are cumulative allertative in their application;

The implementation of Child Criminalization in Indonesia goes through several phases, including: a. Phase of the Supreme Court Circular Letter Number 800 of 1959;<sup>16</sup> b. Phase of Instruction of the Supreme Court M.A./Pemb/048/71 of 1971<sup>17</sup> c. Circular Letter of the Attorney General Number P. 1/20 issued on March 30, 1951<sup>18</sup>, d. Phase of Law of the Republic of Indonesia Number 3 of 1997;<sup>19</sup> e. Phase of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Based on the description above, it can be clearly and clearly concluded that the phases of the implementation of child criminal practice develop and move dynamically in accordance with the situation and the needs of the law itself, which is currently the direction of the government's current Criminal Policy in the Juvenile Criminal Justice System is oriented towards special protection and/or carried out with the Juvenile Criminal Justice System must prioritize the Restorative Justice approach, not sentenced to death or life imprisonment and not arrested, detained, or imprisoned, except as a last resort and in the shortest time, this is done because in essence children are an inseparable part of human survival and the

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<sup>17</sup> S.R. Sianturi, 1986, *Principles of Criminal Law in Indonesia and Its Application*, AHAEM- PTHAEM Alumni, Jakarta, p. 211



sustainability of a nation and state with the hope that in the future children who are facing the law will provide the best punishment for children with the principle that prison is an alternative last.

Looking at the description above, it is very clear that the impact of Narcotics Abuse is indeed very dangerous for a nation, so the government with its authority is very appropriate to determine the abuse and dissemination of Narcotics without rights and against the law into a *criminalization* policy by giving birth to the Law of the Republic of Indonesia Number: 35 of 2009 concerning Narcotics, then by paying attention to the principle of *flex Specialist Drogat Lex Generalis* (Special Law Sets Aside General Law) *Juncto* principle *Lex Posterior Derogat Legi Priori* (new law overrides the old law), then a special law will be applied to the perpetrators of Narcotics crimes, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System<sup>18</sup>

Therefore, the handling of child cases that are in conflict with the law is included in the case of Narcotics Buying and Selling Intermediaries by children, formally legality is subject to the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Based on the description above, as the legal issue in the first point in this formulation Criminal Law Regulation in the Case of Narcotics Trafficking by Children who are confronted with the law, it can be concluded that the government's legal regulation of narcotics crimes by children, is carried out based on *criminal* policy. The government is that in handling the case of the crime of intermediary trading of narcotics by children, an examination is carried out in accordance with the applicable Law on the Child Criminal Justice System by paying attention to article 69 paragraph (1) of Law of the Republic of Indonesia Number 11 of 2012 concerning the Criminal Justice System which reads "Children can be sentenced to a crime or subject to action, so the Judge chooses to impose action on the child in the form of being returned to the parents.

## **2. Legal considerations of the panel of judges in narcotics crimes against children (study on Decision Number 18/Pid.Sus-Anak/2023/PN Bnj)**

In the decision of Decision Number 18/Pid.Sus-Anak/2023/PN Bnj Anak was charged by the Public Prosecutor with an alternative charge, so that the Judge by paying attention to the legal facts directly chooses the first alternative charge as stipulated in Article 114 Paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law No. 11 of 2012 concerning the Child Criminal Justice System. for this reason, it will be proven whether the Child has committed acts or criminal acts as formulated and criminally threatened in Article 114 Paragraph (2) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Jo Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), with the following elements: without rights or unlawfully offering to sell, selling, buying, receiving, becoming an intermediary in buying and selling, Exchange, or hand over Class I narcotics in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant forms weighing 5 (five) grams.

Regarding these elements, the Judge considers the following:

### **1. Everyone's Element**

It is the person who is the subject of the law (the child himself) that all the identities read out from the indictment of the Public Prosecutor in this case, are appropriate and have been justified by the child.

The Child was filed in this case, and during the trial it was proven that the Child was physically and mentally healthy so that he could account for his actions, the Judge was of the opinion that this

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<sup>18</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019. p. 93



Element of Everyone had been legally fulfilled according to the law.

According to Article 2 of UURI Number 11 of 2012 concerning the Child Criminal Justice System says that Children in Conflict with the Law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts then Article 3 says Children in Conflict with the Law which hereinafter referred to as Children are children who have reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal act and if it is related to the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K/Pid/1994 dated June 30, 1995, the terminology of the word "barangai" or "hij" as anyone who must be made a child. Basically, everyone as a subject of the law (supporter of rights and obligations) can be made as a child who is in conflict with the law. This is because everyone is considered capable of taking legal action unless the law specifies otherwise.<sup>19</sup>

2. Without rights or against the law, offer to sell, sell, buy, receive, become an intermediary in the sale and purchase, exchange, or delivery of Class I narcotics in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) tree trunks or in non-plant forms weighing 5 (five). This term without rights or against the law is also called the term *wederrechtelijk*, "according to Drs. P.A.F. Lamintang, S.H., in his book *The Basics of Indonesian Criminal Law wederrechtelijk* includes the meanings": Contrary to objective law, contrary to the rights of others or, without rights that exist in a person or, without authority.

The provisions of Law Number 35 of 2009 concerning Narcotics contain provisions where in the circulation, distribution, and/or use of narcotics must obtain a special permit or approval of the Minister as an authorized official on the recommendation of the Food and Drug Supervisory Agency (Vide: Article 8 Paragraph (1) Jo Article 36 Paragraph (1) and Paragraph (3), Article 39 Paragraph (2) of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics).<sup>20</sup>

Thus, the Judge is of the opinion that the Element of No Rights is part of the Element of Unlawfulness, namely any act that violates written law (laws and regulations) and or general principles of unwritten law. In this case, the Element Without Rights is without permission and/or approval from the authorized party for it, namely the Minister on the recommendation of the Food and Drug Supervisory Agency or other authorized officials based on the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics and other relevant laws and regulations.

Thus, the Judge argued that because the Child is still a Student and has not worked and is not a health worker and does not have a special permit and/or approval from the competent authority for it (the Minister of Health), so the Child is not authorized or has no right based on the provisions of the applicable laws and regulations to become an intermediary in the sale and purchase of Class I Narcotics other than plants. Thus, based on this description, the Judge is of the opinion that the second element of No Rights or Unlawfully has been legally fulfilled according to the law.<sup>21</sup>

In accordance with the explanation of Article 7 of Law Number 35 of 2009 Narcotics can only be used for the purpose of health services and/or the development of science and technology, further in Article 8 paragraph (2) in a limited number of Class I Narcotics can be used for the purpose of science and technology development and for diagnostic reagents, as well as laboratory reagents after first obtaining approval from the Minister on the recommendation of the Head of the Agency Drug and Food Control.

Article 1 number 18 of Law Number 35 of 2009 concerning Narcotics states that a Malicious

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<sup>19</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019. Page 71.

<sup>20</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019.

<sup>21</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019.

Conspiracy is the act of two or more people who conspire or agree to commit, implement, assist, participate in committing, ordering, encourage, facilitating, consulting, becoming a member of a Narcotics crime organization, or organizing a Narcotics criminal act. The act of the child who agreed to accompany the witness Teguh to take the ecstasy type narcotics for sale has fulfilled all the elements of Article 114 paragraph (2) jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. Therefore, the provisions on attempting to commit a criminal act cannot be applied to children.

The agreement or consent of the Child to accompany and assist the witness Teguh to sell Class I Narcotics is a criminal act of malicious consensus to commit the crime of Narcotics as referred to in Article 114 of Law Number 35 of 2009 concerning Narcotics so that with the joint intention or mutual agreement between the Child, the witness Teguh and the witness Rahma Agung Satria to become an intermediary in the sale and purchase Class I Narcotics has shown that the act of a child is the act of two or more people with the intention of agreeing to commit a crime. Thus, the element of "malicious conspiracy to commit narcotics crimes as referred to in Article 114" has been fulfilled.<sup>22</sup>

Because all elements of Article 114 Paragraph (2) Jo Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics Jo Law No. 11 of 2012 concerning the Child Criminal Justice System have been fulfilled, the child must be declared to have been legally and convincingly proven to have committed a criminal act as charged in the first alternative indictment.

However, in his decision, the Judge will apply the Juvenile Criminal Justice System event which must prioritize the Restorative Justice approach which involves the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation based on the principle of deprivation of independence and criminalization as a last resort.

In order to comply with the provisions of Article 60 paragraph (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System, which states that before making a decision, the Judge gives the opportunity to the parents to state things that are beneficial to the Child, then after the Judge gives the opportunity the Child's parents say that the best for the Child is to be returned to the parents so that the Child can continue his education which is currently in the 3rd grade of SMK Yayasan Perguruan Hope then at the trial, the child's parents said that they had realized their mistake because they had been negligent in caring for and guiding the child, and also promised to further supervise the child in the future and would carry out full responsibility as a parent to the child.

In order to comply with the provisions of Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that the Judge is obliged to consider the community research report from the Community Supervisor before issuing a decision on the case, in accordance with articles 71 and 82 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, because currently the child is still an active student and is currently in the 3rd grade of vocational school and also said that The child's parents are still able to provide the child's rights and take full responsibility for the child's growth and development, including better supervision in the future.

In the next consideration, the Judge did not agree with the Public Prosecutor's demand as stated in his letter of demand which was not in line with the Principles and Objectives of the Law on the Juvenile Criminal Justice System, nor did he pay attention to the facts revealed at the trial that the child was only a victim of the trap of law enforcement officials who took refuge under the law Article 24 of the Regulation of the National Police Chief Number 14 of 2012 concerning Investigation Management with covert purchases in the investigation of narcotics crimes, namely the technique of

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<sup>22</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019



disguise as a prospective buyer (undercover buy) which is carried out to find and collect evidence with which evidence sheds light on narcotics crimes and in order to find the suspects, It is appropriate that covert purchases target the arrest of narcotics sellers and especially on a large scale and do not target narcotics crimes on a small scale, especially based on the legal fact that children are not the target that has been investigated, but children are only affected by the invitation of adults.

So it is very unfortunate that this technique is used to make Anak a suspect who in fact is not a dealer or dealer of narcotics, but Anak is just a student.

Criminal acts or sanctions imposed on the child, in article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. That is, a child who is in conflict with the law, hereinafter referred to as a child, is a child who has been 12 (twelve) years old, but has not yet reached the age of 18 (eighteen) years old who is suspected of committing a criminal act.

From the existing juridical facts, the child is proven to have committed a criminal act in accordance with the Public Prosecutor's Indictment. It has also been proven that the child was born on August 6, 2001, so that at the time the child committed the crime the age of the child was about 17 (seventeen) years and 8 (eight) months, so it is still classified as the age of the child according to Law Number 11 of 2012 concerning the Child Criminal Justice System, then the child can be categorized as a "Child in conflict with the law" as referred to in Article 1 number 3 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice.<sup>23</sup>

Regarding the Judge's Decision to Order the Child, to be released from the custody of the Temporary Child Placement Institution (LPAS) immediately after this decision is pronounced and Based on the matters considered above, the criminal imposition of the child below by the Judge is considered to be in accordance with the purpose of punishment, namely not as revenge or grief, but to educate and make the child aware of his wrongdoing, In addition, so that it can also be used as a lesson for other people and even all members of the community so that they do not do what has been done by the child.

To impose a criminal sentence on a child, it is necessary to first consider the aggravating and mitigating circumstances of the child:

Aggravating circumstances:<sup>24</sup>

- The actions of children are very contrary to the Government's program which is intensively eradicating the circulation of narcotics.

Aggravating circumstances :

- The child frankly admits his actions;
- The child behaves politely in court;
- Young children are expected to improve their attitude in the future;
- The child has never been in trouble with the law;
- The child is still in the 3rd grade of SMK Yayasan Perguruan Harapan;

Paying attention, Article 114 paragraph (2) jo Article 132 paragraph (1) of UURI No. 35 of 2009 concerning Narcotics, UURI No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law of the Republic of Indonesia No. 8 of 1981 concerning the Criminal Procedure Law and other

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<sup>23</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019

<sup>24</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019



relevant laws and regulations.<sup>25</sup>

In the narcotics law, there is no provision for age restrictions in narcotics crimes so that children can be criminally punished according to the sanctions contained in the narcotics law.<sup>26</sup>

The best treatment and priority must be given to children who are in conflict with the law because here we must consider the mental development of the child if he is subject to criminal sanctions that are not in accordance with the child's mental development. So in this case we must really pay attention to the future. No less important is that we must know the environment, location, social status of the child and how the child is raised in the midst of his family. Because wrong parenting has the potential to plunge the child into acting beyond his knowledge so that it conflicts with the law.<sup>27</sup>

Narcotics crimes committed by children must still be sanctioned to provide learning to the child how to account for his actions. Children are assets for a country so legal sanctions must be in accordance with the child's age, behavior and psychology. Because this concerns the child himself, his future and social life. Rehabilitation is considered very necessary for the child about the dangers of narcotics.<sup>28</sup>

Criminal liability for narcotics abuse by children has actually been regulated in the laws and regulations in Indonesia. However, the punishment of children must pay attention to the physical and moral aspects of the child. The physicality of the child can be seen from the mind, the intelligence of the child. A child's morals can be seen from his or her psyche, such as abnormalities, mental disorders, so that if the child experiences such a mental disorder, he will not be held juridically responsible. To determine this juridical liability, the judge will be very careful. Considering that if it is associated with a child committing a criminal act, it is a very important element, and must be resolved with legal responsibility.<sup>29</sup>

Law Number 11 of 2012 concerning the juvenile criminal justice system which has been enacted since July 30, 2014 prioritizes the Restorative Justice approach which involves the perpetrator, the victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation based on **the principle of deprivation of independence and criminalization as a last resort**. Previously, the sanction of child crimes always caused debate, because it had consequences for socialization, behavior or stigma in society against the child. So that Law Number 3 of 1997 concerning Children's Court is no longer in accordance with the development and legal needs of the community because it has not comprehensively provided protection to children who are in conflict with the law, so it needs to be replaced with a new law.

Law Number 11 of 2012 concerning the juvenile criminal justice system which also has a two-track system, which regulates criminal sanctions and actions. So that the sanctions imposed better reflect justice for the perpetrator and the victim.

Law Number 35 of 2014 concerning narcotics, although it does not specifically regulate criminal sanctions for children. However, in principle, sanctions are still given or charged in the

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<sup>25</sup> Muammar, *A Study of Criminology of Narcotics Trafficking (A Study in East Aceh Regency)*, Vol. 7 No. 1, January 1, 2019

<sup>26</sup> I Wayan Govinda Tantra, I Made Minggu Widyantara and Luh Putu Suryani, *Criminal Liability of Children as Couriers in Narcotics Crimes*, Journal of Legal Analogy, Volume 2, Number 2, 2020

<sup>27</sup> Samsul Arifin, *Criminal Liability for Children as Narcotics Couriers*, Justitia Jurnal Hukum, Volume 1 No 6 April 2021 ISSN Print: 2579-9983, E ISSN: 25796380 pages 136-142.

<sup>28</sup> Ni Kd Saras Iswari Gunnanda, *Criminal Liability of Children Who Use Narcotics*, Kertha Desa Journal, Vol. 9 No. 6, pages 66-73, P-ISSN: 2302-528X, E-ISSN: 2303-0593.

<sup>29</sup> I Wayan Gede Phalosa Jitaksu Wahendra, I Wayan Parsa, "*Criminal Liability for Perpetrators of New Types of Narcotics Abuse in Indonesia*". Scientific Journal of Law Students, Udayana University 8, No. 6 (2019).





article or the narcotics law. However, it is still necessary to consider special provisions, namely Law Number 11 of 2012 concerning the juvenile criminal justice system.<sup>30</sup>

## E. Conclusion and Advice

### 1. Conclusion

Based on the discussion in the chapter above, the following conclusions can be drawn that (1) the government's legal regulation of narcotics crimes by children, is carried out based on *criminal policies* or government legal policies, namely that in handling criminal cases against children, including the crime of intermediaries buying and selling narcotics, an examination is carried out according to the Indonesian Law Number 11 of 2012 concerning the Child Criminal Justice System. This Criminal Policy is a *grand design* of the Indonesian Government's legal politics that recognizes children's human rights with the aim that children are the generation of the Nation that can be useful in the future so that Special Arrangements are needed in the settlement of cases that befall them. With the hope that the child will become the nation's generation that brings progress to the nation. (2) The consideration of the Examining Judge of the Binjai District Court who imposed an action against the child, in the form of the act of returning to the parents and ordering the child to be released from the custody of the Temporary Child Placement Institution (LPAS), has been in line with the Principles and Objectives of the Law on the Child Criminal Justice System because it is carried out by considering the growth and development and the best interests of the child, this is a form of manifestation of the presence of the state in realizing protection of the nation's generation and pay attention to the welfare of children as mandated in Law Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection *in conjunction* with Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System.

In legal considerations, the Judge has stated that the child's actions have fulfilled all the elements in the first alternative indictment, namely violating Article 114 paragraph (2) jo Article 132 paragraph (1) of UURI No. 35 of 2009 concerning Narcotics, jo UURI No. 11 of 2012 concerning the Criminal Justice System and the Child is able to be responsible, then he must be declared guilty so that by paying attention to Article 82 paragraph (1) point a, The child should be sentenced to action in the form of being returned to the parents, but because the child has been detained at the Temporary Child Placement Institution (LPAS) while the verdict to be handed down against him is the act of returning to the parents, the child must be ordered to be immediately released from custody as soon as this verdict is pronounced to be handed over to the parents, in legal consideration the judge also said that the detention that has been It is enough to provide lessons and deterrent effects for Children and their parents with the hope that Children and their parents take wisdom from the incident and strive to be better and strive to continue the education of Children who had been interrupted as a result of the detention carried out on Children for the future of Children and the generation of the Nation.

### 2. Suggestion

It is suggested by the existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which has regulated the entire process of resolving cases of children who are facing the law from the investigation stage to the guidance stage after serving a criminal sentence. In the future, it is expected that Law Enforcers and policy makers will implement the Principles and

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<sup>30</sup> Asep Syarifuddin Hidayat, Samul Anam, Muhammad Ishar Helmi, *Legal Protection for Children as Narcotics Couriers*, SALAM; Journal of Social & Cultural Syar-i FSH UIN Syarif Hidayatullah Jakarta Vol. 5 No. 3 (2018), pp.307-330





Objectives of the Law on the Juvenile Criminal Justice System in every handling and legal process involving children, especially against perpetrators of narcotics crimes;

It is suggested that the criminal imposition of a child by a judge should be seen as in accordance with the purpose of punishment, namely not as revenge or grief, but to educate and make the child aware of his wrongdoing, besides that it can also be used as a lesson for others and even all members of society so that they do not commit acts as have been done by the child.

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