

## **Legal Protection Of Children As Perpetrators Of Narcotics Crimes (A Study At The Special Children's Institution Special Institution For Children (Lpka) Class I Medan)**

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### **ABSTRACT**

A child who is the perpetrator of a crime must provide protection for the rights of a child. In the criminal court system for the child who has a role in providing case assistance for children who deal with the law. A child or minor who commits a drug crime can be given special attention to the child in order to provide the best. This research has the aim of knowing the implementation, obstacles and efforts in providing solutions to the obstacles of narcotics crimes committed by children at the Medan Class I Child Special Development Institution in Medan. The research method used is juridical sociology, which emphasizes to obtain empirical hokum by going directly to the object. Based on this research, several research results were found as follows: semestrinya the implementation of the child protection law is handed over to the Child Special Development Institution Class I Medan. The next obstacle is the lack of understanding of law enforcement officials that children, like drug users, are the only victims. The second obstacle is the lack of public understanding of juvenile drug users. Drug use by juveniles is considered the same as drug crimes committed by adults in the public perception. The third obstacle is the weakness in infrastructure, especially in rural areas in Indonesia. Especially in the rehabilitation process, with the mechanism of the rest process, mental rehabilitation, physical rehabilitation, physical development, spiritual development, all of which have not been provided at the Medan Class I Special Child Development Center in Medan.

**Keywords:** legal protection, children, drug crimes

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### **1. INTRODUCTION**

The rule of law regulates legal relations through ties between individuals and individuals or between individuals and society. The work is displayed in the license in the chain. Because it is normal, a system is made According to the law, this only happens if authority is given authority and responsibility. Legal rights and obligations (Siska Elvandari, 2015). Indonesia, which is a State of law, as stated in Article 1. Paragraph (3) of the 1945 Law, the most important provisions of the law, namely. and the government, in carrying out its duties and responsibilities, must rely on laws or regulations, the existence of human rights Humans (citizens), the division of powers within the State and the existence of judicial control (rechterlijke controle).

In addition, to achieve the goals of the law against drugs, the government has developed a prevention strategy and action plan for drug eradication due to the directive of the President of the Republic of Indonesia number 2 of 2020 concerning the National Action Plan for the Prevention and Eradication of Abuse and illicit trafficking of narcotic drugs and drug dealers 2020-2024. But until now, drug crimes in Indonesia I don't feel comfortable. During the period January to June 2021, the National Police detected 19,229 cases of drug addiction by protecting 24,878 people (Bustomi, 2021).

At the beginning of human life, one of them can also cause changes in behavior that cause problems in the legal field (Pramita & Suputra, 2021: 49). The pending offense is a violation of drug law. Drug crimes are called narcotics in English crime and in Dutch called verdovende (Rodiyah & Salim, 2017: 85).

In childhood, there are many things that usually happen that are very complex, one of which is the desire to commit a crime. Childhood is a period of self-discovery that is used to perform certain actions and decide for themselves who they really are (Fashadhin, 2013). The most common part of unlawful acts committed by children is the first behavior that is limited to child abuse and leads to the end of criminal acts that require appropriate legal treatment is very bad. (Al-Roshid, 2019).

Meanwhile with lawlessness still happening They need help. (Hamzah, 2014) When should children be punished for their crimes, they are entitled to counseling and assistance especially for the welfare of children, their future and their mental health. They need special attention, including good legal protection. On average, the first years you will use drugs is when you are young, which is 12 (twelve) - 15 (fifteen) years old (Novitasari & Rochaeti, 2021: 97).

In addition, the drug law seeks to ensure the existence of narcotics and psychotropic substances for the benefit of medical and scientific work, prevent narcotic and psychotropic behavior, and eradicate the illicit trade in drugs and alcohol. Abusing narcotics and psychotropic drugs is a crime and threatens the safety, both physical and mental, as well as the employees of the surrounding community (Dolar & Riza, 2022).

In the case of a child's involvement in the practice of drug crimes, it is actually not done by his own conscience, but by the land. social that Felix received from the child himself. Development and a society that seems increasingly united Drugs are also one of the factors that cause the number of children involved in business law. Also, the development of information technology, which has become more advanced and abandoned traditional practices, has increased the marketing strategy of buying and selling illegal goods, especially among teenagers. Buying and selling drugs not only guarantees a general special profit for the seller and the seller, but it also allows this to happen as a habit applied in daily life to survive and fulfill daily needs (Adi, 2014).

The role of a child committing a drug-related crime. This illicit product is really detrimental to the community of actions taken by children. Given that children are the successors and also the future of parents and families and even this country itself. This condition causes a reduction in the child's ability to influence the process. education, character and much more in its development. This also makes it difficult for the government to protect the future of Indonesia, which is the responsibility of Indonesian children not to get involved in these activities to destroy ourselves and Indonesia.

The condition of a child as a young generation of the nation's successor Pursuing the ideals of the nation, the leader will determine the future of the nation in the future of the future and as a source of hope for past generations, must be achieved the greatest opportunity to foster and develop rationality and spiritual, physical and spiritual well-being.Social. Child protection is an effort and responsibility of all levels of society, in different situations and roles, knowing that children are important for mother earth and the future of the country. If they have matured physically, mentally and socially, then the time has come to replace the previous generation.

In the treaty rules on children's rights, then regarding children's rights are also contained in Law Number 17 of 2016 concerning Child Protection (Child Protection Law). Children's rights are human rights, even if they are creators, their rights are always protected. This case according to the 1945 law, namely children have the right to survival, growth and development, and freedom from violence and discrimination. Then in terms of child protection is regulated and Article 59 Paragraph of the Child Protection Law which reads: The government, local government, and other state bodies are required and responsible for ensuring such security, especially for children.

The legal protection of children requires all efforts. This is done to create conditions that can be achieved by every child's rights and responsibilities for the development and growth of children who are both physical, mental and social. Child protection is a manifestation of the existence of justice in society, this is why we need to protect children in various aspects of state and community life. Child protection programs have legal consequences, both in terms of written or unwritten legal rules.

In terms of legal protection of children is: All activities to ensure and protect children and their rights to their potential to live, grow, develop and participate optimally as human mountains and dignity and protected from violence and discrimination. The Indonesian government has made efforts to create security for children as perpetrators compared to the juvenile criminal justice system The plan is implemented on the basis of the following: a) Security; b) Justice; c) Non-discrimination; d) Best interest of the child; e) Respect for the imagination of the child; (f) Survival, growth and development of the child; g) Management and guidance of children; h) Limitation; i) Deprivation of liberty and punishment of last resort; and j) avoidance of retaliation.

Not guaranteeing the protection of children indirectly limits and considers the impact on the environment and children themselves, so that conservation efforts do not cause negative impacts. Protection of

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children is maintained with common sense, responsibility and usefulness. This indicates an efficient and effective endeavor. Child protection business should not have an impact on limiting the way, creativity, skills and other factors cause dependence on others and behave uncontrollably, so that the child is unable to be willing to perform human rights and fulfill one's duties.

Meanwhile, according to the law, the protection of a child must be complied with Children can exercise their rights and responsibilities. Legal side Child protection should focus more on the legal rights of the child and no work because the child is legally (legally) no burden of responsibility. Child protection curriculum in general Planning can be divided into two types: a. Legal (both in terms of public law and civil law) b. It is not legal (social, health and education sectors). For child protection based on article 1 number 2 of Law Number 35 of 2014 concerning Child Protection, "Child Protection is all programs designed to support and protect children and their rights to live, grow, develop and participate effectively and human dignity and values through the protection of violence and discrimination".

One of the efforts in nurturing child protection is to create a situation so that every child can exercise their rights and obligations for normal child development and growth, both physically, mentally and socially. Child protection is a form of social justice. In this way, child protection is pursued in various fields of state and community life. Child protection services have legal consequences, both regarding written and unwritten law. The law is a commitment to child protection services.

Legal protection is necessary for the continuation of child safety operations and the prevention of violence that negatively affects the implementation of child protection. Child safety measures implement policies, services and assistance that characterize effective successful businesses. Efforts to protect children will not result in the death of their methods, creativity and other factors causing the dependency of others to behave uncontrollably so as to deprive the child of the ability and willingness to use and exercise his/her right to work. Reimbursement of costs follows the criteria for recovery as applicable The first (restutio in integrum) is the business of the criminal offender must be returned to the original state before the criminal offense was committed even though it is based on the possibility of the victim not returning to his original position. (Hasibuan, 2019).

## **2. LITERATURE REVIEW**

### **Legal Protection**

A meaning in protection is very important, protection is something that includes activities that are indirect and threatening behavior towards children physically or mentally. (Wiyono, 2016). According to Satjipto Rahardjo, legal protection includes ensuring the protection of human rights, some are harmed, and the community is given protection so that it may have all the rights granted by law. Based on the above definition, everyone is entitled to protection This law is a government effort to protect society or control with some existing values.

It is agreed that security is legal protection if you have the following:

1. There is government protection to its citizens.
2. Confirmation of legal retention.
3. Related to the rights of citizens.
4. There is a penalty limit for third parties to break it Depends on

Next is Muchsin's opinion, regarding legal protection can be divided into two, namely:

1. Preventive Legal Protection, is a protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or boundaries in carrying out an obligation.
2. Repressive Legal Protection, is a final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.

### **Definition of Child**

The definition of a child is a mandate and a gift from God Almighty, in which the dignity of a human being is inherent. Therefore, children also have human rights that are recognized by the community of nations in the world and are the basis for freedom, justice and peace throughout the world. It is recognized that during their physical and mental development, children need special care, protection, and legal protection both before and after birth.

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It is recognized that the family is the natural environment for the growth and well-being of the child. And that for the full and harmonious development of the child's personality requires a happy, loving and understanding family environment. Children have the right to obtain services, care, education and training, guidance and assistance, as well as other rights in accordance with the provisions of laws and regulations (Makara, 2014).

A child is a boy or girl who has not yet reached puberty. A child is also a second offspring, where the word "child" refers to the opposite of parents, adults are children of their parents, even though they are adults. According to psychology, a child is a period of development that extends from infancy to the age of five or six, this period is commonly referred to as the preschool period, later developing into the equivalent of the primary school years. However, this term also often refers to a person's mental development, although biologically and chronologically a person is already an adult, but if their mental development or age sequence then a person can be associated with the term child.

Meanwhile, a child is a position as a young generation who will continue the noble ideals of the nation, future leaders of the nation in the future and as a source of hope for previous generations, it is necessary to have the widest possible opportunity to grow and develop properly both spiritually, physically and socially. Child protection is an effort and activity of all levels of society in various positions and roles, who are well aware of the importance of children for the country and nation in the future. When they have matured physically, mentally and socially, it is time to replace the previous generation.

### **Narcotics Crime**

The definition of narcotics crime is etymologically derived from the English narcose or narcois which means lulling and anesthesia. The word narcotics comes from the Greek narke which means drugged so as not to feel anything. From the pharmacological term used is the word drug, which is a type of substance that when used will bring certain effects and influences on the user's body such as affecting consciousness and providing calmness, stimulating and causing hallucinations. Terminologically, narcotics in the Big Indonesian Dictionary are drugs that can calm nerves, relieve pain, cause drowsiness and stimulate.

Some opinions of scholars and legal experts, the definition of narcotics is as follows :

- a. Soejono D states that what is meant by narcotics is a type of substance, which when used (inserted in the body) will have an influence on the body of the user. The influence is in the form of calming, stimulating and causing delusions or hallucinations.
- b. Edy Karisono, narcotics are substances / active ingredients that work on the central nervous system (brain) which can cause a decrease to loss of consciousness and pain (pain) and can cause dependence).
- c. Elijah Adams provides a definition of narcotics consisting of synthetic and semi-synthetic substances, the famous heroin is made from morphine which is not used, but is widely seen in illicit trafficking, as well as also known as dihydro morphine.

Furthermore, there is an explanation of the definition of narcotics above, it can be concluded that narcotics are substances derived from plants or non-plants that can cause a decrease, change in consciousness, reduce to eliminate pain, cause delusion or hallucinations and can cause the effects of dependence which are divided into groups as attached to the law or later determined by a decree of the minister of health.

### **3. RESEARCH METHOD**

In this research, a research method was carried out. As for the approach method in this research, the researcher uses a juridical sociological research type, which emphasizes research that aims to obtain legal knowledge empirically by going directly to the object. Thus the author examines the legal protection of children as perpetrators of narcotics crimes. The nature of the research used in accordance with the problems mentioned above is descriptive (Sunggono, 2017), namely trying to obtain a complete, comprehensive, and systematic picture (Laurensius Arliman S, 2018) regarding the legal protection of children as perpetrators of narcotics crimes.

### **4. RESULTS AND ANALYSIS**

#### **Implementation of Legal Protection Against Children as Perpetrators of Narcotics Crimes in Specialized Class I Medan Children's Prison**

Several definitions that can describe the term child itself and there is no limit so that we can know that the determination of the age or age of the child and the definition of the child itself depends on which legal

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interests will be used. Law Number 35 of 2014 concerning Child Protection was born in order to further improve the protection of children.

Meanwhile, child protection guarantee activities are needed. Child protection according to Article 1 point (2) of Law Number 35 of 2014 concerning Child Protection is all activities to ensure and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity of humanity and receive protection from violence and discrimination. Child protection is all efforts made to create conditions so that every child can exercise their rights and obligations for the proper development and growth of children physically, mentally and socially. Child protection is a manifestation of justice in a society, thus child protection is sought in various fields of state and community life.

One form of child protection is by realizing legal certainty for children. According to Arif Gosita in Maidin (2008) argues that "legal certainty needs to be sought for the continuity of child protection activities and to prevent fraud that brings unwanted negative consequences in the implementation of child protection." Child protection relates to several things that must receive attention, namely First, the scope of protection, namely child protection which basically includes protection in terms of the needs of clothing, food, housing, education, health, law, and things that are physical and spiritual. Second, the guarantee of the implementation of protection, namely to achieve maximum results, it is necessary to guarantee the implementation of child protection activities. It is expected that the guarantee of the implementation of child protection is set out in a written regulation such as in a regional regulation whose formulation is simple but can be accounted for and disseminated evenly in the community.

Article 20 of Law No. 35/2014 on Child Protection states that the state, government, local government, community, family and parents or guardians are obliged and responsible for organizing child protection. The state, government and local governments are obliged and responsible for respecting and fulfilling children's rights without discriminating against ethnicity, religion, race, class, gender, ethnicity, culture, language, legal status or physical condition and/or mental condition of a child.

Furthermore, children's rights are part of human rights that must be guaranteed, protected and fulfilled by parents, families, communities, the state, government and local governments. The Indonesian state strongly upholds human rights and one of them is marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution itself.

Meanwhile, children's rights include the right to a name or identity, the right to citizenship, the right to protection, the right to food, the right to a healthy body so that the child can develop optimally, the right to recreation, the right to education, the right to play, the right to play a role in development and finally the right to equality. All children are entitled to be given these children's rights without distinguishing between one child and another. Children spiritually, physically and socially still do not have the ability to stand alone and determine something, so it is the obligation of the government and state to guarantee, maintain and secure the interests and protection of children. The state, government, community, family and parents are obliged to provide protection and ensure the fulfillment of children's human rights in accordance with their duties and responsibilities. In the context of organizing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development of children physically, mentally, spiritually and socially without discrimination.

The importance of child protection is especially important when a child is undergoing legal proceedings. During the legal process, the rights and obligations of a child must be fulfilled. If the child does not get protection, it is feared that it can damage the child's psychology. Article 59 paragraph (1) of Law Number 35 of 2014 concerning Child Protection emphasizes that the government, local governments, and other state institutions are obliged and responsible for providing special protection to children. Special protection for children is a form of protection received by children in certain situations and conditions to obtain a guarantee of security against threats that endanger themselves and their lives in their growth and development.

As for the theory of legal protection, the focus of the study lies on legal protection provided to the community, especially people who are in a weak position both economically and weak from the juridical aspect, it can be seen that children as weak parties are required to be given legal protection by the state. Therefore, child protection is all activities to ensure and protect children's rights so that they can be protected. to live, grow, develop in accordance with the dignity of humanity. Protection of children can also be defined as efforts to prevent, rehabilitate and empower children in order to ensure their survival and growth. Growth and development is a dynamic process throughout human life. Changes that occur in one phase become the basis of development in the next phase. Sigmund Freud, a neurologist and psychological scientist from Austria with his theory, namely the theory of growth and development, stated that the various problems faced by adult patients were caused by disturbances or obstacles experienced by the psychosocial development of the patient when he was far into childhood and even infancy (Dharmaningtyas, 2020).

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Growth and development during child development. Growth is the increase in size and number of cells and tissues such as physical size and body structure and is quantitative so that it can be measured in units of length and weight. Child development describes the increasing maturity of individual functions, and is an important indicator in assessing the quality of life of children. Child development is a fundamental part of human development, an active and unique process for each child and occurs on an ongoing basis so that every child who becomes a drug abuser needs to be given legal protection efforts (Wahyuni, 2018).

What is done in legal protection efforts that can be given to children who abuse drugs, such as first in the selection of investigators also has certain requirements in children's cases, second when children during the examination of children's cases in court have been given legal protection in the form of assistance by legal counsel, community mentors and biological parents of children, third in the case of children the identity of the child must be kept confidential for the sake of the child's mental health and safety and finally in the imposition of a verdict. In essence, all forms of handling children in conflict with the law, including when dealing with narcotics cases, must be carried out by prioritizing the best interests of the child (Dharmaningtyas, 2020).

Rehabilitation is a medium of treatment for drug addicts that aims to free the drug abuser from drug dependence. Rehabilitation is also part of the social protection provided to drug abusers. There are 2 (two) types of rehabilitation, namely medical rehabilitation and social rehabilitation. Medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence itself while social rehabilitation is a process of integrated recovery activities, both physical, mental and social so that former narcotics addicts can return to carrying out social functions in community life.

Furthermore, treatment as the purpose of punishment is put forward by the positive school which argues that punishment is very appropriate to be directed at the perpetrator of the crime, not at his actions. However, the punishment intended by this school is to provide treatment and rehabilitation to criminals as a substitute for punishment. This positive flow argument is based on the reason that criminals are sick people who need treatment and rehabilitation. In relation to the treatment theory, drug abusers are given treatment measures aimed at punishment and directed at the perpetrator of the crime, not against his actions.

### **Constraints in the Legal Protection of Children as Perpetrators of Narcotics Crime in Class I Medan Special Prison for Children**

The legal protection of children as drug abusers in the juvenile criminal justice system in Indonesia has been accommodated and regulated through legislation, but in terms of application and implementation there are many obstacles. Some of the obstacles in the legal protection of children as perpetrators of narcotics crimes are:

First, the lack of understanding from law enforcement officials, that children as drug abusers are only victims. Victims of wrong association, victims of lack of parental attention, victims of an unhealthy environment. Thus, it is not uncommon to find several cases where law enforcement officers apply articles of punishment against children as drug abusers. The law enforcement officers in question are law enforcement officers in the juvenile criminal justice system in Indonesia. Starting from the investigation stage, namely the police or the national / regional narcotics agency. At the prosecution stage is the prosecutor's office. At the court hearing stage is the judge. At the stage of implementing the decision is the correctional institution officer. The understanding of these law enforcement officers can be minimized by selecting police officers, prosecutors, judges and prison officers who truly understand the philosophy of child protection.

A lack of understanding by law enforcement officials affects the diversion process for juvenile drug abusers. Diversion, which should be used, is often not applied. Thus, children's opportunities are closed and have the potential to become real criminals. It is not uncommon for the articles applied to children to be articles that do not allow for diversion. Therefore, the child is forced to stay and follow the entire formal criminal justice process, which has a negative impact on the child.

The second obstacle is the lack of public understanding that child drug abusers are victims. People still equate child drug abusers as real criminals, who are the same as other adult drug criminals. Thus, this public understanding affects legal protection efforts for children that are not maximized. The negative stigma of the community towards child drug abusers will close the opportunity for children to return to their normal lives. The negative stigma will only emphasize that children who abuse drugs are truly criminals and are difficult or even irreparable. Only with the right understanding can society provide positive supervision to children, so as to avoid drug abuse.

The third obstacle is the lack of facilities, especially in remote areas of Indonesia. Especially in the rehabilitation stage, through the process of detoxification, mental rehabilitation, physical rehabilitation, physical development, spiritual development, not all of which are available in regions in Indonesia. This is

understandable due to the geographical factor of Indonesia, which consists of islands. Thus, the protection of children who abuse drugs is not optimal.

The implementation of this lack of facilities is also in the form of institutions that are required to exist, as stipulated in the SPPA Law. Such as the Child Special Development Institution (LPKA), Temporary Child Placement Institution (LPAS), Social Welfare Implementation Institution (LPKS). Although these institutions exist in several regions in Indonesia, the existence of these institutions is uneven. Thus, the implementation of diversion, which is a form of legal protection for children, is not maximized.

## 5. CONCLUSION

As conclusions in this research, among others, the legal protection of children who use drugs in Indonesia is regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2009 concerning Narcotics and Law Number 17 of 2016 concerning the Decree on the Weight of this Government Law replacing Law Number 1 of 2016 concerning the Second Amendment, in Law Number 23 of 2002 concerning child protection, and various other laws and technical standards involved children who use drugs.

Next, efforts to protect children who use drugs, carried out through diversion efforts, to prevent children from participating in the process criminal justice other than criminal justice law. Other protection and treatment, prevention, treatment and rehabilitation of addicted children. Preventive measures, legal protection of drug-using children, first of all, lack of understanding of law enforcement officials. Second, the lack of understanding of the community. Third, the lack of resources, especially in the field of remote areas in Indonesia.

## Suggestion

Children of drug addicts are the only victims. Therefore, it is not appropriate for the State to use the same concept of suffering today between child abusers and real criminals (human traffickers). In Indonesia's juvenile justice system, there are still children who use drugs going to court. Even if she judges, the child will still benefit from protection.

Child protection efforts Drug users are regulated by different laws, will improve if the understanding of the authorities increases Law enforcement is strengthened and community involvement is expanded. Different Companies, especially companies that support child protection, must pay attention Poor governance.

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