

Law Enforcement Against Minors as Narcotics Dealers in Pohuwato Regency

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ABSTRACT

This study aims to analyze law enforcement against minors as narcotics traffickers in Pohuwato Regency. The process of law enforcement on children uses a different application method from other legal models. because the suspect who is brought before the investigator's desk is a person who is still underage or not yet legally competent. Based on this, the researcher aims to analyze the application of law to minors as narcotics traffickers. This study uses an empirical method by including interview data along with official data sourced from the Indonesian National Police, especially the Pohuwato Regional Police. justice and balance for the perpetrators of the crime and the victims themselves. Factors that become obstacles in the application of the law against narcotics committed by minors are divided into two, namely internal factors and external factors. With the *diversion method* based on a justice or judicial approach based on deliberation or *restorative justice* , it is hoped that legal development in Indonesia will prioritize more humanistic laws so that Indonesian law does not seem rigid.

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1. Introduction

The problem of drugs in Indonesia is still something urgent and complex. The impact of drug abuse not only threatens the survival and future of the abuser, but also the future of the nation and state, regardless of social, economic, age or educational strata.¹

The problem of drug abuse is not only a problem that needs attention for the Indonesian state, but also for the international world. By looking at the reality that is happening and its very large negative impact in the future, all elements of this nation such as the government, law enforcement officers, public education institutions and others, from now on we will encourage the movement to fight drugs, and preventive and repressive approaches. , so that drug prevention and control efforts can run effectively.²

Law enforcement in Indonesia is in the spotlight by the public and the media because law enforcement is considered a weapon to fight against all kinds of crimes that are growing day by day where law enforcement officers are required to solve legal problems so that what is the goal of law, namely legal certainty, justice and benefit can be achieved. Including crimes committed by children³.

Children in general have a great sense of curiosity, so that information or something new is worth trying without realizing the consequences of the new thing leading to goodness or vice versa. In dealing with and overcoming the actions and behavior of children, it is necessary to consider the position of the child with all his characteristics and characteristics. Although children can determine their own actions based on their thoughts, feelings and desires, their surroundings can influence their behavior.

The development of narcotics abuse is increasing day by day and the government has issued rules governing the handling of children who are perpetrators of narcotics abuse, namely the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Meanwhile, children who become perpetrators of criminal acts or crimes are regulated in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, while children as victims are regulated in the Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection. Therefore, every criminal act committed by a child is resolved

¹ Simangunsong Jimmy. 2015. Drug Abuse Among Adolescents (Case Study at the Tanjungpinang City National Narcotics Agency). *e-journal*. Vol. 1 No.1.

² *Ibid* page 2

³ Alam Dipo Andi. 2017. *Juridical Review of Narcotics Abuse by Children*, Faculty of Law, Hasanudini University Makassar, page 3. thesis.

through the courts where the settlement process uses a different mechanism from the courts in general.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination. ⁴The protection and guarantee of legal certainty provided by Law Number 35 of 2014 concerning Child Protection must be considered in the best interests of the child not to the child as a victim of a crime but to children who are in conflict with the law. And in handling cases dealing with legal processes, we must rely on the provisions of Law No. 3 of 1997 concerning Juvenile Court.

Before discussing the forms of legal protection that can be given to children who have committed narcotics crimes committed by children, we must understand the rights of a child as a criminal in general and narcotics crime in particular. In the law due to its special nature, children's cases must be handled specifically. In this way, there is a guarantee that the legal remedies taken will take into account the condition of the child without ignoring the principles of the court. So that the handling of cases of children must be carried out by special officials. Or at least being able to understand the condition of the child and have full concern for the child.

However, if the person who commits the violation is still a minor, then Article 22 of Law No. 3 of 1997 concerning Child Protection applies. Thus, if there are people who are underage committing a crime as referred to in the Narcotics Law, the punishment imposed by the judge is not only limited to imprisonment. But the judge can also make a decision as stipulated in Article 22 of the Juvenile Court Law. Thus, in the application of this provision, it applies to the *lex specialist derogate legi generalis*.

An example of a narcotics abuse case carried out by a child in Pohuwato Regency, Friday, January 31, 2020, at around 23.30 WITA, members of the Opsnal Narcotics Investigation Unit of the Pohuwato Police, received information about someone who would bring what is suspected to be narcotics of the type of methamphetamine to the West Popayato area. After hearing this, they went straight to Molosipat Village, West Popayato District.

When they got there they got information where the TO or the perpetrators would cross the border. On Saturday at 02.00 WITA the perpetrators crossed the border on a motorbike and they immediately chased him, the perpetrator was successfully arrested in North Molosipat Village, West Popayato District and found evidence which was then located on the ground beside the trans road, precisely in Molosipat

⁵Faisal Salam, Moch 2005, *Juvenile Justice Procedural Law in Indonesia*, Issue I Mandar Maju, Bandung, p. 2.

Village, West Popayato District because in threw by Andi Bambang Masulili while chasing the motorbike they were riding. They were taken to the police station for further processing. Based on the examples above, it is necessary to supervise children because there is a tendency for narcotics dealers and dealers to use children as the main target for the development of the narcotics business, one of which is using children as couriers in distributing narcotics. Counted in all cases of narcotics dealers under the age that occurred during the last three years from 2018-2020 in Pohuwato Regency, namely 4 suspected cases of narcotics dealers under the age of 18 (eighteen) years and under and still in school. middle school (SMP) we can see the following table:

Table 1. Number of narcotics trafficking cases in Pohuwato Regency carried out by minors

| No | Year | Case Report |
|----|------|-------------|
| 1 | 2018 | 1 |
| 2 | 2019 | 1 |
| 3 | 2020 | 2 |

Data source. Potato Police Station 03 March 2021

The development of narcotics crimes committed by minors in the Pohuwato Regency area based on research data within the last 3 years there were 4 cases. In 2018 there was 1 case, in 2019 there was 1 case, and in 2020 there were 2 cases of underage narcotics dealers. Narcotics are drugs that can relieve especially aches and pains that come from the visceral area or the tools of the chest and abdominal cavities, can also cause a stupor effect or prolonged stupor in a conscious state and cause addiction or addiction. The definition of narcotics according to Law Number 35 of 2009 concerning narcotics. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence.⁵

With the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice system, it provides a strong legal basis to distinguish the treatment of children in conflict with the law. Legal treatment of minors in narcotics abuse cases deserves special attention from law enforcement officials law in

⁶ Mardani, 2008, *Misuse of Narcotics in the Perspective of Islamic Law and National Criminal Law*, Raja Grafindo Persada, Jakarta, page 78

processing and deciding the decisions to be taken to regulate and restore the future of children as responsible citizens in society.⁶

Based on the description of the background above, the authors are interested in researching criminal acts of narcotics abuse with the title "Law Enforcement Against Minors as Narcotics Dealers in Pohuwato Regency"

2. Method

This study uses a qualitative approach. Through the empirical legal research method, it is intended to conduct reseresearchtion of law to minors as narcotics dealers, as a means of obtaining appropriate answers or conclusions.⁷

3. Law Enforcement Against Narcotics Circulation by Minors

Article 1 number 15 of Law No. 35 of 2009, states that an abuser is a person who uses narcotics without rights and against the law here can be classified as addicts and dealers who use and carry out illicit narcotics trafficking. Law No. 35 of 2009 basically h sides, namely the human side to narcotics addicts, and a hard and firm side to dealers, syndicates, and narcotics dealers. The humanist side can be seen as included in Article 54 of Law no. 35 of 2009 which states that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. While the hard and firm side can be seen from the articles listed in CHAPTER XV of Law no.the Year 2009 (criminal provisions), which essentially states in the chapter that people who without the right to violate the law to plant, maintain, store, control, or provide, are punishable by imprisonment. This means that the law guarantees punishment for addicts/victims of narcotics abuse in the form of rehabilitation, and dealers, syndicates, and narcotics dealers in the form of imprisonment. ⁸Relevant to victim protection, Law Number 35 of 2009 regulates, among other things, treatment and rehabilitation (Article 53 to Article 59), Awards (Article 109 to Article 110), and community participation. Rehabilitation can be in the form of medical rehabilitation and social rehabilitation. The award is given by the government and the community is given the broadest role to help prevent and eradicate narcotics smuggling and illicit trafficking. The settlement of juvenile criminal cases can be resolved from the perspective of child protection, but on the other hand, the criminal law enforcement process must not injure the sense of justice.

⁷ *Ibid*

¹³ *Ibid page 51*

⁸Narcotics Abuse and Narcotics Precursor.

Seeing how the provisions of criminal sanctions for children in Law Number 22 of 1997 concerning Narcotics have been revoked and replaced by Law Number 35 of 2009 concerning Narcotics. The Narcotics Law does not specifically regulate the system of sanctions for children, so it will be seen how the sanctions system in the Narcotics Law applies to children.⁹

Although, in the Narcotics Law several exception articles are specifically applied to those who are not old enough. So that the enforcement of the sanctions system in the Narcotics Law against children must also apply to the Child Protection and Justice Act as special provisions that are applied to children. this is a consequence of the principle of *lex specialis derogate legi generalis*.¹⁰

The results of the interview related to the arrest of two school-age teenagers who were caught both carriers and users of methamphetamine in West Popayato District. The two students were taken into custody by the Pohuwato Police Sat Narcotics Team because they were proven to be selling and using Sabu-type drugs. Pohuwato Police Head AKP. Leonardo, confirmed the incident. He said the two perpetrators were arrested in North Molosipat Village, West Popayato District.

The two perpetrators, each 18 years old and the other 16 years old. Both are still students, in Pohuwato Regency. Leonardo said this arrest was based on information from residents, that there were 2 young men were using motorbike, passing towards Moutong / Central Sulawesi to buy narcotics of methamphetamine. Based on information from residents, the Pohuwato Drug Team quickly searched, when the officers were about to confront him, the perpetrators tried to escape and tried to escape, and the drugs continued to be dumped in the bushes.

The drug unit at the Pohuwato Police Station carries out law enforcement against children as perpetrators or as suspects in drug trafficking, which are treated as in Law No. 11 of 2012 concerning the juvenile justice system, in case handling procedures (formal provisions) by the provisions of the Constitution No. 11 of 2012,

- The provisions of Article 7 investigators are obliged to seek diversion, in this case the Pohuwato Police Narcotics Unit does not carry out diversion to children involved in narcotics offenses when the child fulfills the material offense of the Constitution No. criminal.
- The provisions of Article 33, namely detention for only 7 days, for suspects handled by the Pohuwato Police drug unit, no detention is carried out.

⁹Adi, Kusno, 2015, *Diversion of Child Narcotics Crime*, Second Printing, Malang: Setara Press, p. 22

¹⁰ *ibid*, p.23

In the procedure for finding articles (material provisions) still refer to Law No. 35 of 2009 concerning criminal acts, in this case the role of children in drug trafficking will determine the threat of punishment against the child, and the Pohuwato Police Narcotics Unit will process the role of the child as good as users, intermediaries or even distributors.

The role of the family should be in preventing children or adolescents who are still underage from falling into drugs, namely by way of socializing children must be supervised by parents and forbid children to do a lot of freedom (except what they want). The prevention of drug abuse should start in the family. The family as the smallest unit in society is the main container in the process of socializing children towards a more mature personality. Families are the main fortress that can prevent children from drug problems.

3.1 Obstacles in Law Enforcement Against Narcotics Circulation by Minors

In general, the Pohuwato Police Narcotics Unit has not experienced significant obstacles in handling cases of children as perpetrators of drug crimes, because so far the Pohuwato Police Narcotics Unit continues to process further to the court stage for children who have been arrested for involvement in drug traffickin, but are still in the handling procedures. Refers to Law No. 11 of 2012.

What is often an obstacle is that the Pohuwato police drug unit does not detain children because the detention time limit is only 7 days while for handling drug crimes it takes more time than that to prove the handling of cases, and in this case, it is usually the suspect who is returned to someone else. His parents often leave the jurisdiction of the Pohuwato Police and the Pohuwato Police drug unit must look for suspects outside the jurisdiction of the Pohuwato Police, to be handed over to the Public Prosecutor when the file is declared complete.

The handling of cases taken by the Pohuwato Regional Police is the diversion method or the handling of criminal cases with a restorative justice approach, namely a model that offers different views and approaches in understanding and handling a crime. In restorative justice, the meaning of crime is the same as the view of criminal law in general, namely attacks on individuals and society and relationships. However, in the restorative justice approach, the main victim for the occurrence of a crime is not the state, as in the current criminal justice system.

The settlement of criminal cases using a restorative approach is an option that does not mean that with the presence of a new approach, namely restorative justice, the conventional criminal justice system will be lost.¹¹

Efforts to shift the process from the judicial process to the non-judicial process in overcoming narcotics abuse by children are an effort to resolve narcotics abuse by children outside the criminal justice system. That is, the transfer of the process from the judicial process to the non-judicial process in overcoming narcotics abuse by children, is an effort to prevent children from applying criminal law and punishment.

Actually, in the Juvenile Court Law, there has been an effort to change the paradigm of criminalizing children in Indonesia which is no longer aimed at retaliation or retributive but is more directed at the coaching process so that their future is better. This paradigm is felt to be insufficient because the development of children's needs is further than the regulation in the law, where the paradigm that developed later was no longer just changing the type of crime into a criminal type that was educational in nature minimum, included children in the juvenile criminal justice process.

4. Factors Causing the Circulation of Narcotics by Minors

It is no longer a foreign term for the public considering that there is so much news, both from print media, social media, and electronics that preach about drug dealers and abuse and how victims from various backgrounds and ages fall due to drug abuse. There are several factors that a person commits a drug crime that causes narcotics abuse to be grouped.

Some cases of children as drug abuse are still children and are faced with the trial process, and it is not uncommon for them to be sentenced to imprisonment and not to undergo rehabilitation. The process of punishment given to children by putting them in prison did not succeed in deterring children and getting better. Prison often makes children more professional in committing crimes.

Internal factors that become obstacles in the application of the law against narcotics trafficking carried out by minors, among others:

1. Age factor

At a young age, they have not been able to accept bad influences from the outside, today it can be a personal factor causing children to commit a behavior deviation, at

¹¹Collaborative Research Report of lecturers and students with Pnbp funds for the 2021 fiscal year: " *The application of Restorative Justice in the settlement of criminal acts of children as narcotics dealers and users in the perspective of customary law in Pohuwato Regency*" . Page 69 of 2017

a young age they tend to be more easily influenced by a negative surrounding environment, due to wanting to try new things in order seek identity, experience and show their existence to their peers. Besides that, the child's mentality is not ready to consider the good and the bad new things that he receives from the surrounding environment.

2. Psychological factors

Psychological factors occur because the child is not able to face / overcome/overcomems he faces. The mental state is still unstable, if there are parties who communicate with about drugs, then the child will easily get involved in juvenile delinquency who use mental drugs, that negative frustration reactions or mental agitation arise because psychologically they are unable to face or adapt to the changing conditions of the times. modern and complex, causing the wrong reaction or not in accordance with the surrounding environment.

3. The factor of wanting to try

The child's curiosity about something is always owned by everyone even for something that does not have to be known, humans try to find out. Trying something is an attempt to find out. It's the same with trying drugs, people who just want to know how the narcotics are, are they the same as what people say.

The feeling of curiosity about these drugs is essentially more dominant in children at a young age who want to try to enjoy drugs, it can encourage someone to commit narcotic crime.

4. The will to be free

This nature is essentially a basic trait possessed by the community/perpetrators of criminal acts. Meanwhile, in society, there are many norms that limit free will. This free will appears by manifesting itself into behavior every time someone is overwritten by the burden that is being overwritten by interacting and dealing with narcotics, it is very easy for that person to fall into narcotics crime.

External factors that become obstacles in the application of the law to the distribution of narcotics by minors, among others:

1. Family factor

Family is the main factor of children in shaping the nature, habits and identity of children, disharmony between children and parents can be the cause of child delinquency behavior, this is because there is no inner attachment between children and parents so that it becomes a gap between the will of parents and the will Then the child can perform delinquency behavior that is caused because there is no

sensitivity to the thoughts, feelings and wills of others. Therefore, the role of the family is very important in nurturing children as good individuals so that they do not fall into negative things that affect the child's personality. If the child is not properly nurtured, it is not surprising that the child does bad things because there is no role for the family to supervise and limit the child's personal actions and to determine whether it is good or bad.

The family is the main factor in shaping the child's personality, nature, character, habits and identity, disharmony between children and parents can be the cause of children's delinquent behavior, this is because there is no inner bond between children and parents so that there is a gap between the will of parents and parents. the child's will then the child can carry out delinquent behavior caused because there is no sensitivity to the thoughts, feelings and wills of others. After the child does not get what he wants in the family, the child tries to find a job and find peers to hang out with.

In a society that is still simple, perhaps the family life between parents and their children lives in a harmonious culture, there is not much outside influence and as a result creates a stable and harmonious atmosphere without experiencing difficulties in solving a problem. In contrast to modern society as it is today, filled with various activities, this takes up a lot of time for parents, so the time that should take care of children is taken up by it. When this happens, it is difficult for children to express and complain about their problems. This will make the child frustrated, because there is no place for songs to convey the problems he faces.

2. Economic factors

The poor economic situation of the family, such as when a child wants or asks for something that the parents are unable to fulfill, because the income from the parents is only sufficient to meet their daily needs, it is also the main reason why children commit crimes. Economic conditions like this cause children to become frustrated, and justify any means that cause children to want to make themselves a buying and selling intermediary in order to get extra pocket money and also want to follow the appearance of today's styles, but some of them don't know what they are doing. deliver what they know for sure just to make money.

A young child who is economically quite capable, but does not get enough attention from his family or gets into the wrong social environment, will more easily fall into drug abuse. One of the oldest theories known by many is the *Divergent Theories*, which means that crime arises from poverty. Plato (427-347BC) argues that in every country where there are many poor people, secretly there are many criminals, religious transgressors and criminals of various types including thieves /

pickpockets / thieves. Aristotle (384-322BC) also said that poverty can lead to crime/rebellion.

3. Educational factor

On average, children only study up to junior high school. Not a few of the children who only study up to elementary school. In addition, many of them drop out of school. So that their understanding of the dangers of drugs is not well known. They also never get socialization about the dangers of drugs. Both at school and in the community.

4. There is convenience

The convenience here is because there are many types of narcotics circulating on the black market in the community, the greater the opportunity for drug crimes to occur.

5. Association/environment

Narcotics abuse by perpetrators which can lead to addiction and dependence cannot be separated from their social environment. This means that the first time teenagers get to know and try drugs and where they find the cursed drugs in the middle of the association (at meetings) and in certain places that "a small group of addicts" are well known. The impact of drug abuse among children is a special and secret association, between addicts in the midst of a wider community association who may be indifferent and it is not so easy to know what they are doing. It is clear that drug addicts live in a separate social world, apart from a normal social environment. Children are forced by the influence of drugs not to care about the norms and values of social life that have actually been embraced since childhood in the care of their parents and harmonious kinship in their immediate environment (neighbors and schools).

Environmental factors that are not good or do not support the psychological development of children, lack of attention to children can also lead a child to become a drug *user*.

5. Conclusion

Based on the results of the study from the discussion that the researcher has done, the conclusions that the researcher can put forward are all criminal cases related to the application of the law against minors as narcotics traffickers in Pohuwato district, namely:

1. Law enforcement against children of drug dealers and drug users in the West Popayato sub-district, namely using law enforcement using the diversion method, namely the method regulated in the SPPA law which aims to:
 1. Achieving peace between victims and children
 2. Resolving child cases outside the judicial process
 3. Protecting children from deprivation of liberty
 4. Encouraging people to participate
 5. Instill a sense of responsibility in children

In addition, *diversion* is carried out based on an approach of justice or justice based on deliberation or restorative justice. The substance of justice or deliberation-based justice or restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration of original justice, and discussion.

The main goal of restorative justice is the creation of a fair trial. In addition, it is hoped that the parties, both perpetrators, victims, and the community will play a major role in it. Considering that children who commit narcotics crimes are victims, in handling children's cases, a known form of restorative justice is reparative boards/youth panels, namely a settlement of criminal cases committed by children by involving perpetrators, victims, the community, mediators, law enforcement officers who jointly authorized to formulate appropriate sanctions for perpetrators and compensation for victims or the community. In fact, indigenous groups in the order of their lives always use mediation efforts by deliberation in resolving all problems with the mediators being customary heads, tribal chiefs, traditional leaders and elders in the group. So the application of restorative justice is not a new thing that is carried out in the process of resolving disputes/problems but has become the custom and culture of the Indonesian people from generation to generation until now.

2. Obstacles of law enforcement in dealing with this problem are faced with the procedures regulated in the legislation. Because the regulated detention time limit is a maximum of 7 days. Meanwhile, in practice, the police need more than 7 days to uncover narcotics crime cases, especially in dealing with underage perpetrators, of course requiring more extraordinary actions.

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