



RESEARCH ARTICLE

# APPLICATION OF CRIMINAL SANCTIONS TOWARDS CHILDREN WHO ARE SUSPECTS OF METH BASED ON LAW NUMBER 35 OF 2014 CONCERNING CHILD PROTECTION (Case Study of Decision Number: 72/Pid.Sus-Anak/2023/PN.Plg)

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## Abstract

Legal protection for children who are being prosecuted for the abuse of methamphetamine is by providing special protection from the government and state institutions in the form of supervision, prevention, care, and rehabilitation by the government and the community. The formulation of the problem in this study is: 1. What is the legal protection for children who are being prosecuted for the abuse of methamphetamine? and. 2. How is the application of criminal sanctions against children who are suspects of methamphetamine based on Law Number: 35 of 2014 concerning Child Protection? The research method used in this study is normative research. The data sources used in this study consist of primary and secondary data. Based on the results of the study, it shows that: 1). Legal protection for children who are being prosecuted for the abuse of methamphetamine, children must be given special protection by both the government and special institutions, according to Article 3 of Law Number. 11 of 2012 concerning the Child Criminal Justice System which emphasizes that one of the rights of children is not to be arrested, detained, imprisoned except as a last resort. The rights mentioned in letter h of Article 3 are one of the fundamental rights that must be considered by Police and Court Investigators. 2). The application of criminal sanctions against children who are suspects of methamphetamine based on Law Number: 35 of 2014 concerning the Protection of Children who abuse narcotics can be carried out by diversion which is a very important policy to be applied in the formal justice process. In addition, children can also be subject to criminal sanctions which are a last resort. Criminal sanctions for children consist of principal and additional penalties. Principal penalties consist of warning penalties, penalties with conditions, job training, and coaching in institutions.

Keywords: Children, Narcotics, Criminal Acts, Legal Protection

## Introduction

The young generation is the future of a nation and state, therefore, the development of the young generation needs to be done well. Good education and coaching will produce good coaching. On the other hand, poor education/development will have bad consequences. Children as part of the younger generation need to receive good guidance. This training must be carried out from an early age, of course, factors that can encourage them to commit crimes must be avoided, as in their development towards adulthood they are very easily influenced by the environment around them. Their deeper curiosity about something new sometimes leads them to negative things.

There are many types of crimes that have involved children as perpetrators of criminal acts or crimes. One of the phenomena that often occurs today is drug abuse. This is very worrying because drug abuse by children does not only occur in many countries in the world, the same thing happens in Indonesia and especially in the city of Palembang, South Sumatra Province. Drug abuse that is currently occurring in society is not only committed by adults, there is even a tendency for the perpetrators to be children. Therefore, various efforts to prevent and overcome child delinquency need to be done immediately.

Drug crime is a dangerous crime, damaging the young generation and the character and physicality of the community that uses it. This crime can also be associated with a number of crimes, such as robbery, theft, money laundering, and terrorism. Therefore, the effects of drug use not only have a bad impact on the user himself but

also directly or indirectly will affect the family environment, society, and the country.

Children involved in drug abuse are certainly not born suddenly, but rather through a process of consideration from criminal organizations or drug trafficking syndicates. Where the crime does promise quite tempting profits. In the development of society recently there are several things that increasingly encourage the acceleration of the rampant crime organizations or drug trafficking syndicates to expand their networks and move across countries or internationally, especially those concerning the advancement of communication and transportation technology so as to facilitate human mobility throughout the world.

Drug victims extend to all levels of society from students, college students, artists, traders, public transportation drivers, housewives, street children, workers and so on. Drugs are easily obtained, can even be mixed by yourself which is difficult to detect, illegal drug factories have also been found in Indonesia. Drug crimes are international crimes (International Crime), organized crimes (Organize Crime), have a wide network, have large financial support and already use sophisticated technology.

A number of pieces of evidence from three narcotics cases uncovered by the South Sumatra BNN were destroyed by the South Sumatra National Narcotics Agency (BNN) in Palembang City, the narcotics evidence included 1.2259 grams of crystal methamphetamine, 14,704 ecstasy pills, and 82.09 grams of broken ecstasy pills (BNN, 2024). The first case in the destruction of evidence at the South Sumatra BNN was the disclosure of the Palembang-Batam narcotics network.

Based on its history, the use of narcotics was initially only used as a tool for religious ritual ceremonies and was also used for treatment. The first type of narcotics used was opium or commonly referred to as opium (Hadi, 2014). Currently, the development of narcotics use is increasing rapidly for medical purposes or the purpose of developing science but with the aim of obtaining huge profits, namely by illegally trading narcotics to various countries.

Children have an important role in social and state life, because of their position as the successors of the nation. Therefore, children have the potential to play an active role in maintaining the sustainability of the nation's life, in order to realize the goal of

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establishing a government that protects citizens. Drug abuse by children is currently a concern for many people and continues to be discussed and published.

In the capacity of a child being used as a courier is a very concerning thing where the child will face the law, and is considered to have committed a narcotics crime. Likewise, when a child uses the illicit goods themselves, they will definitely be caught in criminal law. With the limitations of children's abilities and imperfections, it is necessary for law enforcement officers to pay attention to the application of criminal penalties for children who commit narcotics crimes.

This becomes a legal problem if the act committed is an extraordinary crime of narcotics crime and on the one hand the perpetrator is a child where there are several special characteristics attached to him. Narcotics crimes are regulated by Law Number 35 of 2009 concerning Narcotics with severe criminal threats while Juvenile Justice is regulated in Law Number 11 of 2012 concerning the Juvenile Justice System with all mechanisms that are different from adults.

There is a view that the use of criminal law as a means of overcoming crime cannot be dismissed with the understanding that its use must remain subsidiary. This means that as long as the use of means outside the criminal justice system is considered more effective, then the use of criminal justice should be avoided as much as possible. In addition, if criminal (law) is to be used as a means to achieve a complete Indonesian human being, then a humanistic approach must also be considered.

Theoretically and legally, the use of criminal sanctions for children is still possible, although strict requirements are determined. This means that the imposition must be very selective and its implementation must be adjusted to the child's mental condition (Hadi, 2014).

This is important not only because crime is essentially a humanitarian problem, but also because in essence criminal law itself contains elements of suffering that can attack the most valuable interests or values for human life (Arief, 1994). Therefore, the use of criminal law as a means of overcoming crime cannot be ignored, even its use must be integrated with instruments/means outside the criminal justice system.

Conceptually, crime prevention can be done either by using criminal justice (judicial) or other means outside criminal justice (non-judicial). Efforts to divert the process from the judicial process to the non-judicial process in overcoming drug abuse by children are basically efforts to resolve drug abuse committed by children outside the criminal justice system. This means that the diversion of the process from the judicial process to the non-judicial process in overcoming drug abuse committed by children is basically an effort to prevent children from the application of criminal law and punishment.

Diversion in essence also has the aim of preventing children from the negative impacts of criminal law enforcement. Diversion also has the essence of ensuring that children grow and develop both physically and mentally. Reviewed theoretically from the concept of the purpose of punishment, the diversion of the judicial process to the non-judicial process for children who abuse narcotics will be seen as relevant. In general, the purpose of punishment in essence consists of efforts to protect society on the one hand and protect individuals (perpetrators) on the other (Arief, 1994).

In its development, criminal law also needs to pay attention to victims of crime. The orientation of criminal law that only tends to the issue of acts (criminal) and perpetrators (*daad-dader strafrecht*) has given birth to a criminal law construction that does not respect victims. Whereas in the context, children as people who abuse narcotics, they cannot be seen solely as perpetrators, but they must also be seen as victims who need priority in eradicating their dependence on narcotics.

According to Utrecht, a crime is an event that causes a person to be punished (*feir terzake van hetwelk een persoon strafbaar*) (Agus, 2016). In essence, the criminal law is the same as the interpretation of each statutory regulation. In essence, the law must be made clear according to the law itself.

In Law No. 35 of 2009 concerning Narcotics, there is a criminal aggravation of 1/3. When children are involved as perpetrators of drug abuse, it is very closely related to acts of exploitation because in Law No. 35 of 2014 concerning Child Protection and Law No. 35 of 2009 concerning Narcotics, several rules have been formulated regarding the prohibition of acts of exploitation against children,

especially in relation to drug abuse along with its production and distribution. So that children involved in criminal acts of drug abuse can be qualified as perpetrators and victims of exploitation.

The definition of a child can be seen from several laws, such as Article 1 paragraph (2) of Law Number: 35 of 2014 concerning Child Protection which states that "A child is a person who has not reached the age of 18 (eighteen) years, including a child in the womb" (Grafika, 2015).

In the Convention on the Rights of Children, it is expressly stated that: (Liza, 2016)

"for the purposes of the convention, a child means every human being below the age of 18 year old, under the law applicable to the child, majority is attained earlier". (The term child according to this convention means every person under the age of 18 years, unless the law applicable to children determines that adulthood is attained earlier).

In international law, children in conflict with the law or "children in conflict with the law" are people under the age of 18 who are faced with the criminal justice system because they are suspected or accused of committing a crime (Angger, 2014).

The use of criminal law as a means of overcoming drug abuse committed by children is essentially a dilemmatic choice. Given that criminal justice is a means of overcoming drug abuse (procedural justice). So the results are often unsatisfactory and clearly ignore the interests and welfare of children. So the results are often unsatisfactory and clearly ignore the interests and welfare of children.

Child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop and participate optimally in accordance with human dignity and honor and receive protection from acts of violence and discrimination (Article 1 point 2 of Law Number 23 of 2003 as amended by Law Number 35 of 2014) (Abdussalam, 2014).

The age limit of a child provides a grouping of a person to be called a child. What is meant by the age limit of a child is the maximum age grouping as a manifestation of the child's ability in legal status, so that the child changes status to adulthood or becomes a legal subject who can be independently responsible for the actions and legal actions carried out by the child. To be called a child, the person must be at the lower age limit or minimum age of zero (0) years (counting in the womb) to the upper age limit or maximum age of 18 years in accordance with applicable legal provisions. In Law Number. 35 of 2014 Article 1 paragraph (1) A child is a person who is 18 (eighteen) years old and has never been married, including a child still in the womb.

In practice, children often serve their sentences together with adults because there are no special cells for children or because there is no juvenile correctional facility available at that location. The practice of placing children and adults together also often occurs during the judicial process, for example at the investigation level in the police where child prisoners are often mixed with adult prisoners because there are no special cells for children or because of limited cell space.

This problem started with a child named Hairul alias Irul Bin Agus who lives in Lr. Sailun, RT.25, RW. 007, Kelurahan 36 Ilir, Gandus District, Palembang City, on Monday, October 31, 2023 at around 06.30 WIB, offering and selling and acting as an intermediary for the sale and purchase of Class I narcotics, type Shabu, weighing more than 5 (five) grams, caught red-handed by an undercover police officer, namely Adjunct Commissioner of Police (AKP) Haerudin, a member of Subdit II of the South Sumatra Regional Police. That in the indictment of the Public Prosecutor (JPU), the child obtained the Shabu type narcotics from a drug dealer with the initials A who was at that time a fugitive.

Based on the description above, the researcher will conduct research on the application of criminal sanctions against children who are suspects of narcotics in the form of crystal methamphetamine based on Law Number 35 of 2014 concerning Child Protection.

## Method

In accordance with the scope and problems in this study, what is done is an empirical normative legal research. In this empirical research or study, it is implied that there is a formulation of the problem, determination of the method and formulation of the theory. This approach allows researchers to apply legal theories and regulations in analyzing the application of criminal sanctions against

children who are suspects of narcotics in the form of crystal methamphetamine based on Law Number: 35 of 2014 concerning Child Protection.

The specification of this research is analytical descriptive, said to be descriptive, because this research is expected to be able to provide a detailed, systematic, and comprehensive picture of several things related to applicable policies and implementation practices for the application of criminal sanctions against children who are suspects of narcotics of the type of crystal methamphetamine based on Law Number: 35 of 2014 concerning Child Protection. In relation to this, the term analysis contains the meaning of grouping, connecting, comparing and giving meaning to the application of criminal sanctions against children who are suspects of narcotics of the type of crystal methamphetamine based on Law Number: 35 of 2014 concerning Child Protection.

To obtain accurate, complete and accountable research results, appropriate, clear and reliable data sources are needed. In this writing, the researcher will use primary data sources including the Narcotics Law Number. 35 of 2009 concerning Narcotics, Law Number. 35 of 2014 concerning Child Protection, Law Number 11. of 2012 concerning the Judicial System, Child Criminal Law, Regulation of the Minister of Health Number. 5 of 2023 concerning Narcotics, Psychotropics, and Pharmaceutical Precursors, and Jurisprudence, and is also equipped with several secondary legal materials related to primary legal materials such as theses, journals, papers, articles and research results.

## Results and Discussion

### 1. Legal Protection for Children Under Legal Process for Abuse of Crystal Methamphetamine

Law enforcement on child protection really needs the role of parents. Lack of guidance and attention from parents will have a fatal impact on children's behavior. As a result, children do not behave according to their time and deviate from the norms that exist in society. One form of deviation from these norms is drug abuse by children. Nowadays, children often commit narcotics crimes, such as consuming excessive doses, and selling without permission. Guidance and protection efforts are needed for children so that children can avoid drug abuse.

Legal protection for children who are perpetrators of narcotics crimes, whether as couriers or deliverers of goods to consumers or as spies who become accomplices of dealers or distributors, in the eyes of the law, remains the same as subjects who have the right to receive special protection when the child is arrested and processed in court.

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In this case the judge decided with the following verdict:

To judge:

- a. Declaring that the child has been proven legally and convincingly guilty of committing the crime of "without rights or against the law of possessing, storing, controlling or providing Class I Narcotics other than plants weighing more than 5 (five) grams", as in the second alternative charge;
- b. Sentencing children to 3 (three) years imprisonment and 6 (six) months job training;
- c. Determining that the period of arrest and detention in the Temporary Child Placement Institution (LPAS) that has been served by the child is deducted in full from the sentence imposed;
- d. Place the child in the Special Placement Institution for Children (LPKA) Palembang;
- e. Establishing evidence in the form of:

- 1) 4 (four) packages of crystal methamphetamine wrapped in transparent plastic clips weighing 37.49 (thirty seven point forty nine) grams.
- 2) 1 (one) green plastic bag.
- 3) 1 (one) pair of blue jeans, Maximo brand.
- 4) Simcard 1: 0882-8677-7637 and Simcard 2. 0887-4271-76743.

Seized for destruction.

- 5) 1 (one) unit of blue Oppo brand cellphone with IMEI number 1: 8628 2904 4004 960 and IMEI 2: 8628 2904 4804 978, confiscated for the state.
- 6) Ordering the child to pay court costs of Rp. 5,000 (five thousand rupiah).

Decided on Tuesday, December 5, 2023, by Romi Sinatra, SH, MH, as a judge at the Palembang District Court, and pronounced in an open hearing for the public on that day and date.

With the following considerations:

- 1) Considering that because all elements of the Public Prosecutor's second alternative charge have been fulfilled and during the examination at trial, the Panel of Judges does not need to consider other charges, furthermore, during the trial, the Panel of Judges did not find any justification or excusing factors that could eliminate the unlawful nature of the Child's actions, then based on the provisions of Article 193 Paragraph (1) of Law Number 8 of 1981 (KUHP), for the said criminal act, a punishment must be imposed that is commensurate with the actions.
- 2) Considering that because the Child was sentenced as per Article 112 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics, the Child was sentenced to a criminal fine which was replaced with job training as stated in this decision.
- 3) Considering that in order to impose a criminal penalty on a child, it is necessary to first consider the aggravating and mitigating circumstances of the child:

The aggravating circumstances are that the Child's actions do not support the government's program in eradicating the circulation of narcotics. The mitigating circumstances are: a) The child is polite and frankly admits his actions; b) The child regrets his actions; c) The child has never been punished.

The basic principles of the theory cited in this study are guided by the research object being studied, this is done so that the use of theory in the basis of thinking will remain in accordance with the specified title. The citation of theory in the preparation of this research is adjusted to the formulation of the problem. In discussing the formulation of the problem of this research, several theories are used, namely (Dewa, 2018):

- 1) Absolute Theory / Retaliation Theory (Vergelding Theories); In essence, this theory explains that criminal sanctions are imposed solely because the perpetrator has committed a crime or criminal act. So the essence of punishment is retribution.
- 2) Theory of Justice; is a type of legal theory from the level of legal philosophy related to the objectives of law which include certainty, utility, and justice. Now two theories of justice have emerged, namely: legal justice theory and social justice.

Drug trafficking using children as couriers or dealers is currently quite rampant in various regions of Indonesia, especially in the city of Palembang. Drug trafficking involving children is a concern for the Police because it needs to be handled specifically in accordance with the provisions of applicable laws and regulations.

If analyzed normatively, being a courier or drug delivery person committed by a child is a criminal act that is threatened with imprisonment in Law Number. 35 of 2009 concerning Narcotics. This means that criminal acts committed by children as couriers are prohibited and threatened with criminal sanctions in the form of imprisonment or fines as stipulated in Articles 111 to 147 of the Narcotics Law. However, the process of handling children who commit crimes is not regulated in Law Number. 35 of 2009 but is regulated in Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System. So criminal acts committed by children violate the narcotics law, but the procedural law regarding juvenile justice is specifically regulated in Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System. Therefore, investigators in handling children who become couriers, spies or other positions that are part of the distribution of drugs must be guided by Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System.

In his dissertation, Setyo Wahyudi (2011) stated that what is meant by the Juvenile Criminal Justice System is a system for enforcing juvenile criminal justice law which consists of a juvenile



investigation subsystem, a juvenile prosecution subsystem, a juvenile judge examination subsystem, and a subsystem for implementing juvenile criminal law sanctions which are based on substantive juvenile criminal law and formal juvenile criminal law and the law for implementing juvenile criminal law sanctions.

As a minor, a child has rights when dealing with the law. A child who is arrested and accused of being a drug courier, although responsible for his actions before the law, also needs to be balanced with special legal protection.

According to Article 1 number 2 of Law Number 35 of 2014, it is stated that "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 dignity and receive protection from violence and discrimination."

Among the activities that are not child protection activities, but instead constitute criminal acts, are mentioned in Chapter XII concerning Criminal Provisions of Law Number 35 of 2014, namely Articles 77 to 89.

From each of these criminal provisions, there are 2 (two) objective elements that are the same, namely (Wiyono, 2016): 1) Objective element: "every person"; 2) Objective element: "child".

Criminal case investigations are conducted by the Police in accordance with the Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) and in particular investigations of child perpetrators of criminal acts are regulated by the Child Criminal Justice System Law Number 11 of 2012 and the Child Protection Law Number 35 of 2014.

In conducting investigations into children's cases, investigators are required to ask for consideration or advice from the Community Guidance Officer after a criminal act has been reported or complained about. The Community Guidance Officer in Article 1 number 13 states (Wiyono, 2016): "The Community Guidance Officer is a legal functional official who carries out community research, guidance, supervision, and assistance to children inside and outside the criminal justice system."

Special protection for children in conflict with the law is explained in more detail in Article 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that: Every child in the criminal justice process has the right to:

- 1) Treated humanely with attention to needs appropriate to his age;
- 2) Separated from adults;
- 3) Obtain legal and other assistance effectively;
- 4) Doing recreational activities;
- 5) Free from torture, punishment or other cruel, inhumane or other treatment
- 6) Lowering his status and dignity;
- 7) Not sentenced to death or life imprisonment;
- 8) Not be arrested, detained or imprisoned, except as a last resort and for the shortest possible time;
- 9) Obtain justice before a juvenile court that is objective, impartial, and in a trial that is;
- 10) Closed to the public;
- 11) His identity was not published;
- 12) Obtaining support from parents/guardians and people trusted by the child;
- 13) Obtain social advocacy;
- 14) Getting a personal life;
- 15) Achieving accessibility, especially for children with disabilities;
- 16) Get an education;
- 17) Obtain health services; and
- 18) Obtain other rights in accordance with the provisions of laws and regulations - invitation.

According to the provisions above, a child who commits a crime and is processed in a juvenile court has rights guaranteed by the Child Criminal Justice System Law. One of them is the right not to be arrested, detained and imprisoned except as a last resort. The rights mentioned in Article 3 letter (h) are one of the fundamental rights and are truly considered by investigators of the Protection of Women and Children (PPA). A child involved in a drug network does not necessarily have to be detained, let alone combined with adults. If there is no interest in detaining, the child must be returned to the parents with prior guidance.

Avoiding children from the detention process is an effort to protect children from negative stigma/labels that can be given to children by society and to avoid a detention or prison environment

that is not good for their personality. Therefore, here it is necessary for investigators of the Protection of Women and Children (PPA) to understand children's rights in the judicial process.

Police efforts to provide legal protection for children who become drug couriers or deliverers can be carried out through diversion as mandated by the Child Criminal Justice System Law.

Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that diversion aims to:

- 1) achieve peace between victims and children
- 2) Resolving children's cases outside the courts
- 3) Protecting children from deprivation of liberty
- 4) Encourage the community to participate
- 5) Instilling a sense of responsibility in children.

Diversion for children is mandatory in all judicial processes as regulated in Article 9 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that:

- 1) Investigators, Public Prosecutors, and Judges in conducting Diversion must consider: a) the category of the crime; b) the age of the child; c) the results of community research from Bapas; and d) support from the family and community environment.
- 2) Diversion Agreement must obtain the consent of the victim and/or the Child Victim's family and the willingness of the Child and his/her family, except for: a) Criminal acts in the form of violations; b) Minor criminal acts; d) Criminal acts without victims; or d) The value of the victim's loss is not more than the local provincial minimum wage.

Legal protection for children involved in the illicit trafficking of narcotics should be given special protection through a strict diversion process involving the child's parents, community leaders, religious leaders and related institutions to reach an agreement aimed at preventing children from the process of detention and punishment and providing advice and guidance to children. Diversion will provide a much more beneficial effect than having to punish children with imprisonment.

The concept of diversion is a concept to divert a case from a formal process to an informal process. The diversion process is intended to provide protection for children in conflict with the law. Several police forces in Indonesia have implemented this diversion concept. For example, the Palembang City Police are currently carrying out their duties and functions in investigating children suspected of committing crimes. To provide legal protection to children, investigators who conduct investigations are policewomen (Polwan) who have an interest, concern, dedication and understand children's problems. Investigations by policewomen are intended to examine suspects in a family atmosphere. Investigators need to ask for consideration or advice from community counselors, education experts, mental health experts, and so on. Examination of children who commit crimes is carried out in a special room and is confidential (Lilik, 2025).

The Police and National Narcotics Agency as the main gates in handling children and adolescents involved in drug networks in various regions in Indonesia determine whether a child will be continued to the judicial process or other informal actions. Detention carried out on children is still guided by the legal rules regarding children's rights as stated in Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System. Differentiation of places of detention, provision of facilities that protect children's development, education, hobbies, access to family, protection of children's professional rights, treatment from physical and mental violence, and a short and fast judicial process (Nashriana, 2011).

Detention carried out by the police must still pay attention to children's rights and provide different treatment such as children being detained in special places for children's detention, being examined in a family atmosphere and there being no shouting or beatings carried out on children. During detention, efforts are made for children to be accompanied by their parents or Bapas.

## 2. Implementation of Criminal Sanctions Against Children Who Are Suspects of Methamphetamine Based on Law Number 35 of 2014 Concerning Child Protection

Law Number.11 of 2012 concerning the Juvenile Criminal Justice System adopts a double track system, it is possible that a child who is proven to have committed a crime can be subject to sanctions in the form of actions or sanctions in the form of criminal penalties. Based

on Article 82, the actions that can be imposed on children are as follows:

1. Return to parents/guardians.
2. Surrender to someone.
3. Treatment in a mental hospital.
4. Treatment at LPKS (Social Welfare Institution).
5. Obligation to take formal education and/or training held by the government or private bodies.
6. Revocation of driving license.
7. Correction due to criminal acts.

According to the provisions of Article 21, Children who are under 12 years old who commit or are suspected of committing a crime, Investigators, Community Guidance Officers, and Professional Social Workers make decisions to: 1. return them to their parents/guardians; or 2. Include them in education, coaching, and guidance programs at government agencies or Social Welfare Institutions (LPKS) at agencies that handle social welfare, both at the central and regional levels. In this case, the Correctional Center (BAPAS) is required to evaluate the implementation of education, coaching, and guidance programs. Because children still need further education, coaching, and guidance, the period of education, coaching, and guidance can be extended for a maximum of 6 (six) months.

Sanctions stipulated in the Juvenile Criminal Justice System Law for children are still possible, although determined by existing requirements. The imposition of criminal penalties on children must be adjusted to the child's mental state and cannot be equated with the imposition of criminal penalties on adults. In Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System, the Juvenile Criminal Justice System must prioritize the Restorative Justice approach. Restorative Justice is a diversion from formal to informal criminal proceedings as the best alternative for handling children in conflict with the law by means of all parties involved in a particular crime, jointly solving problems to deal with the consequences of the child's actions in the future. In the Juvenile Criminal Justice System Law, Restorative Justice is carried out with Diversion. Based on Article 6, diversion aims to:

- 1) Achieving peace between victims and children.
- 2) Resolving children's cases outside the court process.
- 3) Protecting children from deprivation of liberty.
- 4) Encourage people to participate.
- 5) Instilling a sense of responsibility in children.

The types of criminal penalties regulated in the Juvenile Criminal Justice System Law that can be imposed on children and their mechanisms are regulated in Articles 71-83. Article 71 states the main and additional penalties for children, namely as follows:

1. The main criminal penalties for children consist of:
  - a. criminal warning;
  - b. criminal offense with the following conditions:
    - 1) coaching outside the institution;
    - 2) community service; or supervision;
    - 3) job training;
    - 4) coaching within the institution; and
    - 5) prison.
2. Additional penalties consist of:
  - a. confiscation of profits obtained from criminal acts; or
  - b. fulfillment of customary obligations.
3. If in material law cumulative penalties in the form of imprisonment and fines are imposed, the fines are replaced with job training.
4. Criminal penalties imposed on children must not violate the child's dignity and honor.
5. Further provisions regarding the form and procedures for implementing criminal penalties as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated by Government Regulation.

The explanation in the Child Criminal Justice System Law, Article 71, is that the main criminal penalties consist of:

1. Criminal Warning Based on Article 72, a criminal warning is a minor crime that does not result in restrictions on the child's freedom.
2. Criminal conditions with conditions are imposed by the judge, namely a maximum prison sentence of 2 (two) years accompanied by general and special conditions, namely:
  - a. General conditions: children who will not commit any further crimes during their sentence with conditions.

- b. Special conditions: doing or not doing certain things as stipulated in the judge's decision while still taking into account the child's freedom.

Therefore, the term of special conditional punishment is longer than the term of general conditional punishment. The longest term is 3 (three) years. Children who are serving conditional punishment must continue to follow 9 (nine) years of compulsory education, supervised by the public prosecutor and receive guidance from a community counselor. The types of conditional punishment are:

- 1) Guidance Outside the Institution Based on Article 75, criminal guidance outside the institution is a must, namely:
  - a) follow the guidance and counseling program carried out by the supervising official;
  - b) undergoing therapy at a mental hospital; or
  - c) following therapy due to abuse of alcohol, narcotics, psychotropics, and other addictive substances. If in the course of fostering the Child violates special conditions, the fostering official may propose to the supervising judge to extend the fostering period, a maximum of 2 (two) times the fostering period that has not been implemented.

#### 2) Community Service

Based on the Juvenile Criminal Justice System Law Article 73, community service is a punishment intended to educate children by increasing their concern for positive community activities. If a child does not fulfill all or part of the obligations in carrying out community service without a valid reason, the supervising official may propose to the supervising judge to order the child to repeat all or part of the community service imposed on him. Community service for children is imposed for a minimum of 7 (seven) hours and a maximum of 120 hours.

#### 3) Supervision

According to the Child Criminal Justice System Law Article 77, it is explained that children are placed under the supervision of the Public Prosecutor and guided by the Community Guidance Officer. The supervision sentence that can be imposed on a child is at least 3 (three) months and at most 2 (two) years.

- 4) Job Training According to the provisions of Article 78, Children are placed in institutions that carry out job training that is appropriate to the age of the Child. The implementation of job training is a minimum of 3 (three) months and a maximum of 1 (one) year. Based on Article 81, job training is carried out at the Special Child Development Institution (LPKA). Job training is a form of criminal punishment in which it is carried out outside the institution by carrying out the specified job training.
- 5) Guidance in Institutions Based on Article 80, criminal penalties for guidance in institutions are carried out at work training places or coaching institutions organized by either the government or the private sector. Criminal penalties for guidance in institutions are imposed if the child's condition and actions do not endanger the community. The guidance is carried out for a minimum of 3 (three) months and a maximum of 24 months, and children who have undergone 1/2 (one half) of the duration of guidance in institutions and not less than 3 (three) months, and are well-behaved, then the child is entitled to conditional release.
- 6) Imprisonment Based on Article 81, Children who are sentenced to imprisonment in the Special Child Development Institution (LPKA) if the condition and actions of the Child will endanger society. The maximum prison sentence that can be imposed on a Child is 1/2 (one half) of the maximum prison sentence for adults. The guidance carried out in the Special Child Development Institution (LPKA) is carried out until the Child is 18 years old. Then, Children who have undergone 1/2 (one half) of the length of guidance in LPKA and behave well are entitled to parole. Imprisonment for Children is only used as a last resort. If the crime committed by the Child is a crime that is threatened with the death penalty or life imprisonment, then the sentence imposed is a maximum of 10 (ten) years imprisonment. Article 32 Paragraph (2) explains that Children who are 14 years old or older and are suspected of committing a crime with a prison sentence of 7 (seven) years or more can be detained.

In addition to the main criminal penalties, there are also additional penalties consisting of:

- 1) Confiscation of Profits Obtained from Criminal Acts The confiscation referred to is the deprivation of a child's liberty. However, in principle a child's liberty cannot be confiscated, unless forced to do so for the purpose of resolving a criminal act.
- 2) Fulfillment of Customary Obligations

The customary obligations referred to are fines or actions that must be fulfilled based on local customary norms that still respect the dignity and honor of the child and do not endanger the physical and mental health of the child.

Based on the Child Protection Law, children who commit crimes receive special protection from the government and the state. In accordance with Article 59 which states that the Government and other state institutions are obliged and responsible for providing special protection to children in emergency situations, children in conflict with the law, children from minority and isolated groups, children who are exploited economically and/or sexually, children who are traded, children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances (napza), children who are victims of kidnapping, sale and trade, children who are victims of physical and/or mental violence, children with disabilities, and children who are victims of mistreatment and neglect.

Article 67 explains special protection for children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances (napza) and are involved in their production and distribution, carried out through supervision, prevention, care and rehabilitation efforts by the government and the community. In accordance with Article 64 Paragraph (2), children in conflict with the law receive special protection, namely:

- 1) Humane treatment of children in accordance with the dignity and rights of children;
- 2) Provision of special child support officers from an early age;
- 3) provision of special facilities and infrastructure;
- 4) Imposition of appropriate sanctions in the best interests of the child;
- 5) Continuous monitoring and recording of the development of children in conflict with the law;
- 6) Providing assurance to maintain relationships with parents or family; and
- 7) Protection from identity disclosure through mass media and to avoid labeling.

If analyzed normatively, being a courier or drug delivery person committed by a child is a criminal act that is threatened with imprisonment in Law Number. 35 of 2009 concerning Narcotics. This means that criminal acts committed by children as couriers are prohibited and threatened with criminal sanctions in the form of imprisonment or fines as stipulated in Articles 111 to 147 of the Narcotics Law. However, the process of handling children who commit crimes is not regulated in Law Number. 35 of 2009 but is regulated in Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System. So criminal acts committed by children violate the Narcotics Law, but the procedural law regarding juvenile justice is specifically regulated in the Juvenile Criminal Justice System Law. Therefore, investigators in handling children who become couriers, spies or other positions that are part of the distribution of drugs must be guided by the Juvenile Criminal Justice System Law.

As a minor, a child has rights when dealing with the law. A child who is arrested and accused of being a drug courier, although responsible for his actions before the law, also needs to be balanced with special legal protection.

Diversion for children is mandatory in all judicial processes as regulated in Article 9 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which states that:

1. Investigators, Public Prosecutors and Judges in carrying out Diversion must consider:
  - a. category of criminal acts;
  - b. age of the child;
  - c. results of community research from Bapas; and
  - d. support from the family and community environment.
2. The Diversion Agreement must obtain the consent of the victim and/or the Child Victim's family as well as the willingness of the Child and his/her family, except for:
  - a. Criminal acts in the form of violations;
  - b. Minor crimes;
  - c. Victimless crimes; or
  - d. The value of the victim's loss is no more than the local provincial minimum wage.

The concept of diversion is a concept to divert a case from a formal process to an informal process. The diversion process is intended to provide protection for children in conflict with the law. To provide legal protection to children, investigators who conduct investigations are policewomen (Polwan) who have interest,

attention, dedication and understand children's problems. Investigations by policewomen are intended to examine suspects in a family atmosphere. Investigators need to ask for consideration or advice from community counselors, education experts, mental health experts, and so on. Examination of children who commit crimes is carried out in a special room and is confidential (Lilik, 2005).

The issuance of implementing regulations regarding diversion needs to be balanced with the commitment of investigators for the Protection of Women and Children (PPA) to provide maximum and non-discriminatory protection for children who commit drug crimes in order to avoid the punishment process which can have a negative impact on the child's development.

In drug cases involving children as perpetrators of drug abuse, diversion can be carried out, which is a very important policy to be applied in the formal justice process. Moreover, the community is still pessimistic about the diversion policy which will harm the interests of certain parties. The issuance of implementing regulations regarding diversion needs to be balanced with the commitment of investigators for the Protection of Women and Children (PPA) to provide maximum protection and without discrimination for children who commit drug crimes in order to avoid the punishment process which can have a negative impact on the child's growth.

Children as drug abusers can be subject to actions in the form of being returned to parents/guardians, surrendered to someone, treatment in a mental hospital, treatment at LPKS, the obligation to attend formal education and/or training held by the government or private agencies. In addition, children can also be subject to criminal sanctions. Criminal sanctions for children consist of principal and additional penalties. Principal penalties consist of warning penalties, penalties with conditions, job training, coaching in institutions; and imprisonment.

## Conclusions and Recommendations

processed for the abuse of methamphetamine is by providing special protection from the government and state institutions in the form of supervision, prevention, care, and rehabilitation by the government and the community. By involving the child's parents, community leaders, religious leaders and related institutions to reach an agreement that aims to prevent children from the process of detention and punishment and provide advice and guidance to children.

The application of criminal sanctions against children who are suspects of methamphetamine based on Law Number: 35 of 2014 concerning Child Protection in drug cases involving children as perpetrators of drug abuse can be carried out by diversion which is a very important policy to be applied in the formal justice process. In addition, children can also be subject to criminal sanctions which are a last resort. Criminal sanctions for children consist of principal and additional penalties. Principal penalties consist of warning penalties, penalties with conditions, job training, and coaching in institutions.

The author provides suggestions to the Government to socialize the Narcotics Law Number 35 of 2009, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning Child Protection as a prevention in society so that children do not fall into drug abuse or other criminal crimes.

The application of criminal sanctions against children who are suspects of methamphetamine based on Law Number. 35 of 2014 concerning Child Protection requires changes to the Narcotics Law due to the lack of explanation related to children as drug abusers. And detention should be placed as a last resort and prioritize the best interests of the child, diversion will provide a much more beneficial effect than having to punish children with imprisonment.

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