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The Nature of Legal Protection for Child Offenders of Narcotics Abuse in South Sulawesi Province

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ABSTRACT

The research objectives are (1) to analyze, find out and discover how the nature of the judge's function is in realizing justice, expediency and legal certainty in criminal cases in South Sulawesi. (2) To analyze, know and find, the effectiveness of the Judge's function as a decision maker that is fair, beneficial and has legal certainty in criminal cases in the jurisdiction of the Makassar High Court. (3) To analyze, know and find out what factors influence judges in realizing decisions that are just, beneficial and have legal certainty in criminal cases in South Sulawesi. In general, this research can be classified as empirical sociological research. The author uses the type of empirical or sociological legal research, namely legal research that views law as a social phenomenon. The results of the research in this study are (1) The essence of the function of judges in realizing justice, benefit and legal certainty in criminal cases in South Sulawesi is to find and place the value of justice in a decision based on the judge's legal considerations in realizing legal goals, namely justice, expediency, and legal certainty. (2) The effectiveness of the judge's function as a decision maker that is fair, beneficial and has legal certainty in criminal cases in the jurisdiction of the Makassar High Court is found in the cases submitted at each stage, the dissatisfaction of the litigants continues at the appeal stage and the next stage, according to the author when If the decision is considered fair, the parties involved will be satisfied with the first level court decision. (3) The factors that influence judges in realizing decisions that are just, beneficial and have legal certainty in criminal cases in South Sulawesi are legal substance, legal structure, and legal culture, which are factors that influence freedom and moral integrity. judges as administrators of judicial power in realizing justice, benefits and legal certainty. The recommendations in this study are (1) The function of judges in realizing justice, benefit and legal certainty in criminal cases must be supported by all parties, be it the executive, legislative and judiciary, and society in general, not only laws that must strengthen the function of judges, and the independence of judges, but the public also needs to understand the functions, duties and roles of the judges themselves. (2) Satisfying the parties to the judge's decision is indeed impossible, but the judge certainly needs to think of ways to reduce the dissatisfaction of the parties submitting the appeal. One of the suggestions in this paper is that the role of deliberations led directly by the judge is needed on a scale with more frequency, so that the judge can know the wishes of the parties and can be a consideration in deciding the case. (3) In order for judges to be able to decide cases that are just, beneficial and have legal certainty in criminal cases judge independence is necessary but judges also need to hear how justice is in the eyes of society so that when judges decide cases can satisfy various parties, not only the litigants but Even parties who are not in a case can feel the justice of the judge's decision.

Keywords: *The Nature of the Functions of Judges, Justice, Benefit, Legal Certainty, and Criminal Cases*

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I. INTRODUCTION

Children as part of the nation's next generation are one of the human resources that have the potential to become a source of strength. The spirit, characteristics and special characteristics that exist in him make children have a strategic role in realizing the ideals of the nation's struggle in the future. In line with the times, Indonesia is one of the countries where the development of society is very fast. This is marked by the ease of adapting to the culture, information, and developments that come from outside, both positive and negative. Related to the above, there are changes in children's behaviour at this time. If previously only adults committed crimes and violations, now the deviant behaviour of children has balanced adults. In almost every area we can find cases of criminal acts committed by children. Not only that, juvenile crime is not only limited to general

crimes but has penetrated specific crimes, namely narcotics abuse.¹ Narcotics itself is a drug or substance which is very useful in the field of medicine or health services and the development of science. However, if its presence is misused or used without strict and thorough control and supervision it will lead to dependence and this is of course very detrimental to the body of each user. All forms of importing, exporting, producing, growing, storing, distributing and/or using narcotics without strict and thorough control and supervision and contravening laws and regulations constitute a narcotics crime because it is very detrimental and poses a very great danger to human life, society, nation and state as well as Indonesia's national security.²

Acts of abuse of narcotics each year continue to increase. The National Narcotics Agency (BNN) stated that the level of abuse of narcotics and dangerous drugs has increased worldwide. In Indonesia alone, the increase was 0.03 per cent. The number of drug abusers in Indonesia is estimated at approximately 3.6 million people from the age range of 15-65 years. Trafficking of Narcotics among teenagers up to the age of children is now difficult to prevent. Most of the world's population can easily obtain narcotics from irresponsible persons.³ The targets are not only limited to discotheques, prostitution places, and places for gang gatherings but have penetrated places where the nation's next generation is created, such as schools and campuses. The fact that narcotics are so rampant naturally raises concerns from various parties, be it parents, mass organizations, and of course the government. Deputy for Child Development and Development of the Ministry of Women's Empowerment and Child Protection (KPPA) Lenny N Rosalin said that the increase in narcotics cases in children and adolescents should be an alarm for parents. Besides being able to damage health in the form of decreased body immunity, narcotics also attack a person's emotional side and cause children to be in an unhealthy social environment. Based on BNN data, drug abuse in Indonesia in 2017 was 3,376,115 people in the age range of 10-59 years. Then in 2019 drug abuse in children and adolescents increased by 24-28 per cent.⁴

For South Sulawesi itself, in almost every district/city there are cases of drug abuse by children. During the last 3 years, there has been an increase in the number of cases. In 2018 there were 76 cases, in 2019 there were 52 cases and in 2020 there were 81 cases. One of the preventive steps taken so that acts of narcotics abuse do not continue to increase, especially those that occur among children, is to issue Law Number 35 of 2009 concerning Narcotics as a mission to save the future of the next generation of the nation while at the same time protecting the public from the dangers of abuse. narcotics in the form of prevention and eradication of illegal narcotics trafficking. Commissioner General of Police Heru Winarko as Head of the National Narcotics Agency for the 2018-2021 period, said that there had been an increase of 24-28 per cent in drug abuse among adolescents where this increase was not only dominated by teenagers but also by children. The increasing number of deviant behaviours committed by children and the younger generation is a major threat to the fate of the nation in the future. As we know, the addictive substances contained in narcotics will slowly but surely destroy the nerves, then make the body more fragile and eventually become mentally weak. If this had happened, the country's ideals of producing strong, intelligent, and noble young people would not have been possible to come true. The South Sulawesi Provincial National Narcotics Agency (BNNP) stated that in 2017 the majority of narcotics users were from the 14-21 year age group, while in 2019 the majority were 6-13 years old. This fact is very concerning, especially since narcotics users are dominated by the age group of elementary school students. Head of BNNP South Sulawesi, Brigadier General Pol. Idris Kadir revealed that the increase in cases of narcotics uses, especially among children, made it obligatory for the South Sulawesi BNNP to be more active in socializing the dangers of narcotics to the public and providing an understanding of the priority of the family in preventing the circulation of narcotics so that it does not become more widespread. The South Sulawesi National Narcotics Agency (BNN) noted that the number of narcotics users and addicts in South Sulawesi is still quite high. The BNNP survey results stated that the prevalence of abuse in South Sulawesi in 2016 had reached 130,400 people. According to the Head of the Prevention Division of the BNNP Sulsel, Jamal, the jurisdiction of South Sulawesi ranks 9th (nine) highest in Indonesia. The average age of users is in the productive age category, between 10 and 35 years.⁵

There was an increase in the following year, South Sulawesi was in 7th (seventh) position in 2017 with a prevalence rate of 1.95 per cent or as many as 133,503 people. As a result of narcotics abuse, 30-40 people die

¹Parker, Jeffrey G., and Steven R. Asher. "Peer relations and later personal adjustment: Are low-accepted children at risk?." *Psychological bulletin* 102.3 (1987): 357.

²Calixto, J. B. "Efficacy, safety, quality control, marketing and regulatory guidelines for herbal medicines (phytotherapeutic agents)." *Brazilian Journal of medical and Biological research* 33 (2000): 179-189.

³Saefudin, Yusuf, and Isharyanto Hartiwiningsih. "Rehabilitation policy for drugs abuse in Indonesia." *Indian Journal of Forensic Medicine & Toxicology* 14.4 (2020): 4111-4115.

⁴Hounmenou, Charles. "Exploring child prostitution in a major city in the West African region." *Child Abuse & Neglect* 59 (2016): 26-35.

⁵Latief, Muhammad Iqbal, and Agustinus Solli. "Social challenges of teen in recovery from drugs addictions: A case study of Makassar, Indonesia." *Enfermeria Clinica* 30 (2020): 390-393.

every day, said the Head of the South Sulawesi BNN when giving a speech at the peak of the 2018 International Anti-Narcotics Day (HANI) commemoration which was centred at the BNN Baddoka Makassar Rehabilitation Center, South Sulawesi Province. The number of dealers and dealers in 2016 was 12,423 people, in 2017 there was an increase of 19,514 people. The BNN Rehabilitation Coordinator for South Sulawesi Province, Sudaryanto, admitted that most drug users in South Sulawesi Province came from teenagers, namely aged 15 to 25 years. This number is proven by data on users who have taken part in the rehabilitation program. In 2016, the most were in the late adolescent age group (age 17-25 years) as much as 44.27%, early adulthood (26-35 years old) 25.74%, and late adulthood (age 36-45) 14.07%. Early youth (age 12-16 years) 12.87%, early elderly (age 46-55 years) 2.18%, late elderly (age 56-65 years) 0.54%, children (age 5-11 years) as much as 0.33%. This is concerning because there is an age group of children involved in narcotics abuse.

This fact is truly heartbreaking and at the same time invites all residents of this country to think about the responsibilities of children, parents, and society and the most fully responsible is the state as the highest sovereign in determining policies aimed at protecting Indonesian children as the next generation in realizing nation's aspirations. The preamble to the 1945 Constitution of the Republic of Indonesia (UUD) of the Republic of Indonesia provides a mandate for the goals of the establishment of the Republic of Indonesia, one of which is to protect the entire Indonesian nation and all of Indonesia's bloodshed, promote public welfare, educate the nation's life, and participate in carrying out world order that is based on freedom, lasting peace, and social justice. The goals of the state have been clear, the next obligation of the state is to carry out these goals in people's lives because they have been regulated in the Indonesian constitution. Article 28G of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) confirms:

- 1) Everyone has the right to protection for himself/herself, family, honour, and dignihonour property under his control, and has the right to feel safe and protected from threats of fear to do or not do something which is a human right;
- 2) Everyone has the right to be free from torture or treatment that degrades human dignity and has the right to obtain political asylum from another country.

The meaning contained in these regulations reminds the government of its role in protecting the entire Indonesian nation, this is closely related to legal protection, namely protecting all Indonesian citizens against involvement in narcotics abuse. occurrence of narcotics abuses. Legal protection for children is closely related to law enforcement. Every process that is passed in law enforcement must reflect a form of protection for children, starting from the stage of investigation/investigation, prosecution, and trial, to the stage of executing the decision. Children as perpetrators of narcotics crimes are just victims. It is not appropriate, in giving punishment, to be equated with real adult criminals (dealers). As a victim, a child as a narcotics abuser must receive protection. Child protection is an effort made to create conditions so that every child can carry out his rights and obligations for the sake of the natural development and growth of children, both physically, mentally and socially. Children, even though their status as perpetrators of narcotics crimes, in this case, are still victims. Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, says that victims are people who experience physical, mental, and/or economic loss as a result of a crime. The above statement is in line with Separovic's opinion which puts forward the criteria for objects that are victims of criminal acts in 4 categories:

1. Individual victims, namely victims suffered by a person individually, such as someone who died because of murder, abuse, or being deceived;
2. Collective victims, namely victims experienced by a group of people at the same time. For example, victims of massacres to exterminate certain tribes or ethnic groups, and victims of inter-group wars. This includes consumer losses in a company's product;
3. Abstract victim is a type of victim that is difficult to see clearly because of its existence as a victim in cases of crime and violations of public order;
4. Victims themselves, are victims that occur in a type of crime without a victim (crime without a victim) where the status of the victim is also the perpetrator, because the victim is himself, so it is as if there is no victim.

The perpetrator of the crime of drug abuse belongs to one of the types of victims mentioned above, namely the victim himself. Therefore, children as perpetrators of narcotics abuse crimes, in addition to receiving legal protection from Law Number 35 of 2014 concerning Child Protection, also do not escape being the object of legal protection from Law Number 31 of 2014 concerning Protection of Witnesses and Victims. Children as narcotics abusers in the juvenile justice system in Indonesia are still undergoing the judicial process. The judicial process continues to hold children accountable. Even though they are undergoing a judicial process, children must still receive protection. The consideration of protecting children who abuse narcotics is because the child's deviant behaviour does not solely originate from the child himself but is influenced by various factors, including the family environment, society, to education. The living environment has a great influence

on the development of children's values and behaviour.⁶ A bad environment will have a negative influence on children's values and behaviour so they have the potential to commit behavioural deviations or unlawful acts. Narcotics abuse is included in the category of deviant behaviour or unlawful acts. In Article 1 paragraph (15) of Law Number 35 of 2009 concerning Narcotics, narcotics abusers are people who use narcotics without rights or are against the law. Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), confirms that a child in conflict with the law is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. The suspicion of being a narcotics abuser does not eliminate his status as a child who has deficiencies and limitations. Protection of children as narcotics abusers remains an important thing that must be implemented.

Narcotics Law is one of the special criminal law instruments, where victims of narcotics crimes are also regulated in it. Even though the law on narcotics has expressly ordered medical and social rehabilitation for drug addicts and victims of narcotics abuse, the existing regulations are unable to provide a further task for the state in terms of charging all costs incurred in the rehabilitation process. In addition, the Criminal Code itself does not fully regulate the protection of victims' rights as parties who suffer and are harmed. The lack of attention to the issue of protection for victims of crime has resulted in the fact that there are still many victims whose rights are neglected.

The Government's efforts to maximize legal protection for children in Indonesia are carried out by issuing Law Number 23 of 2002 concerning Child Protection. This law was later amended to become Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. The increasing number of cases of violence, especially sexual violence against children, has led the government to take concrete steps by issuing a regulation instead of a law (PERPPU) on child protection. The PERPPU was subsequently stipulated as law through law number 17 of 2016 concerning the stipulation of Government Regulation instead of Law Number 1 of 2016 regarding the second amendment to Law Number 23 of 2002 concerning Child Protection. A series of amendments to child protection laws aim to protect and implement children's rights, including children who abuse narcotics. One of the special protections for children regulated in child protection laws is children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances (drugs). Indonesia also has Law Number 35 of 2009 concerning Narcotics which stipulates that the government will guide all activities related to narcotics, including efforts to prevent the involvement of minors in the abuse and illicit trafficking of narcotics. Prevent the younger generation and school-age children from abusing narcotics, by including education related to narcotics in the elementary the high school curriculum. The government and other state institutions are required to comply with these regulations. Based on this, it is clear that there is a gap between the availability of various regulations to protect children as narcotics abusers, both the Child Protection Act itself, the Law on the Juvenile Criminal Justice System, and the Law on Narcotics (das sollen) with the facts empirical that occurred (das Sein) in the Regional Police Region of South Sulawesi Province in the form of increasing cases of narcotics abuse involving children as perpetrators so that it needs to be made one of the special Dissertation-level scientific research topics concerning legal protection for children who commit crimes of narcotics abuse, which is expected will be able to provide various alternative solutions in anticipating the occurrence of narcotics abuse among children in the Legal Area of the Regional Police of South Sulawesi Province.

II. RESEARCH METHOD

Research Approach

This type of research is empirical research (nondoctrinal) or also known as social legal research, focusing on research by viewing law as a socio-empirical phenomenon observed in experience. Approaching the legal reality that occurs in society is based on the gap between expectations (das sollen) and reality (das Sein). For this reason, the law is not only studied from its normative aspect but also the law as it is in reality.

Types and Sources of Data

The types and sources of data required or needed in this study are as follows:

1. Primary data is data obtained directly in the field and is still in the form of raw data. Data collection was carried out using interviews or interviews, as well as through the distribution of questionnaires or questionnaires.
2. Secondary data is data that has been processed, and obtained through 3 types of legal materials, namely:
 - a. Primary legal material is legal material in the form of various laws and regulations relating to the protection of children and narcotics abuse, namely Law Number 35 of 2014 concerning Child Protection and

⁶Coates, Linda, and Allan Wade. "Telling it like it isn't: Obscuring perpetrator responsibility for violent crime." *Discourse & society* 15.5 (2004): 499-526.

Law Number 35 of 2009 concerning Narcotics, as well as implementing regulations;

- b. Secondary legal materials are legal materials in the form of legal theory documents, research results, and scientific journals related to child protection and narcotics abuse;
- c. Tertiary legal materials are legal materials in the form of legal dictionaries, general dictionaries, and encyclopedias.

Population and Sample

The population in this study was grouped into 8 (eight) types of the population as follows:

1. Police officers in the Legal Area of the Regional Police of South Sulawesi Province;
2. BNN South Sulawesi Province;
3. Prosecutor's apparatus in the Province of South Sulawesi;
4. General Court Judges in the Province of South Sulawesi;
5. Advocate;
6. Community leaders, the general public, and Community Social Institutions (NGOs) in the Province of South Sulawesi;
7. Children associated with drug abuse in the Province of South Sulawesi.
8. Parents/families of children associated with drug abuse in the Province of South Sulawesi.

Data collection was carried out on samples (respondents) determined by the researcher using purposive sampling, namely where the researcher determined sampling by obtaining special characteristics according to the research objectives so that it was expected to be able to answer research problems both through interviews and filling out research questionnaires that were designed closed. The number of samples determined in 4 (four) Regencies/Cities based on the geographical location of each region in the south, north, east and west, to represent the Province of South Sulawesi, is as follows:

1. Bulukumba Regency, 8 types of population, as many as 32 samples;
2. Makassar City, 8 types of population, as many as 32 samples;
3. Sidrap Regency, 8 types of population, as many as 32 samples;
4. Palopo City, 8 types of population, as many as 32 samples;

Data Collection Techniques

1. Through direct interview techniques to each respondent using an interview guide or interview instructions in the form of a list of questions prepared beforehand. This interview guide was derived from the conceptual framework taken to achieve the research objectives. In this technique, a direct diary system (Logbook) is used.

2. Through the distribution of questionnaires that were submitted directly to each respondent for each location that had been determined. The questionnaires that were distributed contained a variety of questions in closed form (Yes or No Questions).

Data Analysis Techniques

In analyzing the data, two kinds of analysis were used, namely qualitative analysis and quantitative analysis. Qualitative analysis will be directed at analyzing data that is difficult to quantify, for example, an analysis of laws and regulations related to narcotics abuse among children in the Regional Legal Area of South Sulawesi Province. Quantitative analysis is used to analyze data that can be quantified or data in numerical form using the frequency distribution model analysis formula to find the percentage value of each factor observed, then described in tabular form.

III. RESEARCH RESULTS AND DISCUSSION

The Nature of Legal Protection for Children Perpetrators of Narcotics Abuse Crime

The legal process undertaken by children as perpetrators of criminal acts of narcotics abuse is of course not handled the same as adults. For children themselves, handling is special because it is regulated in a separate regulation. Legal protection for children is one of the efforts made in protecting the freedom and human rights of children. Child welfare is the main goal of protecting children. Protection of children in conflict with the law is a shared responsibility, law enforcement officials who handle juvenile criminal cases must refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and other laws and regulations. All parties, including officials, must prioritize peace efforts rather than formal legal processes. Protection for children who commit narcotics crimes needs to be resolved through a diversion policy pursued through deliberations involving children and their parents/guardians, victims and/or their guardians, social counsellors and

professional social workers based on a restorative justice approach.⁷ The imposition of punishment for children aims to foster, not to give law or misery to children as a result of their actions. The punishment given is in the form of education needed for mental stability by providing opportunities for children to be able to deepen their identity so that later they become strong, independent, and responsible individuals not only for themselves but also for their families, communities, nations and countries. The essence of protecting children as human beings like humans in general is closely related to the presence of natural law as a basis. Thomas Aquinas as an adherent of natural law explained that the reflection of an eternal law is none other than natural law itself (*lex naturalis*). Natural law was born long before the historical flow of law existed, presented in the form of science. It does not end there; natural law is also accepted as the basic principle in legislation. Humanity's great concern for the presence of justice leads to hope for the emergence of a rule that is higher than positive law. The presence of natural law gave birth to various opinions from legal philosophers which took place from time to time until in the 17th century the substance of natural law gave birth to a universal principle, now known as Human Rights (HAM). Human Rights according to Law Number 39 of 1999 concerning Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law and government, and every people for the sake of honor and protection of human dignity.

Human nature is born as a creature that God created, by nature has freedom, the right to life, the right to be protected, and various other rights which are basic rights. It is the same with the principles of natural law in the 18th century which fought for individual freedom and the primacy of reason. John Locke as one of its adherents argues that the foundation of legal theory cannot be separated from individual freedom and the primacy of reason. In addition, John Locke introduced the existence of a social contract. According to him, humans who carry out social contracts are those who carry out the order and can respect freedom, the right to life of others, and ownership of property as human innate rights. The ideal human according to John Locke is a human being who can respect and does not violate other basic human rights. These basic rights, according to John Locke, do not automatically surrender to the authorities when a social contract is made. Through a social contract, the power of the ruler will be handed over so that the gift is not absolute. Thus, the presence of power in a society that carries out a social contract aims to protect natural rights from various harmful threats, not only from outside but also from within. Supposedly, Indonesia's positive law protects basic rights.

Human rights as basic rights do not provide gaps in differences between one another. The presence of human rights forms a person to become an independent person and has a role and benefits for human survival. Immanuel Kant clearly explained that the protector of the basic rights and freedoms of society is the law. According to him, all humans are rational beings and are free to determine their destinies. The role of the state is to ensure the upholding of the rights and freedoms of each of its citizens. The purpose of law and the state is how people can obtain happiness and prosperity. Therefore, the state must not become an obstacle to upholding basic rights. The theory of legal protection by Fitzgerald argues that law is an integration tool that coordinates all existing interests in society because in principle protection for a particular party can only be realized through restrictions on the interests of other parties.⁸ The stages that need to be carefully examined in the legal protection process are the birth of legal protection originating from various existing legal regulations including rules originating from community agreements to regulate people's behaviour in their relations with other community members, or between individuals and the government who are considered to be acting on community interests. Protection of human rights (HAM) through legal protection will prevent a party from harming another party, besides that legal protection also provides space for every community to be able to receive all the rights that should be given by law. The theory of legal protection put forward by Lili Rasjidi⁹ and IB Wysa Putra states that the law can play a role in realizing protection that is not only adaptive and flexible but also predictive and anticipatory. Related to legal protection, Phillipus M. Hadjon¹⁰ explained that legal protection for the people is a government action that is not only preventive but also repressive. The purpose of preventive legal protection is to prevent problems from arising, this directs the government to be more careful in every decision taken based on discretion, and repressive protection which aims to resolve any problems that occur, including the legal process in the judiciary. The primacy of the various efforts made to obtain legal protection is the presence of order and regularity among the basic values of law, namely certainty, usefulness and legal justice, even though in reality these three basic values clash with each other, strong efforts are needed

⁷Erdianti, Ratri Novita, and Sholahuddin Al-Fatih. "Fostering as an Alternative Sanction for Juveniles in the Perspective of Child Protection in Indonesia." *Journal of Indonesian Legal Studies* 4.1 (2019): 119.

⁸Ruggie, John. "Protect, respect and remedy: A framework for business and human rights." *Innovations: Technology/ Governance/ Globalization* 3.2 (2008): 189

⁹Rasjidi, Lili., Putra, I.B.W. 1993. Law as a System. Rosdakarya youth. Bandung.

¹⁰Hadjon, P.M. 1987. Legal Protection for the Indonesian People. PT. Science Development. Surabaya.

so that these values are bases can go hand in hand. The existence of children as the next generation of the nation who will become future leaders, and on their shoulders hopes for improvement in the future, should be given the freedom to grow and develop normally both spiritually, physically and socially. Protection is a joint effort of all elements in society who have their roles and functions and are very aware of how important the position of children is in the future. When the child's physical and psychological growth, as well as social maturity, will automatically take over the position of the previous generation. Child protection is a form of effort made to create a condition where every child can exercise his rights and obligations for the growth and development of children both in terms of physical, mental and social, so that child protection covers all aspects of community life. Activities related to child protection efforts certainly have legal consequences, both written and unwritten, which include all guarantee standards for child protection. Regarding child protection, ArifGosita emphasized that legal certainty is very important to prevent deviations from occurring that harm the implementation of child protection so that its sustainability is maintained. Child protection is divided into 2 (two), namely: juridical child protection, including protection in the field of public law and the field of civil law; and non-juridical child protection, including protection in the social, health, and education fields.

The effectiveness of legal protection for child perpetrators of narcotics abuse in South Sulawesi Province

Before looking at the effectiveness of legal protection for children of narcotics abusers in South Sulawesi Province, an overview of cases of children who abuse narcotics in South Sulawesi will be presented through the Case Tracing Information System. (SIPP) Supreme Court of the Republic of Indonesia¹¹. Apart from that, as comparative data, data regarding child clients at the South Sulawesi Provincial National Narcotics Agency (BNNP) will also be presented, as well as data on child narcotics clients at the Social Rehabilitation Center for Children Requiring Special Protection. The following is a recapitulation of data for the last three (3) years. In the Case Tracing Information System (SIPP) of the Supreme Court of the Republic of Indonesia¹², data were obtained from twenty-four (24) districts/cities in South Sulawesi regarding special crimes for children classified as narcotics cases for the last three (3) years which are presented in the diagram below:

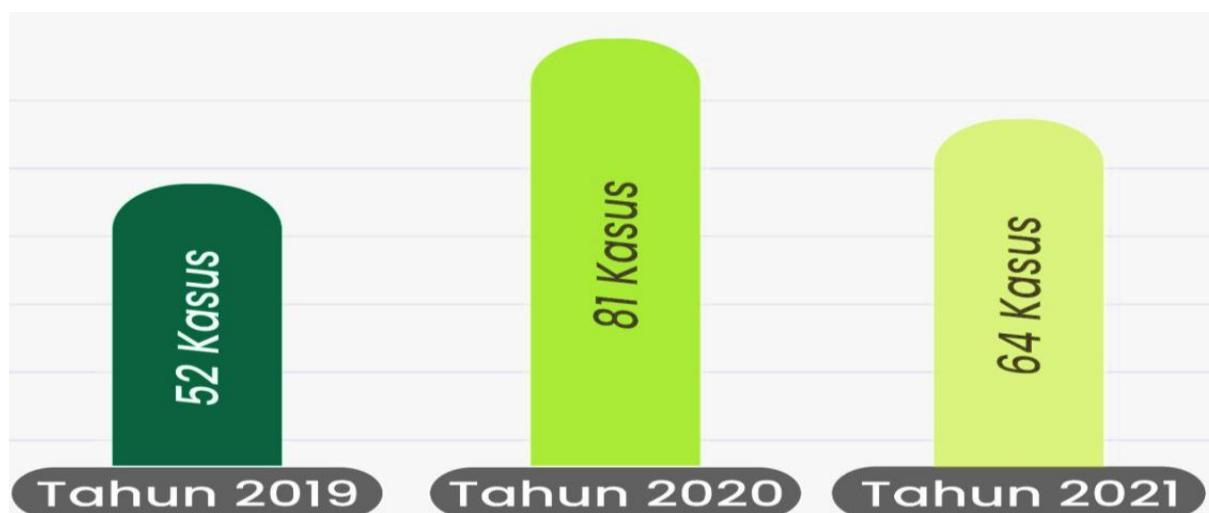


Figure 2. Recapitulation of Child Narcotics Abuse

Cases (Material Tracing Information System (SIPP) of the Supreme Court of the Republic of Indonesia)

Based on the diagram above, it can be seen that there were 52 cases of children involved in narcotics abuse cases in 2019, an increase of 81 cases in 2020, a decrease in 2021 to 64 cases but not significant, and still higher than the number of cases in 2019. The increase in cases of criminal acts of narcotics abuse by children in 2020 was due to the Covid-19 Pandemic. between dealers and users, where during the pandemic it turned out that not only were positive activities carried out virtually, but actors involved in the narcotics trade also took advantage of them. The average perpetrators of criminal acts of drug abuse who were arrested admitted to obtaining these illicit goods by utilising online motorcycle taxi services, expedition sending services, and using online delivery services through applications.

¹¹ Supreme Court of the Republic of Indonesia. 2015. Case Tracing Information System (SIPP). Supreme Court of the Republic of Indonesia. March 20, 2021 (09:25).

¹² Supreme Court of the Republic of Indonesia. 2015. Case Tracing Information System (SIPP). Supreme Court of the Republic of Indonesia. March 20, 2021 (09:25).

Factors Influencing the Effectiveness of Legal Protection for Children Perpetrators of Narcotics Abuse in South Sulawesi Province

In the following, various factors are suspected of influencing the effectiveness of legal protection for children who commit narcotics abuse in South Sulawesi Province. As stated in Chapter III, namely in the conceptual framework diagram and in the hypothesis section, 6 (six) factors are thought to influence the effectiveness of legal protection for children who commit narcotics abuse in South Sulawesi Province, namely: (1) legal substance; (2) legal structure; (3) facilities/infrastructure; (4) children, families and communities; (5) legal culture; (6) implementation of non-comprehensive diversion. In the following, the results of the research are presented in the form of various tables which are the processed results of the primary data (questionnaire), then processed by recapitulating the data, and then describing it through a frequency distribution which describes the tendency of the respondents' views in tabular form

1. Factors of Legal Substance

The table below describes the views of respondents regarding the influence of legal substance factors on legal protection for children who commit crimes of narcotics abuse in South Sulawesi Province:

Table 7. Influence of Factors of Legal Substance on Legal Protection for Children who commit Narcotics Abuse

No	Description	Frequency	Percentage (%)
1.	Influential	77	60
2.	Less influential	38	30
3.	No effect	13	10
	Total	128	100

Data Source: Primary data after processing, 2022

From the table above, it is clear that there are 60% of respondents answered that the legal substance factor influences legal protection for children who commit narcotics abuse in South Sulawesi Province.

Furthermore, it appears that there are 30% of respondents answered that the factor of legal substance has little effect on legal protection for children who commit crimes of narcotics abuse in South Sulawesi Province. The table above also confirms that only 10% of respondents answered that the legal substance factor did not affect legal protection for children who were perpetrators of narcotics abuse in South Sulawesi Province. For Children in Conflict with Law (ABH) currently uses the Law on the Juvenile Criminal Justice System (UUSPPA), but specifically for narcotics it still uses Law Number 35 of 2009, wherein the Narcotics Law only one article allows the diversion of children namely in article 127 where the child is the user. UUSPPA should have accommodated all crimes committed by children, including narcotics. Furthermore, if the UUSPPA is observed closely, what is illustrated is the aspect of the punishment, while children as legal subjects whose status is under guardianship, what is needed is not only to provide a deterrent effect so that they do not repeat the crime but what is far more critical is to provide solutions for children so that can come back and grow into a useful child amid society.

The next problem of legal substance is related to the implementation of UUSPPA in 2012, while for cases of children as drug abusers, they still refer to the Narcotics Law which was enacted in 2009. The Narcotics Law, of course, has not been able to adjust the growth and development of children to the application of its articles because existed long before UUSPPA existed. Overlapping rules with one another will complicate the apparatus in applying the article to children as non-criminal perpetrators of narcotics abuse. Referring to the results of the analysis above, where the factor of legal substance influences legal protection for children who commit crime¹² of narcotics abuse. Legal protection is of course very closely related to law enforcement itself. Theoretically, according to Lawrence M. Friedman¹³, the success of law enforcement always requires the functioning of all components of the legal system. One of the elements of the legal system is the legal substance in the form of rules and norms that apply in society, and are used by institutions in the forms of behaviour of the actors observed in the system.

The legal substance in its form as statutory regulations has been accepted as an official instrument that has aspirations¹⁶ to be developed, and pragmatically oriented in dealing with various contemporary social problems. Law with such a character is better known as the concept of "law as a tool of social engineering" from Roscoe¹⁴ Pound, or in the realm of terminology, Mochtar Kusumaatmadja¹⁵ states that law will function as

¹³ Friedman, L.M.1977. Law and Society an Introduction. Prentice Hall Inc. New Jersey.

¹⁴ Pounds, Roscoe. 1989. Philosophy of Law. Bhartara. Jakarta.

¹⁵ Kusumaatmadja, Mochtar. 1986. Functions and Development of Law in National Development. Bina Cipta. Bandung.

a means to assist change in society.

2. Legal Structure Factors

The description regarding the legal structure factor consists of 7 (seven) observed assessment indicators, namely: a). Influence of legal structure factors in general, b). The Influence of Legal Structure Formal Education Factors, c). Effect of Non-Formal Education Factors on Legal Structure, d). The influence of the moral factor of the legal structure, e) the influence of the commitment factor of law enforcement officers, f) the influence of the quality factor of the law enforcement officers, and g) the influence of the quantity factor of the law enforcement officers.

3. Facility/Infrastructure Factor

The description regarding the facilities and infrastructure factors for law enforcement officials is divided into 2 (two) observed assessment indicators, namely: a). Facility Factor, and b) Supporting infrastructure factor.

4. Child, Family, and Community Factors

The description regarding the factor of community legal awareness consists of 3 (three) observed assessment indicators, namely: a). Factors legal awareness of citizens, b). Factors legal understanding of citizens, and c). Factors legal behaviour of citizens.

5. Legal Culture Factors

The discussion related to legal culture factors consists of 2 (two) observed assessment indicators, namely: a). Factors of the legal culture of the community members, and b) Factors of the habits of the community members.

6. Non-Comprehensive Diversion Implementation Factors

The description regarding the non-comprehensive diversion implementation factor consists of 3 (two) observed assessment indicators, namely: a). The influence of factors on the level of public understanding regarding diversion to legal protection for children who commit narcotics abuse in South Sulawesi Province, b) The influence of guidance, supervision and assistance during the criminal implementation process on legal protection for children who commit narcotics abuse in South Sulawesi Province, and c) The influence of the factors of guidance, supervision, and assistance after serving a sentence on legal protection for children who commit crimes of narcotics abuse in South Sulawesi Province.

Theory Relevance with Research Results

The results of the research and discussion show that the implementation of legal protection for child perpetrators of narcotics abuse in South Sulawesi Province is less effective. This is indicated by the six (6) factors that affect legal protection for children who commit narcotics abuse in South Sulawesi Province that have not gone well.

The relevance of the theory to the results of the research above is described as follows:

1. Theory of Legal Effectiveness when examined from a legal perspective by Lawrence M. Friedman¹⁶ in Theory of Legal Effectiveness argued that the effectiveness of law enforcement depends on three elements of the legal system, namely the structure of law, substance of the law and culture. law (legal culture). The legal structure concerns law enforcement officials, the legal substance includes statutory instruments and the legal culture is a living law that is adhered to in a society. Thus, this theory is very appropriate to apply so that it is still worth defending because it is proven that the three (3) factors put forward by Lawrence M. Friedman in his Legal Effectiveness Theory are also still influential in seeing the effectiveness of legal protection for children who commit narcotics abuse in South Sulawesi Province. It's just that, seeing the current condition of society, it is necessary to add several other factors. For example, in the crime of narcotics abuse by children studied by the author, six (6) factors are needed to see the effectiveness of the protection.

2. Theory of Legal Protection: the next theory used as an analytical tool in this dissertation study is the Theory of Legal Protection by Lili Rasjidi¹⁷ and I.B Wysa Putra which states that the function of law is to provide protection that is not only adaptive and flexible but also predictive and anticipatory. According to the researchers, this theory is very appropriate to be applied in the current conditions related to the legal protection of children in narcotics crimes. The existence of concrete steps from all parties when the crime of narcotics abuse by children occurs is very important, but concrete actions to take prevention so that the crime of narcotics abuse by children does not occur is far no less critical, and which is always neglected by all competent parties. is an effort so that after a child has served a sentence, the child can return to society by bringing a much better personality and being able to provide benefits not only for himself but also for others. Therefore, it can be concluded that this theory is very feasible to defend.

¹⁶ Friedman, L.M.1977. Law and Society an Introduction. Prentice Hall Inc. New Jersey.

¹⁷Rasjidi, Lili., Putra, I.B.W. 1993. Law as a System. Rosdakarya youth. Bandung.

3. Law Enforcement Theory: law enforcement in the narrow sense by Jimmy Asshiddiqie¹⁸ is related to the activities of taking action against any violations or deviations from laws and regulations, especially through the criminal justice process which involves the role of legal structures such as police officers, prosecutors, advocates or lawyers, and other agencies, judiciary. Therefore, the study of the author's dissertation in terms of legal protection for children who commit crimes of narcotics abuse includes the legal structure as one of the factors that influence the effectiveness of legal protection for children who commit crimes of narcotics abuse. The results of the study show that the protection of legal protection for children who commit crimes of narcotics abuse is less effective because the apparatus as a legal structure also have not carried out its duties and functions to the fullest. In addition, law enforcement theory also focuses on important things that are also needed in law enforcement, namely legal awareness from the community. Evidently, from the results of the author's research, it was concluded that legal protection for children who commit crimes of narcotics abuse is less effective because society is currently more apathetic so it seems indifferent and indifferent to narcotics abuse involving children. This happens because the legal awareness of society is getting lower. This means that the theory of law enforcement is still worth defending.

4. Theory of Legal Purpose: one of the theoretical foundations used by the author in studying legal protection for children who commit crimes of narcotics abuse is the theory of legal objectives. In principle, the theory of legal objectives emphasizes the existence of law enforcement officials in carrying out the law enforcement process in Indonesia, namely to achieve legal objectives, namely legal certainty, justice, and legal benefits for all people. The three legal objectives above constitute a unity that cannot be separated from one another. The legal process undertaken by children as perpetrators of narcotics abuse crimes must also fulfil the elements of legal certainty, justice and legal benefits. The existence of the Law on the Juvenile Justice System (UUSPPA) and the Narcotics Law, which provide references in the application of articles to children as perpetrators of criminal acts of narcotics abuse, do not necessarily guarantee legal protection for children. The value of legal certainty must be followed by the value of justice, not the concept of equal justice, the sense of being equal is more the proportional value, putting something in its place. From the results of the author's research, currently, the legal process for crimes committed by children refers to the UUSPPA, except for the crime of narcotics abuse which still refers to the Narcotics Law. It should be seen from the side of justice, children are still children so even though the crime he committed is related to the Narcotics Law, of course, it is better if it is processed using the UUSPPA, this will give children a sense of justice. Furthermore, the most important element of the purpose of the law itself is expediency. Again, we see that the application of the articles given to children who conflict with the law is currently still focused on providing a deterrent effect, it would be much more useful if the UUSPPA concocted provisions that are providing solutions for children so that they return to being useful figures not only themselves, other people, society, nation and state. This is the cause of the ineffectiveness of legal protection for children who commit crimes of narcotics abuse because the three elements of legal objectives have not been properly applied to every legal process undertaken by children. This shows that the theory of legal objectives is very relevant to the author's dissertation study and deserves to be defended.

5. Theory of Cause and Effect: the theory of cause and effect means that there will be an act that results in a crime because of intention. In determining the causal relationship between actions and the consequences arising from the criminal law using certain standards to see the clause relationship between actions and the resulting consequences. In cases of criminal acts of drug abuse, it is very relevant to use this theory in the stages of the legal process. It is necessary to study the reasons why children commit crimes because basically children act not by using logic but by instinct, so they do not think about the consequences that will arise from the actions they have committed. In causal theory, it emphasizes the importance of conducting this study because children are still children who should not be involved in adult cases, of course, there are causes until this happens. The results of the study show that children are often used by adults in committing crimes of narcotics abuse so these children are only victims of circumstances that need legal protection. The causal theory is still worth defending.

6. Theories on the Causes of Child Crime: The theories on the causes of crime from the sociological aspect are grouped into three general categories, namely anomie (absence of norms) or strain (information); cultural deviation; and social control (social control). In cases of criminal acts of narcotics abuse committed by children, there are three (3) of the above factors that contribute to the non-criminal occurrence. Currently, there has been a crisis of norms in people's lives where parents have lost their authority in front of their children

¹⁸Asshiddiqie, Jimmy. 2009. *Towards a Democratic Law Country*. PT. Popular Science Bhuana. Jakarta.

because they cannot be role models; in terms of cultural deviations, the current social environment of the child is no longer the same as it used to be, the desire to try new things makes the child fall into drug abuse, the impression of not being cool if you don't follow the trend makes the child join in without thinking about the bad effects will arise; Besides that social control is very lacking causing legal protection for children who commit crimes of narcotics abuse to be less effective, people who are ignorant and indifferent to the surrounding environment because they are considered not family so they are not obliged to prevent narcotics abuse causing cases of narcotics abuse involving children to increase day by day is increasing. Based on the results of existing research, this theory is very feasible to defend because there is relevance to the study accompanied by the author.

Research Findings

The novelty of this research study compared to previous or existing studies is:

1. The results of the study confirm that 6 (six) factors influence the effectiveness of legal protection for children who commit crimes of narcotics abuse, namely:
 - a. Legal substance;
 - b. Legal structure;
 - c. Sarana/prasarana;
 - d. Children, families and communities;
 - e. Legal culture;
 - f. Implementation of non-comprehensive diversion.

2. The theory put forward by Lawrence M. Friedman¹⁹ (legal substance) and SoerjonoSoekanto²⁰ (legal effectiveness theory) is proven to be true and is still worth defending as a tool for analysis in various studies. Likewise, the Theory of Legal Protection put forward by Lili Rasjidi and I.B Wisa Putra states that the function of law is to provide protection that is not only adaptive and flexible but also predictive and anticipatory, still relevant and very appropriate to apply in current conditions related to legal protection. against children in criminal acts of narcotics abuse, so it is still worth defending.

IV. Conclusion

Based on the results of the research described above, several conclusions can be drawn, namely:

1. In essence, legal protection for children who commit crimes of narcotics abuse is one of the efforts made to protect the freedom and human rights of children in the process of implementing laws and regulations based on the principle of non-discrimination, the principle of the best interests of the child, the principle of the right to life, survival, and development, and the principle of respect for children's opinions.
2. Legal protection for children who commit crimes of narcotics abuse is not only intended to reduce the negative impact of children's involvement in every legal process they undergo, but rather how to prepare children to be able to return to society after serving a crime, and the most important thing is prevention efforts. Implementation of legal protection for children who commit crimes of narcotics abuse in South Sulawesi Province is less effective.
3. The effectiveness of legal protection for child perpetrators of narcotics abuse in South Sulawesi Province is less effective because it is influenced by several factors, namely:
 - a. Legal substance; overlapping rules with one another, making it difficult for officials to apply the article to children as non-criminal perpetrators of narcotics abuse.
 - b. Legal structure; limited quantity and competence of the apparatus both in terms of formal and informal education, apart from that the commitment and morale of the device also still needs to be improved.
 - c. Infrastructure; Inadequate existing facilities, both those used for examination, detention, medical rehabilitation and social processes.
 - d. Children, families and society: the situation in the family environment is not harmonious so divisions arise, children do not get love from the family environment causing children to seek protection from the environment which harms children's development, as well as a vote of distrust from society towards officials who think it is useless to report because it will not be processed.
 - e. Legal culture; Today's society is more apathetic, it seems they don't care because they are considered not family, so they have no obligation to supervise or report to the authorities.
 - f. Non-comprehensive implementation of diversion; Socialization related to efforts to prevent narcotics abuse is currently still incidental in nature, guidance, supervision, and assistance during the process of executing

¹⁹ Friedman, L.M.1977. Law and Society an Introduction. Prentice Hall Inc. New Jersey.

²⁰Soekanto, Soerjono. 2003. Factors Influencing Law Enforcement. Eagle Press. Jakarta.

a crime and after serving a sentence has not been maximized.

V. Suggestion

The advice that the author can give is to make improvements in all factors that cause legal protection for children who commit narcotics abuse in South Sulawesi Province to be less effective, including:

1. Legal substance: policymakers (government and DPR) should revise the Narcotics Law about cases of children as drug abusers by adopting the Juvenile Criminal Justice System Law (UUSPPA). Because UUSPPA is binding, everything related to children should be a reference in every stage of the legal process, this will also make it easier for law enforcement officials to apply the articles to children because there are no overlapping rules between one and another. In addition, the UUSPPA also needs to be revised because if it is observed, only aspects of the punishment are depicted, while children as legal subjects whose status is under guardianship, what is needed is not only to provide a deterrent effect so that they do not repeat the crime, but what is far more important is providing solutions for children so that they can return and grow to be useful children amid society.
2. Legal structure: increasing the quality and quantity of human resources for law enforcement officials, encouraging law enforcement officers to continue their studies, increasing training and technical assistance related to handling children in conflict with the law, intensifying moral and spiritual guidance so that officers have high commitment and morality.
3. Facilities/infrastructure: the government should provide facilities and infrastructure in the form of adequate equipment, sufficient budget, good and separate detention places for adults as well as adequate and special examination rooms for children. The provision of facilities in the form of medical and social rehabilitation places that are in one place and at least present in each district/city also needs to be expedited. In addition, local governments need to pay attention to the existence of child-friendly places, not just providing child-friendly places but must pay attention to conditions in their social environment. Places for special job training for children also need to be provided so that children who have diverted and returned to society can be given training according to their interests and talents.
4. Children, families and society: family resilience is needed in the protection for children who commit crimes of narcotics abuse. Starting with the determination of the child himself not to fall into things that are abused by narcotics. Furthermore, parents must control their child's social interactions, the family must assist so that children do not depend on the environment outside the home, which is a bad place for children's growth and development. In addition to the above, the community's mindset must also be straightened out, don't always direct children to be given prison sanctions, because there are many other ways such as being returned to parents, given job training, because the treatment of children in jail, is of course, different if the child is in a job training centre, given skills/skills so that when they are returned to the community they can utilize the skills they have.
5. Legal culture: public legal awareness is needed so that a legal culture can be created. Society needs to rebuild trust in the government in eradicating narcotics abuse, and vice versa. Society should not be apathetic but should be active in preventing narcotics abuse as a form of effort to protect children. Social control also needs to be improved so that the supervision of children is maximized.
6. Non-comprehensive implementation of diversion; good coordination is needed between all parties involved in the process of implementing legal protection for children who commit crimes of narcotics abuse, intensifying guidance, supervision, and assistance starting from the process of carrying out a crime until after becoming a criminal. What is no less important is for the government, in this case, law enforcement officials, and various related parties to further improve legal counselling, and religious counselling for a community moral approach so that people have high legal awareness in supervising their children not to be involved in criminal acts. narcotics abuse.

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