



"The application of drug abuse charges against the right to rehabilitation for children"

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Abstract

This research aims to analyze the judge's considerations in drug-related criminal cases involving children and their relation to the fulfillment of rehabilitation rights based on Decision Number 1/Pid.Sus-Child/2025/PN Bpd. The research uses a normative legal method with a legislative and case approach. The analysis was conducted normatively-qualitatively on the provisions regarding the juvenile criminal justice system, narcotics offenses, rehabilitation, and judicial considerations. The research results show that judges focus on proving the elements of the crime based on the Public Prosecutor's indictment, namely Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) and Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law. Although the child tested positive for using methamphetamine, Article 127 paragraph (1) letter a was not charged, thus limiting the judge's consideration for rehabilitation. The condition indicates that the resolution of the case emphasizes the aspect of punishment more than the rehabilitation and recovery of the child. Thus, the construction of the indictment letter needs to be drafted by considering the facts of drug use and the child's condition so that the fulfillment of rehabilitation rights and the principle of the best interests of the child can be more optimal.

Keywords: Child, narcotics, judge's consideration, rehabilitation, indictment letter

Introduction

Narcotics offenses are one form of crime that has a wide-ranging impact on community life, often categorized as an extraordinary crime. The impact caused is not limited to individual health, but can also affect various aspects of life, such as social, economic, cultural, and the overall life of the community.^[1] The situation becomes even more concerning when drug abuse involves children, considering that children are still in the stage of growth and development, thus requiring special protection and guidance. The situation becomes even more concerning when drug abuse involves children, considering that children are still in the stage of growth and development, thus requiring special protection and guidance.^[2]

The involvement of children in drug abuse is not solely a matter of criminal responsibility, but also relates to the protection of the child's continuity and future. The use of narcotics can lead to addiction and have an impact on the physical condition and life of the child.^[3] Therefore, handling children who are in conflict with the law needs to be done by considering the child's condition and interests, including the need for guidance and rehabilitation, so that it is not solely focused on imposing criminal sanctions.

The guaranty of protection for children involved in narcotics cases has been regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Justice System. Article 59 of the Child Protection Law regulates the obligation of the government, local governments, and other state institutions to provide special protection to children, including those who are victims of narcotics abuse.^[4] In addition to providing provisions regarding criminal acts and sanctions, Law Number 35 of 2009 on Narcotics also provides regulations regarding rehabilitation efforts for addicts and victims of narcotics abuse. Article 54 stipulates that narcotics addicts and victims of narcotics abuse are required

to undergo medical rehabilitation and social rehabilitation. Medical rehabilitation is essentially aimed at helping to overcome dependence on narcotics, while social rehabilitation aims to restore physical, mental, and social conditions so that the individual can return to fulfilling their social functions in community life.^[5]

The provision of rehabilitation is of great importance in handling drug-related cases involving children. In certain conditions, a child facing the law can simultaneously be in the position of a criminal offender and an individual experiencing drug abuse. This situation means that handling it cannot be viewed solely from the aspect of criminal responsibility, but also needs to consider the child's needs for recovery, rehabilitation, and guidance.^[6]

The issue is further related to the construction of the indictment prepared by the public prosecutor. The indictment holds a very important position in the criminal justice process because it serves as the basis for the examination of the case in court and determines the scope of the judge's examination.^[7] The indictment must be prepared carefully, clearly, and completely, containing a description of the criminal act charged against the defendant. The determination of the criminal provisions in the indictment is an important part because the construction of the indictment can influence the direction of the case examination and the application of the law to the defendant.^[8]

The issue regarding the construction of the indictment can be seen in the Blangpidie District Court Decision Number 1/Pid.Sus-Anak/2025/PN Bpd. The case involves a 17-year-old child who, based on the trial facts, was found to act as an intermediary or courier at the request of an adult perpetrator. In the case, evidence was found in the form of methamphetamine with a net weight of 0.28 grams. In addition, the urine test results showed that the child tested positive for methamphetamine. This condition indicates the child's involvement in the narcotics case as well as the indication of narcotics use by the child in question.

However, despite the urine test results indicating the use of narcotics, the public prosecutor did not use Article 127 paragraph (1) letter a of Law Number 35 of 2009 on Narcotics as the basis for the charge regarding the personal use of Class I narcotics. Instead, the public prosecutor based the charge on Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) and Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law. The construction of the indictment then resulted in the imposition of a prison sentence on the child in a Special Child Development Institution without any actions in the form of medical or social rehabilitation.

This condition raises a legal issue regarding the relationship between the construction of the public prosecutor's indictment and the judge's discretion in providing protection and rehabilitative measures for the child. On one hand, the Juvenile Criminal Justice System places protection, guidance, and the best interests of the child as important parts of the case handling process. On the other hand, judges in examining and deciding cases still adhere to legal provisions and the limits of the case determined through the indictment. Thus, the selection of criminal provisions in the indictment is related to the case examination process and the form of legal responsibility that can be imposed on the child.

In the implementation of the Juvenile Criminal Justice System, the imposition of punishment on children is placed as a last resort (*ultimum remedium*). The SPPA Law also places the best interests of the child, rehabilitation and guidance, and avoidance of retribution as principles that must be considered in the juvenile criminal justice process.^[9] This principle indicates that the resolution of drug-related cases involving children needs to consider the balance between accountability for the actions taken and the child's need for recovery and rehabilitation.

Research Method

This research is a normative legal study conducted by examining legal norms, principles, and doctrines based on library materials. The discussion is directed toward a juridical study of the application of narcotics abuse criminal charges in relation to the fulfillment of rehabilitation rights for children. The study also includes an examination of the possibility of gaps, contradictions, or ambiguities in the legal norms governing the issue.^[10]

The approach used in this research consists of the statute approach and the case approach. The statute approach is conducted by examining various legal provisions that are related to the research object. Meanwhile, the case approach is used to examine relevant court decisions, particularly regarding the legal considerations or *ratio decidendi* used by judges as the basis for their rulings.^[11]

The sources of legal materials in this research include primary legal materials and secondary legal materials. Primary legal materials consist of laws and regulations as well as court decisions related to the issues being studied. Meanwhile, secondary legal materials are sourced from various literatures, such as legal books, scientific journals, articles, and other library sources relevant to the study's object.^[12] The collection of legal materials is conducted through library research, by searching, identifying, and inventorying legal sources related to the research problem. The legal materials that have been collected are then analyzed normatively-qualitatively, by interpreting the

applicable legal provisions and examining the judges' considerations in the decisions used as the object of research. The analysis process is conducted deductively, using general legal norms and principles as the basis for analyzing and drawing conclusions on specific legal issues.^[13]

Results and Discussions

1. Judge's Considerations in Decision Number 1/Pid.Sus-Anak/2025/PN Bpd in the Case of Narcotics Crime Committed by a Minor

The judge's legal considerations are an important part of a ruling because they contain the process of evaluating the facts obtained during the trial, the evidence presented, the statements of the parties, and the relevant legal provisions. Through these considerations, the judge provides the basis for arguments to determine whether the elements of the crime are fulfilled and simultaneously establishes the form of legal responsibility for the defendant.^[14]

In the Blangpidie District Court Decision Number 1/Pid.Sus-Child/2025/PN Bpd, the Child was charged with alternative accusations based on Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) and Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The facts revealed in the trial show that the Child was involved in the drug transaction process by helping to find buyers, receiving two packages of methamphetamine, and transporting the drugs to the predetermined location for the transaction. From the arrest, methamphetamine weighing 0.28 grams was found, which, based on laboratory examination results, contained methamphetamine. Urine tests also showed that the child tested positive for methamphetamine use.

The Public Prosecutor based the evidence on the second alternative charge and requested that the Child be sentenced to 1 year in prison and 1 month of vocational training. However, the Panel of Judges chose the first alternative charge, namely Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law. The choice was based on the assessment that the Child's involvement in receiving and carrying narcotics to be handed over to potential buyers fulfilled the elements of actions related to intermediating in the sale and purchase of narcotics as well as the elements of attempt or conspiracy. The assessment is supported by witness testimony, the child's confession, evidence, and laboratory examination results.

The panel of judges further assessed that although the narcotics transaction had not yet reached the stage of delivery to the buyer, the series of actions taken by the Child indicated an intention and initial execution to realize the transaction. The actions of seeking buyers, obtaining narcotics from suppliers, and then bringing the narcotics to the transaction location were considered a series of acts sufficient to prove the Child's involvement in the alleged criminal act.

If linked to the theory of judicial authority, this consideration shows that judges, in deciding cases, remain within the scope of authority granted by the law. The indictment serves as both the basis and the limit for the judge in examining and deciding the case, so the judge essentially cannot render a verdict based on a crime that is not included in the indictment.^[15] In this case, the Public

Prosecutor did not include Article 127 paragraph (1) letter a of the Narcotics Law regarding the abuse of Class I narcotics for personal use. This situation limits the judge's ability to consider provisions directly related to drug abuse and rehabilitation.

The results of the urine test showing that the Child is positive for methamphetamine is a court fact indicating the use of narcotics by the Child. This fact is relevant in assessing the Child's position, not only as a party involved in drug trafficking offenses but also as an abuser who needs attention on the aspect of rehabilitation. In this context, judicial discretion can be understood as the space of freedom for judges in carrying out their judicial functions, including when determining the form and type of punishment while still adhering to the law and the values of justice.^[16]

Rehabilitation in drug-related cases is fundamentally not only oriented toward imposing sanctions but also providing an opportunity for addicts or abusers to achieve recovery and return to their social lives. The rehabilitative approach places recovery as one of the important parts in handling drug abuse.^[17] The fact of drug use by children should be relevant in determining the appropriate form of handling that suits the conditions and needs of the child.

The construction of the indictment in this case is an important issue because the Public Prosecutor only used provisions related to the distribution and possession of narcotics, without including Article 127 paragraph (1) letter a as one of the bases for the indictment. However, the trial facts show that the Child also used narcotics. The omission of provisions regarding drug abuse affects the judge's discretion in applying a rehabilitative approach.

The considerations of the Panel of Judges in Decision Number 1/Pid.Sus-Child/2025/PN Bpd essentially focus on proving the elements of the criminal act based on the charges submitted by the Public Prosecutor. Although the judge has considered the facts regarding the child's involvement in drug transactions, the positive fact of using methamphetamine has not been a sufficient basis to provide medical or social rehabilitation actions. This shows that the construction of the indictment is closely related to the limits of the judge's authority in determining the form of responsibility and handling of the Child.

2. The Suitability of Judicial Considerations with the Principles of Child Protection and the Best Interests of the Child in the Juvenile Criminal Justice System

Protection of children essentially includes the fulfillment and respect for children's rights so that they can develop optimally, both physically, mentally, and socially. In every legal process involving a child, the child's interests need to be placed as one of the main considerations.^[18] This principle is in line with Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which emphasizes that the implementation of the juvenile criminal justice system is based on the principles of protection, justice, non-discrimination, the best interests of the child, respect for the child's opinion, the survival and development of the child, as well as guidance and mentoring.

The principle of the best interest of the child requires that every action and decision related to the child considers the child's interests and future as the primary consideration. In this context, Arif Gosita explains that child protection is a

series of efforts to create conditions that allow children to obtain and fulfill their rights and obligations so that they can grow and develop properly in physical, mental, and social life.^[19] The handling of children in conflict with the law should not only be oriented toward punishment but also consider aspects of rehabilitation and recovery.

Decision Number 1/Pid.Sus-Child/2025/PN Bpd shows a difference in orientation between the repressive approach in combating narcotics crimes and the restorative approach, which is one of the foundations of the juvenile criminal justice system. In handling juvenile cases, the characteristics of children as individuals who are still in the process of growth and development need to be taken into consideration. Moreover, in the case, the child was found to have used narcotics based on urine test results and was involved as an intermediary at the request of the adult perpetrator, with a relatively limited amount of evidence. The situation indicates that the child's position cannot only be seen as a perpetrator but also has characteristics of being a victim of drug abuse.

That position should be an important part in determining the form of handling for the child. Imposing prison sentences without considering rehabilitation potentially overlooks the child's need for recovery and guidance. Punishing children can also lead to social and psychological consequences that affect their growth and development process. On the other hand, Law Number 35 of 2009 on Narcotics provides space and obligation for rehabilitation for both addicts and victims of narcotics abuse.

Rehabilitation can essentially be placed as part of the implementation of the double track system, which is a penal system that allows for the use of both criminal sanctions and action sanctions. Sinaga explained that criminal sanctions contain elements of suffering as a consequence of criminal acts, whereas action sanctions are more directed toward rehabilitation and recovery. In cases of drug abuse, rehabilitation plays an important role in aiding the recovery process while also preventing relapse into drug abuse.^[20]

Based on the description, the judge's considerations in Decision Number 1/Pid.Sus-Child/2025/PN Bpd do not yet fully demonstrate the application of the principle of child protection and the best interests of the child. The considerations provided are still more oriented toward punitive aspects rather than the needs for guidance and rehabilitation. In the juvenile criminal justice system, the child's personal condition, involvement in the case, rehabilitation needs, and the continuity of the child's growth and development are aspects that need to be thoroughly considered in determining the form of case resolution and the type of sanctions imposed.

3. The Impact of the Selection of Charges on the Child's Right to Obtain Rehabilitation Rights.

The formulation of articles in the indictment letter plays an important role in determining the direction of the case examination in court and the type of verdict that can be imposed by the judge. In drug cases involving minors, the determination of the charges not only relates to the type and severity of the criminal threat but also affects the possibility of applying rehabilitation measures. Therefore, the indictment must be carefully drafted to align the facts of the incident with the applicable criminal provisions.^[21] M. Yahya Harahap divides the indictment into several forms, namely single, subsidiary, alternative, and cumulative

indictments. In an alternative indictment, several criminal provisions are presented as options so that the judge can determine the most appropriate charge based on the facts proven in the trial.^[22] This form becomes relevant in drug cases because the nature of the defendant's actions may be related to several different criminal provisions.

In Decision Number 1/Pid.Sus-Child/2025/PN Bpd, the public prosecutor prepared the indictment alternatively using Article 112 paragraph (1) in conjunction with Article 132 paragraph (1) and Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. The provisions used are related to possession and mediation in drug trafficking. However, Article 127 paragraph (1) letter a regarding the abuse of narcotics for personal use is not included in the indictment. This condition affects the consideration space regarding the possibility of handling the child as a narcotics abuser who requires rehabilitation.

In the case, the urine test results showed that the child tested positive for methamphetamine. The fact indicates the use of narcotics, which should also be part of the assessment of the child's condition. Thus, the examination of the case should not only be directed at determining the child's involvement in the possession or distribution of narcotics, but also need to consider whether the child is a user, abuser, addict, or victim of narcotics abuse. This is important because Article 54 of Law Number 35 of 2009 on Narcotics mandates that addicts and victims of narcotics abuse undergo medical and social rehabilitation.

The omission of provisions regarding drug abuse in the indictment causes the case construction to place the child more in the position of being a perpetrator of drug possession or distribution. This situation has the potential to direct the resolution of the case toward a punitive approach rather than a rehabilitative one. However, the handling of children in conflict with the law should consider the needs for guidance, rehabilitation, and the sustainability of the child's life after undergoing the judicial process. If linked to the theory of relative punishment, the imposition of punishment is essentially not only intended as retribution for the act committed but also aimed at preventing the occurrence of criminal acts, rehabilitating the perpetrator, and protecting society.^[23] In cases involving children who use narcotics, these goals can be achieved through handling that takes into account the needs for rehabilitation and guidance. On the other hand, imprisonment without rehabilitation can hinder the recovery process and lead to social and psychological consequences for the child, including stigma and difficulties in reintegrating into the family and community.

The preparation of an indictment in a drug case involving a child needs to take into account the child's condition and position comprehensively. If the facts of the case indicate the use of narcotics for personal use, the public prosecutor needs to consider the provisions regarding narcotics abuse in the construction of the indictment in accordance with the facts and applicable legal provisions. With a more comprehensive indictment construction, the judge has a more adequate basis for assessing the child's rehabilitation needs, without disregarding the evidence and the judge's authority limits based on the indictment. This approach aligns with the goals of the juvenile justice system, which emphasizes rehabilitation, restoration, and protection of the best interests of the child.

Conclusion

The judge's considerations in Decision Number 1/Pid.Sus-Anak/2025/PN Bpd focus on proving the elements of the criminal act based on the Public Prosecutor's indictment. The judge applied Article 114 paragraph (1) in conjunction with Article 132 paragraph (1) of the Narcotics Law because the child's actions were deemed to fulfill the elements of mediating a sale and purchase as well as an attempt or conspiracy to commit a crime. Although the child tested positive for methamphetamine use, this fact has not been the basis for providing medical or social rehabilitation.

The condition indicates that the principles of protection and the best interests of the child have not yet been fully reflected in the handling of cases. Criminalization is still more dominant compared to a rehabilitative approach, even though children need guidance and recovery that support their growth and development. Moreover, the omission of Article 127 paragraph (1) letter a of the Narcotics Law in the indictment also limits the judge's consideration of the possibility of rehabilitation. Therefore, in drug-related cases involving children, the drafting of the indictment needs to be adjusted to the facts of the case, including the condition of the child as a user, so that the need for rehabilitation can be considered more accurately in accordance with the judge's authority and applicable legal provisions.

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