

REVIEW OF LEGAL PROTECTION FOR CRIMINAL ACTS CHILD NARCOTICS AS DRUG DEALERS IN Law 35 of 2009 concerning Narcotics and Law no. 35 of 2014 concerning Child Protection (Study of Decision Number 7/Pid.Sus/2024/PN Mdn)

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Received : 30 June 2025

Revised : 10 July 2025

Accepted : 28 July 2025

Published : 31 August 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i5.3865>

Link Publish : <https://radjapublika.com/index.php/IJERLAS>

Abstract

This research analysis is related to the Review of Legal Protection for Narcotics Crimes for Children as Drug Dealers in Law 35 of 2009 concerning Narcotics and Law no. 35 of 2014 concerning Child Protection (Decision Study: 7/Pid.Sus-Anak/2024/PN.Mdn. Which in this case occurred where in this case the perpetrator of a narcotics crime was a minor and committed the crime of narcotics distribution and was subject to punishment based on article 114 Paragraph 1 with a sentence of life imprisonment or a minimum of 5 years and a maximum of 20 years, the final decision in the trial was deemed by the author to not fulfill the elements of child protection by considering that the child was a victim ordered by the defendant Teguh and dropped out of 6th grade elementary school because of family economic factors and laziness in studying as regulated in Law 35 of 2014 concerning child protection the judge's decision regarding legal protection for criminal acts of child narcotics dealers based on Law No. 35 of 2009 concerning Narcotics and Law no. 35 of 2014 concerning Child Protection where by considering these two laws, children who commit criminal acts can obtain their rights and can be.

Keywords: *Juridical Review, Legal Protection, Child Narcotics Crime*

Background .

The circulation of narcotics in Indonesia continues to increase and has even reached alarming levels. As is known, narcotics are now distributed not only in large cities but also in rural areas. Drug abusers are not limited to adults but have spread to all levels of society, including students, entrepreneurs, officials, children, and others.¹The spread of narcotics among children has reached a stage that is extremely difficult to control. This reality is deeply concerning, as children are the future generation of the nation. Therefore, children require special guidance and protection to foster positive attitudes and behavior.² Drug abuse by children is currently a major public concern and is constantly discussed and publicized. In fact, the issue of drug abuse has become a concern for various groups. Almost all elements of society are reminding Indonesians to always monitor and monitor their children's social interactions to prevent the rampant drug distribution, which can damage their future. The problem of drug abuse in Indonesia is currently perceived as a worrying situation. As an archipelagic nation with a strategic location, both economically, socially, and politically, Indonesia has participated in combating drug abuse through the enactment of Law Number 35 of 2009 concerning Narcotics.³ The involvement of children in narcotics crimes as assistants in distributing narcotics is a series of evil conspiracies in carrying out illegal narcotics distribution, but in the capacity of the category of children who are accomplices in distributing narcotics, this is a very worrying matter where the child has faced the law and is classified as having committed a narcotics crime.⁴The term "child drug dealer" in this context refers to children

¹Adam Chazawi, Criminal System, Criminal Acts, Theory of Punishment, and Time Limits of Criminal Law, Raja Grafindo, Jakarta, 2020, Page 32.

² ²Satjipto Raharjo, Legal Studies, Bandung, PT. Citra Aditya Bakti, 2010, page 12.

³Mardani, Narcotics Abuse from the Perspective of Islamic Law and National Criminal Law, Raja Grafindo Persada, Jakarta, 2020, p. 9

⁴Ahmad Kamil, Child Protection and Adoption Law in Indonesia, Jakarta: Rajawali Perss, 2019, p. 43.

involved in drug trafficking, whether as dealers, couriers, or intermediaries. Child drug dealers are considered criminals who require more specific legal protection that is sensitive to the needs and rights of children as drug victims. Child Protection Laws, such as Law Number 35 of 2014 concerning Child Protection, contain specific provisions to protect children's rights, including those involved in drug trafficking. This law guarantees the protection of children as victims of drug trafficking and prioritizes health and social issues over prosecution. Legal protection in the context of child drug dealers means providing legal protection that is more specific and sensitive to the needs and rights of children as victims of drug trafficking. This legal protection includes efforts to reduce the negative impact of drugs on children and provide opportunities for children to receive appropriate assistance and rehabilitation.⁵

In providing special guidance and protection to children, the government, society and family must consider the child's position from all the characteristics and characteristics of the child, although the child can determine his own actions based on his thoughts, feelings and desires, those around him can influence his behavior.⁶ In the study of court decision No. 7/Pid.Sus-Anak/2024/PN Mdn, the police arrested a child by posing as a buyer of narcotics with the type of marijuana that the police bought from the child, where from this action the police arrested the child and found evidence in the form of 17 plastic bags containing marijuana which had been proven based on laboratory tests and cash amounting to Rp. 25,000.00 (twenty five thousand) where the evidence was obtained by the child directly from the main suspect Teguh. The actions of children as regulated and threatened with criminal penalties according to Article 114 Paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning narcotics and imposing a criminal penalty on children in conflict with the law with a prison sentence of 2 (two) years and a fine of IDR 500,000,000 (five hundred million rupiah) and if not paid/replaced with 1 (one) year of imprisonment, the final decision in the trial is considered by the author not to fulfill the elements of child protection by considering that the child is a victim of the defendant Teguh's orders and dropped out of grade 6 of elementary school due to family economic factors and laziness in studying as regulated in Law Number 35 of 2014 concerning child protection. Therefore, the author is interested in conducting research with the research title "(Review of Legal Protection for Child Narcotics Crimes as Drug Dealers in Law No. 35 of 2009 concerning Narcotics and Law No. 35 of 2014 concerning Child Protection (Decision Study: 7/Pid.Sus-Anak/2024/PN.Mdn)".

holder of the first mortgage right can immediately and immediately applyResearch methods

This research is descriptive in nature which aims to obtain concrete information and data related to the form of analysis of the legal review of legal protection for child narcotics crimes as narcotics dealers based on Law No. 35 of 2009 concerning Narcotics and Law No. 35 of 2014 concerning Child Protection Study of Decision Number. 7 / Pid.Sus-Anak / 2024 / PN Mdn). which is the discussion in this research. The type of research in this research is qualitative research with a normative juridical approach method in the form of analysis that aims to find out how the form of protection for children who are victims of narcotics crimes while still maintaining their rights as minors or children who are in conflict with the law who are protected by law in the study of decision No. 37 / Pid.Sus / 2023 / PN Mdn. The data analysis method used in writing this research is the method of legal material analysis and uses deductive analysis, namely looking at a problem in general to specific matters to achieve the actual perception intended in this research.⁷In this study, the data collection method used is document study, which is a method of collecting data through information obtained from related parties in accordance with the case study. Documentation study is one way in which qualitative research visualizes the perspective of the subject in this study. The type of data in this study is obtained from secondary data in the form of basic data related and obtained directly from the research object, directly through court case decision data, secondary data in this study is a statutory approach.⁸

⁵Tengku Riza Zarzani, The Idea Of Renewing Terrorism Criminal Law In Indonesia As An Effort To Overcome Terrorism Based On The Justice Values, Vol 8, No1, International Journal Of Law Reconstruction, 2021, p. 45.

⁶Lilik Mulyadi, Juvenile Courts in Indonesia, Grafika Indo, Bandung, 2020, Page 23.

⁷Burhan Ashshofa, Legal Research Methods, Rineta Cipta, Jakarta, 2020, p. 45.

⁸Ahmad Sholin, Normative Research Methods, PT Grafindo Persada, Jakarta, 2021, p. 23.

RESULTS AND DISCUSSION

Review of Legal Protection for Child Narcotics Crimes as Drug Dealers in Law No. 35 of 2009 Concerning Narcotics and Law No. 35 of 2014 Concerning Child Protection (Decision Study: 7/Pid.Sus-Anak/2024/PN.Mdn)

1. General Overview of Narcotics Crimes Based on Law No. 35 of 2009

Based on the provisions of Article 1 number 1 of Law No. 35 of 2009 concerning Narcotics, narcotics are defined as: "substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependence". The complete categories of narcotics can be seen in the appendix to Law No. 35 of 2009. According to Mardani, narcotics are: "drugs or substances that can calm the mind, cause unconsciousness or anesthesia, eliminate pain and discomfort, cause drowsiness or stimulation, can cause stupor, and can cause addiction and dependency and are determined by the Minister of Health as narcotics."⁹ A crime is human behavior defined in law, which is against the law, punishable, and committed with error. A person who commits a crime will be held accountable for that act with criminal penalties if he or she is guilty. A person is guilty if, when committing the act, it is seen from the perspective of society as showing a normative view of the wrongdoing he or she has committed.¹⁰

Drug abuse is a crime and violation that threatens the safety, both physically and mentally of the user and also the surrounding community socially, so with a theoretical approach, the cause of drug abuse is a material crime, while the actions for which the perpetrator is held accountable are formal crimes.¹¹ Narcotics crimes can be defined as acts that violate the provisions stipulated in Articles 111 to 148 of Law No. 35 of 2009 concerning Narcotics. This can be seen from Supramono's opinion that if narcotics are only for medical and scientific purposes, then acts outside of these interests constitute a crime (criminal act).¹² Based on the articles of the Narcotics Law, it is known that perpetrators of drug crimes are threatened with high and severe penalties with the possibility of the defendant being sentenced to a maximum of the death penalty in addition to imprisonment and a fine. Considering that narcotics crimes are included in the special type of crime, the criminal threat against them can be imposed cumulatively by imposing 2 (two) types of principal penalties at once, for example imprisonment and a fine or the death penalty and a fine.

Narcotics crimes include corporate crimes which are special crimes outside the Criminal Code. This is expressly stated in Article 25 of Government Regulation Number 24 of 1960 which came into effect on June 9, 1960 concerning the investigation, prosecution and examination of criminal acts.¹³ Special criminal law is criminal law that is established for special groups of people, including military criminal law (special groups of people) and fiscal criminal law (special acts) and economic criminal law.¹⁴ The regulations regarding narcotics crimes in Law Number 35 of 2009 concerning Narcotics include the following:¹⁵

Article 111 of Law No. 35 of 2009 concerning narcotics:

- a. Any person who without the right or against the law plants, maintains, possesses, stores, controls, or provides Class I Narcotics in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).
- b. In the case of the act of planting, maintaining, possessing, storing, controlling or providing Class I Narcotics in the form of plants as referred to in Paragraph (1) weighing more than 1 (one) kilogram or more than 5 (five) tree trunks, the perpetrator shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

⁹Mardani, *Narcotics Abuse from the Perspective of Islamic Law and Criminal Law*, PT Raja Grafindo Persada, Jakarta, 2020, p. 80.

¹⁰Andi Hamzah, *Anthology of Criminal Law and Criminal Procedure*, Ghalia Indonesia, Jakarta, 2021, p. 34.

¹¹Tri Adrisman, *Special Crimes Outside the Criminal Code (Economic Crimes, Corruption, Money Laundering and Terrorism)* University of Lampung, Bandar Lampung, 2020, page 9

¹²Supramono, *Indonesian Narcotics Law*, Djambatan, Jakarta, 2018, p. 34.

¹³Ismaidar Ismaidar, *Dimensions of Corporate Crime*, Vol 1, No. 2, *International Journal of Criminal Law and Justice*, 2024, p. 45.

¹⁴Ismaidar, *Characteristics of Corporate Crimes in Criminal Law*, Vol 4, NO 4, *Jurnal Dimensi Hukum*, 2024, p. 48.

¹⁵Rodliyah and Salim HS, *Special Criminal Law (Elements and Criminal Sanctions)*, RajaGrafindo Persada, Rajawali Pers, Depok, 2021, p. 12.

2. Factors Influencing the Occurrence of Drug Crimes in Children as Dealers

Adolescence is the age where children are literally able to differentiate between wrong and right actions without needing to be dictated by adults. As in adolescence, children should carry out actions that are appropriate for their age and do not conflict with the law because actions that are contrary to the law can become a record of actions that will become scars that cannot be lost. It turns out this also impacts the crime rate among children, particularly drug-related offenses. In this case, the underlying factors behind these crimes include:

- a. As children enter their teens, individuals at this age are still unstable and searching for their identity, making it easy to imitate or be influenced by the behavior of their peers without thinking about their actions and the consequences. Without considering the consequences of their actions, children often act rashly and recklessly.
- b. The perpetrator's friends and living environment tend to behave badly, namely hanging out at night so that they can easily join in committing illegal acts, this is a very dominant influence in the occurrence of criminal acts committed by children, including the crime of abuse.
- c. Family conditions that do not monitor children's behavior tend to cause children to have bad social interactions and tend to do wrong things and even commit crimes.

Narcotics crimes are not always committed by adults; sometimes they are committed in collaboration with minors (those under 18 years of age). Therefore, exploiting minors for narcotics activities is a criminal offense.

There are several factors that underlie the crime of children being drug dealers, as follows:

- a. Internal Factors

- 1.) Wrong View

Children's perception of right and wrong often differs from that of adults. Children tend to model antagonists, whom they perceive as cool. Furthermore, they may act rashly, ignoring the fact that such behavior violates societal norms, rules, and values.¹⁶

- b. External Factors

- 1.) Family Factors

The family is the primary factor in shaping a child's character, habits, and identity, as children experience the learning process in life through their role as the closest people. In nurturing a child as a good person, the family's role is to provide understanding and comprehension to distinguish between good and bad behavior, so that the child does not fall into negative influences that could affect their personality.

- 2.) Economic Factors

Economy is a supporting factor for someone in doing something, it can be likened to economy being a benchmark for someone's status, it can be imagined that if a child is only given material support by his parents but is not given spiritual support and affection from his parents, then the child can do what he likes especially to get money without caring about the methods that are against the law that he will do.

- 3.) Environmental Factors

A bad environment will directly influence a child's personality in behaving and acting, mentally the child is not yet fully mature to accept negative influences, in the sense that the child will imitate what he sees and experiences from the surrounding environment because he thinks that it is normal to do so, therefore the environment has a very big influence in determining a child's personality, a good environment will create a good child's personality too.

- 4.) Education Factor

Lack of education factors prevent children from developing their broad minds and lack of knowledge about the impacts that will be obtained from their actions makes children able to do anything for personal interests and satisfaction without thinking about the impact of their actions on their future lives which are still long.

3. The Author's Analysis of the Review of Legal Protection for Narcotics Crimes of Children as

¹⁶Yamitah Mandasari Siregar, The Law Enforcement Of Corruption Crimes In Terms Of Autory Abuse, Vol 7, No. 1, International Journal Of Law Reconstruction, 2023, p. 23.

Narcotics Dealers Based on Law No. 35 of 2009 and Law No. 35 of 2014 Concerning Child Protection (Study of Decision Number 7/Pid.Sus-Anak/2024/PN Mdn)

In the case study of court decision No. 7Pid.Sus-Anak/2024/PN Mdn which began on Wednesday, February 7, 2024, Witnesses Chandra Sitepu, Mayunis and Bastanta Kaban.SH. and Bryan Hazler Sibarani had previously received information about the circulation of marijuana narcotics carried out by children on Jalan Sesar, Amplas Village, Medan Amplas District, Medan City, then Police officers conducted an investigation by pretending to buy marijuana, where at around 16.00 WIB Police officers met the child on Jalan Sesar, Amplas Village, Medan Amplas District, Medan City, precisely on the riverbank then ordered two packages of marijuana narcotics then the child took 2 (two) plastic clip packages containing marijuana narcotics from the plastic bag that the child kept under a banana tree then when the child wanted to hand over the marijuana, the witnesses immediately arrested the child then the witnesses ordered the child to take the narcotics stored under the banana tree then the child took 1 (one) plastic bag containing 17 (seventeen) plastic packages containing marijuana narcotics and cash of Rp. 25,000 (twenty five thousand rupiah) where the evidence was obtained by the child who was previously entrusted by TEGUH (DPO / Not yet caught) then the child and the goods The evidence was brought to the Medan Police Narcotics Investigation Unit office.

The evidence obtained has been proven based on a test strip to be a type of marijuana narcotic, where from the arrest which is equipped with evidence and accompanied by witness statements, the child's actions as regulated in Article 114 Paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics "Any person who without the right or against the law offers to sell, sells, buys, receives, acts as an intermediary in buying and selling, exchanges, or delivers Class I Narcotics, shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah). In imposing a sentence, the judge in his indictment to determine the final sentence on the child considers several aspects that have been proven and have been fulfilled which strengthen the decision as follows:

- a. Each person
- b. Unlawfully or unlawfully offering for sale, selling, buying, receiving, acting as an intermediary in buying and selling, exchanging or handing over class I narcotics

The judge in court decision No.7/Pid.Sus-Anak/2024/PN Mdn determined and imposed the following sentence:

- a. Declaring that the child has been legally and convincingly proven guilty of committing the crime of "without right or against the law, acting as an intermediary in the sale and purchase of Class I (one) narcotics in plant form" as in the first indictment;
- b. Imposing a criminal sentence on children in conflict with the law with a prison sentence of 2 (two) years and a fine of IDR 500,000,000 (five hundred million rupiah) and if not paid/replaced with 1 (one) month's imprisonment;
- c. Determining that the period of arrest and detention that has been served by a child in conflict with the law is deducted in full from the sentence imposed;
- d. Determining that children in conflict with the law remain detained
- e. Determine that the confiscated evidence will be destroyed
- f. Charge the defendant with court costs

In the results of the court's decision regarding the child, the child was sentenced with consideration of aggravation and mitigation as follows:

- a. Aggravating Circumstances
 - 1.) The child's actions are contrary to the government's program to eradicate the circulation of narcotics.
- b. Extenuating Circumstances
 - 1.) The child admitted and regretted his actions.
 - 2.) The child has never been punished

In this case, the author found that in the court decision No. 7/Pid.Sus-Anak/2024/PN Mdn did not consider Law No. 35 of 2009 concerning Narcotics and Law No. 35 of 2014 concerning Child Protection which provide more specific legal protection for children involved in narcotics protection, including as narcotics dealers. Law No. 35 of 2009 concerning Narcotics regulates that children involved in narcotics automotive must be given more specific legal protection and be sensitive to the needs and rights of children as protected victims.

The author also found that the obstacles in Court Decision No. 7/Pid.Sus.Anak/2024/PN Mdn in providing legal protection for children involved in narcotics conservation can be seen through the legal system consisting of legal structure, legal substance, and legal procedures. The author also found that certain community members put pressure on law enforcement to ensure that children who commit narcotics crimes are punished as severely as possible, which can be an obstacle in providing legal protection for children involved in narcotics protection. In Court Decision No.7/Pid.Sus-Anak/2024/PN Mdn, children committed narcotics crimes with children as narcotics dealers due to several factors that have been collected in the trial files, namely economic factors and lack of education. In this case, the judge should have considered more regarding children's rights which are generally protected by law and the punishment received from children's crimes is half of the punishment received for crimes committed by adults. As in Article 48 and 49 of Law No. 35 of 2014 concerning child protection, it explains the rights of children in carrying out education, namely that regional governments are obliged to provide basic education for at least (9) years for all children and the State, Government, Regional Government, Family, and Parents are obliged to provide the widest possible opportunities for children to obtain education. In this case, the child in court decision No. 7 / Pid.Sus-Anak / 2024 / PN Mdn should receive a lighter sentence and be given compensation in the form of rehabilitation and reduced sentences.

CONCLUSION

Based on the results of research related to the Review of Legal Protection for Child Narcotics Crimes as Drug Dealers in Law No. 35 of 2009 concerning Narcotics and Law No. 35 of 2014 concerning Child Protection (Decision Study: 7/Pid.Sus-Anak/2024/PN.Mdn. It can be concluded as follows:

1. Narcotics crimes can be defined as acts that violate the provisions stipulated in Articles 111 to 148 of Law No. 35 of 2009 concerning Narcotics. This can be seen from Supramono's opinion that if narcotics are only for medical and scientific purposes, then acts outside of these interests constitute a crime (criminal act).
2. Age factors, as well as friendship factors and social conditions as well as family conditions that do not monitor children's behavior tend to cause children to have bad social circles and tend to do wrong things and even commit crimes.
3. In Court Decision No. 7 / Pid.Sus-Anak / 2024 / PN Mdn, children commit narcotics crimes with children as narcotics dealers due to several factors that have been collected in the trial files, namely economic factors and lack of education. In this case, the judge should consider more regarding children's rights which are generally protected by law and the punishment obtained from children's crimes is half the punishment obtained for crimes committed by adults. As in Articles 48 and 49 of Law No. 35 of 2014 concerning child protection, it explains children's rights in carrying out education, that regional governments are required to provide basic education of at least (9) years for all children and the State, Government, Regional Government, Family, and Parents are required to provide the widest possible opportunities for children to obtain education. In this case, children in court decision No. 7 / Pid.Sus-Anak / 2024 / PN Mdn should receive a lighter sentence and be given compensation in the form of rehabilitation and reduced legal sentences.

⁶Adrian Yusuf, Legal Protection for Auction Purchases of Mortgage Objects Canceled by the Court of State Property Services Office and Pekalongan City Auctions, Thesis, Sultan Agung Islamic University, 2020. p. 34.

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