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## Reformulation of Age Limit for Criminal Liability Child Narcotics Dealer

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### Abstract

This article that uses and is based on applicable laws and principles. The legal and regulatory approach is carried out by examining legal provisions, in particular, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2009 concerning Narcotics, and other related regulations to determine and find out the age of a child before the law. relevant in national criminal law. Based on the above approach, the results of the discussion of this study are: Children in conflict with the law are children who are 12 years old but have not reached the age of 18 who are suspected of committing a crime. This definition was derived from a law known as the Law on the Juvenile Criminal Justice System (UU SPPA), which replaced the law known as the Law on Juvenile Courts. As a result of this definition, it is clear that the Legislature has reached a consensus that the age of eight is an inappropriate age for a person to be held accountable for actions they have committed. In terms of handling narcotics cases, especially children as dealers, the prosecutor's attention is needed to better control the results of investigations conducted by the police so that they can catch perpetrators of child narcotics dealers to uncover a large network of narcotics dealers. Until now there has been no study or regulation that specifically regulates the prosecutor's authority to control the results of investigations by the police to be able to catch perpetrators of child narcotics dealers to uncover the large network of narcotics dealers behind them.

**Keywords:** Child; Age Limitation; Narcotic Criminal Actions.

### Introduction

Children who are involved in narcotic abuse are certainly not born suddenly but through a process of observation and selection from crime organizations or drug trafficking syndicates,<sup>1</sup> where the crime promises lucrative profits and, lately,

<sup>1</sup> Robert J MacCoun and Peter Reuter, *Drug War Heresies: Learning from Other Vices, Times, and Places* (Cambridge University Press 2001).

a growing and circulating trend among criminal organizations or drug trafficking syndicates tends to use children under the age of 12 as couriers or drug dealers. Inside the provisions of Article 1 point 3, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System,<sup>2</sup> State Gazette of the Republic of Indonesia of 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332,<sup>3</sup> it is explained that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (12) years old, but not yet 18 (18) years old, who is suspected of committing a crime.

With the increasing number of cases of drug trafficking using children under the age of 12 as couriers or drug dealers, it is safe in the Jawa Pos article, stating that out of the 19 narcotic cases that occurred, 10 cases used children under the age of 12 in practice law enforcers could not take any action against children under the age of 12, which if the child was criminally prosecuted, it is hoped that it will be able to uncover the narcotic distribution network. By not processing children under the age of 12 as drug couriers or delivery agents, perpetrators will automatically be involved using children under the age of 12 as drug couriers or delivery people will be released without receiving any sanctions. is the age limit for children in conflict with the law, as stipulated in Article 1 number 3 of Law Number 11 of 2012 concerning the juvenile justice system still relevant.

On the other hand, based on the provisions of Article 113 of Law No. 35 of 2009 concerning Narcotics, which can exacerbate criminal threats for adult perpetrators who order children to act or persuade children to become narcotics, couriers cannot be exposed, let alone punished. In terms of handling narcotic cases, especially children as dealers, the prosecutor's accuracy is needed to better control the results of investigations by the police so that they can catch perpetrators of child narcotic dealers to uncover a large network of narcotic dealers. Until now, there have been no

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<sup>2</sup> Law of 2012 concerning to Juvenile Criminal Justice System.

<sup>3</sup> Dani Krisnawati, 'law Enforcement Preparedness For The Implementation Of Indonesia's Law On Juvenile Justice System' (2013) 25 *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*. [476].

studies or regulations that specifically regulate the prosecutor's authority to control the results of investigations by the police to catch perpetrators of child narcotics dealers to reveal the large network of narcotics dealers behind them. In the future, it is hoped that the prosecutor's office, with its authority, will be able to make a regulation that favors children of narcotic dealers but is able to uncover narcotic distribution networks and provide a more deterrent effect to adult narcotic dealers.

Considering that the age limit for children who are in conflict with the law needs to be reviewed, it is necessary to determine whether the age limit for children who are in conflict with the law mentioned above remains relevant. With this review regarding the age limit for children who are in conflict with the law, justice, and legal certainty will be obtained for perpetrators and children involved in narcotic trafficking who are under 12 (twelve years). Based on the above description, the problem to be studied is the philosophical basis for determining the age limit for children who cannot be punished? Implications of setting age limits for narcotic traffickers.

This article that uses and bases it on legislation and applicable principles.<sup>4</sup> The approaches used in this study are the statutory approach (*statute approach*), conceptual approach (*conceptual approach*), and a comparison approach (*comparative approach*). The approach to legal regulations is done in a way that analyzes legal provisions, in particular Law number 11 of 2012 concerning the juvenile criminal justice system, Law number 35 of 2009 concerning narcotics, and other relevant regulations to determine and find the age of a child dealing with relevant laws in national criminal law.

### **Determination of the Age Limit for Criminalizing Children in Drug Dealers *the Right to Establish***

Children's age is the main target because, at that time, children are in the stage of searching for identity and are still believed to be unstable.<sup>5</sup> The spread of narcotics to date has not seen old and young people. Children who participate in drug abuse

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<sup>4</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Revisi, Kencana Prenada Media Group 2013).

<sup>5</sup> Riana Mashar, *Emosi Anak Usia Dini Dan Strategi Pengembangannya* (Kencana 2015).

do not emerge by themselves. On the other hand, there are a number of supporting factors, including the increasing prevalence of drug gangs among adolescents, as well as the rapid increase in the development of information technology, which has made drug trafficking easier. The benefits of engaging in the sale of illegal goods are attractive to dealers and the city encourages residents to pursue this field of work to meet their daily needs.<sup>6</sup>

Article 40 of Law No. 1 of 2023 concerning the Criminal Code (KUHP) states that a child who is not yet 12 (twelve) years old cannot be charged with a crime.<sup>7</sup> Article 330 of the Civil Code (BW) defines an adult as an individual who has not reached the age of twenty-one years or who has never been married before.<sup>8</sup> In addition, Law no. 35 of 2014 changed to Law no. 23 of 2002 concerning child protection, hereinafter referred to as (UUPA)<sup>9</sup> and Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as (UU SPPA) both provided the definition of a child in Article 1 Number 1 (UUPA),<sup>10</sup> which states that “a child is an individual who has not reached the age of 18 (18), including children who have not yet been born. Meanwhile, Article 1 point 3 of the SPPA law defines minors<sup>11</sup> as “children who are contrary to the law, later referred to as juveniles, and are children aged 12 to 18 years who are suspected of having committed a criminal offense.<sup>12</sup>

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<sup>6</sup> Muhammad Aphid Hambali, ‘The Prevention of Narcotics Crime from a Viewpoint Law Number 35 of 2009’, *proceedings Drugs Seminar Faculty Of Law* (2013).

<sup>7</sup> Hernando Bm Awondatu, ‘Tindak Pidana Eksploitasi Anak Di Denpasar Bali Ditinjau Dari Perundang Undangan Yang Berlaku’ (2023) 11 *Lex Administratum*.

<sup>8</sup> Fanny Angelina, ‘Penerapan Pasal 330 Kitab Undang-Undang Hukum Pidana Dan Pasal 83 Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Oleh Pihak Kepolisian Dalam Sindikat Perdagangan Bayi Dikaitkan Dengan’ (Fakultas Hukum UBAYA 2009).

<sup>9</sup> Syahrizal Efendi Lubis, ‘Faktor-Faktor Penyebab Terjadinya Kekerasan Seksual Terhadap Anak Di Kota Medan Uu Ri No 23 Tahun 2002 Dan Uu No 35 Tahun 2014 Tentang Perlindungan Anak’ (2021) 6 *Jurnal Ilmiah Maksitek*. [58].

<sup>10</sup> Susana Andi Meyrina and HR Indonesia, ‘Restorative Justice Dalam Peradilan Anak Berdasarkan Undang-Undang No 11 Tahun 2012’ (2017) 17 *Jurnal Penelitian Hukum De Jure*. [92].

<sup>11</sup> Neisa Angrum Adisti and Alfian Mardiansyah, ‘Implementasi Pasal 71 Ayat (3) Dan 78 Ayat (2) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak Dalam Putusan Perkara Pidana Anak Di Palembang’ (2018) 15 *Jurnal Legislasi Indonesia*.

<sup>12</sup> I Wayan Govinda Tantra, Made Minggu Widiantara and Luh Putu Suryani ‘Criminal Responsibility of Children as Couriers in Narcotics Crimes’ (2020) 2 *Journal of Legal Analogies*. [215].

Whereas before regarding the provisions governing the age limit for children from 12 to 18 years there was a Constitutional Court decision which read “The decision that the minimum age at which a minor can be considered legally responsible is 12 years was made by the Constitutional Court (MK). Prior to the ratification of Law No. 3/1997 concerning the Juvenile Court, the minimum age at which a child can be held accountable for their actions in criminal court proceedings was eight years. Which contains “states the phrase 8 years in Article 1 number 1, Article 4 paragraph 1, and Article 5 Paragraph 1 of Law no. 37/1997 concerning Juvenile Justice is contrary to the 1945 Constitution”, the court considers it necessary to set a child’s age limit to protect constitutional rights, particularly the right to protection and freedom to grow and develop. In addition, the court believes that it is necessary to set an age limit to ensure the safety of the children. In some countries, such as the Americas, Mexico, and the Netherlands, the consensus is that the minimum age at which minors can be held legally responsible should be no more than 12. Another factor to consider is that children are generally emotionally, mentally, and intellectually stable at the age of 12. This is because the age of 12 is quite intelligent. The Juvenile Court Law was tested in the Constitutional Court (MK) with Decision Number 1/PUU-VIII/2010 dated February 24, 2011, ruling that the range limit of The 8-16 years contained in the Juvenile Justice Law conditionally contradicts the 1945 Constitution of the Republic of Indonesia, unless it is interpreted as 12 years.

Determining the age limit for juvenile offenders is one of the most important factors to be considered when formulating the Criminal Code that applies to children. Nowadays, along with the speed of times and the ease with which children can access information, they are more mature in thought than their age. Many examples in the field physically look like children, but their words and actions are similar to adults; therefore, the age limit for children is 12 years. Guidelines regarding the age limit for criminal responsibility for children themselves have been stipulated in criminal law in Indonesia, particularly the Criminal Code (KUHP), Juvenile Court Law, and SPPA Law. This law establishes the minimum and maximum age at which

children can be held legally responsible for their own criminal acts. Shifting the age at which a child is deemed to be breaking the law brings ideas into consideration for governments to shift the line between age-related delinquents and children who break the law. This study is based on the basic concept of age change, in which children become legally responsible for their actions.<sup>13</sup>

However, it seems that the legal provisions related to Article 1, point 3 of the Juvenile Justice System Law, which states that the minimum age for children in conflict with the law is 12 years, is considered less relevant. Many children under the age of 12 have committed a crime, one of which is drug abuse. Article 1 point 3 of the SPPA Law explains that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (12) years old but not yet 18 (18) years old, who is suspected of committing a crime. The trend that has been developing recently when viewed from the point of view of drug trafficking has begun to reach children aged 10 to 16 years. This provision, if related to narcotic law issues involving children, occurs because narcotic dealers have thought about using children under the age of 12 if the child is by the authorities; for example, in this case, the police are caught red-handed. offer to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over narcotics, then the child will not be processed and released. This legal loophole is exploited by perpetrators of narcotic crimes by using children under the age of 12 as couriers or acting as intermediaries in buying and selling, exchanging, or handing over narcotics.

The thing that needs to be of concern is not when children become perpetrators of narcotics and psychotropic drugs or when they become victims or users of narcotics and psychotropics, but when they are used as tools in trading narcotics and dangerous drugs. This incident can happen because the child becomes a tool that is almost impossible to suspect, even though it may happen that a child is used as a courier by their parents or relatives who become drug dealers. In legal development time, the role of the prosecutor as a case controller is needed to determine whether

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<sup>13</sup> Asri Lestari Rahmat, 'Age Limit of Child Criminal Responsibility in Indonesian Criminal Law' (2014) 15 Collection of Law Faculty Student Journals.

a case is tried in court, including determining whether a child is appropriate for criminal proceedings. This is known as the principle of Dominus Litis.

Dominus Litis is a universal principle that is attached to the prosecutor. The prosecutor, as a public prosecutor, plays a central role in the criminal justice system. The Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice is the basis for prosecutors to carry out restorative justice-oriented criminal law enforcement. In general, as well as the therapeutic justice-oriented enforcement of criminal law carried out by the Prosecutor as Dominus Litis, there are weaknesses and obstacles found in the implementation process. The essence of the principle of the Dominus Litis attached to the Prosecutor is not optimal. During the Pre-Prosecution Stage, the Prosecutor as Dominus Litis was only limited to receiving the SPDP and examining the files from the investigators to be followed up to the prosecution stage or returned to the investigators. The implementation of the termination of prosecution based on restorative justice by the Prosecutor as Dominus Litis is appropriate and in line with the values contained in Pancasila, especially in the fourth precept. However, obstacles were found in its implementation, including legal substance, structure, and culture.

Strengthening the authority of the prosecutor as Dominus Litis in enforcing restorative justice-oriented criminal law can be achieved by formulating the concept of restorative justice in the Criminal Procedure Code. However, reforming the Criminal Procedure Code requires many aspects of consideration and takes a long time. The most likely thing to do in the near future is to synergize the Police and the Attorney General's Office to apply the Dominus Litis principle in criminal law enforcement with a restorative justice orientation.

To adapt to existing developments and achieve legal and national objectives, the Attorney General's Office has issued legal products related to restorative justice dealing with criminal cases at the prosecution stage in the form of the prosecutor's authority as Dominus Litis by prioritizing restorative justice, which emphasizes restoration to its original state and a balance of protection and interests of victims

and perpetrators of criminal acts that are not oriented towards retaliation. The termination of Prosecution Based on Restorative Justice is a legal breakthrough that still has to be considered in criminal provisions due to the implementation of the abolition of prosecution based on restorative justice considered to erode the principle of legal certainty. This is because the orientation of new case settlements results in sentencing disparities and differences in case-settlement solutions. In addition, it is interesting to study the actualization of the application of restorative justice by the prosecutor's office as a case controller (*DominusLitis*) to ensure the achievement of legal objectives.

The existence of the prosecutor's authority in Indonesia in carrying out prosecutions is closely related to the principle of *dominus litis*, so that the determination and control of prosecution policies are only on the one hand, namely the prosecutor's office. The formulation of the regulation of the prosecutor's authority at the stage of investigation and prosecution as an effort to reform the criminal procedural law in Indonesia is related to the principle of *dominus litis*.

### **Conclusion**

A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (18) years old, and is suspected of committing a crime. The trend that has been developing recently when viewed from the point of view of drug trafficking has begun to reach children aged 10 to 16 years. This provision, if related to narcotic law issues involving children, occurs because narcotic dealers have thought about using children under the age of 12 if the child is by the authorities; for example, in this case, the police are caught red-handed. offer to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over narcotics, then the child will not be processed and released. This legal loophole is exploited by perpetrators of narcotic crimes by using children under the age of 12 as couriers or acting as intermediaries in buying and selling, exchanging, or handing over narcotics. Currently, with the speed of development and ease with which children access information, they are



more mature in thought than their age. Many examples in the field physically look like children, but their words and actions are similar to adults; therefore, the age limit for children is 12 years. Lowering the age limit for children to below 12 years will create the conditions for eradicating narcotics that we desire to reduce the rate of circulation of narcotics in Indonesia.

*Mr. Litis* is a universal principle attached to the prosecutor. The prosecutor, as a public prosecutor, plays a central role in the criminal justice system. The Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice is the basis for prosecutors to carry out restorative justice-oriented criminal law enforcement. In general, as well as restorative justice-oriented enforcement of criminal law carried out by the Prosecutor as *Dominus Litis*, weaknesses and obstacles are found in the implementation process. The essence of the principle of the *Dominus Litis* attached to the Prosecutor is not optimal. Adjusting to existing developments and achieving legal and national goals, the Attorney General's Office issued legal products related to restorative justice in criminal cases at the prosecution stage in the form of the prosecutor's authority as the *owner of the suit* by prioritizing restorative justice, which emphasizes restoration to its original state and balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation. In terms of handling narcotic cases, especially children as dealers, the prosecutor's accuracy is needed to better control the results of investigations by the police so that they can catch perpetrators of child narcotic dealers to uncover a large network of narcotic dealers. Until now, there have been no studies or regulations that specifically regulate the prosecutor's authority to control the results of investigations by the police to catch perpetrators of child narcotics dealers to reveal the large network of narcotics dealers behind them.

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