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REHABILITATION OF CHILDREN AS PERPETRATORS OF NARCOTICS CRIMES IN THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW REFORM (COMPARATIVE ANALYSIS OF INDONESIA-THAILAND)

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Abstract

The involvement of children as perpetrators of narcotics crimes presents a significant challenge within the criminal justice system, as children must be regarded not merely as offenders but also as individuals in need of protection and recovery through rehabilitative approaches. This study examines how child rehabilitation is regulated for children who commit narcotics offenses within the context of Indonesian criminal law reform, and compares such rehabilitation frameworks between Indonesia and Thailand through the lens of the principle of the Best Interests of the Child. The study aims to analyze rehabilitation mechanisms under Indonesian law and compare them with Thailand's legal system in order to identify a more appropriate legal approach for children in conflict with the law. The research employs a normative juridical method, encompassing statutory, comparative, and conceptual approaches through a review of primary and secondary legal materials. The findings reveal that Indonesia has established rehabilitation frameworks through the Narcotics Law, the SPPA Law, and related regulations; however, implementation remains hampered by an overemphasis on punitive aspects. By contrast, Thailand offers a more flexible mechanism with a focus on rehabilitation, diversion, and restorative justice. This study concludes that Indonesian criminal law reform must strengthen its rehabilitative and restorative approach by firmly establishing the best interests of the child as the primary principle in cases involving children who commit narcotics offenses.

Keywords: Rehabilitation, Children, Narcotics Crimes, Criminal Law Reform, Legal Comparison.

I. INTRODUCTION

Children represent the future generation of the nation and require careful attention to ensure their optimal physical, mental, and emotional development. Childhood is a critical stage in character and personality formation, making it imperative for all stakeholders to protect children from negative influences, including criminal activity.

In reality, however, many children continue to become involved in criminal activity, including drug abuse. The proliferation of narcotics has permeated all strata of society, including children, whose cognitive limitations make them particularly susceptible to environmental pressures and manipulation by adults. This situation is increasingly alarming, as juvenile delinquency continues to rise

each year, necessitating more effective prevention and intervention measures (Nikmah Rosidah, 2019).

The regulation of children who use narcotics under criminal law in Indonesia is governed by Article 81 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). Narcotics regulations in Indonesia are set forth in Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law). Under Article 127 of the Narcotics Law, narcotics abusers for personal use may be subject to criminal sanctions, with penalties varying according to the classification of the narcotics involved. (Uyat Suyatna, 2018).

Under this legal framework, children who use narcotics may be sentenced to a maximum of half the adult maximum penalty, which is typically less than one year. Furthermore, both the SPPA Law and Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 and subsequently by Law Number 17 of 2016 (hereinafter referred to as the Child Protection Law) provide for diversion, a mechanism that redirects the resolution of children's cases away from formal criminal court proceedings toward alternative, out of court processes.

A concrete example of narcotics crimes committed by a minor is found in Decision Number 1/Pid.Sus-Anak/2025/PN Lbs, which involved a 16 year old child identified as MDS. The child was persuaded by a peer identified as RH to participate in the possession of marijuana type narcotics totaling 3.8 kilograms in the Kotanopan area, North Sumatra. The court sentenced the child to detention at the Tanjung Pati Special Children's Development Institute (LPKA), with a fine substituted by three months of vocational training. The marijuana evidence was destroyed, and the child was ordered to pay court costs of Rp. 2,000.00 (Roiyah Ulfa Siregar and Mairul, 2025).

Thailand also faces a deeply concerning narcotics situation. Unlike Indonesia, Thailand not only serves as a transit route and narcotics market but has also emerged as a producer of narcotics. Evidence of this is seen in the discovery of large scale narcotics production facilities, and Thailand's geographic position within the Golden Triangle comprising Laos, Thailand, and Myanmar makes it one of the highest risk countries in terms of narcotics trafficking. Thailand has enacted specific legislation on narcotics in the form of the Narcotics Code B.E. 2564 (hereinafter referred to as the Narcotics Code 2021). This law supersedes the Narcotics Act B.E. 2522 (hereinafter referred to as the Narcotics Act 1979), which had been subject to numerous parliamentary amendments. While the Narcotics Code 2021 retains severe sanctions including the death penalty for narcotics traffickers these provisions do not apply to children, for whom a protection and rehabilitation oriented approach is instead mandated. This is reflected in the Juvenile and Family Court and Procedure Act B.E. 2553 (hereinafter referred to as the JFCPA 2010), which stipulates that children who use narcotics may not be sentenced to imprisonment but must instead undergo rehabilitation at designated rehabilitation facilities (Duangporn Ukris, 2017).

The fundamental difference between the two countries lies in their procedural approaches. Indonesia prioritizes out of court settlement through a mechanism known as diversion. In practice, however, diversion is not always available in narcotics cases in Indonesia. The mechanism is subject to strict requirements: it can only be applied where the applicable prison sentence is less than seven years and where all parties have reached a mutual agreement. This

stands in contrast to Thailand's system, which does not impose such rigid diversion prerequisites. Under the 2010 JFCPA, Thai juvenile courts are granted broad discretionary authority to suspend prison sentences and redirect children to medical rehabilitation programs or vocational training, regardless of the length of the applicable statutory sentence. Where a court determines that a child remains amenable to guidance and that the offense was committed due to the child's age or through adult manipulation such as being coerced into acting as a drug courier the judge may redirect the sentence toward rehabilitation.

Indonesia is also entering a new phase with the enactment of Law Number 1 of 2023 (hereinafter referred to as the National Criminal Code), which is set to take effect in January 2026. The National Criminal Code incorporates a rehabilitative approach, requiring that narcotics users undergo rehabilitation rather than imprisonment. However, this reform is considered insufficient to fully protect children, as the new rehabilitation guarantee applies primarily to children classified as end users.

Given these differences in legal approaches and the significance of the issues involved, this study focuses on analyzing rehabilitation arrangements for children who commit narcotics offenses within the framework of Indonesian criminal law reform, and on comparing these arrangements with those of Thailand. Specifically, this study examines how the rehabilitation of child narcotics offenders is regulated under Indonesian law, with particular reference to the Narcotics Law and the SPPA Law, and compares these provisions with the applicable Thai legal framework. The comparative analysis seeks to identify similarities and differences in the legal approaches of both countries in protecting children in conflict with the law, particularly with respect to the implementation of rehabilitation guided by the principle of the best interests of the child.

II. RESEARCH METHODS

This study employs a normative juridical research method, which involves examining and analyzing applicable legal norms as contained in statutes, regulations, legal doctrines, and other relevant legal materials pertaining to the research problem (Bintang Adi Putra et al., 2026). Library research serves as the primary data collection technique, drawing on secondary sources including books, scientific journals, academic articles, and related studies.

The primary legal materials used in this study include: Law Number 11 of 2012 concerning the Juvenile Criminal Justice System; Law Number 35 of 2009 concerning Narcotics; Law Number 35 of 2014 concerning Child Protection; Law Number 39 of 1999 concerning Human Rights; Law Number 1 of 2023 concerning the Criminal Code; the Act Promulgating the Narcotics Code, B.E. 2564 (2021), Royal Thai Government Gazette, Vol. 138, Part 73 A, 8 November 2021; the Juvenile and Family Court and Procedure Act, B.E. 2553 (2010), Royal Thai Government Gazette, Vol. 127, Part 75 A, 14 December 2010; the Child Protection Act, B.E. 2546 (2003), Royal Thai Government Gazette, Vol. 120, Part 95 A, 2 October 2003; and Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child.

The data gathered through the literature review will be analyzed using a qualitative descriptive method, which involves interpreting and explaining the meaning and interrelationships of the collected data in order to draw conclusions expressed in written form (Lexy Moleong, 2011).

III. RESULTS AND DISCUSSION

1. Regulation of the Rehabilitation of Children as Perpetrators of Narcotics Crimes in the Perspective of Indonesian Criminal Law Reform

Narcotics trafficking in Indonesia has shown a significant and persistent increase, both in the number of cases uncovered and in the growing diversity of individuals involved, including children who are increasingly being exploited within narcotics distribution networks. This phenomenon is evidenced not only by the rising number of cases but also by the documented involvement of children as couriers and intermediaries in narcotics trafficking. The involvement of children in narcotics crimes presents a distinctive dilemma: on one hand, they are regarded as offenders; on the other, they are victims of exploitation who are entitled to legal protection. Accordingly, a more thorough examination is needed of the extent to which Indonesian law is capable of providing substantive protection for children involved in narcotics trafficking offenses (Chairul Bariah et al., 2024).

Within the Indonesian legal system, children who abuse narcotics are not regarded solely as criminal offenders but rather as individuals requiring recovery through rehabilitation. In response, the state has established, through various laws and regulations, more humane legal mechanisms aimed at protecting and rehabilitating affected children. These legal provisions form the foundation for the implementation of rehabilitation as an intervention mechanism for children who abuse narcotics. The regulatory framework for rehabilitation reflects a criminal law policy designed to prevent drug abusers and addicts from relapsing into narcotics use. Rehabilitation represents an appropriate alternative to penal sanctions for narcotics addicts and therefore requires implementing regulations that adequately accommodate the rights of drug abusers and addicts (Novitasari, 2017).

The primary legal basis for the rehabilitation of children who use narcotics in Indonesia is found in Law Number 35 of 2009 concerning Narcotics (the Narcotics Law). Article 54 stipulates that narcotics addicts and victims of narcotics abuse are obliged to undergo medical and social rehabilitation. Furthermore, Articles 59 and 103 empower law enforcement officials to order rehabilitation as an alternative to criminal punishment. Articles 54 and 56 of the Narcotics Law impose an obligation on narcotics addicts to undergo both medical and social rehabilitation, with the aim of restoring addicts to health and productivity, free from criminal behavior and narcotics dependence. The rehabilitation period is also credited toward the duration of the sentence served. The rehabilitation of narcotics addicts constitutes a form of social protection aimed at reintegrating them into normal community life and preventing further narcotics abuse (Riawan et al., 2021).

Furthermore, the Child Protection Law establishes that every child has the right to be protected from exposure to addictive substances, including narcotics, and the right to recovery if they have been victimized by abuse. This provision underscores that rehabilitation for children who abuse narcotics constitutes a component of child protection rights that the state and society are obligated to fulfill. The Regulation of the Head of the National Narcotics Agency (BNN) Number 11 of 2014 serves as a guiding framework for the implementation of integrated rehabilitation in Indonesia. The regulation establishes procedures, standards, and mechanisms for integrated medical and social rehabilitation, involving multiple relevant agencies to ensure that the rehabilitation process operates

effectively and in accordance with the specific needs of children who abuse narcotics (Firmeinia Qoltiana and Rahmatul Hidayati, 2025).

Based on these legal provisions, rehabilitation for children who abuse narcotics is not merely a health program but a legal obligation that must be fulfilled as part of child protection, enabling children to resume their social roles optimally within their family and community environment. Through authorized institutions, particularly the BNN, the state bears responsibility for providing rehabilitation services tailored to the medical and social needs of children. The implementation of rehabilitation is not limited to addressing physical dependence but also encompasses the restoration and rebuilding of the psychological, mental, and social well being of affected children.

The implementation of rehabilitation for children who abuse narcotics is not without challenges. In practice, numerous technical and non technical obstacles impede the effective delivery of rehabilitation services to this population, ultimately affecting the overall effectiveness of rehabilitation programs directed at children who abuse narcotics.

Under the National Criminal Code, children are no longer subject to the same penal system as adults; instead, they receive special treatment grounded in the principle of differentiated treatment. A significant development is the codification of a minimum age of criminal liability under Article 40, which provides that criminal responsibility cannot be attributed to children below the age of twelve at the time of the offense.

Beyond establishing an age threshold for criminal responsibility, the National Criminal Code expands the range of sanctions and measures applicable to children, prioritizing recovery over punishment. Article 70 of the National Criminal Code encourages judges to consider alternatives to imprisonment in certain circumstances and reflects a stronger orientation toward restorative and rehabilitative justice. The approach adopted in the National Criminal Code reflects a paradigm shift from retributive to restorative justice, reframing children not merely as criminal perpetrators but as individuals with the capacity for rehabilitation and development. The National Criminal Code also expands judicial discretion to apply the principle of the best interests of the child in decision making. This signals that Indonesia's criminal law system is progressively moving toward a framework that is more responsive to the protection and fulfillment of children's rights within the criminal justice process (Ronaldi and Dina, 2024).

The application of the National Criminal Code in the juvenile criminal justice system nevertheless requires harmonization with the SPPA Law to prevent regulatory overlap or normative conflicts. Although the National Criminal Code incorporates restorative justice principles, its application must be critically evaluated with respect to effectiveness and consistency in practice. This is particularly relevant to the handling of children involved in serious offenses such as narcotics trafficking. Furthermore, effective law enforcement must be supported by the training and capacity building of law enforcement personnel to ensure they are equipped to understand and apply child sensitive approaches (Erlina Maria Christin Sinaga and Sharfina Sabila, 2020).

2. Comparison of Child Rehabilitation Arrangements as Perpetrators of Narcotics Crimes in Indonesia and Thailand: The Principle of the Best Interests of the Child

Thailand's original narcotics regulatory framework was established under the Narcotics Act B.E. 2522 (hereinafter referred to as the Narcotics Act 1979), which classified narcotics into five categories. Categories 1 through 4 encompassed substances such as heroin, amphetamines, methamphetamine, and morphine, as well as precursor chemicals including acetic anhydride and acetyl chloride. Category 5 covered substances not classified in the preceding categories, including marijuana (cannabis), kratom (*Mitragyna speciosa*), opium, and hallucinogenic mushrooms (psilocybin mushrooms), along with cannabis plants and kratom in whole or in part. To promote kratom as an economic commodity, a series of amendments were made to the Narcotics Act 1979, including through the Narcotics Act (No. 8) B.E. 2564 (2021), which removed kratom from Category 5 in May 2021 (Angkana Boonsit, 2014).

On November 8, 2021, the Thai Government published the Act Prescribing the Use of the Narcotics Code B.E. 2564 in the Government Gazette, thereby enacting the new Narcotics Code 2021. The legislation entered into force thirty days after its publication, on December 9, 2021. Upon its entry into force, all prior narcotics legislation, including the Narcotics Act 1979 and its amendments, was repealed. The Narcotics Code 2021 now serves as the primary legal instrument governing the production, import, export, sale, possession, and use of narcotics in Thailand. Under this new regulatory framework, marijuana is no longer classified as a Category 5 narcotic. This policy forms part of Thailand's long term strategy to develop cannabis and hemp as economically viable crops with significant potential in the global market, particularly in the food and beverage sector (Angkana Boonsit, 2014).

One of the most significant changes introduced by the Narcotics Code 2021 is the shift in the treatment of narcotics users. Whereas users were previously treated primarily as criminals, they are now recognized as individuals in need of treatment and rehabilitation. This approach seeks to reduce the prison population while offering users the opportunity to recover from narcotics dependence.

Legal protection for children in conflict with the law in Thailand is specifically governed by the Juvenile and Family Court and Procedure Act (hereinafter referred to as the JFCPA), which applies to children who commit criminal acts or to family cases involving children. It operates through a specialized judicial mechanism, separate from the adult justice system, founded on the principle of the best interests of the child. The JFCPA includes two significant provisions Articles 50 and 63 which support the implementation of Family and Community Group Conferencing (FCGC). In 2010, the 1991 JFCPA was repealed and replaced by the current 2010 JFCPA.

Restorative justice and diversion are central instruments within Thailand's juvenile justice system. Both approaches are normatively accommodated under the 2010 JFCPA, which permits case resolution outside the formal criminal process where such resolution is deemed more beneficial for a child's development. The restorative justice approach focuses on the recovery of victims' losses, the moral accountability of children for their actions, and the repair of social relationships disrupted by criminal conduct. In practice, the mediation process may involve children, victims, parents or guardians, social workers, and supervisory officials, working toward a fair and proportionate agreement as a vehicle for social reintegration. The primary orientation of this approach is, therefore, the restoration and strengthening of social relationships rather than mere retribution (Anjari, 2021).

A critical component of Thailand's child protection system is the National Referral Mechanism (NRM), which is designed to identify children who are victims of human trafficking or other forms of exploitation. Developed in accordance with the National Referral Mechanism to Protect the Rights of Victims of Trafficking in Persons Action Plan B.E. 2565 (2022), the NRM is implemented through a multidisciplinary approach involving social workers, psychologists, law enforcement personnel, and civil society organizations dedicated to victim protection. Through a rigorous identification and assessment process, children involved in narcotics crimes who are also suspected victims of human trafficking or exploitation can be identified at the earliest stages of case handling (Karisma Nor et al., 2026).

Both Indonesia and Thailand have developed juvenile justice systems grounded in the principle of the best interests of the child, as mandated by the United Nations Convention on the Rights of the Child (UNCRC). In Indonesia, the primary legal framework governing juvenile justice is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, supplemented by provisions in Law Number 1 of 2023 concerning the Criminal Code. These regulations strengthen the application of restorative justice at every stage of the legal process, subject to specific conditions and under court supervision. Diversion must be pursued at every stage of examination in cases that satisfy the applicable requirements, with the objectives of achieving peaceful resolution, avoiding detention, and facilitating the social reintegration of children.

In Thailand, the 2010 JFCPA established the Juvenile and Family Court as a specialized judicial institution, distinct from the general court system. The legislation places emphasis on protection, rehabilitation, and social development, granting courts the authority to suspend criminal sentencing and replace it with a range of rehabilitative measures. Child protection in Thailand also enjoys constitutional grounding under the Constitution of the Kingdom of Thailand B.E. 2560 (2017), which guarantees children's protection from violence and unfair treatment, as well as their right to receive appropriate care and education from the state when necessary. Reforms to Thailand's Penal Code and regulations on victim compensation have further strengthened victim protection and indirectly bolstered the implementation of restorative justice (Andika Dwi Amrianto and Indra Hafit Zahrulswendar, 2023).

One of the most prevalent narcotics offenses involving children in Thailand is the possession or abuse of methamphetamine, commonly known as Ya Ba. Research published in the International Journal of Criminal Justice Sciences indicates that children's involvement in such offenses is generally driven by social environmental factors, family economic hardship, and exploitation by adult perpetrators who take advantage of children's vulnerability. When such cases arise in Thailand, they are handled through an integrated system operating under the Narcotics Code 2021 in conjunction with the JFCPA 2010. Under Section 107 of the 2021 Narcotics Code, the abuse of certain narcotics is addressed primarily through a health and rehabilitation framework rather than punitive measures alone (Wichit Yaemyim et al., 2021).

In contrast to Thailand, Indonesia's handling of children involved in narcotics crimes continues to face significant limitations. This is illustrated by Decision Number 46/Pid.Sus-Anak/2025/PN Mdn, involving a 15 year old child identified as M. Deev Mahira, who was arrested for possessing 0.85 grams of methamphetamine. The child came from an economically unstable family background and acted with the motive of obtaining financial rewards from other

parties. The public prosecutor charged the child under Article 114 (1) of Law Number 35 of 2009 concerning Narcotics. The application of this article effectively precluded diversion, as the applicable criminal penalty exceeded the threshold established under Article 7 (2) of the SPPA Law. Consequently, the case proceeded through formal judicial mechanisms despite the child's age, the relatively minor quantity of narcotics involved, and the child's socioeconomic circumstances all of which pointed to the need for a rehabilitative approach. The court ultimately sentenced the child to two years and six months of imprisonment. This outcome illustrates that despite Indonesia's recognition of restorative justice and child rehabilitation principles under the SPPA Law, the practical scope of these principles remains constrained by the classification of offenses and the severity of penalties invoked in the charge (Haykal Ramadhan, 2026).

Based on this comparative analysis, it is evident that both countries recognize the importance of rehabilitation for child narcotics offenders. Thailand, however, provides a more flexible and integrated mechanism that prioritizes child recovery from the earliest stages of the legal process. While Indonesia has established rehabilitation instruments through the SPPA Law, the Narcotics Law, and the Integrated Assessment Team, their implementation remains constrained by certain normative requirements, resulting in unequal access to rehabilitation mechanisms for children. This contrast reveals that the application of the Best Interests of the Child principle in narcotics cases in Thailand tends to prioritize social recovery and reintegration, whereas in Indonesia, striking a balance between rehabilitation objectives and penal approaches remains a persistent challenge in law enforcement practice.

IV. CONCLUSION

Narcotics trafficking in Indonesia continues to show a significant increase, including the growing involvement of children as couriers and intermediaries within trafficking networks. Under the Indonesian legal system, children who abuse narcotics are not regarded solely as criminal offenders but as individuals requiring recovery through rehabilitation. Rehabilitation is governed by the Narcotics Law, the Child Protection Law, and the Regulation of the Head of BNN Number 11 of 2014, as a framework for protecting children and enabling their recovery so they may resume their social roles optimally. The National Criminal Code further prioritizes recovery over punishment through the principle of differentiated treatment and a restorative justice approach, although its application still requires harmonization with the SPPA Law. Both Indonesia and Thailand have developed juvenile justice systems grounded in the principle of the Best Interests of the Child, and both recognize the importance of rehabilitation for children who commit narcotics offenses. Thailand, however, provides a more flexible and integrated mechanism that prioritizes child recovery from the earliest stages of the legal process through rehabilitation, diversion, and restorative justice. Indonesia, by contrast, has established rehabilitation instruments through the SPPA Law, the Narcotics Law, and the Integrated Assessment Team; however, their implementation remains constrained by specific normative requirements, and striking a balance between rehabilitation objectives and punitive approaches continues to be a challenge in law enforcement practice.

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