DISHARMONY IN THE REGULATION OF CRIMINAL RESPONSIBILITY FOR CHILDREN AS NARCOTICS COURIERS FROM THE PERSPECTIVE OF THE NARKOTICS LAW AND THE JUVENILE CRIMINAL JUSTICE SYSTEM

Muhammad Julian[1*], Muhamad Adystia Sunggara[2], Enny Agustina[3]
[1,2,3]Faculty Of Law, University of Pertiba, Pangkalpinang, Indonesia
muhammadjulian@pertiba.ac.id[1*], adystiasunggara@pertiba.ac.id[2], ennyagustinadua@yahoo.com[3]

Received 10 August 2026 • Revised 25 August 2026 • Accepted 15 September 2026 • Publish 2 October 2026

Abstract

The involvement of minors in narcotics-related crimes demonstrates a legal paradox within Indonesia's criminal justice system. Children are no longer merely victims of drug abuse but have increasingly been exploited as couriers by organized crime networks. When apprehended, law enforcement agencies tend to apply Law Number 35 of 2009 on Narcotics (Narcotics Law), which adopts a punitive approach without considering the child's position as a victim of exploitation. Conversely, Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA) emphasizes protection, rehabilitation, and restorative justice. This divergence in legal orientation has created normative disharmony, resulting in legal uncertainty and the criminalization of minors. This study aims to analyze the forms of disharmony between these two laws and examine their implications for child protection within Indonesia's criminal justice framework. The research employs a normative juridical method through statutory, conceptual, and case approaches, drawing on court decisions involving child narcotics couriers. The findings reveal fundamental inconsistencies in legal principles, objectives, and sentencing provisions between the two statutes. The study concludes that legal harmonization is urgently needed through the revision of the Narcotics Law, the implementation of a double-track system, and the issuance of judicial guidelines to ensure both legal certainty and the protection of children exploited in drug trafficking.

Keywords: Legal disharmony, juvenile criminal liability, restorative justice, narcotics

Copyright @ 2026 Authors. This is an open access article distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (http://creativecommons.org/licenses/by-nc/4.0/), which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original author and source are properly cited

INTRODUCTION

The exploitation of children in narcotics-related crimes constitutes a legal phenomenon that challenges the morality, justice, and effectiveness of the criminal justice system in Indonesia. In recent years, the role of children has no longer been limited to that of drug users but has shifted toward becoming active couriers within narcotics trafficking networks. This phenomenon not only reflects weak social control but also indicates the existence of legal loopholes that allow children to be utilized as instruments by organized crime syndicates.

Data from the National Narcotics Agency (BNN) show that as of 2023 there were approximately 3.6 million active narcotics users in Indonesia, with 18% of them being children or young people under the age of 24. Of these cases, around 1,046 children were directly involved in narcotics-related crimes, an increase from 758 cases in 2021. This trend demonstrates that children are no longer merely victims of narcotics abuse but have increasingly become objects of exploitation within the drug distribution chain.(Roy Aron Tampubulon & Siregar, 2024)

The Indonesian Child Protection Commission (KPAI) reports that 54% of children involved in narcotics cases act as couriers, 30% as small-scale dealers, and 16% as users. Recruitment patterns generally occur through persuasion or relatively small material incentives, such as pocket money or mobile phones. According to a report by the Ministry of Women's Empowerment and Child Protection (KemenPPPA), most child offenders in narcotics cases come from economically disadvantaged families with low educational backgrounds. These conditions indicate that economic vulnerability and social powerlessness constitute the primary factors behind the exploitation of children by criminal syndicates.

From the perspective of positive law, the position of children in narcotics cases creates a serious normative dilemma. On the one hand, Law Number 35 of 2009 concerning Narcotics (Narcotics Law) adopts a repressive and retributive approach, with severe criminal sanctions that do not distinguish between adult and juvenile offenders. Article 114 paragraph (1) of the Narcotics Law stipulates:"Any person who without rights or unlawfully offers for sale, sells, purchases, receives, acts as an intermediary in the sale and purchase, exchanges, or transfers Category I Narcotics shall be punished with imprisonment for a minimum of five years."

The phrase "any person" in this provision is formulated universally without exceptions for children, thereby enabling law enforcement authorities to prosecute children under the same criminal sanctions applicable to adults.

On the other hand, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) emphasizes the principles of the best interest of the child and restorative justice. Article 7 paragraph (1) of the SPPA Law even mandates diversion efforts at every stage of examination. However, paragraph (2) stipulates that diversion applies only to criminal offenses punishable by imprisonment of less than seven years. Consequently, children involved in narcotics cases carrying a minimum sentence of five years and a maximum penalty of life imprisonment automatically do not qualify for diversion, even when it is evident that they were victims of exploitation.

This situation creates a clear disharmony in legal regulation. Arifin (2021) argues that "the lack of synchronization between the Narcotics Law and the SPPA Law has resulted in the criminalization of children in conflict with the law, particularly in cases involving narcotics exploitation." Similarly, Aziz, Rahmaddani, and Kuntadi (2022) assert that "the mandatory minimum sentencing provisions in the Narcotics Law eliminate the opportunity for the implementation of restorative justice and contradict the principle of child protection."(Yantika, 2022)

Beyond the differences in legal orientation, practical implementation also reveals disparities in court decisions involving children in narcotics cases. In the Medan District Court Decision Number 39/Pid.Sus-Anak/2021, a 16-year-old child was sentenced to three years' imprisonment for carrying 10 grams of methamphetamine without adequate consideration of the exploitation context. In contrast, the Binjai District Court Decision Number 12/Pid.Sus-Anak/2020 granted diversion after it was established that the child had merely acted as an intermediary promised a payment of IDR 50,000 by an adult offender.

Such disparities indicate the absence of uniform judicial guidelines in assessing children's involvement in narcotics crimes. Marlina et al. (2024) state that "Indonesian criminal law has not yet provided an effective legal mechanism to distinguish between child offenders and child victims of exploitation in narcotics cases." As a result, many children who are in fact victims are processed as criminal offenders and subjected to penal sanctions.

Within the framework of criminal law theory, this condition contradicts the concept of juvenile criminal liability. According to Barda Nawawi Arief (2012), sentencing children must consider their capacity for responsibility (*toerekeningsvatbaarheid*), which relates to an individual's level of moral and

psychological maturity. In the case of children, this capacity is not yet fully developed, and therefore their criminal responsibility should be limited. This principle is also consistent with the doctrine of *parens patriae*, which imposes an obligation upon the state to protect children who come into conflict with the law. (Barda Nawawi Arief, 2012)

Philosophically, the juvenile criminal justice system is grounded in the paradigm of protection, education, and rehabilitation rather than retribution. The Convention on the Rights of the Child (CRC), which has been ratified by Indonesia, affirms that every child in conflict with the law must be treated humanely, with full respect for their dignity and well-being. Therefore, the national legal system should ensure that children who are victims of exploitation in narcotics cases are processed within a framework of restorative justice, rather than retributive justice.

Considering this complexity, harmonization between the Narcotics Law and the SPPA Law becomes an urgent necessity. Contradictory legal regulations have created a gap in legal protection for child victims of exploitation while simultaneously generating uncertainty in law enforcement practices.

Based on the literature review, several previous studies have addressed the issue of criminal liability for children used as narcotics couriers.

Tantra, Widiantara, and Suryani (2020), for instance, explain that children involved in narcotics crimes still possess a certain degree of criminal responsibility even when acting under the influence of other parties. However, their study does not thoroughly examine the normative conflict between the Narcotics Law and the SPPA Law, limiting its analysis to the issue of children's capacity for criminal responsibility as offenders. Another study by country (2024) highlights the dual position of children as both perpetrators and victims, yet it does not systematically analyze how the mandatory minimum penalties in the Narcotics Law restrict the application of diversion under the SPPA Law, thereby contributing to the criminalization of children. Similarly, the research conducted by Pratiwi (2021) focuses more on the challenges of law enforcement against adult perpetrators who exploit children but does not offer a comprehensive criminal policy formulation capable of integrating child protection in narcotics cases. (Tantra, Widiantara, and Suryani, 2020)

Compared to these studies, the present research offers a more fundamental analytical focus, namely examining the regulatory disharmony between the Narcotics Law and the SPPA Law as the root cause of the inconsistency in handling child narcotics couriers. This study not only examines the concept of juvenile criminal liability from theoretical and statutory perspectives but also analyzes judicial practice through a case-based approach in order to identify the impact of this disharmony on sentencing disparities and legal uncertainty. Accordingly, this research contributes novelty in mapping the sources of normative conflict, assessing their juridical and sociological implications, and proposing a model for the harmonization of criminal law policy based on a double track system that differentiates treatment between adult offenders and children who are victims of exploitation. This novelty renders the study relevant, urgent, and significant in contributing to the reform of juvenile criminal law in Indonesia.

Based on the foregoing discussion, this research seeks to address two primary issues: first, how the concept of criminal liability applies to children used as narcotics couriers within the Indonesian criminal law system, particularly in relation to the Narcotics Law and the SPPA Law; and second, how criminal law policy should be formulated in order to balance the repressive approach toward adult offenders with a protective approach toward children as victims of exploitation in narcotics-related crimes.

This research aims to analyze the disharmony in the regulation of criminal liability for child narcotics couriers between the Narcotics Law and the SPPA Law. Theoretically, it seeks to examine the application of criminal liability norms to children recruited as narcotics couriers within criminal justice practice. The study also aims to analyze the implications of the disharmony between these two laws for child protection within the criminal justice system. Practically, the research seeks to formulate an ideal model for regulatory harmonization in order to realize legal protection consistent with the best interest of the child principle.

RESEARCH METHOD

This study employs a normative juridical approach with an emphasis on analyzing the synchronization of statutory regulations and the conceptual framework of juvenile criminal law. The approaches used include the statutory approach, the conceptual approach, and the case approach.

The statutory approach examines the normative substance contained in the Narcotics Law and the Juvenile Criminal Justice System Law (SPPA Law) that potentially generate conflicts in their application. The conceptual approach is used to understand the principles of juvenile criminal liability,

restorative justice, and the doctrine of lex specialis systematische. Meanwhile, the case approach is conducted through the analysis of court decisions involving children in narcotics-related cases.
The sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and court decisions. Secondary legal materials consist of research findings, legal journals, and institutional reports from bodies such as the National Narcotics Agency (BNN), the Indonesian Child Protection Commission (KPAI), and the Ministry of Women's Empowerment and Child Protection (KemenPPPA). Tertiary legal materials include legal encyclopedias and legal dictionaries.

Data analysis is carried out using a qualitative normative method, applying hermeneutic and systematic interpretation to identify logical relationships among legal norms and to interpret the substantive meaning of criminal liability for children involved as narcotics couriers. This method is chosen because it enables a rational and in-depth explanation of the conflict between two criminal law regimes and is consistent with the descriptive-analytical nature of this research.

RESULTS AND DISCUSSION

Forms of Normative Disharmony between the Narcotics Law and the SPPA Law

The inconsistency between the Narcotics Law and the SPPA Law is clearly reflected in their respective legal orientations and underlying principles. The Narcotics Law adopts a repressive and deterrent-oriented approach, while the SPPA Law emphasizes a protective approach grounded in restorative justice. These differing orientations have resulted in overlapping applications when dealing with children who act as narcotics couriers.

Table 1. Comparison of the Substantive Provisions of the Narcotics Law and the SPPA Law

Aspect	Narcotics Law (Law No. 35 of 2009)	SPPA Law (Law No. 11 of 2012)	Analysis
Legal Orientation	Repressive & Retributive	Restorative & Rehabilitative	Paradigmatically different
Legal Subject	"Any person" (without age distinction)	Children aged 12–18 years	Not synchronized
Criminal Sanctions	Minimum 5 years – life imprisonment	Corrective measures prioritized	SPPA Law is more humane
Diversion	Not recognized	Mandatory for crimes punishable < 7 years	Child narcotics couriers do not qualify for diversion
Main Principle	Imprisonment and public protection	Best interest of the child	Requires harmonization

This comparison illustrates that the SPPA Law cannot be optimally applied to children acting as narcotics couriers because the criminal penalties under the Narcotics Law are excessively severe. As a consequence, child victims of exploitation often lose access to diversion and rehabilitation mechanisms

Implications of Legal Disharmony for Law Enforcement and Child Protection

As a consequence of this legal disharmony, juvenile justice practices in narcotics cases demonstrate disparities in law enforcement and a lack of child protection perspectives.

Table 2. Data on Children Involved in Narcotics Cases (2021–2024)

Year	Number of Children	Percentage of Total Narcotics Cases	Dominant Role of Children	Source
2021	758	4.1%	Couriers (52%), Dealers (28%), Users (20%)	BNN
2022	894	4.8%	Couriers (49%), Dealers (32%), Users (19%)	BNN
2023	1,046	5.6%	Couriers (54%), Dealers (30%), Users (16%)	KPAI
2024	1,210	6.3%	Couriers (56%), Dealers (29%), Users (15%)	BRIN

The data indicate a consistent increase in the involvement of children as narcotics couriers. This demonstrates that current criminal law has not been sufficiently effective in preventing child exploitation, as it focuses primarily on punishment rather than protection.

As reported by KPAI (2023), more than 68% of children serving narcotics-related sentences do not return to school after release, increasing the risk of social recidivism. This indicates that the legal system has not only failed to protect children but has also prolonged their cycle of vulnerability.
In criminal law theory, such conditions represent a form of criminal law maladministration, in which the law loses its function as a mechanism of social protection and instead becomes an instrument of repression.

The regulatory disharmony between the Narcotics Law and the SPPA Law generates a series of normative, institutional, and sociological implications that collectively illustrate how regulatory inconsistencies contribute to weak child protection in Indonesian criminal justice practice.

a. Normative Implications

From a normative perspective, the inconsistency between the two laws results in legal uncertainty in their application. The Narcotics Law functions as a lex specialis for specific criminal offenses, while the SPPA Law also acts as a lex specialis regarding child offenders. Because no connecting norm explicitly determines which law should take precedence, law enforcement authorities have discretion in selecting the applicable legal framework.

This situation produces selective enforcement practices, where children acting as narcotics couriers may be prosecuted under either law depending on the interpretation of investigators and prosecutors. Such conditions may violate the principle of equality before the law, as children in similar cases may receive different legal treatment in different jurisdictions.
Barda Nawawi Arief (2012) emphasizes that the criminal justice system must ensure legal certainty, justice, and utility in a balanced manner. In this context, however, such balance is not achieved, as the system prioritizes repressive measures over protective considerations.(Wendell et al., 2024)

b. Institutional Implications

From an institutional perspective, the disharmony directly affects coordination among law enforcement authorities, including the police, prosecutors, judges, and juvenile correctional institutions.
First, at the investigation stage, police officers frequently prioritize the Narcotics Law because it is considered to possess stronger lex specialis authority over narcotics crimes. This situation is aggravated by the limited training of juvenile investigators who fully understand restorative justice principles as mandated by the SPPA Law.

Second, prosecutors often reject diversion requests on the grounds that the criminal penalties under the Narcotics Law exceed seven years. In fact, diversion should still be considered when evidence indicates that the child was a victim of exploitation. Third, during trial proceedings, judges frequently encounter normative dilemmas. Some judges rely on the SPPA Law as the legal basis, while others apply the Narcotics Law due to the perceived concreteness of the offense. Consequently, disparities in court decisions emerge, as reflected in Medan District Court Decision No. 39/Pid.Sus-Anak/2021 and Binjai District Court Decision No. 12/Pid.Sus-Anak/2020, which demonstrate two different approaches toward child narcotics couriers.

Fourth, at the stage of sentence implementation, juvenile correctional institutions (LPKA) encounter difficulties in distinguishing between child offenders and child victims. Many child narcotics couriers are placed in rehabilitation programs together with children convicted of violent crimes or theft, thereby hindering the process of social rehabilitation.

c. Sociological and Psychological Implications

The most profound implications occur at the sociological and psychological levels. The criminalization of children in narcotics cases produces long-term consequences for their personal development and social lives. Research by KPAI (2023) indicates that 68% of children serving narcotics sentences do not return to school, while 21% experience psychological disorders due to social pressure and environmental stigma. This demonstrates that the criminal justice system has not successfully rehabilitated children but has instead worsened their social conditions.
According to Marlina et al. (2024), the psychological effects of child imprisonment include chronic guilt internalization, low self-esteem, and a loss of trust in legal institutions. Sociologically, this phenomenon creates a situation in which formerly incarcerated children face a higher risk of re-engagement in criminal activity after release. (Marlina et al., 2024)

From the perspective of progressive legal theory (Satjipto Rahardjo), law should function to “promote human well-being” rather than merely impose punishment. Consequently, a juvenile criminal justice system that worsens the conditions of children contradicts the essence of substantive justice.

Therefore, the disharmony between the Narcotics Law and the SPPA Law is not merely a normative issue but also reflects a failure of the state to fulfill its obligation to protect children as mandated in Article 28B paragraph (2) of the 1945 Constitution of Indonesia.

Theoretical Analysis of Criminal Liability of Child Narcotics Couriers

Juvenile criminal liability is inherently limited because children lack sufficient moral and intellectual maturity. Based on the doli incapax doctrine, children are presumed to lack the full capacity to understand the legal consequences of their actions. In this context, child narcotics couriers may be categorized as pseudo offenders, since their actions are often driven by coercion, manipulation, or economic exploitation. Consequently, imposing criminal punishment upon such children not only contradicts the principle of justice but also violates the principle of non-discrimination stipulated in Article 37(b) of the Convention on the Rights of the Child.

According to Barda Nawawi Arief (2012), criminal law must integrate penal and non-penal approaches, particularly in handling juvenile cases, a concept known as the double track system. The penal track should be directed toward adult offenders who exploit children, while the non-penal track should be applied to children through rehabilitation, guidance, and social recovery. However, the implementation of this principle has not yet been realized in Indonesian positive law because the Narcotics Law does not explicitly recognize child victims of exploitation as a distinct legal subject. In practice, children continue to be processed formally through the criminal justice system, and law enforcement authorities rarely employ diversion due to the constraints imposed by mandatory minimum penalties.

This condition reinforces the argument of Marlina et al. (2024) that the Indonesian legal system remains retributive-centered rather than restorative-oriented. Therefore, legal harmonization is required in order to effectively implement the parens patriae principle

Legal harmonization is necessary to ensure consistency between child protection and narcotics eradication policies. The fundamental principle of harmonization is that the SPPA Law should function as the lex specialis for child offenders, while the Narcotics Law should operate as the lex generalis for narcotics-related crimes in general.

Tabel 3. Model Harmonisasi Pertanggungjawaban Pidana Anak Kurir Narkoba

CRIMINAL LAW HARMONIZATION MODEL		
A. General Law Track (Narcotics Law Enforcement)	B. Special Legal Route (Juvenile Criminal Justice System Law)	C. Integration Point
• Focus: Law enforcement against adult perpetrators. • Instrument: Severe criminal penalties (Article 114, 112, 111). • Objective: Prevention and eradication of syndicates	• Focus: Protection of child victims of exploitation. • Instrument: Diversion, social rehabilitation, coaching. • Objective: Restorative justice and the best interests of the child.	• Revision of the Narcotics Law (New article on child victims). • Supreme court guidelines (Supreme Court Circular Letter) about child exploitation. • Colaboration of the Nation Narcotics Agency, Indonesian Child Protection Commission, Ministry of Women's Empowerment and Child Protection.

The table illustrates that an ideal legal system must integrate a penal approach toward adult perpetrators with a rehabilitative approach toward children who are victims of exploitation. Under this model, child narcotics couriers should be positioned as victims of criminal exploitation who require recovery rather than punishment. In addition to regulatory reform, the Supreme Court should issue a Circular Letter (Supreme Court Circular Letter) emphasizing the priority of applying child protection principles in narcotics cases. Such a measure would create uniform interpretation among judges and prevent disparities in court decisions

CONCLUSION

This study concludes that the Indonesian criminal law system continues to face normative and practical disharmony in regulating the criminal liability of children involved as narcotics couriers. The inconsistency between the Narcotics Law and the Juvenile Criminal Justice System Law (SPPA Law) is not merely technical in nature but reflects a deeper conflict between two criminal law paradigms: the retributive approach, which emphasizes punishment and deterrence, and the restorative approach,

which prioritizes child protection. As a consequence, children who are in fact victims of exploitation are often positioned as perpetrators of criminal offenses. This situation results in legal uncertainty, disparities in law enforcement, and weakened protection of children's rights. It also demonstrates a significant gap between law in the books and law in action, where the principle of the best interest of the child has not yet been consistently implemented within the criminal justice system.

Therefore, addressing this issue requires a comprehensive reformulation of national criminal law policy through regulatory harmonization between the Narcotics Law and the SPPA Law. Such reform should be directed toward recognizing children as victims of exploitation within narcotics trafficking networks, strengthening diversion mechanisms, and effectively implementing the double track system. In addition to regulatory reform, stronger institutional coordination and enhanced capacity of law enforcement authorities in applying restorative justice principles are also essential. Through these measures, juvenile criminal law can function not only as an instrument of legal certainty but also as a mechanism for substantive justice and humanitarian protection for children.

REFERENCES

Arief, Barda Nawawi. (2012). Kebijakan Hukum Pidana. Bandung: Citra Aditya Bakti.

Arifin, M. (2021). Pertanggungjawaban Pidana terhadap Anak sebagai Kurir Narkotika. Justitia Jurnal Hukum, 5(3), 47–49.

Aziz, A., Rahmaddani, F., & Kuntadi, K. (2022). Child Perpetrators of Drug Crimes in Indonesia: Legal and Human Rights Perspectives. Lex Publica, 9(2), 112–116.

Badan Narkotika Nasional. (2024). Laporan Akhir Tahun 2023. Jakarta: BNN Press.

Badan Riset dan Inovasi Nasional (BRIN). (2024). Kajian Penegakan Hukum Anak di Indonesia. Jakarta: BRIN.

Komisi Perlindungan Anak Indonesia (KPAI). (2023). Laporan Tahunan Perlindungan Anak Indonesia. Jakarta: KPAI.

Marlina. (2020). Perlindungan Hukum Terhadap Anak dalam Proses Peradilan Pidana. Bandung: Refika Aditama.

Marlina, S., Mulyadi, R., & Wendell, T. (2024). Pertanggungjawaban Pidana Anak dalam TindakPidana Penyalahgunaan Narkotika. Locus Journal of Law, 3(1), 87–91.

Marzuki, Peter Mahmud. (2017). Penelitian Hukum. Jakarta: Kencana.

Rahardjo, Satjipto. (2010). Progressive Law: Law That Liberates. Jakarta: Kompas.

Republik Indonesia. (1945). The 1945 Constitution of the Republic of Indonesia.

Republik Indonesia. (2009). Law Number 35 of 2009 concerning Narcotics.

Republik Indonesia. (2012). Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Roy Aron Tampubulon, & Siregar, R. A. (2024). Perlindungan Hukum Bagi Anak Yang Dijadikan Kurir Tindak Pidana Narkotika. *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, *10*(1), 18–28. https://doi.org/10.55809/tora.v10i1.327

United Nations. (1989). Convention on the Rights of the Child. New York: United Nations.

Wendell, R. D., Mulyadi, M., & Marlina, M. (2024). Pertanggungjawaban Pidana Anak Yang Berkonflik Dengan Hukum Dalam Tindak Pidana Penyalahgunaan Narkotika dalam Putusan No. 39/Pid.Sus-Anak/2021/PN Mdn. *Locus Journal of Academic Literature Review*, *3*(1), 33–44. https://doi.org/10.56128/ljoalr.v3i1.275

World Health Organization. (2021). Health and Rights of Children in the Context of Drug Use. Geneva: WHO Press

Yantika, M. T. (2022). Penerapan hukum pada tahap penyidikan terhadap anak sebagai kurir dalam tindak pidana penyalahgunaan narkotika (Studi Pada Direktorat Reserse Narkoba Polda Sumatera Barat). *UNES Journal of Swara Justisia*, *6*(2), 156–168. https://doi.org/10.31933/ujsj.v6i2.257