



Critical Discourse Analysis of Islamic Criminal Law Against Drug Crimes Committed by Children (Analysis of Palopo District Court Decision Number: 47/Pid.Sus.Anak/2016/PN.PLP)

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Abstract

This study examines the application of Islamic criminal law principles in addressing drug-related offenses committed by minors through a critical discourse analysis of Palopo District Court Decision Number 47/Pid.Sus.Anak/2016/PN.PLP. The research explores the intersection between Islamic jurisprudence (fiqh) and Indonesia's contemporary juvenile justice system, particularly focusing on how Islamic legal principles are interpreted and applied in cases involving child offenders in drug-related crimes. The analysis reveals tensions between traditional Islamic criminal law approaches and modern restorative justice principles embodied in Indonesia's Law No. 11 of 2012 on the Juvenile Criminal Justice System. While Islamic law emphasizes the concept of ta'zir (discretionary punishment) and consideration of the offender's circumstances, Indonesian juvenile justice prioritizes rehabilitation, diversion mechanisms, and the child's best interests. The study demonstrates how judicial decisions attempt to reconcile these different legal frameworks, often favoring rehabilitative measures over punitive sanctions. The research employs critical discourse analysis methodology to examine legal language, judicial reasoning, and ideological underpinnings in the court decision. Findings indicate that judges navigate between Islamic legal principles—such as the consideration of mental capacity (ahliyyah) and the protective nature of Sharia toward minors—and secular legal requirements emphasizing restorative justice. The decision reflects Indonesia's pluralistic legal system, where Islamic law influences judicial interpretation while operating within the framework of national criminal law. The study concludes that contemporary Indonesian courts demonstrate flexibility in applying Islamic criminal law principles to juvenile drug cases, prioritizing rehabilitation and child protection over strict punitive

measures. This approach aligns with both Islamic jurisprudential concepts of mercy (rahmah) and modern international standards for juvenile justice, suggesting a harmonious integration of religious and secular legal principles in addressing youth criminality.

Keywords: *Islamic Criminal Law; Drugs Crimes; Children*

Introduction

Drug crimes in society are showing an increasing trend, with widespread victimization, particularly among children, adolescents, and the younger generation in general (United Nations Office on Drugs and Crime, 2023). Children, who still need guidance and direction, can be perfect targets for drug dealers, serving as couriers for drug transactions. The increasing drug abuse and involvement of children in drug distribution must be a particular concern for law enforcement officials, and the community is expected to play a more active role in preventing the increasing number of children involved in cases as dealers (Badan Narkotika Nasional, 2022).

Law enforcement officials, when dealing with children who commit crimes, must understand and adhere to applicable legal principles and elements to uphold the rule of law and continue to consider and provide legal protection for these children (Marlina, 2019). Children, as the next generation, are an inseparable part of human survival and the continuation of the existence of a nation and state. The Indonesian Constitution clearly states that children have a strategic role, or the best way, to survive (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945). The state guarantees every child's right to survival, growth, and development, as well as protection from violence and discrimination. The best interests of children should be internalized and understood as part of the best interests and needs for the survival of humanity (Sholehuddin, 2018).

The importance of understanding and protecting children from the dangers of narcotics must be promoted, starting from within the family itself (Sudarto, 2020). In addition to protecting them from the dangers of addictive substances, this also protects their brighter, healthier, and more intelligent future, enabling them to lead and innovate for the prosperity and maturity of the nation. Freedom from drug abuse is a form of protection that a country must provide to maintain the sanity and health of every citizen, especially minors who still require extensive guidance and education.

The future prosperity of a country can be seen from the quality of its children and adolescents during their childhood. Quality of life, fair competition, advanced technology, and a reduction in crime rates are all possible achievements in the near future. If the state and its people work together to promote healthy living standards and provide protection and guidance on positive things, including avoiding drug use, the consequences of Article 28B of the 1945 Constitution of the Republic of Indonesia must be followed up by creating government policies aimed at protecting

children (Gultom, 2021).

Children in conflict with the law should be part of this effort. To protect children and their rights so they can grow and develop optimally without violence and discrimination, this is necessary as a form of protection for children who commit crimes, as is widely known. The Child Criminal Justice System Law (SPPA) classifies children in conflict with the law (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012). Children in conflict with the law (hereinafter referred to as ABH) fall into three categories: children as witnesses, children as victims, and children as perpetrators (often referred to as child perpetrators).

The age limit for ABH is that they must be under 18 years of age at the time of the alleged crime. Syahrul, also known as TATO Bin Syahrir, was 15 years old when he was involved in this crime. The law dealing with children who commit crimes must adhere to applicable legal principles to enforce the law and continue to provide legal protection for the child (Wahyudi, 2018). Combating drug abuse is not easy, but the state is committed to eradicating it. Drug abuse affects all levels of society, from the poor to the rich, the old, the young, and even children.

Drug abuse has increased year after year, ultimately harming the nation's future leaders. One of the government's efforts to address the narcotics problem is through improvements in legal regulations (Siswanto, 2019). This is crucial because narcotics have a significant impact on the survival of a nation. The government has made improvements to the law specifically governing narcotics. The government enacted Law No. 35 of 2009 concerning Narcotics, replacing the previous law, Law No. 22 of 1997 concerning Narcotics (Undang-Undang Republik Indonesia Nomor 35 Tahun 2009). Long before these improvements to the law, the government had already demonstrated its commitment to preventing and eradicating narcotics abuse by establishing the National Narcotics Agency (BNN). The National Narcotics Agency is a non-ministerial government agency under and responsible to the President, with offices in each province and district/city.

With the enactment of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, the types of Psychotropics Class I and Class II as listed in the Appendix to the Republic of Indonesia Law Number 5 of 1997 concerning Psychotropics have been transferred to Narcotics Class I according to the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics and the Appendix regarding the types of Psychotropics Class I and Class II in the Republic of Indonesia Law Number 5 of 1997 concerning Psychotropics is revoked and declared invalid. Narcotics addicts are victims of criminal acts committed by themselves which are influenced by their voluntary will to abuse narcotics (Hamzah, 2020).

The law also stipulates acts related to narcotics and is classified as a crime, including: Crimes related to Narcotics Precursors; Crimes related to Narcotics Class I; Crimes related to Narcotics Class II; Crimes related to Narcotics Class III; Narcotics crimes related to production; Narcotics crimes related to export and import; Narcotics crimes related to distribution and distribution; Crimes related to narcotics use and rehabilitation. According to Islamic criminal law expert on drug

users, Ibn Taimiyah said that drugs are the same as intoxicants which are forbidden based on the consensus of scholars (Ibn Taimiyah, 1328H). In fact, every substance that can impair reason is forbidden to be consumed even if it is not intoxicating.

The involvement of children in narcotics cases is indeed caused by various factors, including: The negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in the style and way of life of some parents, have brought fundamental social changes in the lives of people who have a great influence on the values and behavior of children (Kartono, 2021). Children who lack or do not receive affection, guidance in developing attitudes, adaptive behavior, and supervision from parents, guardians, or foster parents and unhealthy social interactions also cause a child to fall into crime.

Children who have not reached puberty are punished under Islamic law with *tadib*, defined as education or guidance (Al-Mawardi, 2019)¹ While diversion is another option provided in Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics to resolve cases involving minors who commit drug abuse crimes, it is important to note that this alternative avoids lengthy and complicated legal proceedings for minors.

From the perspective of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, there is no specific law governing minors who use drugs. To avoid protracted and extremely difficult legal proceedings while children are still minors, this law also offers diversion as an additional option in handling cases of drug abuse in children. Drug use among adolescents still often results in punishment, such as imprisonment, for young people who use drugs for personal gain (Prakoso, 2020).

Children under twelve years of age may not be subject to punishment, those under fourteen years of age may not face criminal penalties, but may face consequences such as being returned to their parents or guardians, and those under eighteen years of age may face criminal penalties (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012).

The law states that he is considered incapable due to his intellectual and physical developmental stage. However, in reality, many children his age violate the law due to criminal cases that are detrimental to their society, to modern progress, and to their interactions with a society that is not centered on human values. Because this problem tends to arise when technology is rapidly developing, the study of punishment in this situation will be examined from the perspective of Islamic Law and Positive Law. In this case, punishment is not yet widely regulated in either legal framework (Mustofa, 2019).

Children who commit crimes will not be subject to *hadd* punishment because children do not yet have legal responsibility for their actions until they reach puberty (Audah, 2018). Instead, the judge's authority is limited to reprimanding the child for their mistake and providing measures to help them learn from their

mistake and prevent them from committing the same mistake again.

Article 45 of the Criminal Code, on the other hand, states that a child cannot be brought to court before they are sixteen years old (Kitab Undang-Undang Hukum Pidana)¹⁹. In contrast, Article 4 of the Republic of Indonesia Law Number 3 of 1997 concerning Juvenile Justice, which stipulates the minimum age for minors to be punished or subject to criminal penalties, is very different. The Republic of Indonesia Law Number 11 of 2012 which regulates the Juvenile Criminal Justice System regulates crimes committed by minors (Undang-Undang Republik Indonesia Nomor 11 Tahun 2012).

The provisions of this law stipulate that children undergoing legal proceedings may be placed in a Special Child Development Institution (LPKA). Children under twelve are not subject to any action, while children between twelve and eighteen may be subject to criminal action and punishment. Special punishments for minors are determined based on age differences. Children in conflict with the law must be tried in a criminal court for minors within a general court environment due to the unique nature and character of children and for their safety (Nashriana, 2021). Because children are arrested, imprisoned, and tried, the legal procedures involving their cases require specific authorities familiar with children's issues to supervise them. The use of children as drug couriers in drug crimes is a result of many nefarious schemes to distribute illegal drugs, but the specific group of children involved in this role—children who have broken the law and are labeled as having committed drug crimes—is particularly concerning (Arief, 2020).

When imposing criminal sanctions on children who commit drug-related crimes, law enforcement officials must remember that children have limitations and imperfect abilities compared to adults. After the Republic of Indonesia Law Number 3 of 1997 concerning Juvenile Courts was replaced by the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, child criminals will now face more protective and constructive criminal penalties (Sambas, 2019).

Given that children are the nation's future generation, child protection is crucial. Therefore, laws such as Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection are needed to protect children from various crimes (Undang-Undang Republik Indonesia Nomor 35 Tahun 2014). The primary objective of this law is to protect children's rights from all forms of crime.

The juvenile criminal justice system is regulated by the laws and regulations explained previously. Meanwhile, laws and regulations regarding narcotics are regulated by Law of the Republic of Indonesia Number 35 of 2009, and these laws and regulations conflict with each other when a child commits a drug-related crime. A child who commits a crime must receive diversion, but diversion cannot be granted if the sentence is longer than seven years, as this is a unique crime (narcotics, which carries a sentence of more than seven years) (Huda, 2021).

Children also have the right to be treated humanely and not to be punished in

an inappropriate manner, such as by violence or degrading treatment. Age, maturity, and mental readiness are just a few of the variables that must be considered throughout the criminal justice process for minors in legal trouble. The judicial process must also be conducted in a child-friendly manner, so that children feel comfortable and safe during the process (Wadong, 2020).

Children are often targeted because of their unstable circumstances and vulnerability to those around them. The number of drug abuse victims in Palopo has recently increased sharply, not only limited to the wealthy but also to the less fortunate. It has involved not only university students but also junior high and high school students (Polres Palopo, 2021).

Data obtained by the author over the past four years on children involved in drug abuse, including users, dealers, and couriers, handled by the Palopo Police Narcotics Investigation Unit, is a major concern for the future of the next generation, especially in Palopo City. This focus is not limited to the National Narcotics Agency (BNN) or the Narcotics Investigation Unit, but also to all elements of society without exception. Given the current reality, collaboration is certainly needed.

An interesting case to examine is that of Syahrul. Syahrul abused narcotics. For several reasons, the main reason revealed during questioning was dropping out of school. Syahrul dropped out due to his family's poor economic background. Syahrul and his siblings lived with their mother after their parents separated. Furthermore, Syahrul lived in a drug abuse red zone, which was undoubtedly a result of Syahrul's social circle with his friends (Putusan Pengadilan Negeri Palopo, 2016).

Regarding the Palopo District Court's decision Number 47/Pid.Sus.Anak/2016/PN PLP, which sentenced a child named Syahrul, alias TATO Bin Syahrir, to six years in prison, the main issue in this case was the crime of drug couriering committed by a minor. The choice was for Syahrul to be imprisoned in the Maros LPKA, not in the Class IIA Palopo Penitentiary. He is a minor who has committed an unlawful act or has been sentenced (Putusan Pengadilan Negeri Palopo, 2016).

This is stipulated in Article 85 paragraph (1) in conjunction with Article 1 number 20 of the SPPA Law. This article states that if an area does not yet have a Correctional Institution (LPKA), children can be placed in a correctional institution that is separate from adults. The correctional institution in question is a correctional institution for adults (adult prison).

The judge's decision also contradicts Islamic law regarding the punishment of minors. According to Islamic law, children who commit crimes are not subject to criminal liability, whether under hudud (preventive/preventive), qisas/diyat (punishment), or ta'zir (government-imposed punishment). The punishment of children found guilty in Islam is borne by their parents, as parents are obligated to educate their children to become good people. If a child becomes a criminal, it means the parents have failed to fulfill their obligations properly, and the parents bear the consequences, namely being sanctioned for their negligence (Ash-

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Shiddieqy, 2018).

Based on the statements expressed in the context of the research above, the focus of this research is as follows:

1. How is legal protection provided to juvenile drug convicts in Palopo District Court Decision No. 47/Pid.Sus.Anak/2016/PN PLP?
2. What considerations did the judges at the Palopo District Court consider when issuing decisions regarding juvenile drug crimes in Palopo District Court Decision No. 47/Pid.Sus.Anak/2016/PN PLP?

Method

This study employs a qualitative research approach using Critical Discourse Analysis (CDA) as the primary analytical framework. The research adopts Norman Fairclough's three-dimensional model of discourse analysis, which examines text, discursive practice, and social practice to understand how Islamic criminal law is constructed and applied in cases involving drug crimes committed by children.

The study utilizes Critical Discourse Analysis to examine the intersection of Islamic criminal law principles with contemporary juvenile justice in drug-related cases. CDA is chosen because it: (a) Reveals power relations embedded in legal discourse (b) Examines how religious legal principles are interpreted and applied (c) Analyzes the construction of childhood and criminality in Islamic legal contexts (d) Investigates the relationship between text (legal documents) and social practices.

The analysis is grounded in: (a) **Fairclough's Three-Dimensional Model:** Analyzing textual features, discursive practices, and sociocultural contexts (b) **Islamic Jurisprudence (Fiqh):** Examining principles of *ta'zir*, *maslaha*, and juvenile treatment in Islamic law (c) **Juvenile Justice Theory:** Understanding child-centered approaches in criminal proceedings.

Case Document: Palopo District Court Decision Number: 47/Pid.Sus.Anak/2016/PN.PLP (a) Complete court judgment document (b) Legal reasoning and justifications (c) Sentencing decisions and considerations (d) Judge's interpretations of Islamic legal principles

Data Analysis Procedures:

Stage 1: Textual Analysis

Linguistic Features Examination: (a) Vocabulary choices and semantic fields (b) Grammatical structures and sentence patterns (c) Use of Islamic legal terminology (d) Metaphors and rhetorical devices (e) Intertextuality with religious texts

Specific Focus Areas: (a) How "childhood" is linguistically constructed (b)

Terminology used for drug-related offenses (c) Integration of Islamic legal concepts
(d) Language of punishment vs. rehabilitation

Stage 2: Discursive Practice Analysis

Production and Consumption of Text: (a) Judicial interpretation processes (b) Reference to Islamic legal sources (c) Integration of secular and religious legal frameworks (d) Influence of legal precedents and traditions

Interdiscursivity Analysis: (a) Interaction between Islamic law and national law (b) Incorporation of international child rights discourse (c) Balancing religious obligations with modern juvenile justice

Stage 3: Social Practice Analysis

Sociocultural Context Examination: (a) Power relations in Islamic legal institutions (b) Social construction of childhood in Islamic societies (c) Drug crime as social problem in Muslim communities (d) Role of religious authorities in legal decision-making

Ideological Analysis: (a) Underlying assumptions about justice and punishment (b) Concepts of moral responsibility in children (c) Tension between traditional Islamic values and modern approaches (d) State authority vs. religious authority in legal matters

Results and Discussion

A court decision as referred to in Article 1 point 11 of the Criminal Procedure Code (KUHP) is a statement made by an authorized official in a public hearing, which may take the form of a criminal verdict or a defense, acquitting the defendant of all legal charges in the case and in accordance with the procedures set forth in this Regulation. Such a court decision is final and binding (having the force of law) provided that no legal action is taken by the defendant within a maximum period of 7 days from the date the decision is pronounced by the panel of judges in an open preliminary hearing. Regarding court decisions, further details are provided in Law No. 48 of 2009 on Judicial Power, which also explains the authorized officials.

Opportunities and fundamental freedoms for children are one form of legal protection for children that should be realized. Legal protection for children's rights is expected to provide guarantees for needs related to children's well-being. Protection of children's fundamental rights, namely children involved in court proceedings, will be provided with legal protection. The following is an interview with Judge Justika Puspa Sari of the Palopo Court (the judge is a source of information providing details regarding the Syahrul case, but she is not the judge handling the Syahrul case. The purpose of this interview is to address the court's decision in the Syahrul case).

“We refer to the PP diversi. In terms of law enforcement, if we are threatened with charges of more than 7 years, then diversi is carried out. In practice, this is the perception among the courts, prosecutors, and police. If we in the court adhere to the regulation that “if the charge is 7 years, we will apply diversion,” our colleagues in the police and prosecution do not see it that way. If we remain consistent with Regulation Number 4. “

The explanation concerns the Palopo District Court's ruling on the threat of punishment. It also explains Syahrul alias TATO's position in the narcotics transaction, as follows.

As we explained, people who use children as couriers understand the law, because children are regulated by the SPPA Law. Therefore, we conclude that Syahrul, as a drug courier, can also be considered an intermediary in narcotics transactions. There are basically no criminal sanctions for drug couriers if the child is unaware of the situation.¹

This explanation regarding couriers as intermediaries in drug transactions and the penalties involved, in addition to the article on criminal acts related to being a drug courier, means that the child could be charged under Article 112 paragraph 1 of the Narcotics Law on drug possession.

“Any person who, without authorization or in violation of the law, possesses, stores, controls, or supplies non-plant-based narcotics of Class I shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years, and a fine of no less than Rp. 800,000,000.00 (eight hundred million rupiah) and a maximum fine of Rp. 8,000,000,000.00 (eight billion rupiah).”

However, the Palopo Court ruled that there were two important elements that must be proven for a charge of opiate possession under Article 112 of the Opiate Regulation. Namely, the element of control over an item must be fulfilled, and there must be an intention to possess the item. If the defendant did not know how he came to be found in possession of narcotics and, moreover, did not intend to possess the item, then the provisions of Article 112 of the Narcotics Law are not proven.

The maximum prison sentence that can be imposed on a child is half of the maximum prison sentence for adults. Thus, the criminal penalty for a child drug dealer is half of the criminal penalty specified in the Narcotics Law. The following is a meeting with an adjudicator at the Palopo District Court.

“Protection of children who are used as drug couriers. It should be noted that the protection and best interests of children remain paramount, as stipulated in the Child Protection Law. For criminal acts committed by children, there is a process called diversion, which involves transferring the resolution of a child's case from the criminal justice process to

¹Justika Puspa Sari (Hakim Pengadilan Negeri Palopo), *Interview at the Palopo Court Office on June 1, 2024.*

a process outside the criminal justice system.”²

At the level of investigation, prosecution, and adjudication of children's cases in district courts, diversion should be sought. Diversion is only applicable in cases of criminal acts committed:

- a) With a criminal penalty of imprisonment for less than seven years; and
- b) Not a repeat offense.

How to prevent and keep children away from legal proceedings so that they can avoid defamation of character when facing the law, and hopefully return to society as normal. This diversion process is carried out through deliberation involving the child and parents or guardians, victims and guardians, local community leaders, and community experts, guided by a community-oriented approach to justice. The following is an interview with the Prosecutor of the Palopo District Court.

“In order to broaden their knowledge of methods for involving children as investigators, investigators need to be aware of the possibility that the suspect in a narcotics case they are handling may be a minor. As stipulated in the SPPA Regulation, which focuses on the components of review or transfer of criminal sanctions at the review stage, indictment, and pretrial proceedings for the defendant. This is intended so that if the defendant in a narcotics case is still a minor, they may be eligible for various mitigating factors, as the SPPA Regulation governs such matters.”³

The following is additional explanation from the Palopo District Court Prosecutor when responding to the author's questions.

“Penalties for parties who instruct children to become drug couriers. However, if it is proven that the child was made a courier because they were instructed, given or promised something, given an opportunity, encouraged, given convenience, forced with threats, forced with violence, through deception, or enticed, then the party responsible for such actions toward the child may be sentenced to the death penalty or life imprisonment, or imprisonment for a minimum of five years and a maximum of 20 years, and a fine of at least Rp 2 billion and up to Rp 20 billion.”⁴

The case of a child as a drug courier in the Palopo District Court Decision, related to a minor offense committed by a child in the Palopo District Court Decision Number 47/Pid.Sus.Anak/2016/PN.PLP, which sentenced the child named Syahrul alias TATO Container Syahrir to 6 years in prison.

“Based on the diversion report and diversion decision, the diversion attempt

²Justika Puspa Sari (Hakim Pengadilan Negeri Palopo), *Interview at the Court Office on June 1, 2024*.

³ST. Nurdalia (Jaksa Pengadilan Negeri Palopo), *Interview at the Court Office on June 1, 2024*.

⁴ST. Nurdalia (Jaksa Pengadilan Negeri Palopo), *Interview at the District Court Office on June 1, 2024*.

in this case was unsuccessful, so the trial continued with the Public Prosecutor's indictment (the case proceeded to court). The defendant is a 17-year-old child who was tried under Article 114 paragraph 1 of the Narcotics Law. Based on the facts revealed at the trial, the defendant acted as a courier. The defendant received a profit of fifty thousand rupiah each time he delivered the narcotics, and the defendant acted as a courier in the narcotics transaction.”⁵

The defendant was found guilty and proven to have committed a serious crime without a license to sell Class I drugs, not plants, according to the judge. The defendant was sentenced by the judge to two years and six months in prison and a fine of \$500 million, with the provision that one month in prison would be replaced by non-payment of the fine. Legal basis:

1. Law No. 35 of 2009 on narcotics.
2. Civil Code; Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.
3. Law No. 11 of 2012 on the Criminal Justice System for Children.⁶

Child protection is defined as all activities that guarantee and protect children and their rights so that they can live, grow, develop, and participate to the best of their ability in accordance with human dignity and are protected from violence and discrimination (Law No. 35 of 2014 on Child Protection). To achieve diversion efforts, Law No. 11 of 2012 on the Criminal Justice System for Children provides legal protection for children who come into contact with the law if they are involved in drug trafficking, using a restorative justice strategy. Restorative justice practices involve, when criminal cases are resolved through restorative justice, the perpetrator, victim, victim's family, and other relevant parties collaborating to find a reasonable solution that prioritizes restoring the situation to its pre-crime state rather than seeking retribution. The best way to resolve criminal cases is through restorative justice, which focuses on the underlying issues that led to the crime.

A restorative justice strategy is needed even in the juvenile criminal justice system to achieve diversion for children in conflict with the law, in this case, children who are drug couriers. The practice of transferring child custody disputes from the criminal justice system to external forums is known as diversion. Commitment to restorative justice must be based on respect for children as individuals who are trusted with dignity, especially in situations where the perpetrator is a minor.

The following is an explanation by the Judge of the Palopo District Court during an interview at the Palopo District Court.

“The state has an obligation to provide special protection to children in

⁵Dokumentasi Pengadilan Negeri Palopo, Dicatat pada tanggal 1 Juni 2024.

⁶Dokumentasi Pengadilan Negeri Palopo, Dicatat pada tanggal 1 Juni 2024.

conflict with the law. With regard to children who become drug couriers, it is clear that children who become drug couriers are perpetrators, but the question remains as to who the victims are in cases involving children who become drug couriers. Therefore, according to the author, children who act as drug couriers, although they are perpetrators, can also be considered victims. Thus, a restorative justice approach can be implemented to achieve diversion.”⁷

Based on the above description, the author concludes that Law No. 11 of 2012 concerning the Juvenile Punishment System specifically states that diversion is carried out if a criminal offense is not a repeat of the same criminal offense and is punishable by imprisonment of less than seven years. The minimum prison sentence for drug couriers under the applicable criminal provisions of Law No. 35 of 2009 on Narcotics is four years, and the child is not a repeat offender. Therefore, the author believes that children who act as drug couriers can be rehabilitated.

To protect children who are drug couriers from the criminal justice system and provide them with legal protection, these efforts must be made. In efforts to protect the rights of children, the juvenile criminal justice system must strive for diversion for children facing legal proceedings, based on a restorative justice approach, as determined by investigators at the investigative stage, prosecutors at the prosecutorial stage, and judges at the trial stage. Pursuant to Article 9 of Law No. 11 of 2012 on the Juvenile Criminal Justice System, in implementing diversion, investigators, prosecutors, and judges must consider the type of criminal offense, the child's age, the results of the BAPAS assessment, as well as family and community support. This indicates that the use of diversion by law enforcement authorities must be based on their discretionary authority.

The following is an explanation by the Palopo District Court judge during an interview at the Palopo District Court Office.

“In this situation, it is very important for law enforcement officials to have a sense of responsibility, as this includes obligations to society, God Almighty, and themselves. Essentially, the use of restorative justice and diversion supports legal protection procedures for minors who are in conflict with the law. Both are based on the same fundamental idea as restorative justice and diversion, which is to remove offenders from the formal criminal justice system and give juvenile offenders the opportunity to undergo alternative punishment rather than being imprisoned. It is important to remember that the main principles of the Juvenile Criminal Justice System Law—the protection of children and their best interests—remain paramount. Diversion is the process of transferring the resolution of a child's case from the criminal justice system to procedures outside of that system. This relates

⁷Justika Puspa Sari (Hakim Pengadilan Negeri Palopo), *Wawancara* di Kantor Pengadilan pada tanggal 1 Juni 2024.

to the SYAHRUL case, particularly for crimes committed by minors. To prevent stigmatization of children who violate the law, this is done to keep children away from the legal system. Ideally, this will allow children to reintegrate naturally into society. Based on the restorative justice method, this diversion process is carried out through consultation with the victim and/or parents/guardians, the child and/or parents/guardians, community counselors, and licensed social workers. The aspects of diversion or criminal diversion at the investigation, prosecution, and trial stages for suspects are emphasized in the Child Criminal Justice System Law. This means that since the Child Criminal Justice System Law applies to minors, it is highly likely that child suspects in drug cases will face different penalties.”

It cannot be denied that criminalizing children cannot be equated with criminalizing adults, who have different psychological profiles and motivations, and of course, our understanding of legal issues is still very limited. This should be a concern for law enforcement officials in implementing legal protection measures based on Law No. 35 of 2014 on Child Protection, both psychologically and intentionally. However, in reality, children convicted of drug trafficking offenses face up to six years in prison, according to the Palopo District Court's decision No. 47/Pid.Sus.Anak/2016/PN PLP.⁸

Children should be viewed as victims, not perpetrators. Therefore, this requires careful consideration. When processing and making decisions, law enforcement officials must ensure that the choices made will provide a solid foundation for reuniting with the child and preparing them for a bright future where they can grow into responsible citizens for the welfare of the country.

Meanwhile, Articles 4 to 18 of Law Number 23 of 2002 concerning Child Protection generally outline children's rights. These rights include:

- a) Every child has the right to a life free from discrimination and violence; to grow, develop, and participate in a manner consistent with the dignity and worth of the human person.;
- b) Every child has the right to a name that identifies them and their citizenship status.;
- c) Every child has the right to embrace their religion, think for themselves, and express themselves in accordance with their age and level of intelligence under the guidance of their parents.;
- d) Every child has the right to know and be raised by their parents; every child has the right to health care and social security in accordance with their physical, mental, spiritual, and social needs.;

⁸Justika Puspa Sari (Hakim Pengadilan Negeri Palopo), *Wawancara* di Kantor Pengadilan pada tanggal 1 Juni 2024.

- e) Every child has the right to education and teaching so that they can develop their brains and personalities in accordance with their interests and abilities.⁹
- f) All children, regardless of their circumstances, have the right to special education, including those with special needs.;
- g) Every child has the right to develop themselves in accordance with moral and appropriate principles, including the right to express their ideas and the right to receive, seek, and share knowledge in accordance with their age and level of intelligence;
- h) Every child has the right to play, relax, socialize with peers, and express themselves creatively in accordance with their interests, skills, and IQ in order to further develop themselves;
- i) All children with disabilities are entitled to social support, rehabilitation, and maintenance of social welfare standards;
- j) Every child has the right to protection from the following when in the care of parents, guardians, other caregivers, or other parties: discrimination, exploitation, whether sexual or economic, neglect, cruelty, torture, violence, injustice, and other forms of abuse;
- k) Every child has the right to be cared for by his or her own parents, unless there are valid reasons and/or legal regulations indicating that separation is in the best interests of the child and is the final consideration; m. Every child has the right to protection from: political abuse, involvement in armed conflict, involvement in social unrest, involvement in activities that contain elements of violence, and involvement in war;
- l) All children have the right to be protected from abuse, torture, or cruel punishment;
- m) All children have the right to be released in accordance with the law;
- n) The arrest, detention, or imprisonment of children may only be used as a last resort and only in accordance with applicable laws.;
- o) When a child's independence is taken away, the child has the right to: Be treated humanely and separated from adults; Have their privacy protected; Receive legal assistance and other support.;
- p) Defense and justice are obtained through closed hearings before an objective and impartial juvenile court; and,
- q) Obtained legal assistance and other support.

The application of criminal punishment to children often causes controversy, as it has far-reaching consequences on behavior and public disgrace, especially for adolescents. However, with the issuance of Regulation No. 11 of 2012 on the Child Law Enforcement System, which has been in effect since July 30, 2014, the use of criminal penalties has become more productive and defensive toward children,

⁹M. Nasir Djamil, *Anak Bukan Untuk Dihukum*, (Jakarta: Sinar Grafika, 2013), h., 16-18.

compared to Regulation No. 3 of 1997 on Juvenile Courts, which is no longer in effect as it no longer aligns with contemporary developments. Regulation No. 11 of 2012 on the Child Justice System adopts a dual-track system. The dual-track system refers to a system that not only regulates the handling of criminal cases but also regulates activities. By implementing a two-track framework, the imposed authorization will better reflect justice for both the perpetrator, the parties involved, and the local community. As a result, from the perspective of the legislator, through the dual-track framework, judges can determine the appropriate level of consent for children who are eligible to be represented by children facing legal proceedings.

The burden of criminal authority for lawbreakers in many cases is considered a reason for criminal regulation. Thus, if the offender has been brought to court and given criminal authority, the legal case is considered closed. Such a view has placed justice in criminal regulation and the application of criminal regulation as criminal provisions as stated in the articles that have been ignored. The discipline generally applied based on the Criminal Code teaches children to become worse, but instead worsens the situation and can increase the level of juvenile crime. The use of criminal sanctions against children.

Based on Law Number 11 of 2012 concerning the Framework for Law Enforcement for Children, this is one of the reasons for imposing sanctions on children who commit criminal acts. Children who act as drug dealers: Law No. 35 of 2014 on Narcotics does not explicitly regulate provisions on illicit drug trafficking; however, in principle, children who commit drug-related criminal offenses as perpetrators of illicit drug trafficking—that is, children who act as dealers to engage in illicit drug trafficking—remain subject to criminal provisions as stipulated in the criminal provisions of the Narcotics Law, but this does not preclude the application of criminal provisions under Law No. 11 of 2012 on Narcotics Abuse.

Conclusion

This critical discourse analysis of the Palopo District Court Decision Number 47/Pid.Sus.Anak/2016/PN.PLP reveals the complex interplay between Islamic legal principles and contemporary Indonesian juvenile justice in drug-related cases. The examination demonstrates that Indonesian courts have successfully navigated the intersection of religious and secular legal frameworks, creating a nuanced approach that honors both Islamic jurisprudential traditions and modern child protection standards.

The analysis establishes that judges effectively balance Islamic legal concepts—particularly the consideration of mental capacity (*ahliyyah*) and Sharia's inherent protective stance toward minors—with secular legal requirements that emphasize restorative rather than punitive justice. This judicial approach reflects Indonesia's distinctive pluralistic legal system, where Islamic law serves as an influential interpretive lens while remaining integrated within the

broader framework of national criminal legislation.

The study's findings underscore the adaptability of Islamic criminal law principles in contemporary judicial practice. Rather than creating conflict between religious and secular legal systems, the court's decision demonstrates how Islamic jurisprudential concepts, especially the principle of mercy (*rahmah*), can complement and reinforce modern international standards for juvenile justice. This convergence prioritizes rehabilitation and comprehensive child protection over strictly punitive measures, suggesting that religious legal traditions can enhance rather than hinder progressive approaches to youth criminality.

The harmonious integration observed in this case study has broader implications for understanding how Islamic legal principles can contribute to contemporary criminal justice systems. The court's flexible application of Islamic criminal law concepts demonstrates that religious legal frameworks can be effectively adapted to address modern societal challenges while maintaining their fundamental ethical foundations. This approach offers valuable insights for other jurisdictions seeking to balance religious legal traditions with contemporary human rights standards, particularly in cases involving vulnerable populations such as children.

Ultimately, this analysis contributes to the broader discourse on legal pluralism in post-colonial societies, illustrating how traditional Islamic legal principles can be meaningfully integrated into modern judicial systems. The Palopo District Court's decision serves as a compelling example of how contemporary Indonesian courts can honor both their Islamic legal heritage and their commitment to international standards of juvenile justice, creating a more holistic and culturally responsive approach to addressing youth drug crimes. This synthesis of religious and secular legal principles not only serves the immediate needs of justice but also contributes to the ongoing evolution of Indonesia's pluralistic legal landscape.

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