

## Criminal Law Policy in Efforts to Combat Narcotics Crimes by Minors

Musran<sup>1</sup>, Hamdan Azhar Siregar<sup>2</sup>

<sup>1,2</sup>Universitas Islam Jakarta, Indonesia

moes.lissa77@gmail.com, hamdan\_sir@yahoo.co.id

### Abstract

*This study aims to examine the effect of Capital Adequacy Ratio (CAR), Non-Performing Loan (NPL), Loan to Deposit Ratio (LDR), and Operating Costs on Operating Income (BOPO) on the profitability of Commercial Banks. The population used in this study is Bank BRI in 2009-2018. The data in the study were obtained from the financial statements in 2009-2018. The analytical method used is multiple linear analysis with the classic assumption test which includes autocorrelation test, multicollinearity test, and heteroscedasticity test using SPSS version 25.0 for windows. The results showed that the variables CAR, NPL, LDR, and OEOI affect the profitability of Bank BRI. The objective of this research is to identify the effect of capital adequacy ratio (CAR), non-performing loan (NPL), loan to deposit ratio (LDR), and operational costs for operating income (BOPO) on commercial bank profitability. People's Bank of Indonesia/State-Controlled Bank (Bank BRI) was utilized as the population for this study from 2009 to 2018. Financial statements from 2009 to 2018 were used to collect data for the study. Multiple linear analysis with classical assumption tests was utilized to conduct the analysis, which included autocorrelation, multicollinearity, and heterocedasticity tests. SPSS version 25.0 for Windows was used to assist with the analysis. The findings indicated that CAR, NPL, LDR, and BOPO all had an effect on the profitability of a People's Bank of Indonesia/State-Controlled Bank (Bank BRI).*

### Keywords

criminal law; combat narcotics; crime



## I. Introduction

As a state party to the Convention on the Child's Rights, Indonesia should provide exceptional protection for children in conflict with the Law. The Government of Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36/1990 on Article 37 letter (b) stating, "States parties must ensure that no child may be deprived of their liberty unlawfully or arbitrarily (Kencono & Supriyanto, 2017). The arrest, detention or imprisonment of a child must be following the act, and should be used only as a last resort and for the shortest appropriate period." This article is a form of adoption of the ultimatum medium principle. This principle is intended to protect and protect children in conflict with the Law.

Protection of children's rights is a human right for survival, growth and development guaranteed by the state as mandated in the 1945 Constitution of the Republic of Indonesia. According to Law, different meanings depending on the place, time, and purposes of age. This will also affect the limits used to determine the age of the child, such as a child defined as someone who is not yet 18 (eighteen) years old, including children who are still in the

womb, children in conflict with the Law, children who are victims of criminal acts, and children who are witnesses to crimes.

Based on positive Law, a child is defined as a person who is not yet an adult, a person who is underage or underage, or commonly referred to as a child under a guardian's supervision. The limitations of children in understanding and protecting themselves from the influences that exist in their daily environment are one of the causes of deviations or violations of the Law committed by children. For this reason, if children become perpetrators or victims of criminal acts, the state and Law must protect them. The positive legal system that applies in Indonesia is inseparable from illegal law regulations related to narcotics abuse. Narcotics abuse from year to year has increased, which ultimately harms the nation's successors (Ashworth & Horder, 2013).

Narcotics abuse is a prohibited item circulating in the community and is not permitted by Law. Circulation of narcotics is carried out clandestinely. Usually, the seller tries to sell drugs to well-known or to buyers who are considered safe. Therefore, special protection is needed for children who are victims of narcotics abuse and children involved in its production and distribution through monitoring, prevention, treatment and rehabilitation efforts.

Criminal sanctions for children in Law Number 35 of 2009 concerning Narcotics do not specifically regulate the sanctions system for children. It will be seen how the design of sanctions in the Narcotics Law applies to children. The enforcement of the sanctions system in the Narcotics Law against children must also apply to the Child Protection Act and the Juvenile Justice System as special provisions applied to children. This is a consequence of the principle of *lex specialis derogate legi generalis*.

The application of criminal law as a means of overcoming crimes committed by children is a dilemma. On the one hand, the use of criminal Law to overcome offences committed by children by placing children as perpetrators of crime has a very complex negative impact. Still, on the other hand, the use of criminal Law to overcome child crime is considered a rational and legal choice (Santiago, 2014).

The Narcotics Law divides the classification of narcotics abusers, namely: (1) as producers, are subject to criminal provisions based on Article 113 with the threat of capital punishment, life imprisonment or imprisonment for a maximum of 20 (twenty) years and a fine plus a third; (2) as a dealer, as a dealer, is subject to criminal provisions based on Article 114 with the threat of life imprisonment or a maximum imprisonment of 20 (twenty) years plus a fine; (3) as a narcotics abuser against another person, the criminal provisions are subject to criminal provisions based on Article 116, with a maximum imprisonment of 15 (fifteen) years plus a fine; (4) as a narcotics abuser for oneself, is subject to criminal provisions based on Article 127, with the threat of imprisonment for 1 (one) year to 4 (four) years.

Special protection for children in narcotics crimes, one of which is based on the involvement of children in narcotics crimes, of course, does not occur with their awareness but the influence of the social process experienced by the child himself as the rampant narcotics syndicate has caused many minors to be involved in the distribution of narcotics, as well as the development of increasingly sophisticated information technology that facilitates access in the illicit trade of buying and selling narcotics which not only brings benefits to drug dealers and dealers but has become a habit that children carry out among teenagers in their daily lives to survive and fulfil their daily needs.

The relationship between dealers/porters and children as victims makes it difficult to escape from dealers/porters. It is not uncommon for victims to be involved in the illicit trafficking of narcotics due to their increasing need and dependence on drugs.

Children as narcotics abusers are only victims, so it is not appropriate for the state to punish child abusers and real adult criminals. As victims, children as narcotics abusers must get protection. Child protection is an effort made to create conditions so that every child can carry out his rights and obligations for the development and growth of children naturally, both physically, mentally and socially (Syaharuddin et al., 2020).

The Indonesian Child Protection Commission (KPAI) noted that of the 87 million child population in Indonesia, 5.9 million children with a maximum age of 18 years are narcotic addicts. KPAI handled 2,218 cases related to health and drug problems that afflicted children. As many as 15.9 per cent of them are cases of children addicted to narcotics and 8.1 per cent of cases of children being narcotics dealers. These children become addicts and get drugs from their closest people and peers. The mode that is often used in using narcotics is doing schoolwork or studying together. Parents are the first to be responsible for the welfare of the child, the obligation to maintain and educate the child in such a way that the child can grow and develop into someone who is intelligent, healthy, devoted to parents, noble character, fearing the Almighty God and willing and capable of continuing the ideals of the nation (Surya, 2019).

In 2018, KPAI handled 504 cases of children in conflict with the Law. Of the 504 cases, 17.8 per cent were narcotics cases that sentenced children to the Child Special Penitentiary (LPKA). The factors that cause children to commit crimes, especially narcotics abuse, are an opportunity because, at first, children do not have intentions. Still, environmental influences and intentions are the reasons children abuse narcotics. In LPKA, children claim to have experienced sexual violence from their friends.

Based on the results of research conducted by the National Narcotics Agency (BNN) recorded the prevalence of narcotics abuse rates in 2018 among students in 13 provincial capitals in Indonesia reached 3.2 per cent or equivalent to 2.29 million people, while in 2017, the prevalence rate of narcotics abuse by 1.77 per cent or the equivalent of 3,376,115 people in the age range of 10-59 years.

The danger of using narcotics has an enormous influence on the state, and if there is the large-scale use of drugs in society, the Indonesian nation will become a sick nation. If this happens, the country will be fragile from within because national resilience has declined.

To carry out law enforcement to the perpetrators of criminal acts must be subject to a legal consequence closely related to punishment. This relates to the objectives of law enforcement to be achieved, namely the fulfilment of a sense of justice and the achievement of legal certainty. For this reason, an understanding of the purpose of sentencing is essential to know the purpose of upholding the Law. The nature of this punishment is not merely punitive (punishing) or finding fault with the child, but to improve the child by avoiding him from asocial acts.

The current condition is that the lure persuades the children who are their couriers of the dealer who will give the children a large amount of money in return so that they want to become couriers. It should be understood that children are different from adults when they decide to commit an act, so in this condition, the child should be positioned as a victim, not as a perpetrator.

Currently, courier children are made suspects and put into custody by investigators for further examination in the criminal justice process. Placement of children in detention is not an appropriate action even though it is based on the Juvenile Criminal Justice System Act. Investigators must pay attention to aspects of the benefits and negative impacts of children being placed in detention.

When children are caught being narcotics couriers, they should not be punished but should be guided and their rights protected. Law enforcers should pursue dealers who exploit children in narcotics trafficking. A diversion should resolve the settlement of children in

narcotics networks to prevent children from being punished. However, in reality, the child who became a courier was determined to be a suspect and was investigated without proper regard for their rights. The determination of a child as a suspect is not wrong, but what needs to be noted after the resolution of a suspect is that investigators must pay attention to their rights. As much as possible, the child must be avoided from the detention and sentencing process.

Child protection policies have at least two aspects. The first aspect relates to policies and laws, and regulations governing the protection of children's rights. The second aspect relates to the implementation of these policies and regulations. Children who abuse narcotics at first are just for fun, want to try and so on. However, the nature of narcotic compounds that can cause addiction makes children who abuse narcotics not separate from the snares of drugs.

After enacting the Law on the Juvenile Criminal Justice System, it is hoped that law enforcement officers, from investigations to examinations in the judiciary, can treat children specifically by being equipped with exceptional knowledge to deal with criminal acts committed by children. Comprehensively, the provisions of substantive Law and subjective Law formulated in the Law on the Criminal Justice System, and it can be said that there is no complete regulation of juvenile criminal Law. Anticipation of these crimes include functioning of legal instruments effectively through law enforcement (Tumanggor, 2019). Narcotics (Narcotics and illegal drugs) or drugs (Narcotics, Psychotropics, and other addictive substances) are a type of substance whose use in Indonesia (Zulyadi, 2020).

## **II. Research Methods**

This paper is a type of normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data. (Fletcher, 1998). Normative research is the study of legal materials, both primary and secondary legal materials. The source of research data is secondary data. Secondary data is data consisting of primary legal materials, secondary legal materials and tertiary legal materials.

The technique of collecting data on secondary data used in this paper is a literature study. The data analysis technique used in this research is descriptive qualitative.

## **III. Discussion**

### **3.1 Diversion Efforts as a Paradigm for Handling the Problem of Child Delinquency**

According to Moeljatno (2002), a criminal act is defined as an act that is prohibited by a prohibition law which is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the prohibition. According to Moeljatno (2002), quoted by Adam Chazawi, a criminal act is more appropriate to use for the following reasons: First, the prohibited act is the act (a human act, namely an event or condition caused by the behaviour of a person), meaning that the prohibition is aimed at his actions. Meanwhile, the criminal threat was aimed at the person. Second, there is a close relationship between the ban (aimed at the act) and the criminal threat (aimed at the person). Therefore, the act (which is in the form of a situation or event caused by that person, violates the prohibition) with the person who caused the act there is also a close relationship. Third, to state that there is a close relationship, it is more appropriate to use the term criminal act, an abstract meaning that refers to two concrete circumstances, namely, first, the existence of certain events (actions), and secondly, the existence of people who did or caused the incident.

According to Nugraha & Handoyo (2019), a criminal act is defined as an act that is contrary to the order or order required by Law. He distinguished the term criminal act with

strafbaarfeit. This is because a criminal act only refers to the nature of the act that is prohibited by legislation. Soedarto used the term criminal act as a substitute for strafbaarfeit, as for his reason because the community already accepted the crime. There is a group of scholars who hold monistic and dualistic views concerning criminal acts. The monistic theory argues that all elements of a criminal act, namely the element of action, the element of fulfilling the provisions of the Law, the element of being against the law, the element of guilt and the element of responsibility, are used as a unified whole, making it possible to impose a crime on the perpetrator.

Those who have a dualistic view separate actions from criminal liability in the sense that if the act has fulfilled the elements contained in the formulation of the Law, then the act is a criminal act. Regarding the perpetrator, in terms of criminal liability, it still has to be reviewed separately whether the perpetrator has specific qualifications to be sentenced to criminal. For example, if the perpetrator has a mental disorder, he cannot be punished. Indonesia adheres to Dualistic Understanding, as evidenced in the Criminal Code in Article 44, Article 48, Article 49, Article 50, and Article 51 of the Criminal Code, which regulates that a person is acquitted even though he has committed a criminal act for specific reasons, namely: soul, coercive power, forced defence, implementing statutory provisions, and office orders.

Discussing the problem of children in conflict with the Law is indeed a very contradictory thing or method when applied to children, seeing that children's actions have particular motivations and characteristics different from adult perpetrators. As stated in the Convention on the Rights of the Child, it expressly says that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration (in all actions involving children carried out by public or private social welfare institutions, judicial institutions, government agencies or legislative bodies, the best interests of the child will be the main consideration)."

Based on the views above, it is hoped that there will be an extraordinary new way of handling cases of child perpetrators of criminal acts that are more beneficial for physical and spiritual growth by taking into account the psychological factors of children to achieve child welfare. Diversion is the only way to address all of the doubtful challenges above at this point.

### **3.2 Juvenile Justice System**

The Criminal Justice System (SPP) was introduced by criminal law experts and experts in "criminal justice science" in the United States in line with dissatisfaction with the working mechanism of law enforcement officials and law enforcement institutions. This dissatisfaction is evident from the increase in crime in the United States in the 1960s. At that time, the approach used in law enforcement was the "law and order approach," and law enforcement in the context of this approach was known as law enforcement.

The Criminal Justice System is a process of the systemic activity. The system comes from the Greek term *Systema*, which means a business unit consisting of interrelated parts trying to achieve a goal in a complex environment. The term criminal justice system or the criminal justice system (SPP) has now become a term that indicates a working mechanism in crime prevention using a basic system approach. What is meant by the criminal justice system is the control of crime, which consists of the police, prosecutors, courts and prisons of convicts (Supriyanto et al., 2021).

It is known that to overcome the problem of child perpetrators of criminal acts, and it has explicitly been regulated in Law No. 3 of 1997 concerning Juvenile Court. However, it is

undeniable that the juvenile court has also not been able to provide the actual goal as expected, either for the child's welfare or to protect the child's interests. In practice, it tends to leave a stigma on the child. This stigmatization process occurs at the level of investigation, prosecution, trial, to the location of guidance. The stigma is that there are provisions for child prisoners to be fostered and put into correctional institutions. The harmful influence of the juvenile criminal justice process can be in the form of trauma due to the treatment of law enforcement officers at every stage, stigma or evil stamp on the perpetrator so that the child is always feared to do something terrible. and the child is expelled from school.

In crime prevention, the term criminal politics (Criminal Policy) is a community effort in tackling crime. The business can be operationally carried out through penal and non-penal means, and the two are an inseparable pair. Crime prevention through corrective means is usually operationally carried out by formulating criminal norms that contain substantial, structural and cultural elements of the society in which the criminal Lawyer is enforced.

The criminal justice system recognizes three approaches, namely normative, administrative and social approaches. The normative approach views the four law enforcement officers (police, prosecutors, courts and correctional institutions) as implementing institutions of the prevailing laws and regulations. The four apparatuses are an inseparable part of the law enforcement system solely. The administrative approach views the four law enforcement officers as a management organization with a working mechanism, horizontal and vertical relationships, according to the organizational structure prevailing in the organization. The system used is the administrative system. The social approach; views the four law enforcement officers as an inseparable part of a social system so that the community is responsible for the success or failure of the four law enforcement officers in carrying out their duties. The system used is a social system.

The juvenile criminal justice system in the perspective of international human rights as a comparison. The Juvenile Justice System is all elements of the criminal justice system involved in handling juvenile delinquency cases. First, the police as a formal institution when juvenile delinquents first contact the justice system, which will also determine whether the child will be released or further processed. Second, prosecutors and parole agencies will also determine whether the child will be removed or processed in juvenile court. Third, the Juvenile Court is when the child will be placed in choices, starting from being released to being included in a sentencing institution.

### **3.3 Minimum Criminal Threat for Children**

Formulating the sound of a law is a difficult job. In Kanter & Sianturi (2002:85), what must be developed is not a concrete event. Still, as far as possible, the formulation must be so that it covers everything and in all circumstances so that no action or opportunity is left to escape, no matter how carefully we look for weaknesses—formulation of these regulations. Furthermore, Kanter & Sianturi (2002: 78) said that the formulation of the sound of the Law must be simple but straightforward and clear. Again, in the end, it will not only be law enforcement and justice who have an interest in the formulation of legislation but every people who seek justice. Apart from that, it is essential for legal certainty.

Still, in the opinion of Marjanne Termorshuizen-Arts, which is the same as the opinion expressed by Kanter & Sianturi (2002) above, the provisions of criminal legislation should provide legal certainty to citizens. Theoretically, by reading the sound of the statutory provisions or even the Book of Laws, a citizen can trace whether an act or action (which he may want to do) is threatened with criminal sanctions or not. In that way, citizens can know and make choices, including considering the consequences of their actions, provided that the formulation or sound of the statutory provisions is precise enough.

It can be said that the formulation or sound of a statutory provision must be clear and transparent, not only crucial for citizens but also for the authorities, in this case, the state, which is represented by law enforcers who work in the criminal justice system, including the police, prosecutors, courts and prisons. Likewise, with the formulation of articles in a law in Indonesia that regulates or contains provisions regarding criminal threats or criminal sanctions (strafmaat), including extraordinary minimum criminal threats, it is clear that this formulation aims to provide legal certainty for citizens. Indonesia.

The existence of an extraordinary minimum criminal threat contained in a law, including the Narcotics Law, basically correlates with the purpose of sentencing or imposing a crime where the punishment itself is the most critical part in criminal Law because it is the culmination of the whole process of accountability for someone guilty of committing a crime.

According to Andrew Ashworth, as quoted by Chandranegara (2017), "A criminal law without sentencing would merely be a declaratory system pronouncing people guilty without any formal consequences following the form that guilt." From Ashworth & Horder (2013)'s statement later translated it that criminal Law without punishment means declaring someone guilty without any definite consequences for the mistake. From the opinion above, it can be said that there must be a punishment in Criminal Law so that there is a substantial consequence for the errors that the perpetrators have made of the crime. Associated with the understanding of the criminal system, then this includes comprehensive knowledge.

In the opinion of Hulsman (2013) stated that the sentencing system is: "the statutory rules relating to penal sanctions and punishment. Suppose the notion of punishment is defined broadly as a process of giving or imposing a crime by a judge. In that case, it can be said that the criminal system includes the entire statutory provision that regulates how the criminal law is enforced or operationalized concretely so that a person is sentenced to criminal sanctions (Law). This means that all laws and regulations regarding substantive criminal Law, formal criminal Law and criminal law enforcement can be seen as a single criminal system.

This theory says that the essence of a crime is revenge. Criminals are not meant for practical purposes, such as fixing criminals. The crime itself contains the elements for the imposition of a criminal. Crime exists because a crime is committed. There is no need to think about the benefits of imposing the sentence. Every crime must result in criminal penalties being imposed on violators. Crime is an absolute demand, not just something that needs to be dropped but becomes a necessity.

### **3.4 A pattern of Narcotics Crimes below the Minimum Limit**

De Cuellar (1995), former secretary-general of the United Nations, said that the way society treats its children reflects its quality of compassion and protective caring and its sense of justice, its commitment to the future, and its urge to enhance the human condition for coming generations. This is as indisputably true of the community of nations as it is of countries individually.

This expression deserves to be put forward as the initial reflection of the world's nations claiming to commit children, the next generation of their nation. This expression, of course, does not only have meaning, the commitment of the people of a country to protecting the rights of children who have physical, psychological problems and behaviour of children who commit crimes, including narcotics crimes. This means that sensitivity to a sense of justice, commitment and caring attitude towards the next generation of a nation should also be measured from their attention to efforts to protect the rights of problem children.

Talking about overcoming crimes or criminal acts by children, especially children who commit narcotics crimes, cannot be separated from Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 23 of 2002 concerning Child Protection.

In-Law Number 23 of 2002 Article 59 and Article 67, which reads as follows (article 59) the government and other state institutions are obliged and responsible for providing special protection to children in emergencies, children in conflict with the Law, children from minority groups and isolated, economically or sexually exploited children, trafficked children, children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances (drugs), children who are victims of abduction, sales and trafficking, children who are victims of physical and mental violence, children with disabilities, and children who are victims of abuse and neglect. (Article 67) Special protection for children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances (drugs) as referred to in Article 59, and who are involved in their production and distribution, are carried out through supervision, prevention, treatment, and rehabilitation efforts by government and society, Everyone is prohibited from intentionally placing, allowing, involving, ordering to involve children in the abuse, production and distribution of drugs as referred to in paragraph (1).

The two articles above reflect the government's commitment and caring attitude towards the nation's next-generation who deserve special protection and treatment when children are faced with the law and policy decisions on punishment for children who commit narcotics crimes.

The pattern of imposing narcotics crimes for children below the minimum limit carried out by judges must pay attention to Articles 59 and 67 of the Child Protection Act. For this reason, in the juvenile justice process that is applied, it still uses Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, not other statutory provisions or as criminal penalties for adults.

The Juvenile Court is a special court under the general court, so according to Article 16 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is determined that the criminal procedure law also applies to juvenile criminal justice proceedings, unless otherwise stipulated in this Law.

Special arrangements regarding the mechanism of examination in juvenile courts from the aspect of value apart from discriminating treatment in procedural Law are intended to protect so that children who are dealing with the Law can be eliminated from physical and psychological (child mental) touches so that traumatic events do not interfere with growth. And cognitive and personality development of children.

#### **IV. Conclusion**

The factors that cause children to commit narcotics crimes are influenced by a sense of wanting to experience the sensation of narcotics themselves or wanting to stay away from reality (the oblivion seekers), who have failed in the existence of their lives. Another reason for using drugs, in this case, is to relieve loneliness to gain emotional experiences; to fill the void and feel bored from busyness; to eliminate feelings of disappointment, anxiety and various difficulties that are difficult to overcome.

The application of diversion to minors who are perpetrators of narcotics crime abuse implemented by the Indonesian National Police is that the investigation of children in the case of children in conflict with the Law is carried out by Child Investigators, which are determined based on the Decree of the Head of the Indonesian National Police or an official appointed by him. . Arrest Investigators and investigators in making an arrest must have preliminary evidence that can prove the child's guilt in committing acts that are prohibited by laws and regulations. While detention is the investigator's authority, the detention of a child may be carried out by a child investigator after seriously considering the interests of the child. The examination of children is carried out in a family atmosphere. The assessment must be



carried out in a family atmosphere, remembering that the perpetrator is still a child and preventing secondary victimization.

The concept of diversion is based on the fact that the criminal justice process against children in conflict with the law does more harm than good through the criminal justice system. The policy of criminal law formulation is part of the implementation of a criminal law policy in terms of the formulation of materials and articles, namely realizing reasonable regulations according to the circumstances and situations at a time.

The formulation/legislative policy is one part of the functionalization of criminal law policies in the prevention and control of criminal acts. The application of diversion to children who are perpetrators of narcotics crimes should be reviewed considering that after the implementation of pursuit, there are still children committing the same crime; For this reason, the regulation of criminal penalties for child perpetrators of criminal acts is based on the minimum criminal provisions supported by the certainty of age restrictions for children who are considered to be still ambiguous in the applicable laws and regulations.

The Juvenile Criminal Justice System, which is the reference in the juvenile justice process, is not seen as a mere regulation, considering that in the juvenile justice process, law enforcers are more likely to apply the provisions contained in the relevant laws and regulations such as the provisions in the Narcotics Law, without paying attention to the rules and regulations related to children.

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