



# Comparison of Punishment Policies Against Children Narcotics Abuses in Indonesia and Thailand

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## ABSTRACT

The issue of narcotics is multifaceted and continues to evolve over time. According to data from the National Police and the National Narcotics Agency, a total of 3,281 children were found to be engaged in narcotics-related offenses in 2022. In 2015, Indonesia and Thailand became members of ASEAN, a regional organization committed to achieving a drug-free environment. Both countries collaborate to combat the illicit trafficking of narcotics and illegal drugs to ensure national and state security. In both Indonesia and Thailand, there is a concerning issue of narcotics abuse among children, who are considered the future leaders of their respective nations. This study aims to analyze the approaches taken by Indonesia and Thailand in criminalizing children involved in drug abuse. It also seeks to identify and compare the similarities and differences in their respective approaches towards addressing this issue. This study employed the normative juridical research method, specifically utilizing the comparative method of law. The comparative method involves analyzing the norms, doctrines, and rules that are applicable in both countries. Primary, secondary, and tertiary legal materials relevant to this research are utilized in this analysis. The obtained data was analyzed using descriptive qualitative analysis. The study revealed differences and similarities in factors such as the child's age, settlement of cases outside of court, types of crimes considered during sentencing, and court examination procedures.

**Keywords:** Children, Indonesia, Narcotics, Comparative Law, Thailand

## INTRODUCTION

Narcotic problems, including trade, use, and distribution, pose significant threats to the international community. The drug problem has a detrimental impact on society's moral foundation. In addition, narcotics frequently co-occur with various criminal activities, including bribery, corruption, and even homicide. The use of narcotics can have detrimental effects on individuals, their social circle, and society (Leechaianan & Longmire, 2013).

The use of narcotics can result in various consequences, including physical, psychological, and social effects. The physical effects of substance abuse include convulsions, hallucinations, impaired consciousness, damage to peripheral nerves, heart and blood vessel disorders, skin and lung disorders, and reproductive health issues. The psychological effects that can occur include decreased work efficiency, increased carelessness, frequent feelings of tension and anxiety, and a decline in self-confidence (Adam, 2012).

Drug abuse is no longer limited to specific age groups in contemporary society. Individuals of all age groups, including children, adolescents, adults, and the elderly, are prone to drug abuse. Drug trafficking is prevalent in both urban and rural areas of Indonesia. Given Indonesia's significant population, there exists a possibility for the occurrence of illicit drug trafficking. Starting from a stopover for narcotics traffic, it ends up being a place to produce narcotics.

According to data obtained from the National Police and BNN, the current number of individuals suspected of engaging in narcotics-related offenses in Indonesia is 53,405 as of March 2022. As for the category

of children involved in narcotics crimes, there were 3,281 people (Pusat Penelitian, Data, dan Informasi Badan Narkotika Nasional, 2022).

There has been an increase in narcotics-related crimes involving children, with children being both perpetrators and victims of drug offenses. Children play a crucial role in shaping the future of a nation. The future sentiment of a nation can be reflected by the children, as they play a crucial role in shaping the nation's history. Children who engage in criminal behavior are frequently troubled individuals residing in an unfavorable community or family setting.

Children who engage in drug-related activities will inevitably face consequences from the law. In comparison to adults, children have limited and inferior abilities that must be considered by law enforcement. Since the enactment of Act 11 of 2012 pertaining to the Juvenile Criminal Justice System, which substituted Act 3 of 1997 pertaining to Juvenile Courts, it is expected that this will result in a more fostering and protective application of punishment for children who have committed criminal acts.

Children who are 12 years old but under 18 years old who are suspected of committing a crime are included in the juvenile justice system. The major goal of having a juvenile criminal justice system is to uphold children's dignity. Children have a special right to protection, particularly legal protection in the justice system. Law enforcement officials who deal with child cases might pay attention to the child's attitude and mentality from the investigation stage through the trial stage so that eventually the child is prepared to confront a better future (Lubis, 2020).

The child accused of a crime in Thailand, which

can result in a maximum prison sentence of five years, was not initially presented before the Juvenile Court for legal proceedings. The Juvenile Court in Thailand is officially referred to as the Juvenile and Family Court. Thailand has valid justifications for diverting children from the justice system, as rehabilitation offers a chance for these individuals to enhance themselves and reduce the likelihood of future offenses. According to Samati and Tongkachok (2021), it is believed that rehabilitation is more advantageous for both children and society compared to involving them in the criminal justice system.

Based on the previous information provided. The focus of this study is to analyze the juvenile justice systems in Indonesia and Thailand in relation to the handling of cases involving drug use among children. What are the similarities and differences in the legal consequences for children who use narcotics in Indonesia and Thailand? The objective of this study is to provide a description of the criminal justice system as it pertains to juvenile drug offenders in Indonesia and Thailand. The objective is to analyze the pros and cons of the criminal system for children involved in drug use in Indonesia and Thailand.

## METHOD

This research employed a normative-judicial research methodology. Normative juridical research used secondary data whose data sources consisted of primary legal materials, secondary legal materials, and tertiary legal materials. This study also used a comparative legal approach, namely between Indonesia and Thailand. So that the legal issues analyzed were reviewed through a comparison of the primary legal materials. Primary legal materials included Act Number 35 of 2009 concerning Narcotics and Narcotics Law No. 7 B.E.2562 (2019) and Act Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law B.E. 2559 (2016) concerning Juvenile and Family Courts, then through secondary legal materials in the form of books, journals, or previous research discussing narcotics in Indonesia and Thailand. From the data that had been collected, this research was analyzed using qualitative analysis methods so that it could be read coherently and clearly.

## RESULT AND DISCUSSION

### (1) Comparative Justification

In 2015 Indonesia and Thailand provided full political support to jointly combat the threat of illicit trafficking of narcotics and illegal drugs for the sake of regional security and stability. This is an effort to achieve the 2015 ASEAN Drug-Free goals so that it becomes a collaborative effort that is established in the eradication of narcotics (Tabitha, *et. al.*, 2022).

Thailand can be considered a suitable country for comparison due to its adherence to the Drug Free ASEAN 2015 initiative, as well as its shared commitment with Indonesia to uphold eastern culture and customs. These two countries consistently preserve and uphold their local traditions and culture. In addition, Indonesia and

Thailand serve as destinations for illicit narcotics trade from various countries, as observed from a geographical perspective. Thailand was selected as the comparative country for this legal research, based on the aforementioned justifications.

### (2) Comparison Purpose

According to Prof. Soerjono Soekanto (Arief, 2020), the purposes of comparative law include:

1. Providing knowledge about the similarities and differences between various fields of the legal system and their basic understanding;
2. Knowledge of these equations that will make it easier to hold: a. legal uniformity (unification); b. legal certainty; c. legal simplicity;
3. Knowledge of the differences that exist provides a more solid guideline or guideline, that in certain cases the diversity of laws is a reality and a matter that must be applied;
4. Comparison of laws that will be able to provide materials regarding what legal factors need to be developed or eliminated gradually for the sake of the integrity of society, especially in a pluralistic society like Indonesia;
5. Comparison of law that provides materials for the development of law between legal systems in areas where codification and unification are too difficult to achieve;
6. With the development of comparative law, the ultimate goal is no longer to find similarities and/or differences but to solve legal problems in a fair and appropriate manner;
7. Knowing the political, economic, social, and psychological motives that form the background of laws, jurisprudence, customary laws, treaties, and doctrines that apply to a country.

In line with Prof. Soerjono Soekanto's perspective on comparative law, the primary aim of this research is to examine the differences and legal similarities between Indonesia and Thailand in addressing the issue of child drug users. However, beyond this objective, the legal comparison also serves the purpose of analysing the legal elements that necessitate gradual development or elimination in the context of narcotics management by adopting various policies owned by Thailand. Thus, it is hoped that the narcotics problem can be resolved slowly in Indonesia.

### (3) Criminal System for Children Using Narcotics in Indonesia

Criminal law issues are inseparable from discussions about sentencing. Quoting the explanation on sentencing given by Prof. Sudarto that the word punishment is synonymous with the term "punishment". As the word "law" is derived from the word "punishment", it can be seen as either creating a law or determining a penalty (*berechten*). Establishing law can be understood extremely broadly, not only in the field of criminal law but also in other fields of law. Therefore, the phrase must be defined to signify that it becomes a penalty in a criminal case, which is frequently synonymous with giving or imposition of a sentence by a court (Marlina, 2011).

In Indonesia, the legal rules governing narcotics crimes are regulated in Act Number 35 of 2009 concerning Narcotics. The criminal punishments for children who commit drug crimes are not particularly regulated by the narcotics law in its regulations. In general, a child who is involved in a narcotic crime is a drug user or abuses narcotics for himself. Article 1 number 15 explains that narcotics abusers are "people who use narcotics without rights or against the law".

For legal matters of minors who break the law, there is a unique criminal justice system in Indonesian law. The enactment of Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. The juvenile criminal justice system strives to provide as a base for law enforcement officers to handle cases involving kids who have run afoul of the law, commencing with the investigative stage, and continuing through the mentoring stage after the kid has gone through the criminal process.

Children who use drugs and come into contact with the law no longer refer to the book of criminal procedure law as the formal criminal law because there is now a juvenile criminal justice system. Some of the things that are specifically regulated are:

#### a. Must prioritize restorative justice approach

The paradigm of juvenile justice philosophy has changed, initially moving away from a *retributive justice* approach and toward *restorative justice* (Purnama & Krisnan, 2016). To implement a restorative justice approach, in every case process that is undertaken by a child, diversion must be sought by the relevant law enforcement officials. It has legal ramifications for Indonesia to comply with diversion provisions when resolving children's matters that initially went via the courts by children's international instruments (Aprillianda, 2012).

#### b. Detention of children

A teenager is detained for an investigation no later than 24 hours after being

arrested. If there is not a special children's service room nearby, the child will be placed in the LPKS (The institution responsible for the implementation of social welfare programs). Children who are arrested must be placed in a special children's service room. Children have the right to be released from custody if their parents, guardians, or other institutions provide assurances that the child will not flee, lose, or destroy any evidence, or commit the same offense again. The detention of a child in the interest of an investigation is carried out for a maximum of 7 (seven) days and can be extended by the public prosecutor for 8 (eight) days. The custody of children is then carried out for a maximum of 5 (five) days and can be prolonged by the judge for an additional 5 (five) days in the interests of the public prosecution. Afterward, for examination during court proceedings. The district court chairman has the authority to prolong the judge's 10-day detention by an additional 15 days. Meanwhile, if the period as explained above in each examination process the child is still in detention, then the child must be released by law.

#### c. Court examination of children

Children under examination at trial court still get diversion efforts no later than 7 (seven) days after the judge is appointed by the chairman of the district court. Throughout the legal proceedings, it is crucial for children to have the presence of their parents, guardians or companions, defenders or other legal assistance providers, and social advisor to support them. Upon perusing the indictment, the presiding judge of the child's matter instructed the social advisor to orally present a dossier on the findings of societal investigation concerning the aforementioned child, excluding the child's presence. Judges in examining and deciding cases of children at the first level are 1 (one) person or a single judge unless cases committed by children are difficult to prove.

#### d. Crime against children

Regarding the explanation of the punishment imposed on the children, the authors refer to Article 71 which explains as follows:

"(1) Principal crimes for children consist of:

- a. Warning sentence;
- b. Criminal with conditions:
  1. Coaching outside the institution;
  2. Society service; or
  3. Supervision.
- c. Work training;
- d. Institutional coaching; and
- e. Prison

- (2) Additional punishment consists of:
  - a. Deprivation of profits derived from criminal acts; or
  - a. Fulfillment of customary obligations.
- (3) If the material law is punishable by cumulative punishment in the form of imprisonment and fines, the fine shall be replaced by job training.
- (4) The punishment imposed on the child is prohibited from violating the dignity of the child.
- (5) Further provisions regarding the forms and procedures for the execution of crimes as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be stipulated in a Government Regulation."

Based on Article 81 of the Act on the Juvenile Criminal Justice System, the maximum penalty that can be enforced on a minor is half of the maximum punishment for a grown-up. If the crime committed is punishable by death or life imprisonment, the prison sentence imposed is a maximum of 10 years.

Noticing the rule of law in the Narcotics Law it is appropriate to eradicate narcotics abuse, but this also does not necessarily apply the same if the perpetrator is a child. According to Supramono, preventing narcotics abuse is an act that closes the door for illegitimate narcotics consumers. So that the flow illicit circulation of narcotics can be cut off and it does not reach the lower-level abusers. The opposite applies, if you eradicate the illicit traffic of narcotics, then narcotics consumers will find it difficult to obtain narcotics later. This can work by imposing criminal sanctions on the perpetrators of narcotics crimes (Supramono, 2009).

Referring to the rules governing the abuse of narcotics which are contained in Article 127 of Law Number 35 of 2009 concerning Narcotics which reads:

- “(1) any abuser:
  - a. Narcotics Category I for oneself shall be punished with imprisonment for a maximum of 4 (four) years;
  - b. Narcotics Category II for oneself shall be punished with imprisonment for a maximum of 2 (two) years; And
  - c. Narcotics Category III for oneself shall be punished with imprisonment for a maximum of 1 (one) year
- (2) in deciding the case as referred to in paragraph (1), the judge must pay attention to the provisions referred to in Article 54, Article 55, and Article 103

- (3) If the abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation."

Narcotics abuse, which of course has a bad impact on its users, cannot be ignored. The punishment applied should not be equated between adult and child narcotics abusers. Noticing the fact that children as narcotics abusers are also victims of the narcotics trade itself. So that the principle of *restorative justice* must be put forward in handling it by imposing effective diversion (Lubis, 2021).

Noticing the explanation of the rules regarding narcotics abusers as aforementioned explained, then paying attention to the existing rules regarding diversion as explained in the Juvenile Criminal Justice System Law. So, it is appropriate for children who are involved in narcotics abuse to get the opportunity to solve their problems through diversion so that the needs that should be needed by children to escape the dangers of narcotics can be fulfilled.

- (4) Criminal System for Children Using Narcotics in Thailand

Substance abuse will significantly affect the physical and psychological well-being of individuals from Thailand, drugs are often an important cause of illness and premature death. Based on a national survey of households on substance use in Thailand in 2016, among the population aged 12-65 years (50.97 million people) around 2.96 million have used at least one of the narcotics. The information is acquired from the count of individuals who disclosed using one or multiple drugs within the previous 12 months. Kratom, marijuana, yaba, 4x100, and ice are the most popular narcotics used (Kanato *et al.*, 2016).

The number of narcotics users registered for treatment was quite high in 2003, namely 480,711 people but decreased between 2004 and 2010. This figure then increased again in 2012, namely 568,000 people. Most of the drug users are teenagers aged between 15-24 years (Saingam, 2018).

Further, based on the BE 2552 Narcotics Act (1979) as amended by the Narcotics Act No. 7 BE2562 (2019), the police have the authority to arrest narcotics users and conduct narcotics tests using urine samples (Saingam, 2018).

Referring to the rules governing the abuse of narcotics in Thailand, which are contained in:

- a. Article 91 reads "Everyone who consumes narcotics class I which violates Article 57 or consumes narcotics class II which violates Article 58 is threatened with imprisonment for a maximum of six months to three years or a fine of ten



thousand to sixty thousand baht or both"

- b. Article 92 reads "Anyone who consumes narcotics class V in violation of Article 58 paragraph 2, is threatened with a maximum imprisonment of one year or a maximum fine of twenty thousand baht, or both"

The Narcotics' Law over is usually used to impose criminal penalties on adults who abuse narcotics. If narcotics are abused by children, the special rules that are used are the BE Law 2559 (2016) concerning Child and Family Courts, also known as Juvenile and Family Courts. The law states that those between the ages of 7 (seven) and 14 cannot be punished, but courts can impose control of behavior through probation. For children between the ages of 14 and 17, the court may choose to keep them on probation or reduce the sentence by half. Children between the ages of 17 and 20 will face a sentence reduced by half or one-third (Noviadhealiyani, 2020).

In Thailand, there are several stages in the child case procedure, namely as follows (Ukri, 2002):

a. Pre-trial process

Any individual who has been harmed has the right to lodge a report with the authorities concerning a minor. If there are suspicions that a minor has engaged in an illegal activity, the case will begin with an investigation by investigators as required in handling criminal cases, however, the handling carried out on children is more informal. The stages in pre-trial are:

b. Arrest

Theoretically, the apprehension of a minor may not be conducted unless the offense committed is blatant or the victim insists that the minor be apprehended. Following an arrest, authorized police officers are required to report to the director of the *Observation and Protection Center* (OPC), the parent/guardian living with the child.

c. Officer investigation

Officers are required to conduct an initial investigation within 24 hours of a child's arrival at the office. The officer then will report to OPC for further investigation if required by law.

d. Temporary detention and release

In general, a child may be detained for the duration of the investigation at a police station or a detention center for observation and protection (OPC) if the detention is required. Based on the provisions of the law, children can be asked for guarantees for release from detention which must be submitted according

to the detention authority according to the case.

e. EOPC powers

OPC is legally permitted and empowered to execute subsequent primary duties such as:

- i. Create social inquiry documents about children including information on their history, family background, profession, schooling, personality, reasons for criminal behavior, and additional societal details
- ii. Create a report on the physical and cognitive assessment
- iii. Compile observation reports in cases of children or adolescents detained in detention centers

A thorough examination is necessary in every instance, with the exception of uncomplicated cases where a preliminary inquiry is unnecessary. During this procedure, the officer in charge of the matter will present a comprehensive analysis to the authorities within 18 days. Typically, the officer finalizes the report within 6 (six) days, then sends the investigative file, together with the report, to the prosecutor who holds the authority to determine, in accordance with the procedural regulations, whether to incorporate or dismiss any modifications. The Director of the OPC will deliver the report, along with recommendations concerning the reasons behind the infractions, to the JFC.

f. Prosecution and postponement of prosecution

The Public Prosecutor must submit charges to the Children and Family Court (JFC) within 30 days of the arrest of a child. If a claim against a child cannot be filed within that timeframe by coercion, the police or public prosecutor in charge of the case presents a request to the court for a temporary halt.

g. Adjudication

In the legal proceedings, the trial at the Juvenile and Family Court (JFC) is conducted solely in the best interests of the child. The presiding judge has the authority to interrogate the accused or elucidate the procedure. The defendant, parents/guardians, legal counsel, public prosecutor, witnesses, court officials, and anyone else permitted by the court attended the trial behind closed doors. Documentation and publications pertaining to the trial will not be made public. The court will appoint counsel for children who do not have representation during the trial procedure.

h. Post adjudication

Before imposing a decision on a child, the examining judge will hear a report submitted by the OPC director, including his recommendations for deciding. The steps taken by juvenile and family court judges are as



follows:

- (a) Reprimand the child or youth and then the child is expelled
- (b) Return to parent or guardian with a probation order
- (c) Placed under the supervision of a person or organization deemed good by the court
- (d) Suspension of judgment with a probationary period
- (e) Suspension of judgment without a probationary period
- (f) Hand over to the juvenile correctional institution
- (g) Substitute prison sentence for carrying out orders from a juvenile correctional institution
- (h) Suspension of judgment with a probationary period
- (i) Fine
- (j) Prison

The resolution of child cases through diversion is also recognized in the Thai Legal System. Many aspects of restorative justice are still presented in the traditional methods of community justice in certain regions. Thailand's rich cultural background and increasing challenges have led to the deficiencies of traditional criminal justice, resulting in the advancement of the justice process in Thailand. The inaugural national conference on restorative was formally held on January 6, 2002. The conference officially introduced restorative justice to the Thai criminal justice system. In Thai, the concept of restorative justice is referred to as "Samarn-Chan", which translates to social harmony, or "Yutithum Sumarn Chan", which translates to justice for social harmony, media, and society, as well as academia (Kittipong, 2003).

#### (5) Differences and Similarities in the Criminal System for Children Using Narcotics in Indonesia and Thailand

Based on the clarification mentioned earlier, it is evident that when it comes to resolving legal matters involving children involved in drug use, every nation has distinctive regulations in place. Indonesia, in its settlement, uses a special criminal justice system, namely as stated in Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. Thailand, on the other hand, applies the same, namely by using BE Law 2559 (2016) concerning Child and Family Court, or known as Juvenile and Family Court. Some of the differences and similarities between the two countries are as follows:

##### a. Child age

In accordance with the juvenile justice system, minors who can be found guilty are individuals between the ages of 12 and 18. For the punishment of narcotics users over 18 years

of age, the formal criminal law used is in accordance with the provisions in the Criminal Procedure Code. Whereas in Thailand the treatment of children and adolescents is categorized into 3 age ranges, 1) age not more than 12 years 2) age more than 12 years but not more than 15 years 3) age more than 15 years but not more than 18 years.

##### b. Settlement of cases outside the court

The Indonesian juvenile criminal justice system explains efforts to divert children before entering the trial process. Meanwhile, in Thailand, since 2010, with the legalization of the juvenile court, restorative justice had been established to sort out children who commit first-time offenses and misdemeanors using the diversion process of the prosecution tank to the juvenile court system. Furthermore, the OPC director will invite the child who is suspected of having committed an offense, community representatives, and a psychologist to attend a meeting to prepare a rehabilitation plan.

##### c. Criminal Type

In the article 71 of Act on the Juvenile Criminal Justice System divides the types of crimes against children into two, namely principal crimes and additional crimes. The primary forms of penalty encompass cautionary statements, sentences with prerequisites, vocational instruction, mentoring in facilities, and incarceration. Supplementary offenses comprise the confiscation of proceeds obtained from unlawful deeds or the execution of customary responsibilities. Article 18 of the Thai Penal Code explains the types of crimes against children, namely: giving warnings, parents are assigned to care for children on condition that parents can guarantee that the child will no longer commit crimes within 3 years, probation, coaching in institutions, and prison.

##### d. Sentence Time

Narcotics abuse in Indonesia is regulated in the article 81 of the Narcotics Law regarding the threat of punishment, namely, if they use class I the maximum penalty is 4 years, class II 2 years, class III 1 year. However, if it is proven that narcotics abusers are victims, they must undergo medical and social rehabilitation. Whereas in Thailand, regarding narcotics abusers, it is only regulated against narcotics abusers of classes I, II, and V with a maximum imprisonment of 3 (three) years.

##### e. Trial examination procedure

In the procedure for examining cases, there are similarities in the case that trials of children must be carried out behind closed doors. In the Juvenile and Family Court Law in Articles 107 and 108, it is explained that the trial of a criminal case where the defendant is a

child is carried out in a room that is not mixed with an ordinary trial. All proceedings in court are carried out in secret and only those involved in the case have the right to attend. Whereas in Indonesia, these rules are regulated in Article 3, Article 54, and Article 56 of the Law on the Juvenile Criminal Justice System.

## CONCLUSION AND RECOMMENDATION

Physical discipline for youngsters who consume drugs in Indonesia is based on Act Number 35 of 2009 regarding Narcotics. Legally, the penalization procedure is in accordance with Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. Whereas in Thailand the punishment for children who use narcotics materially refers to the Narcotics Act BE 2552 (1979) as amended by the Narcotics Law No. 7 BE2562 (2019). The formal sentencing process in Thailand refers to Law BE 2559 (2016) concerning Child and Family Courts, also known as Juvenile and Family Courts.

Moreover, each country implements a system of punishment for children who use narcotics. Certain parallels and distinctions encompass the child's age, the resolution of cases beyond the courtroom, the nature of the offense, the timing of the verdict, and the procedures for trial scrutiny. The most significant difference lies in the rules regarding narcotics abusers. Indonesia, in its implementation, implements 3 types of categories and each if violated will be subjected to imprisonment. On the other hand, Thailand applies 5 categories. Those categories are subjected to sanctions for narcotics abuse, only narcotics groups 1, 2, and 5. The sanctions imposed are not only imprisonment but there are possible alternatives to fines, even cumulative imprisonment, and fines.

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