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Efforts for Rehabilitation and Legal Protection of Underage Narcotics Crime

Parningotan Malau¹

¹Fakultas Hukum, Universitas Riau Kepulauan, Indonesia

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ABSTRACT

Narcotics crime is still a scourge in Indonesia, today the victims are children. Children are assets of survival for humans, the nation, and the state. influence that causes children to become victims of narcotics. Namely depending on external factors or internal factors. To protect children's rights to ensure a decent life, there is a need for legal protection. Violations of specific criminal offenses for Narcotics which regulate in general are regulated in the provisions of Law no. 35 of 2009 concerning Narcotics. In addition to the provisions on Rehabilitation Efforts, and special rules governing juvenile justice are contained in Law no. 11 Year 2012

ABSTRAK

Kejahatan Narkotika masih menjadi momok di Indonesia, saat ini korbannya adalah anak-anak. Anak adalah aset kelangsungan hidup bagi manusia, bangsa, dan negara. pengaruh yang menyebabkan anak-anak menjadi korban narkotika. Yaitu tergantung faktor eksternal atau faktor internal. Untuk melindungi hak-hak anak guna menjamin kehidupan yang layak, diperlukan adanya perlindungan hukum. Pelanggaran tindak pidana khusus Narkotika yang mengatur secara umum diatur dalam ketentuan UU No. 35 Tahun 2009 tentang Narkotika. Selain ketentuan tentang Upaya Rehabilitasi, dan aturan khusus yang mengatur tentang peradilan anak tertuang dalam UU No. 11 Tahun 2012.

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Corresponding Author:

Parningotan Malau,

Fakultas Hukum,

Jl. Pahlawan No.99, Bukit Tempayan, Kec. Batu Aji, Kota Batam, Kepulauan Riau 29425, Indonesia,

Email: pmalau0707@gmail.com

I. INTRODUCTION

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Indonesia is a country known as a rule of law state, this is in line with Article 1 (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI), which aims to maintain law and order and form a just society. Thus it can be interpreted that all natives who commit legal crimes, negligence, crimes against manners and even general discipline must be upheld and given sanctions. In enforcing the law there are 3 elements namely legal certainty, expediency and justice. Basically, the law exists with the aim of making society better, not intending to bring misery to society, from which the existence of the law then arises harmony, order, legal certainty, and so on. (Dwiatmodjo, 2013).

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Legal ethics and morality socially influence the subject of law as Andersen says that: "Ethics is a situation that studies values and the basis for their application. It is appropriate or inappropriate, good or bad. An ethic will no longer question the human condition but already on how humans should act but then we cannot say that an ethic will solve practical problems. An ethic does not tell a person

what to do in a particular situation. Ethical theory will help people decide what to do. So it can be said that the practical function of ethics is to provide consideration in behavior.(Muhtar, 2019). At present what is of concern as a citizen is the behavior of children, both as perpetrators (perpetrators) and targets (victims) of violations of the law, such as a highly developed conflict, namely regarding the abuse of narcotics.

Children are entrusted gifts from God, since birth children have full dignity and rights to be human beings. Children play a role as a generation for the life of society, nation and state in order to realize a better purpose in life(Hidayat, Anam and Helmi, 2019).In various parts of the globe, including the State of Indonesia, it has changed the Convention on the Rights of the Child in 1990 which was fully rounded up with other international instruments, including: Beijing Rules (1985), The Tokyo Rules (1990)), Riyadh Guidelines (1990), and Havana Rules (1990).

In national law itself the legal basis relating to children's rights includes Article 28 B paragraph (2) and Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 1979 on Child Welfare. Then Law Number 12 of 1995 concerning Society, Law Number 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, In Human or Degrading Treatment or Punishment, Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection (Child Protection Law), Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). The problem of Narcotics has become a national and even international problem that everyone is constantly talking about. At present the development of illegal Narcotics continues to increase with the development of modern traffic and means of connecting and transportation which makes the spread of Narcotics more quickly enter the territory of Indonesia. In the era of society 5.0, the level of narcotics abuse can be said to be increasingly critical, narcotics are able to undermine all levels of people's lives at various ages. Perpetrators of drug abuse are not only among adults, but also infect children like a virus that is difficult to eradicate. No doubt now there are many underage children who have to come into contact with the existence of the criminal justice system.(Greetings, 2005)states the need for protection of children in contact with a law, whether the child acts as a perpetrator of a crime or as a child victim. After all, children are the next generation of a nation in facing future challenges.

The beginning of this form of crime that makes children victims is from narcotics perpetrators, which are caused by promiscuity in the social environment, family upbringing, association, and education.(Harefa, 2017)stated that because children are victims, there is a need for legal protection in order to realize rights and obligations in growing and developing physically, mentally and socially healthy. Children who are victims of narcotics crimes should receive assistance from the social, family and institutional spheres. It is the family's obligation when they find out that their child is a victim, they are obliged to report to the Rehabilitation Institute for immediate medical treatment or social guidance. This anticipation aims to avoid negative impacts on the physical and spiritual health of victims(Najemi, Nawawi and Purwastuti, 2020).

Indonesia itself, which is a country among the many developing countries, is an easy target for illegally producing and distributing narcotics. Narcotics in Indonesia do not only infect adults, even now many children have become drug addicts, even to the point where they cannot be controlled. This is triggered because the child's curiosity tends to be high.(Jumaydi, Hidayatullah and Saputra, 2021)argues similarly, according to the public that a child will have a great sense of questioning, so something that is rarely known is appropriate for them to try without them realizing the impact that will result later.(Hermana, 2017)argues that narcotics abuse by adolescents is closely related to the causes, motivations and consequences to be achieved. As mentioned in Dr.'s research. Graha said

that a teenager or minor is triggered by the desired causes, motivations and goals. For example, a child with a broken home who does not receive love and attention from the person in charge or his guardian as a child. Start trying to consume narcotics with the excuse of eliminating loneliness, frustration, and depression. From this it can be seen that the child takes drugs because he is frustrated by the divorce of his parents, his motivation is to get rid of feelings of loneliness, frustration, and depression, until he achieves the goal of his actions, which is to gain inner peace while taking the drug.

Narcotics themselves are an entity or material that can cause addictive effects, which can affect consciousness to relieve pain, besides that narcotics can also change the nerves of the brain which causes the user to think, feel and behave abnormally (Alifia, 2019). Narcotics based on Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) is a drug product or substance whose contents are originally in the form of an aphrodisiac or non-ague, either artificial or semi-synthetic. Which has an impact on a decrease or change in effectiveness, a disappearing sense of taste, even to the loss of pain or excruciating feelings, and can even produce dependency effects.

The development of illicit circulation, manipulation and narcotics crimes in Indonesia itself began in the 1970s which infected the younger generation in several bustling big areas, such as Jakarta, Bandung and Surabaya. Then in 1980-2000 there was a significant increase in which the negative effects of drug abuse, illicit traffic and crime, not only on the user, but also related to family, financial, spiritual (moral and ethical), social and cultural aspects and it is not impossible to the emergence of several other crimes, especially those committed by the younger generation (Wirasila, Putri and Purwani, 2017).

In this study, there are several previous studies, for example, penelitian oleh Andi Najemi, Kabib Nawawi, Lilik Purwastuti "Rehabilitasi Sebagai Alternatif Pemidanaan Terhadap Anak Korban Penyalahgunaan Narkotika Dalam Upaya Perlindungan Terhadap Anak" who concludes that narcotics abusers should be considered as victims not as perpetrators, then in the application of sanctions rehabilitation should be applied instead of imprisonment. Because it does not provide protection for children. and seen from its usefulness does not provide benefits for children. Next in research Erni Agustina, Subakdi, dan Beniharmoni Harefa, "Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia", concluded that efforts to protect children who abuse narcotics, carried out through diversion efforts, aim to prevent children from formal criminal justice processes to non-formal criminal justice. Other protection with supervision, prevention, care and rehabilitation of children who abuse narcotics. The inhibiting factor, legal protection for children who abuse narcotics, first, is the lack of understanding from law enforcement officials. Second, the lack of understanding of society. Third, the lack of facilities, especially in remote areas in Indonesia. If referring to some of the research above, there is a major difference, namely the author emphasizes conceptual studies on the SPPA Law and focuses on the ideal concept of diversion in the SPPA Law.

Based on the background that has been explained, it can be taken an ongoing problem and can be formulated, namely how the effort legal protection for minors as victims of narcotics users through efforts and child protection in order to realize a non-discriminatory solution?

II. RESEARCH METHOD

The method used in this research is a normative juridical research method with an approach *state approach* as well as library research based on primary, secondary and tertiary legal materials. After all legal material has been collected, the writer then examines the suitability between the subject matter and the normative provisions. Then described in descriptive form (Henni, 2015) whose contents are

based on the provisions concerning children as victims of narcotics use. The primary legal material used is Narcotics Law, Child Protection Law, SPPA Law. Then for secondary legal materials taken from journals, articles, books, scientific papers, as well as research results published through print or electronic media. In general, this normative research begins with examining the rules related to diversion, then it is annotated in a conceptual study of the law approach, after carrying out a series of critical reviews of the problems studied.

III. RESULTS AND DISCUSSIONS

The definition of a child who has eyes with the law has been explained in the SPPA Law divided into 3, namely (1) Children who have conflicts with the law have reached 12 years of age, but ≤ 18 years are considered to have committed a crime. (2) Child Victims, namely ages starting from ≤ 18 years who are having physical, psychological disorders, or who are having problems with economic downturns that occur as a result of criminal acts. (3) A child witness is a child aged ≤ 18 years who can submit comments or explanations for the needs/needs of investigation, prosecution, and investigation of a trial in court regarding a criminal matter that has been heard, seen or experienced. So it can be concluded that a child with a legal gaze is a child who is in the position of the perpetrator, victim, and witness in a criminal act.

Narcotics crime for minors is caused by the influence of the surrounding environment which cannot be avoided. (Paramita, Mangku and Yuliantini, 2022) states that there are factors that can influence children's development, namely: (1) internal factors, which influence these factors are individuals, for example high curiosity, unstable emotional and mental control, (2) external factors, which are caused by surrounding influences, including how to socialize, parenting and family environment, as well as economic and educational social factors.

In his book (Dirdjosisworo, 1996) explained in a scientific study conducted by psychiatrist Dr. Graha Blaine reasons why a teenager consumes narcotics include:

1. Provide evidence of the level of courage in carrying out dangerous actions, such as speeding, brawls, promiscuity, etc.;
2. Proof to parents and social norms that they can challenge authority;
3. Make it easier to channel sexual desires;
4. get rid of loneliness and get emotional sensations;
5. The process of finding identity in life;
6. Eliminate depression and frustration in living life, and;
7. High curiosity so desperate to try.

In the case of the imposition of sanctions on criminal offenders basically has a critical nature about an act or what has been done, where this criminal flogging has a focus on giving a deterrent effect to the perpetrators of criminal acts. On the other hand, there is such a thing as action sanctions, in which the punishment of this action is more inclined to be anticipatory towards the perpetrator, the punishment that occurs is actually more inclined to provide assistance to the perpetrator so that he becomes a better person. (Revelation, 2021). If it is related to the crime of narcotics for minors, it can be said that the punishment imposed on minors is a sanction for action, moreover in narcotics cases minors are children in the position of victims, not purely as perpetrators. The action sanctions referred to here are medical rehabilitation and social rehabilitation.

Regarding crimes committed by children themselves, there is no limit to the seriousness or severity of the crime. In a sense, children as immature subjects both physically and mentally can still commit

criminal acts as committed by adults, one of which is the crime of drug abuse. Children who commit crimes are referred to as children who are in conflict with the law. The term child in conflict with the law refers to anyone under 18 years of age who comes into contact with the justice system as a result of being suspected or accused of an offense (Hendel, 2022).

Drugs is an abbreviation of narcotics and drugs or dangerous substances. Another term introduced by the Ministry of Health of the Republic of Indonesia is drug which stands for narcotics, psychotropics and addictive substances. Narcotics comes from the English "narcotics" which means drug. The definition of narcotics according to Smith Kline and French Clinical Staff is "Narcotics are drugs which produce insensibility or stupor due to their depressant effect on the central nervous system. Included in this definition are opium, opium derivatives (morphine, codein, heroin) and synthetic opiates (meperidine, methadone)". Based on the definition of narcotics, it can be concluded that narcotics are drugs that can cause unconsciousness because the substances contained in them affect the central nervous system.(WP, 2019).

Narcotics and other illegal drugs, become one of the triggers for the destruction of children. Children are often the target of narcotics dealers, because children are still unstable, easily influenced, so they have the potential to become entangled in the abuse of illegal drugs such as narcotics. One of the issues that needs attention at this time is when the network of illicit drug trafficking, both nationally and internationally, uses a new modus operandi, namely by involving children as narcotics couriers.

The participation of children in becoming one of the perpetrators of criminal acts, especially in narcotics, is not an ordinary thing. Because, this participation can be a bad impact on the child's psychology. Of course, there are factors that encourage the child to involve himself in this case, namely becoming a narcotics abuser, both external (external) and internal (internal) factors for the child.

Based on the literature, American scientists describe the dominant factors that make children involved in narcotics abuse, either as users or as couriers, among others (Frisher et al., 2007)

1. Personal: Viewed from a biological and psychological perspective (gender, age, ethnicity, life events, self-esteem, hedonism, to depression or mental disorders);
2. Personal: Viewed from a behavioral or attitudinal perspective (Includes personal factors that are more easily altered by changes in policy or life, such as anti-social behavior; problems with studies; use of drugs, alcohol, and cigarettes; low religious level);
3. Structural: Environment and economy (Includes problems that are outside the individual, such as poverty, low education, environmental disturbances, social sphere demands).

In addition, according to Isidor Chein, Ph.D, who is a researcher from the National Institute On Drug Abuse, he gave a view and description that(Howard et al., 2013). From the point of view of narcotics abusers, there are three main types of motivation, namely the psychopharmacological effects of the drug, motivation related to drug use rather than the effect itself, and motivation related to the counter-normative behavior involved. There are three interrelated benefits that addicts get from their involvement with narcotics, including:

1. Obtaining an identity according to what the addict expects;
2. Get a place in society, where he is really accepted as a partner who wants to accept him;
3. Earn a career guarding supplies, evading the police, and taking part in drug parties.

In general, these factors can also be expanded into:

1. Internal factors (in children as drug abusers)
 - a. Inability to adapt to the environment;
 - b. Weak personality and lack of confidence;
 - c. Lack of ability to control yourself;
 - d. High curiosity to try, imitate;

- e. Lack of deepening in matters of religion;
 - f. Unable to deal with the pressure that is being experienced
2. External Factors (outside the child as a drug abuser)
- a. Parents and families who do not give enough attention and affection;
 - b. Disharmonious family conditions;
 - c. Lack of parental supervision of children;
 - d. Family members become drug abusers so that children become motivated because they see the abuse first hand;
 - e. Economic conditions that require children to take initiative to earn money (by becoming dealers);
 - f. The scope of friends who tend to abuse narcotics;
 - g. Lack of public awareness to participate in supervising children in their environment against the practice of narcotics abuse

Based on the factors that have been described above, basically towards children and adults as narcotics abusers, they are not much different. When viewed from several cases, children who are involved in becoming drug abusers tend to start with an 'invitation' from adults who are also drug abusers. Children are directly involved, whether they are asked to become dealers with the lure of getting money, or even directly offered to use it. From this, what needs to be watched out for is the future effect on the life of the nation and state. Children as subjects are vulnerable to a legal event, special attention must be given, especially to the factors that involve children becoming drug abusers.

The age category for minors already exists in Article 1 Paragraph (1) of the Child Protection Law, namely that they have not reached the age of 18 years. So that minors who are in conflict with the law, are entitled to guarantees for legal protection. Arif Gosita stated that child protection is the result of influences related to interactions and phenomena (M. Iqbal, 2013). In addition, children are also given the right to asylum from violence and discrimination, Article 28B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

In the journal (Nyoman et al., 2020) states, Narcotics is a criminal offense which has been specifically detailed in the Narcotics Law, where this law confirms that criminal sanctions are divided into two types, namely:

1. Main criminal sanctions, threats of sanctions such as life imprisonment until the person's death, death penalty, punishment with a certain time limit, imprisonment, and fines.
2. Sanctions through rehabilitation efforts, these efforts can be carried out through medical or social treatment and care. This provision depends on the consequences, the amount of narcotics used, what kind of use it was, whether it was planned, or corporate, or carried out by a child who was not yet legally competent.

As emphasized in Article 127 Paragraph (1a) of the Narcotics Law, narcotics abusers as victims or perpetrators who order to commit or participate in committing acts without violating the law are Class I for themselves. Considering that because here the victim is a child, child protection is regulated specifically based on the foundation of a juvenile court contained in the SPPA Law. The SPPA Law does not relate it to the threat of Article 10 letter (a) of the Criminal Code regarding the principal crime (Hapsari et al., 2016) the contents of the punishment in the form of: capital punishment, imprisonment, imprisonment, fines, and imprisonment. However, the main punishments for children in Article 71 include warnings, conditional punishment (guidance outside institutions, community services, and supervision), job training, coaching within institutions, and imprisonment. Besides that, in this law there are additional penalties in the form of deprivation of profits from the perpetrator's actions and fulfillment of customary obligations.

Barda Nawawi Arief is of the view that legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to the welfare of the child itself. (Ulum 2016). Delinquency or deviant behavior of children cannot be seen as commensurate or absolutely the same as deviant acts committed by adults. Even though these actions are in the same category, judging from the level of physical and mental maturity of children it is not comparable to adults. In addition, the future of the child is also a consideration in terms of providing the right treatment for children.

Become a courier Narcotics, especially in this case the actors are children, is something that is quite fatal. In addition to children having fallen into the dark circle of narcotics, it is likely that what will happen is that they are interested in trying these illegal drugs. What's more, this position as a dealer gets a heavier penalty than the user, because he has distributed prohibited goods and it is possible to introduce them to other children who are not familiar with narcotics. Thus, the position of children as dealers is a matter that is full of risks for the development of children in general.

Accommodation of legal protection for children, can be reflected in several national and international legal instruments regarding the protection of children's rights. For example, the Convention On The Rights Of The Child which has been ratified through Presidential Decree Number 36 of 1990 concerning Ratification of the Convention On The Rights Of The Child, which regulates the rights of children including the right to obtain protection from forms of discrimination, the right to live together parents, the right to education, the right to be free from all forms of physical violence, the right to protection from the use of illegal drugs, the right to protection against torture and inhumane punishment, the right to welfare and many other children's rights regulated in other legal instruments (Andrisman, 2018).

A child who is in conflict with the law for being a narcotics abuser, continue to use the same laws and regulations even though the judicial process uses the system stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in order to continue to prioritize legal protection and uphold children's rights. itself. However, in the context of the actions that have been committed, namely the abuse of narcotics, the crime is regulated in Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.

In practice, there are at least two articles that are often used in ensnare child perpetrators of narcotics crimes, namely Article 11:

1. Article 111 Law Number 35 of 2009 concerning Narcotics, stipulates that every person who without rights or violates the law plants, maintains, owns, stores, controls, or provides narcotics class I in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years.
2. Article 127 of Law Number 35 of 2009 concerning Narcotics, stipulates that every person who abuses narcotics class I, II, III for himself shall be punished with imprisonment for a maximum of 4 (four) years, 2 (two) years, and 1 (one) year respectively. one year.

Based on Article 111, the perpetrator is threatened with imprisonment for a maximum of 12 (twelve) years and Article 127 the perpetrator is threatened with imprisonment for a maximum of 4 (four) years. If it only refers to that article, the child as the perpetrator is punished with imprisonment as determined. However, based on the provisions of Article 79 paragraph (2) and Article 81 paragraph (2) of the SPPA Law, a maximum prison sentence that can be imposed on a child is half (1/2) of the maximum prison sentence for an adult.

Law enforcement against children as victims of narcotics can be carried out through the restorative justice system, with diversionary settlement efforts. The terms of this effort apply when the victim's child gets a criminal threat for 7 years and is not a repetition of the crime. In particular, the diversion efforts in the SPPA Law aim to prevent and at the same time distance children from the

actual court process so as not to cause a feeling of trauma when they return to their usual social activities. The diversion process is carried out in a deliberative manner accompanied by the person in charge/guardian, then community instructors, and professional social workers. Seeing from Article 3 of the SPPA Law, children have rights when they carry out the judicial process, namely to be treated in a non-discriminatory humane manner, distinguished from the adult judicial process,(Ramadan et al., 2020).

Sanctions in criminal law consist of crimes and actions. It is often said that it is different from crime, that action aims to protect society, while crime focuses on the meaning of sanctions for the perpetrators of an act. However, in theory it is difficult to distinguish in this way because punishment is often said to aim at securing and improving the convict(Putu Gita Dharmaningtyas 2020).

Diversion efforts for children who are victims of narcotics can be carried out through the rehabilitation stage. In Article 54 of the Narcotics Law the rehabilitation phase is divided into 2 parts, viz

1. Medical rehabilitation, is an effort to treat and care for narcotics abusers, in order to free narcotics users from addiction (Article 1 Number (16) of the Narcotics Law).
2. Social rehabilitation, efforts to recover abusers through social, physical and mental activities, (Article 1 Number (17) of the Narcotics Law).

In the Narcotics Law, narcotics victims who are underage, their parents or guardians are required to report to a health center or rehabilitation institution that has been sent by the government as a form of recovery or treatment. In other national laws that have a system for children who use narcotics that are protected in Article 67 of the Child Protection Act. According to(Novitasari, 2017), medical rehabilitation efforts are carried out by means of treatment and medication to reduce victims of narcotic addiction. The administration of the drug is tailored to the individual needs of the patient. For efforts to implement medical rehabilitation, it is contained in Permenkes No. 2415/MENKES/Per/XII/2011. Regarding system efforts, the obligation to report regarding medical rehabilitation for addicts, abusers or victims is set forth in the regulations in the provisions of **Permenkes No. 50 of 2015 concerning Technical Guidelines for Carrying out Reports and Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse** which was passed on July 13, 2015.

Next, the goal of social rehabilitation for children is to achieve acceptance and teach them not to consume drugs in the social environment of the community. For minors who are victims of narcotics, it has been confirmed in Permensos No.26/2012 concerning General Social Rehabilitation of Victims of Narcotics, Psychotropic and Other Addictive Substances Abuse, which has been in force since its enactment, namely November 29, 2012. The indicators are for understanding the program, targeting accuracy , timeliness, target realization, achievement of a real change.

IV. CONCLUSION

There are factors that can affect a child's development,namely: (1) internal factors, which influence these factors are the individual individuals, for example a high sense of curiosity, unstable emotional and mental control, (2) external factors, which are caused by surrounding influences, including the way of association, parenting style and family environment, as well as from social economic factors and education. For minors who are victims of narcotics, it has been confirmed in the Minister of Social Affairs Regulation No. 26 of 2012 concerning Social Rehab for victims of Narcotics and Psychotropics Abuse as a general standard.

Talking about criminal acts of children cannot be separated from the names of parents. Parents play an important role in the development and behavior of children. Children who feel neglected by their parents do not rule out the possibility of using narcotics as an escape. Our savings to parents provide

supervision of children and guide children to comply with existing regulations. External factors also affect environmental conditions, for example, if the environmental conditions are good then the child will also behave well, as the saying goes, a good environment will create a good personality.

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