

## Analysis of Judge's Decision In Deciding Case Of Children Who Criminate Narcotics

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### Abstract

*Children are a gift from Allah SWT which is expected by every prospective parent, Children are also part of the younger generation, one of the human resources who are potential and successors to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, requiring guidance and protection. in the context of complete, harmonious, harmonious and balanced physical, mental and social growth and development. Prior to the enactment of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, basically children with problems were categorized in terms of juvenile delinquency, which refers to Law Number 3 of 1997 concerning Juvenile Court. Currently almost all children are in conflict with the law, especially those brought to the Criminal Justice system, judges still impose criminal penalties, that includes deprivation of liberty. If children are in prison, many of their rights guaranteed by the Child Protection Act are not fulfilled. In addition, with the limited number of detention centers and prisons for children, children are often combined with adult prisoners. The regulation of narcotics crime is expressly regulated in Law No. 35 of 2009. The form of the sentencing process for the defendant's case in the criminal justice system is expressly regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The judge in this case has applied the articles contained in the Juvenile Criminal Justice System. In addition, the application of criminal sanctions in the case of a child defendant in this case is in accordance with imposing a prison sentence on a child, because no justification and forgiving reasons have been found. so that the child defendant must be held accountable for his actions. This is also in accordance with the theory of punishment, namely the theory of deterrence.*

*Keywords: Prison, Children, Narcotics Abuse*

### 1. Introduction.

Children are a gift from Allah SWT which is expected by every prospective parent, Children are also part of the younger generation, one of the human resources who are potential and successors to the ideals of the nation's struggle, which have a strategic role and have special characteristics and characteristics, requiring guidance and protection in the context of complete, harmonious, harmonious and balanced physical, mental and social growth and development. Children have human rights from birth, so that no human or other party can take away these rights.

Protection of children in a nation is a benchmark for how the nation's civilization is, therefore it must be fought for in accordance with the capabilities of the homeland and nation. Child protection intends to seek right and fair treatment, to achieve the welfare of the child.<sup>1</sup>As regulated in Article 53 of Law Number 39 of 1999 concerning Human Rights and for the benefit of the Rights of the Child, it is recognized and

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<sup>1</sup>Nashriana, Protection of Criminal Law for Children in Indonesia, (Jakarta: Rajawali Pers, 2011), p. 3

protected by law even from the time in the womb. The basic right of children is to obtain protection from both parents, society and the state. Getting education, guaranteed health and welfare are some of the rights of children. The guarantee for the protection of children's rights is in accordance with the values of Pancasila and the goals of the state as stated in the Preamble to the 1945 Constitution.<sup>2</sup> So it is necessary to make various efforts to provide guidance and protection for children, both regarding institutions and legal instruments that are more adequate.

Prior to the enactment of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, basically children with problems were categorized in terms of juvenile delinquency, which refers to Law Number 3 of 1997 concerning Juvenile Court. After the Law on Child Protection was enacted, the term changed to a child in conflict with the law (ABH), and currently Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also uses the term child in conflict with the law. Juvenile delinquency is taken from the foreign term Juvenile Delinquency, juvenile means young, children, young people, characteristics or characteristics of youth, the characteristics of the adolescent period, while delinquency means doing wrong, being neglected/ignored,

Currently almost all children are in conflict with the law, especially those brought to the Criminal Justice system, judges still impose criminal penalties, that includes deprivation of liberty. If children are in prison, many of their rights guaranteed by the Child Protection Act are not fulfilled. In addition, with the limited number of detention centers and prisons for children, children are often combined with adult prisoners.

This detrimental tendency is a result of the involvement of children in the juvenile criminal justice process, and is caused by the effects of criminal sanctions in the form of stigma. Negative effects due to the juvenile criminal justice process, namely negative effects that occur before the trial, negative effects during the trial and negative effects after the trial in the form of physical and emotional suffering such as fear, anxiety, sleep disorders, appetite disorders and mental disorders. As a result of all these children become restless, tense, lose emotional control, cry, tremble, embarrassed and so on.<sup>3</sup>

There is a negative effect caused by the existence of a criminal court process, both before the trial, during the examination of the case, and the negative effect after the trial of a criminal case. The negative effect before the case examination arises because there are sources of pressure such as: unsympathetic questions; the child has to retell unpleasant events; awaiting trial; and separation from family. The negative effect when the trial process against children is due to the layout of the court, (the victim and witnesses speak before adults or court officials). The negative effect after the trial on the child, this is due to the judge's decision. With the sentencing decision against a child, the stigma continues, guilt in the child and comes to anger from the family.

Therefore, child protection is an effort to create a condition where children can carry out their rights and obligations. Based on the concept of *parents patriae*, namely

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<sup>2</sup>Irsan Koesparmono, *Child Protection Law*, (Jakarta: UPN, 2006), p.2

<sup>3</sup>Setya Wahyudi, *Implementation of the Idea of Diversion in the Development of the Juvenile Criminal Justice System in Indonesia*, (Yogyakarta: Genta Publishing, 2011), p. 53

the state gives attention and protection to children as parents do to their children, the handling of children who are in conflict with the law must also be done in the best interests of children and based on the values of Pancasila. Children are not to be punished but must be given guidance and coaching, so that they can grow and develop as normal children who are healthy and fully intelligent.

To avoid the negative effects or impacts of the juvenile criminal justice process, guidelines for efforts to avoid these negative effects are given. Efforts to avoid the negative effects of the criminal justice process are by giving authority to law enforcement officers, one of which is judges to take policy actions in dealing with or resolving problems regarding children.

## **2. Methods**

The type of approach used is the Juridical Sociological approach, data collection usually uses the methods of observation, documentation and interviews.<sup>4</sup>The sociological juridical approach method emphasizes research that aims to gain empirical knowledge by going directly to the object, namely analyzing judges' decisions in deciding cases of children who violate narcotics criminal law. And the approach method used in this research is empirical juridical research, namely research whose data sources are primary data, namely data obtained directly through field research conducted either through observation (observation), and interviews with respondents related to the implementation of the accumulation of criminal and criminal acts. imprisonment for narcotics crime. This is in accordance with Burhan Ashofa's opinion. The empirical juridical approach technique is used to analyze and provide answers to legal problems in accordance with the intended target.

## **3. Research Results And Discussion**

Judges' steps in deciding cases of children committing narcotics crimes. Children as the nation's buds have special characteristics and characteristics in assuming responsibility for the continuity of the state's existence in the future. So it is necessary to open up opportunities for children to be able to grow and develop physically and mentally that can be maintained so that deviations do not occur. In the Indonesian constitution, children have a strategic role which is explicitly stated that the state guarantees the rights of every child to survival, growth, and development as well as protection from violence and discrimination. Therefore, the best interests of children should be lived as the best interests for the survival of mankind.

According to the judge of the Tegal District Court, "Aberrations in behavior or unlawful acts committed by children are influenced by several factors, including factors originating within the child and factors originating from outside the child. Factors that come from the child's self, namely, the search for identity which at the time of puberty children tend to seek self-identity or brand identity. Then, factors that come from outside the child, namely, the family because of the first environment they have known

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<sup>4</sup>Soerjono Soekamto, Introduction to Legal Research, (Jakarta: University of Indonesia Press, 1986), p. 51

since childhood until growing up, the way parents educate, pay attention and take care of their children is a factor in shaping the character of the child.

The Head of the Tegal City Police, AKBP Rahmad Hidayat, SS said that "We present this activity as a form of our legal mandate as executor of duties that the public needs to know in this case we will present data related to the disclosure of cases and events in particular. events that have occurred in the Tegal City area within the last one year. Then for the 10 most prominent cases, we see that drugs still dominate crimes or criminal acts that occur in the Tegal City area. The number is quite a lot compared to other cases. There are 47 cases. However, we can complete the report on this drug crime up to one hundred percent."

Crime in Dutch is termed as straf, but basically it can be interpreted as a suffering which is intentionally imposed or imposed on someone who has been proven guilty of committing a crime. Crime is defined as a suffering that is deliberately imposed or given by the state to a person or persons as a result of punishment (sanctions) for him for his actions that have violated the prohibition of criminal law. In particular, this prohibition in criminal law is referred to as a crime (strafbaar feit).

Punishment in a narrow sense can be referred to as punishment. Sentencing in a broad sense is a decision taken from the process of considering a case which contains the determination of sanctions and the process of granting sanctions in criminal law.<sup>5</sup>

Criminal sanctions are said to be the ultimum remedium (last remedy), meaning that criminal sanctions can only be used if other legal remedies are deemed incapable. This causes criminal law as a subsidiary law. Sanctions known in positive criminal law are regulated in Article 10 of the Criminal Code. Various types of crimes are grouped into two, namely the main crime consisting of the death penalty, imprisonment, confinement, fines, and imprisonment. Additional punishment consisting of revocation of certain rights, confiscation of certain goods, and announcement of judge's decision. In the Criminal Code, an alternative system is known (various types of principal penalties are threatened, but only one can be imposed).<sup>6</sup> Meanwhile, additional penalties can only be carried out together with the main punishment. In imposing criminal sanctions against the defendant, it cannot be separated from the basis of the judge's consideration in making the decision. The realization of the value of a judge's decision that contains the value of justice, legal certainty and benefits for the parties concerned is based on the existence of a judge's consideration so that it must be handled carefully, well and carefully. Before the judge considers the aggravating and mitigating factors for the defendant, the judge sees or considers the facts and circumstances of the defendant in carrying out the action or deed.

Based on the results of interviews with the judges of the Tegal District Court, it was stated that the basis of the judge's considerations in giving a decision on imposing a prison sentence was as follows:

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<sup>5</sup>Andri Winjaya Laksana, Criminalization of Cybercrime in a Positive Criminal Law Perspective, Journal of Law Unissula, Volume 35, Number 1, 2019, p. 57

<sup>6</sup>Chandra Yusuf, Impact of the Separation of Authority Between the Constitutional Court and the Supreme Court in Interpreting the Laws and Subordinate Regulations, Unissula Law Journal, Volume 37 Number 2, December 2021, p. 92

- The quality of the act and the consequences of the act, where the child defendant cannot control his mind and himself so that he commits an act that is prohibited by law, namely narcotics abuse. So that in order to improve the child accused, it is necessary to carry out coaching in prisons.
- The actions taken have disturbed the public regarding the spread of narcotics abuse in children.
- The behaviour of the accused child while the child is with his family is also a consideration for the judge in giving this decision.
- With the imposition of imprisonment, it is hoped that the child defendant of child narcotics abuse will have a deterrent effect so that he will not repeat his actions again.

Imprisonment of child defendants for narcotics abuse has not been oriented to the interests of child growth, development and protection. Law enforcers are only oriented to the tasks and authorities that have been set out based on the policies of the laws and regulations. The alternative model of diversion has benefits for child defendants compared to imprisonment, such as children getting a greater opportunity to be rehabilitated, reducing court workloads, increasing the role and awareness of parents and the child's family environment, as well as many more benefits that can be provided by diversion. However, the tendency of judges who are still implementing imprisonment for child accused of narcotics abuse,

Diversion is the transfer of the settlement of children's cases from the criminal justice process outside the criminal justice process, and to that process with the following conditions:

- Sentenced to imprisonment under 7 (seven) years.
- And not the repetition of a crime.

In article 42 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is also explained that:<sup>7</sup>

- The Public Prosecutor is obliged to seek Diversion no later than 7 (seven) days after receiving the case file from the investigator.
- The diversion as referred to in paragraph (1) is carried out no later than 30 (thirty) days.
- In the event that the Diversion process succeeds in reaching an agreement, the Public Prosecutor shall submit the Minutes of Diversion along with the Diversion agreement to the head of the district court for determination.
- In the event that Diversion fails, the Public Prosecutor is obliged to submit an official report on Diversion and delegate the case to the court by attaching a report on the results of community research.

The diversion process is carried out through deliberation involving children and their parents or guardians, victims and their parents or guardians, community counsellors, and professional social workers based on a restorative justice approach.

The solution is through diversion in children with narcotics abuse, one of the options is through rehabilitation so that the child can be gradually freed from his

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<sup>7</sup>Child Criminal Justice System Act

dependence on narcotics. In the process itself, there are things or conditions that must be met, namely the existence of a rehabilitation centre or community institution that can accommodate and help children to be free from dependence and can return to their families and communities. The judge and the child defendant must be able to find an institution that is willing to rehabilitate the child defendant so that he can return to normal.<sup>8</sup> However, if there is no place for rehabilitation or a community institution that is willing to handle the case of dependence on the child accused, the diversion process will be difficult to continue. So that this can be an obstacle in the implementation of diversion.

Based on the results of interviews with the judges of the Tegal District Court, it was stated that diversion was also attempted at the investigation stage at the police and at the prosecution stage at the district attorney's office. If the parties reach an agreement not to proceed with the case, then the judge who examines the case as well as the facilitator then issues a decision containing the termination of the case which will then be made an official report on the diversion process. However, if otherwise no agreement is found in the diversion process, the case will be continued in the trial process.

Factors that hinder judges in deciding cases of children committing narcotics crimes. Imprisonment for a child is not necessarily a deterrent, but it can damage the child's mentality which causes the child to have the risk of repeating a crime because of the labelling of society that has considered children in conflict with the law as bad individuals.<sup>9</sup> Children in conflict with the law must undergo a diversion process at every stage, where the diversion aims to prevent children from the judicial process. When handling children who are in conflict with the law, especially in handling narcotics crime cases committed by children, they must pay attention to the provisions of the category of crime and the age of the child first. Obstacles are obstacles or obstacles. Constraints have a very important meaning in carrying out a task or job. A task or work will not be carried out if there is an obstacle that interferes with the work. Constraints are conditions that can cause implementation to be disrupted and not carried out properly. Every human being always has obstacles in everyday life.

Based on the results of interviews with the judges of the Tegal District Court, it was stated that diversion was also attempted at the investigation stage in the police and during prosecution at the district attorney's office, but did not find an agreement so that the case was continued at the trial stage. Diversion is attempted before the trial process begins. If the parties reach an agreement not to proceed with the case, then the judge who examines the case as well as the facilitator then issues a decision containing the termination of the case which will then be made an official report on the diversion process. However, if no agreement is found in the diversion process, the case will be continued in the trial process.

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<sup>8</sup>Agus Setiawan, Law Enforcement in the Crime of Narcotics Abuse, Unissula Law Journal, Volume 35 Number 2 , 2019, p. 145

<sup>9</sup>Khisni, Ahmad. (2015). The Development of Islamic Legal Thought. Semarang: UNISSULA Press.

dependence on narcotics. In the process itself, there are things or conditions that must be met, namely the existence of a rehabilitation centre or community institution that can accommodate and help children to be free from dependence and can return to their families and communities. The judge and the child defendant must be able to find an institution that is willing to rehabilitate the child defendant so that he can return to normal. However, if there is no place for rehabilitation or a community institution that is willing to handle the case of the child defendant's dependence, it will be difficult to proceed with the diversion process.

Another problem that often occurs in the implementation of diversion is the readiness of law enforcers to carry out diversion, most law enforcers are still not fluent in carrying out diversion so they do not make diversion the main way of solving a case. This means that the understanding of the values in the concept of diversion by law enforcers is different. The next obstacle is the child does not admit his actions. This is also an obstacle for the implementation of diversion because narcotics abuse is a victimless crime. The existence of a confession/statement of guilt from a child as a criminal is an important thing in diversion efforts.<sup>10</sup> More than that, the diversion effort is an effort to learn and recover children as criminals. The absence of a confession/statement of guilt from the perpetrator of a crime is an impetus for a formal legal process for a criminal act. On the other hand, the perpetrator's willingness to solve the problem through diversion plays an important role. Diversion efforts cannot be carried out without the willingness of the perpetrator, even though the perpetrator admits his actions. The family of the accused child still does not understand the special rights of children in conflict with the law, namely that divers can be carried out if the age and crime committed by the child are in accordance with the diversion requirements.

If the child's family is willing to obtain legal assistance, then his party can seek to diversion the case. Apart from the family, the community also plays an important role in the successful implementation of diversion. The lack of public understanding of what is meant by diversion is the lack of public knowledge that diversion is actually more beneficial for the interests of the child than the judicial process in court.

#### 4. Closing

Deviations in behavior or unlawful acts committed by children are influenced by several factors, including factors originating within the child and factors originating from outside the child. Factors that come from the child's self, namely, the search for identity which at the time of puberty children tend to seek self-identity or brand identity. Then, factors that come from outside the child, namely, the family because of the first environment they have known since childhood until growing up, the way parents educate, pay attention and take care of their children is a factor in shaping the character of the child. And also the environment for playing or socializing every day is also included in the biggest factor determining how to determine the future of the child. In this case, a child who has been convicted of a narcotics crime If the parties reach an agreement

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<sup>10</sup>Sri Kusriya. "Spatial Synchronization and Territorial Planning Policies between Regions and National Spatial Planning". *Journal of Sovereign Law* Vol 4, No 2 (2021). p. 110, url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/15714>

not to proceed with the case, the judge who examines the case as well as the facilitator then issues a decision containing the termination of the case which will then be made an official report on the diversion process. However, if otherwise no agreement is found in the diversion process, the case will be continued in the trial process.

The obstacles faced in the implementation of diversion are first, the absence of a diversion agreement in the diversion deliberation conducted by the parties. Second, there is no place for rehabilitation that is willing to accommodate child defendants to be able to help him free from dependence on narcotics abuse. Third, there is still a lack of readiness and understanding from law enforcers in implementing diversion. Fourth, the child defendant does not want to admit his actions. The existence of a confession or a statement of guilt is an important thing in the diversion effort. Fifth, the family still does not understand the special rights of children in conflict with the law. Then, the role of the community is also important in the successful implementation of diversion.

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