

## **Diversion Efforts for Children in Conflict with the Law for Narcotics Crimes Linked to the Juvenile Criminal Justice System (SPPA)**

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**Abstract.** *The purpose of this research is to find out and analyze application of diversion for children in conflict with the law narcotics crime in the juvenile criminal justice system. To find out and analyze diversion efforts for children who are in conflict with the law on narcotics crimes in relation to the Juvenile Criminal Justice System (SPPA). the method used by the researcher is normative legal approach and the specifications in this study include descriptive analysis. the sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the study, implementation of Diversion for Children in Conflict with the Law for Narcotics Crimes in the Juvenile Criminal Justice System reviewed from the legal position of diversion for children who abuse narcotics in the perspective of the development of criminal law is a non-penal policy step for handling children who commit crimes, because the handling is diverted from the juvenile justice system. Diversion is based on the assumption that the process of handling children through the juvenile justice system is more likely to be negative than positive for the development of children. In relation to the handling of children who abuse narcotics, the main problem arising from the juvenile criminal justice process or a criminal decision is the stigma attached to convicts of narcotics abuse after the completion of the criminal justice process. Diversion Efforts for Children in Conflict with the Law for Narcotics Crimes Associated with the Juvenile Criminal Justice System (SPPA) are diversion efforts against children's deviant behavior or committing crimes can be resolved better, without ignoring the interests and welfare of the child, and appropriate actions can be taken according to the needs and interests of the child. This diversion or diversion policy is the best solution that can be used as a formula in resolving several cases involving children as perpetrators of criminal acts, especially in handling*

*children who abuse narcotics. So that it will be more appropriate in determining the actions (treatment) that need to be applied to it.*

**Keywords:** *Children; Criminal; Diversion; Justice.*

## 1. Introduction

The discussion about children and protection will never stop throughout the history of life, because children are the next generation of development, namely the generation that is prepared as the subject of implementing sustainable development and the holder of control of the future of a country, including Indonesia. Protection of Indonesian children means protecting the potential of human resources and building the whole Indonesian people, towards a just and prosperous society, spiritual material based on Pancasila and the 1945 Constitution.

The development of law in Indonesia itself is very dynamic and always changing following the development of society, the development of law especially in the development of criminal (material) and criminal procedure law (formal) outside the territory of Indonesia KUHP (Criminal Code Book) and the Criminal Procedure Code (Indonesian Language Book of Criminal Procedure Law) which are currently in effect. This is because the basic rules of the Criminal KUHP (material) of the Criminal Code and the Criminal Procedure Code (formal) of the Criminal Procedure Code which are old legal products that have not been updated or revised, only revisions / material tests of the Articles in both laws and regulations do not replace / revise the entire Criminal Code or Criminal Procedure Code.<sup>1</sup>

Children are a reflection of a generation or nation in the future, the quality of children will be a picture of future life. Children are often considered as humans who are not yet worthy of being before the law, even though in fact children are included in the subject of law, this is proven by the existence of the Child Protection Law (Law Number 35 of 2014 concerning Child Protection). Children who are said to be legal subjects are children who are facing or in conflict with the law.

Some regulations have different views in defining a child. In the Criminal Code Article 45 it is stated that the age limit for criminal punishment is 16 years.

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<sup>1</sup>Moch. Isa Nazarudin, Umar Ma'ruf, 2020, Comparison Of The Implementation Of Pre-Court Process Before And After The Constitutional Court Decision Number: 21 / PUU-XII / 2014 In The Batang, Jurnal Daulat Hukum Volume 3 Issue 1, Unissula

In Law Number 3 of 1997 concerning Juvenile Courts which was updated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children are limited to ages between 8 (eight) years and 18 (eighteen) years, while the second requirement is that the child has never been married and is not currently bound in a marriage or has been married and then divorced. If the child is currently bound in a marriage or the marriage ends due to divorce, then the child is considered an adult even though he/she is not yet 18 (eighteen) years old.<sup>2</sup>

As an effort to overcome the weaknesses of Law Number 3 of 1997 concerning Juvenile Courts which does not contain the concept of Diversion and places children in the status of prisoners, changes were made to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which uses a restorative justice approach through the Diversion system. This regulation regulates the obligations of law enforcers in seeking Diversion at all stages of the legal process. Diversion is the transfer of the settlement of Juvenile cases from the criminal justice process to a process outside the criminal justice system.<sup>3</sup>

Criminal acts committed by children are generally a process of imitating or being influenced by adults. The formal criminal justice system that ultimately places children in the status of prisoners certainly has quite significant consequences in terms of child development. The process of law enforcement through the formal criminal justice system by putting children in prison has not succeeded in making children deterred and become better individuals to support their growth and development process. Prison often makes children more professional in committing crimes.<sup>4</sup>

One of the legal issues that has been enacted is about drug abuse. Regulations on drug abuse have been outlined in Law Number 35 of 2009. Drug abuse in Indonesia is apparently not only carried out by adults but also by children. Drug abuse by children is increasing every year.

Drug abuse is a crime that has a broad and complex social impact. Criminal punishment for children will cause prolonged trauma to children, which will have a negative impact on children in their life development.

Furthermore, drug abusers who receive rehabilitation guarantees based on Article 4 of Law No. 35 of 2009, but in Article 127 drug abusers are made subjects who can be punished and lose their rehabilitation rights, unless it can be proven or proven to be victims of narcotics. In fact, proving that drug

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<sup>2</sup> Harrys Pratama Teguh, 2018, *Theory and Practice of Child Protection in Criminal Law*, Andi Offset, Yogyakarta, p. 15.

<sup>3</sup><http://www.Hukumonline.com/berita/baca/lt5475dd3e4d788/icjr>,

<sup>4</sup>M. Joni and Zulchaina Z. Tanamas, 1999, *Legal Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child*, Citra Aditya Bakti, Bandung, p. 1

abusers are victims of narcotics is difficult, because it must be seen from the beginning of the drug user using narcotics. In addition, it needs to be proven that drug users when using narcotics are in a condition of being persuaded, tricked, deceived, forced and/or threatened to use narcotics. The many terms can confuse law enforcement officers in implementing the Articles in Law No. 35 of 2009. The position of drug addicts has a slightly different position from other criminals, namely the problem of drug addicts according to the provisions of the law, on the one hand are perpetrators of the crime of drug abuse, but on the other hand are victims.<sup>5</sup>

The purpose of this research is to find out and analyze application of diversion for children in conflict with the law narcotics crime in the juvenile criminal justice system. To find out and analyze diversion efforts for children who are in conflict with the law on narcotics crimes in relation to the Juvenile Criminal Justice System (SPPA).

### **1. Research methods**

The method used by the researcher is normative legal approach and the specifications in this study include descriptive analysis. the sources and types of data in this study are secondary data obtained from literature studies.

### **2. Results and Discussion**

#### **3.1. Implementation of Diversion for Children in Conflict with the Law for Narcotics Crimes in the Juvenile Criminal Justice System**

There is a view that the use of criminal law as a means of overcoming crime cannot be dismissed with the understanding that its use must remain subsidiary. This means that as long as the use of means outside the criminal justice system is considered more effective, then the use of criminal justice should be avoided as much as possible. In addition, if criminal (law) is to be used as a means to achieve a complete Indonesian human being, then a humanistic approach must also be considered. This is important not only because crime is essentially a humanitarian problem, but also because in essence criminal law itself contains elements of suffering that can attack the most valuable interests or values for human life.<sup>6</sup> Therefore, the use of criminal law as a means of combating crime cannot be ignored, in fact its use must be integrated with instruments/means outside the criminal justice system.

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<sup>5</sup>Hera Saputra, Munsyarif Abdul Chalim, 2018, Implementation of the Criminal System Against Perpetrators of Drug Abuse Crimes (Case Study at the Central Java Regional Police), Jurnal Daulat Hukum, Vol. 1. No. 1, Unissula

<sup>6</sup>Barda Nawal Arief, Legislative Policy in Combating Crime with Imprisonment, Diponegoro University Publishing Agency, Semarang, 1994, p. 41.

Legal provisions regarding the age limit for criminal responsibility of children who commit crimes are regulated in criminal law in Indonesia, namely in the Criminal Code, then replaced by Law Number 3 of 1997 concerning Juvenile Courts (Juvenile Court Law), and finally replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Juvenile Justice Law). With the hope that guarantees that children's rights are fulfilled, including children who commit crimes. Even if a child commits a crime that is detrimental to society, the principle of child protection must still be upheld.<sup>7</sup>

Nowadays, there are many cases of drug abuse, not only by adults but also by children. But in this case, it is still dominated by the settlement of child cases through litigation. Children involved in drug abuse are certainly not born by themselves, but through a process of consideration from criminal organizations or drug trafficking syndicates.<sup>8</sup> In line with this, children who abuse narcotics cannot be seen only as perpetrators of criminal acts, but must also be seen as victims because in essence, narcotics abuse can be qualified as a crime without victim.<sup>9</sup> Kekab the normative regulation that specifically regulates legal protection for children as perpetrators of narcotics crimes causes the boundaries between perpetrators and victims to no longer be clearly visible. This causes judges to have their own discretion or views in imposing punishment. The concept of diversion in the SPPA Law is a process of renewing child criminal law, where diversion is the transfer of the regular judicial process (litigation) to a process outside the criminal justice system (non-litigation).<sup>10</sup> Diversion efforts must be carried out in every juvenile criminal justice process, both in the investigation process, prosecution, and examination before the trial. The Supreme Court issued Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System to follow up on the implementation of the diversion.<sup>11</sup>

Drug abuse is qualified as a criminal act in Law Number 35 of 2009 concerning Narcotics. The application of the criminal punishment system for

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<sup>7</sup> Teguh Ariawan, Siti Rodhiyah Dwi Istinah and Denny Suwondo, 2022, The Implementation of Child Violence, Law Which Caused the Fatal Death, *Law Development Journal*, Volume 4 Issue 1, Unissula, p. 157, <http://jurnal.unissula.ac.id/index.php/ldj/article/view/21246/6896#>

<sup>8</sup> Koesno Adi, 2015, *Diversion of Child Narcotics Crimes*, Setara Press, Malang, (hereinafter referred to as Koesno Adi I), p. 82

<sup>9</sup> Ciptono, C. 2019. *Implementation of Narcotics Crimes Against Children in Indonesia*. Adil Indonesia Journal, 1(1). p.14

<sup>10</sup> Sherfany, RD 2016. *Reformulation of Diversion in the Child Criminal Justice System Law Reflecting the Principle of Child Protection*. Collection of Student Journals of the Faculty of Law. p.11

<sup>11</sup> North, NPS, Sarjana, IM, & Setiabudhi, IKR *Discrimination in the Application of Diversion to Children Who Commit Criminal Acts*. Kertha Wicara: Journal of Legal Science. p. 7

perpetrators of drug abuse prioritizes a humanistic approach that takes into account the principle of individualization of punishment in the use of criminal sanctions as a means of overcoming crime. In essence, drug abusers are also victims who need medical help. The application of actions in the form of medical and social rehabilitation aims to improve the condition of drug abusers so that they are free from drug dependence so that they can return to society normally.<sup>12</sup>

According to the Juvenile Criminal Justice System, the implementation of criminal ownership of independence and confidence in the last resort. However, related to children who are victims of drug abuse or narcotics involved in criminal acts, the judge decides that cases of children in criminal inequality often occur.<sup>13</sup>

Un Law Number 11 of 2012 concerning the Juvenile Criminal Justice System requires every law enforcement officer, be it the police, prosecutors, and judges, to conduct diversion in criminal cases committed by children. This is emphasized in Article 7 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that at the level of investigation, prosecution, and examination of children's cases in the district court, diversion must be attempted. The statement of this Article shows that as much as possible, criminal acts committed by children are attempted not to continue to the level of examination in court to sentencing, but are attempted to restore them to their original condition because they are related to the child's mental condition and development which is still unstable.

The development of narcotics regulation in Indonesia is inseparable from the legal consequences of various International Conventions on narcotics ratified by Indonesia. At the time the Vietnam war was at its peak in the 1970s, almost all countries in the world, especially in the United States, drug abuse increased greatly and most of the victims were young people.<sup>14</sup>

The use of criminal law as a means of overcoming drug abuse committed by children is essentially a dilemmatic choice. Given that criminal justice as a means of overcoming drug abuse committed by children often presents itself only as a legal "machine" that will only produce "procedural justice". So

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<sup>12</sup>Dafit Supriyanto Daris Warsito, 2018, The Criminal System for Narcotics Abuse Criminals, Jurnal Daulat Hukum Vol. 1. No. 1, Unissula

<sup>13</sup> Dudu Wawan Setiawan and Bambang Tri Bawono, 2019, Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 /PN.Dps.by Denpasar State Court DecisionNo. 14 / Pid.Sus.Anak / 2015 /PN.Dps.Journal of Legal Sovereignty Volume 2 Issue 4, Unissula, p. 580, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8434/3906>

<sup>14</sup> R. A. Sujono, and Bony Daniel, 2013, Comments & Discussion of Law Number 35 of 2009 concerning Narcotics, Sinar Grafika, Jakarta, p. 8

the results are often unsatisfactory and clearly ignore the interests and welfare of children. So the results are often unsatisfactory and clearly ignore the interests and welfare of children.

Child protection as an effort to protect children so that children can exercise their rights and obligations in a balanced and humane manner. The manifestation is in the form of coaching, guidance, assistance, inclusion, supervision, prevention, educational guarantee arrangements that educate constructive, integrative physical and social aspects of children. Children are those who are not yet adults and become adults because of certain regulations (mentally, physically and socially immature).<sup>15</sup>

Implementation of Diversion for Children in Conflict with the Law for Narcotics Crimes in the Juvenile Criminal Justice System reviewed from the legal position of diversion for children who abuse drugs in the perspective of criminal law development is a non-penal policy step for handling children who commit crimes, because the handling is diverted from the juvenile justice system. Diversion is based on the assumption that the process of handling children through the juvenile justice system is more likely to be negative than positive for the child's development. In relation to the handling of children who abuse drugs, the main problem arising from the juvenile criminal justice process or a criminal decision is the stigma attached to convicts of drug abuse after the completion of the criminal justice process. The increasing tendency of drug abuse by children encourages efforts to overcome and handle it specifically in the field of juvenile criminal law.

### **3.2. Diversion Efforts for Children in Conflict with the Law for Narcotics Crimes Linked to the Juvenile Criminal Justice System (SPPA)**

One form of national legal reform is the creation of new legal provisions needed to meet the demands of community development, so that it is felt to be appropriate and fair. The reform of the juvenile criminal justice system is the preparation of new laws and regulations because the old laws and regulations, namely Law Number 3 of 1997 concerning Juvenile Courts, are considered no longer in accordance with the development and legal needs of society and have not comprehensively provided legal protection to children.

UJuvenile Court Law, there have been efforts to change the paradigm of child criminalization in Indonesia which is no longer aimed at revenge or retributive but more directed at the process of guidance so that their future is better. This paradigm is felt to be insufficient because the development of children's needs is further from the provisions in the law, where the

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<sup>15</sup> Arif Gosita, 1989, Child Protection Issues, Akademika Presindo, Jakarta, p. 2.

paradigm that developed later was no longer just changing the type of punishment to an educational type of punishment, but at least including children in the juvenile criminal justice process.

In accordance with Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Justice System, at the level of investigation, prosecution and examination of juvenile cases in district courts, diversion must be attempted.<sup>16</sup> Crime prevention efforts through the penal path are handling through criminal law. Roughly speaking, it can be said that crime prevention efforts through the penal path focus more on the "repressive" nature (oppression / eradication / suppression) after a crime has occurred.<sup>17</sup>

Diversion Efforts for Children in Conflict with the Law for Narcotics Crimes Linked to the Juvenile Criminal Justice System (SPPA) are diversion efforts against children's deviant behavior or committing crimes can be resolved better, without ignoring the interests and welfare of the child, and appropriate actions can be taken according to the needs and interests of the child. This diversion or diversion policy is the best solution that can be used as a formula in resolving several cases involving children as perpetrators of criminal acts, especially in handling children who abuse narcotics. So that it will be more appropriate in determining the actions (treatment) that need to be applied to it.

#### **4. Conclusion**

Based on the results of the research that has been conducted, the following conclusions are obtained based on the formulation of the problem: Implementation of Diversion for Children in Conflict with the Law for Narcotics Crimes in the Juvenile Criminal Justice System, viewed from the legal position of diversion for children who abuse narcotics in the perspective of the development of criminal law, is a non-penal policy step for handling children who commit juvenile crimes, because their handling is diverted from the juvenile justice system. Diversion is based on the assumption that the process of handling children through the juvenile justice system is more likely to be negative than positive for the development of children. In relation to the handling of children who abuse narcotics, the main problem arising from the juvenile criminal justice process or a criminal decision is the stigma attached to convicts of narcotics abuse after the completion of the criminal justice process. Diversion Efforts for Children in

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<sup>16</sup>Feri Satria Wicaksana Effendy and Arpang, 2021, Settlement Policy of Criminal Actions Performed by Children through Penal Mediation, *Journal of Legal Sovereignty*, Volume 4 Issue 2, Unissula, p. 142, <http://jurnal.unissula.ac.id/index.php/RH/article/download/15744/5568>

<sup>17</sup>Indah Lestari, Sri Endah Wahyuningsih, 2017, Criminal Law Enforcement Against Drug Users in the Central Java Regional Police, *Khaira Ummah Law Journal* Vol. 12. No. 3 September 2017, Unissula



Conflict with the Law for Narcotics Crimes Associated with the Juvenile Criminal Justice System (SPPA) are diversion efforts against children's deviant behavior or committing crimes can be resolved better, without ignoring the interests and welfare of the child, and appropriate actions can be taken according to the needs and interests of the child. This diversion or diversion policy is the best solution that can be used as a formula in resolving several cases involving children as perpetrators of criminal acts, especially in handling children who abuse narcotics. So that it will be more appropriate in determining the actions (treatment) that need to be applied to it.

The suggestion from this research is that it is hoped that the Government in this case can complete all supporting provisions that have been mandated by Law Number 11 of 2012 concerning the Juvenile Justice System, as implementing provisions for handling criminal acts committed by children. To Law enforcement officers in carrying out their duties, including investigation, prosecution, examination and determination of verdicts in court hearings, should prioritize the implementation of diversion as an alternative to the implementation of imprisonment.

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