

Implementation of Diversion against Criminal Conduct of Narcotics Conducted by Children

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Abstract.

The aim of this research is To know and analyze application of diversion to offenders of narcotics crimes committed by children in law enforcement construction at the Cirebon City Police Drug Research Unit. To find out and analyze what factors are the obstacles application of diversion to offenders of narcotics crimes committed by children in law enforcement construction at the Cirebon City Police Drug Research Unit and the solution. This study uses an empirical juridical approach, with descriptive analytical research specifications. The data used in this study are secondary data obtained through library research and primary data obtained through field research interviews with investigators at the Cirebon City Police Drug Research Unit. The results of this study are Application of Diversion Against Perpetrators of Narcotics Offenses Committed by Children in Law Enforcement Construction In the Drug Research Unit of the Cirebon City Police, namely: a) Diversion is carried out by the investigator with the perpetrator/victim and/or his family, community counselors, and involving community leaders. Diversion is carried out by deliberation or mediation which results in a diversion agreement. b) After the Investigator issues the Investigation Termination Order, the Minutes, Diversion Agreement and the Decision of the Head of the District Court are copied to the Public Prosecutor as the basis for the Public Prosecutor to return the SPDP, so that the case becomes inkraht. Barriers: a) Legal Substance Factors b) Legal culture factors c) Community Factors d) Law Enforcement Factors e) RPK Facilities and Infrastructure Factors. Solutions: a) Develop a work plan and maximize the performance of each investigator in handling child cases. b) Establishing Intensive Communication with other Law Enforcement Officials. c) Holding Diversion Socialization among the Community d) Making an Agreement on Supervision of the Implementation of the Diversion Agreement Results. e) Optimizing facilities and infrastructure.

Keywords: Application of Diversion; Perpetrators of Crime; Narcotics; Children; Law Enforcement Construction.

1. Introduction

In its development, Criminal Law always creates debate among Criminal Law experts, especially the purpose of punishment and criminal sanctions. This debate is inseparable from globalization which has had a tremendous impact and affects all aspects of human life, especially the public's view of criminal law. When viewed from human development, that change is a natural thing, because humans will always try to update something in order to improve their welfare by basing themselves on their past experiences.¹ The development of this community must

¹ M. Sholehuddin. (2007). *Sistem Sanksi dalam Hukum Pidana, Ide Dasar Double Track System dan Implementasinya*, Jakarta: Raja Grafindo Persada, p.1

be limited by the instruments of Criminal Law to prevent chaos in society with the threat of criminal sanctions or punishment.

An interesting discussion in criminal law issues is criminal sanctions and the purpose of punishment. Criminal sanctions and the objectives of punishment cannot be separated from one another because one of the approaches to the purpose of punishment is through the imposition of criminal sanctions. Criminal sanctions in certain criminal acts are deemed incompatible with the purpose of the crime itself. One example of a criminal sanction that has sparked debate is the application of imprisonment for narcotics users.

Initially narcotics were used for the benefit of mankind, especially for treatment and health services. However, with the development of the times, narcotics are used for negative things.²Narcotics, especially for the benefit of health and medicine, are needed when performing operations. Basically, narcotics are very beneficial for the interests of education, technology and health, but narcotics will be very dangerous if they are used excessively and irresponsibly.

One of the issues that need to be addressed today is when the illegal narcotics trafficking network, both national and international, uses a new modus operandi, namely by involving children as drug couriers. This mode is used by dealers to trick law enforcement officials and facilitate the distribution of drugs into the hands of users.

The police as the front gate for the criminal case screening process which carries out the process of investigation and investigation of perpetrators of narcotics and psychotropic crimes, in this case is the first agency in the criminal justice system. The police investigating apparatus is often seen as the main pillar of criminal law enforcement in general and juvenile criminal law in particular, the police conduct investigations and investigations in order to gather sufficient evidence to proceed to the next stage of justice.³

It is explained in Article 41 point 1 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System that "Prosecution of children is carried out by the Public Prosecutor who is determined based on the decision of the Attorney General or other official appointed by the Attorney General". The public prosecutor is one of the law enforcement officers who carry out Diversion, apart from the police and judges. The public prosecutor is obliged to strive for Diversion within 7 (seven) days after receiving the case file from the investigator. The public prosecutor after receiving the case file from the investigator can make a selection whether to do Diversion or not.

Children are part of the younger generation, one of the human resources which is the potential and successor of the ideals of the nation's struggle, which has a strategic role and has special characteristics and characteristics, requires guidance and protection in the context of full physical, mental and social growth and development. , harmonious, harmonious and balanced.⁴ Children's human

² Dikdik M. Arief Mansur and Elisatris Gultom. (2007). *Urgensi Perlindungan Korban Kejahatan*, Jakarta: Raja Grafindo Persada, p. 100.

³ Satya Arinanto. (2008). *Hak Asasi Manusia dalam Transisi Politik Indonesia*, Jakarta, p. 81

⁴ Gatot Supramono. (2007). *Hukum Acara Pengadilan Anak*, Jakarta: Djambatan, p. 11

rights, if developed, by providing free opportunities for children and youth to express their opinions, can in fact provide great benefits to the older generation.⁵

Handling criminal cases against children is of course different from handling cases against adults, the handling of these children is special because it is also regulated in separate regulations. Understanding the process of handling children's cases, of course, there may still be some people in the community who do not understand or understand, so that sometimes it raises various judgments, even more fatal if there is a misjudgment that handling children, especially children in conflict with the law, get special treatment and There are also those who think children cannot be punished even though it is not that far, it's just that the handling process is specifically regulated.

Based on the background description above, this study aims to identify and analyze application of diversion to offenders of narcotics crimes committed by children in law enforcement construction at the Cirebon City Police Drug Research Unit, The factors that become obstacles application of diversion to offenders of narcotics crimes committed by children in law enforcement construction at the Cirebon City Police Drug Research Unit and what is the solution.

2. Research methods

The approach method used in this research is a sociological juridical method (Sociological Research) which emphasizes on practice in the field related to aspects of the law or legislation that applies to the object of research being discussed and sees the legal norms that apply and is then linked. with the facts and facts contained in people's lives and discussing how the law operates in society.⁶ The type of study in this research is more descriptive, that is, it provides data that is as accurate as possible about humans, conditions or other symptoms.⁷ The data used in this study are secondary data obtained through library research and primary data obtained through field research interviews with investigators at the Cirebon City Police Drug Research Unit.

3. Results and Discussion

3.1. Application of Diversion Against Perpetrators of Narcotics Offenses Committed by Children

Diversion basically has the goal of avoiding the negative impact of the implementation of the crime against children. The implementation of the juvenile criminal justice system which aims to tackle crimes against child criminal offenders in Indonesia often experiences problems, including in terms of detention of children, a long judicial process starting from investigation, prosecution, trial,

⁵ Sri Widoyati Wiratmo Soekito. (1983. *Anak dan Wanita dalam Hukum*, Jakarta: LP3ES, p. xi

⁶ Amuruddin and Zainal Asikin. (2003). *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada, p. 21

⁷ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia, p. 10

which ultimately places the child convicted in a correctional facility cause trauma and negative implications for children.

There is a view that the use of criminal law as a means of overcoming crime cannot be justified with the understanding that its use must still be subsidiary in nature. This means that as long as the use of facilities outside the criminal justice system is seen as more effective, the use of criminal justice should be avoided as much as possible. In addition, if criminal (law) is to be used as a means of reaching the whole Indonesian human being, then the humanistic approach must also be considered. This is important not only because the crime is essentially a humanitarian problem, but also because in essence the criminal law itself contains elements of suffering that can attack the most valuable interests or values for human life.⁸ Therefore, the use of criminal law as a means of overcoming crime cannot be consecrated.

With regard to the handling of children who abuse narcotics, the main problem that arises from the juvenile criminal justice process or a criminal decision is the stigma attached to the convicted narcotics abuse convict after the completion of the criminal justice process. The increasing trend of narcotics abuse by children or young actors, encourages efforts to deal with and deal with it specifically in the field of child criminal law, both formally and materially.

Based on the case Narcotics crime committed by children with Police Report Number: 163/A/III/2020/Jabar/Res Crb Kota, with a search warrant Number: SP Gledah/15/III/2020/Res Narcotics, March 1, 2020, A man who identified himself as Mister was arrested. Rizky Ahmad Faridz bin Kusuma Putra Sanjaya, who due to alleged abuse of methamphetamine narcotics as referred to in Article 112 paragraph (1) jo Article 127 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in conjunction with Article 5 paragraph (3) Act No. 11 of 2012 concerning the juvenile criminal justice system in an effort to protect the interests of children then the official report of the search was on Sunday, March 1, 2020.⁹

Case analysis based on the facts above, obtained a description or case construction that shows the involvement of the suspect in this case as the person who did it supported by good evidence from the crime scene examination witness testimony and supported by evidence as follows: based on the results of the crime scene examination witnessed by witnesses and suspects, it is true that there have been allegations of criminal acts of abuse of narcotics types of methamphetamine as referred to in Article 112 paragraph (1) in conjunction with Article 127 paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in conjunction with Article 5: (3) Law of the Republic of Indonesia Number 11 of 2012 concerning the criminal justice system for children in an effort to protect the interests of children which occurred on Sunday, March 1 2020 at around 14.00 WIB in front of IndoMarch Jl. Rajawali Raya Kel. Prohibition Kec. Harjamukti City of Cirebon.

⁸ Barda Nawal Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: Badan Penerbit Universitas Diponegoro, p. 41.

⁹ Results of an interview with IPDA Rudiana, SH as an Investigator at the Cirebon City Police Drug Research Unit, November 25, 2020, at 11.45 WIB

Arrest, detention, investigation and investigation are the authorities of the police in implementing the juvenile criminal justice system. In carrying out the process of applying diversion in juvenile criminal justice, the police are given discretionary power. Discretionary power is the legal authority granted by law in which the police have the right to continue or discontinue a case. Based on this authority, the police can divert (diversion) against a criminal case committed by a child so that the child does not have to deal with formal criminal justice settlement.¹⁰

Application of Diversion against Perpetrators of Narcotics Offenses Committed by Children in Law Enforcement Construction in the Drug Research Unit of the Cirebon City Police, including:

- The implementation of diversion is carried out by the investigator with the perpetrator/victim and/or his family, community counselors, and involving community leaders, the implementation of diversion is carried out by deliberation or mediation which results in a diversion agreement between RA and his parents, where RA is returned to his parents, then an Official Report and Agreement Diversion by the Investigator is sent to the District Court to make a Diversion Determination, the District Court then makes a Diversion Determination Number: 2/Pen.Div/2020/PN Cbn jo Number 10/Pid.Sus-Anak/2020/PN Cbn dated 2 June 2020 after The investigator receives a decision from the head of the district court and the diversion agreement has been carried out by the parties, the investigator
- After the Investigator issues the Order to Stop Investigation, the Minutes, Diversion Agreement and the Decision of the Head of the District Court are copied to the Public Prosecutor as the basis for the Public Prosecutor to return the SPDP on behalf of RA, so that the case becomes inkraacht.

3.2. Understanding factors and solutions

In the legal system in Indonesia, narcotics abuse qualifies as a crime in the field of narcotics as regulated in Act No. 35 of 2009 concerning Narcotics. Narcotics crime is seen as a form of crime that has serious consequences for the future of this nation, damages life and the future, especially the younger generation. According to Article 127 paragraph (1) of Act No. 35 of 2009, every Category I Narcotics Abuser shall be sentenced to a maximum imprisonment of 4 (four) years; Every Category II Narcotics Abuser shall be punished with imprisonment of 2 (two) years; and Each Category III Narcotics Abuser shall be sentenced to a maximum imprisonment of 1 (one) year.¹¹

Furthermore, abusers who receive rehabilitation guarantees based on Article 4 of Act No. 35 of 2009, however, in Article 127 abusers are subject to punishment and lose their rehabilitation rights, unless they can be proven or proven to be victims of narcotics. Even though proving a narcotics abuser is a victim of narcotics is a difficult matter, because it must be seen from the start that

¹⁰ Anita Indah Setyaningrum and Umar Ma'ruf, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Melalui Pendekatan Restorative Justice Oleh Penyidik Polda Jawa Tengah", *Jurnal Hukum Khaira Ummah* Vol. 12. No. 4 December 2017

¹¹ Soedjono. D, (1987). *Hukum Narkotika Indonesia*. Bandung: Penerbit Alumni. p. 14

the drug user uses narcotics. In addition, it is necessary to prove that narcotics users when using narcotics are being persuaded, tricked, coerced and/or threatened to use narcotics. The number of these terms can confuse law enforcement officials in applying the articles in Act No. 35 of 2009.¹²

The concept of diversion is based on the fact that the criminal justice process for child offenders through the criminal justice system causes more harm than good. The basic reason is that the court will stigmatize children for their actions as if they are considered evil, so it is better to prevent them from leaving the criminal justice system.¹³

In the case of child offenders narcotics crime resulted in a diversion agreement, that from the report of diversion Number: 10/Pid.Sus-Anak/2020/PN Cbn dated June 2, 2020 between the child and the investigator, a diversion agreement was reached on June 2, 2020 with the provisions as follows:¹⁴

Article 1

Party I (child) admits guilt of breaking the law and promises not to repeat the dressing again;

Section 2

Party II has forgiven Party I and does not question the problem anymore;

Article 3

The first party and the second party agree that RA children are handed back to their parents (Vide Article 11 of Act No. 11 of 2012 concerning the Criminal Justice System for Children);

Article 4

Party I received guidance and supervision from PK BAPAS

Article 5

Party I is willing to carry out rehabilitation at the Putra Agung Mandiri Cirebon Recipient Institution (IPWL), Jalan Pilang Raya Cirebon for 3 months;

Article 6

If this agreement is not fulfilled by the parties, the examination process will be continued in the trial process and the diversion agreement is canceled;

Article 7

This agreement was made by the parties without any element of coercion, error and fraud from any party.

Considering that the diversion agreement has fulfilled and does not conflict with law, religion, compliance with the local community, morals, or contains things that cannot be carried out by the child, or contains bad intentions, so that it is reasonable to grant it;

Taking into account the provisions of Article 12, Article 52 paragraph (5) of Act No. 11 of 2012 concerning the juvenile criminal justice system and Act No. 8 of 1981 concerning criminal procedural law and other relevant laws and regulations.

¹² Hera Saputra, Munsyarif Abdul Chalim, "Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)", *Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X*

¹³ Randall G. Shelden, (1997). *Detention Diversion Advocacy: An Evaluation*, Department of Justice, Washington DC U.S. p. 1.

¹⁴ Results of an interview with Briпка Junaedi, as the Assistant Investigator at the Cirebon City Police Drug Research Unit, November 26, 2020, at 13:15 WIB

Set:

- Grants the petitioner (judge);
- Order the parties to implement a diversion agreement;
- Order the judge to issue a decision to terminate the examination after the diversion agreement is fully/fully implemented;
- Order the public prosecutor to be responsible for the evidence until the diversion agreement is carried out entirely/completely;
- Determine the evidence:
 - 1 (one) package of narcotics types of methamphetamine wrapped in clear color plastic clips with a gross weight of approximately 0.3 (zero point three) grams;
 - 1 (one) piece of gray trousersDestroyed in the event that the diversion agreement has been implemented
- Order the clerk of the clerk to deliver a copy of this ruling to the panel of judges, public prosecutors, child investigators, community advisers, community leaders; legal counsel for children and parents of children.

In Indonesia, the concept of diversion against children is only a component of improving the structure of the juvenile justice system as an alternative to formal criminal justice, by putting Diversion's efforts into every stage of the judicial process (investigation, prosecution and trial). This is different from Australia, where applying the concept of diversion to children is not an alternative program, but a diversion to get out of the justice system. The form of diversion above began to be implemented in the state of Victoria in 1959, Queensland in 1963 and New South Wales in 1985 all in the State of Australia.

The factor that becomes an obstacle application of diversion to offenders of narcotics crimes committed by children at the Cirebon City Police Drug Research Unit, namely:

- Legal Substance Factors
- Legal culture factors.
- Community Factors
- Law Enforcement Factors
- RPK Facilities and Infrastructure Factors

Solution to solve resistance application of diversion to offenders of narcotics crimes committed by children at the Cirebon City Police Drug Research Unit, namely:

- Develop a work plan and maximize the performance of each investigator in handling child cases.
- Establishing Intensive Communication with other Law Enforcement Officials
- Organizing Socialization about Diversion Among the Community
- Make an Agreement on Supervision of the Implementation of the Diversion Agreement Results
- Optimizing facilities and infrastructure

4. Closing

From the results of the research that has been done, it can be concluded as follows: Application of Diversion Against Perpetrators of Narcotics Offenses Committed by Children in Law Enforcement Construction In the Drug Research Unit of the Cirebon City Police, there are: After the Investigator issues the Order to Stop Investigation, the Minutes, Diversion Agreement and the Decision of the Head of the District Court are copied to the Public Prosecutor as the basis for the Public Prosecutor to return the SPDP on behalf of RA, so that the case becomes *inkracht*. The factor that becomes an obstacle application of diversion to offenders of narcotics crimes committed by children at the Cirebon City Police Drug Research Unit and the solution. Barriers: a) Legal Substance Factors b) Legal culture factors c) Community Factors d) Law Enforcement Factors e) RPK Facilities and Infrastructure Factors. Solution: a) Develop a work plan and maximize the performance of each investigator in handling child cases. b) Establishing Intensive Communication with other Law Enforcement Officials. c) Organizing Socialization about Diversion Among the Community. d) Make an Agreement regarding Supervision of the Implementation of the Results of the Diversion Agreement e) Optimizing facilities and infrastructure.

Furthermore, it is suggested as follows There is a need for an SOP for the police regarding diversion for narcotics cases as mandated by Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. There is a need for socialization regarding Act No. 11 of 2012 concerning the Criminal Justice System for Children, including efforts to diversify in narcotics cases. The need for an assessment to be carried out on perpetrators of narcotics crime. The need for rehabilitation of perpetrators of narcotics abuse for themselves.

5. References

Journals:

- [1] Anita Indah Setyaningrum and Umar Ma'ruf, "Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Melalui Pendekatan Restorative Justice Oleh Penyidik Polda Jawa Tengah", *Jurnal Hukum Khaira Ummah Vol. 12. No. 4 December 2017*
- [2] Hera Saputra, Munsyarif Abdul Chalim, "Penerapan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkoba (Studi Kasus di Polda Jateng)", *Jurnal Daulat Hukum Vol. 1. No. 1 March 2018 ISSN: 2614-560X*

Books:

- [1] Amuruddin dan Zainal Asikin. (2003). *Pengantar Metode Penelitian Hukum*, Jakarta: Raja Grafindo Persada
- [2] Barda Nawal Arief, (1994). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: Badan Penerbit Universitas Diponegoro,
- [3] Dikdik M. Arief Mansur dan Elisatris Gultom. (2007). *Urgensi Perlindungan Korban Kejahatan*, Jakarta: Raja Grafindo Persada
- [4] Gatot Supramono. (2007). *Hukum Acara Pengadilan Anak*, Jakarta: Djambatan

- [5] M. Sholehuddin. (2007). *Sistem Sanksi dalam Hukum Pidana, Ide Dasar Double Track System dan Implementasinya*, Jakarta: Raja Grafindo Persada
- [6] Randall G. Shelden, (1997). *Detention Diversion Advocacy: An Evaluation*, Department of Justice, Washington DC U.S.
- [7] Satya Arinanto. (2008). *Hak Asasi Manusia dalam Transisi Politik Indonesia*, Jakarta
- [8] Soedjono. D, (1987). *Hukum Narkotika Indonesia*. Bandung: Penerbit Alumni.
- [9] Soerjono Soekanto. (1986). *Pengantar Penelitian Hukum*, Jakarta: Penerbit Universitas Indonesia
- [10] Sri Widoyati Wiratmo Soekito. (1983). *Anak dan Wanita dalam Hukum*, Jakarta: LP3ES