

Problems of the Implementation of Diversion in the Case of Children who Use Narcotics in the Police

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ABSTRACT

The Indonesian Government's policy in dealing with drug abuse cases as stated in Law No. 35/2009 on Narcotics, basically still categorizes drug abuse as a criminal act, with the threat of criminal punishment regardless of the age of the perpetrator. Although the law applies a double track system, namely the imposition of prison sentences that can be accompanied by rehabilitation measures. In particular, in handling cases of children involved in drug abuse, Law No. 11/2012 on the Juvenile Criminal Justice System mandates that case resolution must prioritize diversion efforts. The main reason for the implementation of diversion is in line with the philosophy of the juvenile criminal justice system, which focuses on the protection and rehabilitation of children who commit criminal offenses. The methodology used in the preparation of this scientific work is descriptive analytical, by describing the problems found, then conducting a study and analysis of them based on primary, secondary and tertiary legal materials. The approach used is normative juridical, which is an approach by examining and analyzing secondary data related to the law. The results showed that in the implementation of diversion for children who abuse narcotics, investigators are required to ask for consideration or input from Community Supervisors shortly after a criminal offense report or complaint is received. Police officers have a goal to resolve cases through diversion mechanisms, so that children who are perpetrators of narcotics abuse are not sentenced to criminal penalties.

INTRODUCTION

The implementation of criminal justice as an instrument in crime prevention efforts, including in incidents involving substance misuse, is in the spotlight and the subject of intense discourse in the academic and practical realms (Lippke, 2020). Although polemics on the effectiveness and justification of the use of criminal law are still ongoing, there is a growing consensus that its use should be subsidiary (Cavadino & Dignan, 2019). That is, as long as approaches outside the criminal justice mechanism are considered more effective, then the criminal system should be the last resort that is avoided (Tonry, 2018). Moreover, when criminal law is employed as an instrument to develop a well-rounded Indonesian individual, it is essential to emphasize a humanistic approach (Muncie, 2020). This is crucial considering that crime is basically a humanitarian issue, even though criminal

law inherently involves an aspect of inflicting hardship that may threaten basic human values (Husak, 2017). Therefore, the existence of criminal law remains important, but its use must be integrated with other approaches outside the criminal justice system (Walker, 2020; Durlauf & Nagin, 2021).

Conceptually, crime prevention strategies can be carried out through two main approaches, namely judicial (criminal justice) and non-judicial (outside criminal justice) channels (Finkelhor, 2019). One concrete form of the non-custodial approach in the context of drug abuse by children is the transfer of the handling process from the criminal justice system to alternative solutions outside the system (Cohen & Hagan, 2020). This approach aims to keep children away from the threat of punishment and provide protection against the negative impacts caused by the criminal legal system (Sullivan, 2018). Diversion essentially aims to ensure that children are not exposed to the adverse effects of the formal criminal process (Hollander-Blumoff, 2017). In many cases, diversion programs have shown effectiveness in reducing recidivism and promoting rehabilitation (Piquero & Moffitt, 2020). Moreover, the use of alternative measures aligns with the goal of restorative justice, which focuses on repairing the harm caused by criminal behavior rather than punishing offenders (Zehr, 2021).

On the other hand, diversion also serves a broader purpose, which is to ensure the optimal physical and mental development of children (Harris, 2020). When viewed through the lens of punishment theories, shifting from judicial to non-custodial approaches is highly relevant, as the goals of punishment generally include both protecting society and safeguarding the offender (Tonry, 2019). In this context, the non-custodial approach aligns with these objectives in meaningful ways (Cavadino & Dignan, 2019). By diverting children from judicial proceedings, they are spared the criminogenic effects associated with the application of criminal law, which often results in stigmatization and dehumanization factors that may increase the risk of recidivism (Binns, 2021). Thus, diversion represents an effort toward depenalization to minimize these risks and simultaneously protect society from future offenses (Rothman, 2021). Moreover, diversion offers multiple benefits for the children themselves: it allows them to remain connected to their social environment, avoiding the disruption that would necessitate post-criminal reintegration (Muncie, 2020), and it shields them from the negative consequences of the prisonization process, which is often a breeding ground for deviant behavior (Lambie & Randell, 2018).

In addition, this approach is very much in line with the modern philosophy of punishment which emphasizes the aspect of guidance (philosophy of treatment). Therefore, this process diversion strategy is also in line with the transformation of the global punishment paradigm which moves from a retributive approach to a reformative approach.

Indonesia's criminal law policy addressing narcotics abuse has a long historical trajectory. It originated with the enactment of the Drugs Ordinance (Verdoovende Middelen Ordonnantie, Stbl.1927 No. 278 jo. No. 536), which was subsequently replaced by Law No. 9 of 1976 on Narcotics. This legal framework underwent further revisions with the introduction of Law No. 22 of 1997, and was ultimately refined through the enactment of Law No. 35 of 2009, which currently serves as the prevailing legislation on narcotics.

The enforcement of criminal law concerning minors in drug abuse cases is basically a choice that is full of dilemmas. The criminal justice process tends to be a legalistic instrument that only produces procedural justice, without considering the best interests of the child. Consequently, this approach often ignores the welfare and protection of children as vulnerable parties.

Child protection implies an effort to ensure the fulfillment of children's rights and obligations in a fair and humane manner. This form of protection includes guidance, assistance, supervision, and education that encourages the physical and social development of children in a constructive and

comprehensive manner. Children, as individuals who are not yet mature mentally, physically and socially, must receive treatment in accordance with their developmental capacity.

Based on these arguments, children who are proven to have committed a criminal offense must still be guaranteed protection and welfare. Even when they have been sentenced, the principle of the best interests of the child must still be prioritized. Therefore, an appropriate policy is needed, especially in the context of criminal sanctions, to remain in favor of the fulfillment of children's rights.

Awareness of the potential negative impacts of children's involvement in the criminal justice system-such as prisonization, dehumanization, and stigmatization-affirms the urgency of implementing diversion mechanisms. In this context, diversion is the most relevant step in dealing with children who violate the law, because it allows for a more thoughtful, humane, and appropriate resolution of cases. This strategy is an effective resolution formula for cases involving children, especially in drug abuse cases.

Law No. 11/2012 on the Juvenile Criminal Justice System reforms the paradigm of punishment for children. Punishment is no longer the main option, but rather the last resort (*ultimum remedium*), by prioritizing the principle of restorative justice. One of the concrete forms of this approach is diversion, which is the transfer of case settlement from the criminal justice channel to a non-litigative process. Diversion is the most appropriate mechanism so that children do not need to undergo court proceedings, and is even required to be applied by law enforcement officials from the early stages of the legal process.

According to Article 7 paragraph (1) of Law Number 11 of 2012, efforts to implement diversion are mandatory during the stages of investigation, prosecution, and court proceedings. This provision emphasizes that as much as possible, juvenile criminal cases are not continued to the court process, but are sought to be resolved in a restorative manner in order to support the growth and development of children who are still in a phase of unstable psychological development.

The law also gives the police a new mandate, in addition to their traditional roles of investigation and prosecution. The police now have the authority to conduct diversion in handling children's cases and seek to prevent the case from proceeding to the prosecution or trial stage.

The implementation of diversion for children involved in narcotics offenses in Indonesia faces significant challenges. Despite the legal framework provided by Law No. 11/2012 on the Juvenile Criminal Justice System, many law enforcement officials struggle to effectively apply diversion principles, leading to inconsistencies in handling cases of juvenile drug abuse. This raises crucial questions about the adequacy of existing laws and the practical obstacles that hinder their successful implementation.

The urgency of addressing these issues is highlighted by the increasing number of children facing criminal charges for drug-related offenses. With narcotics abuse becoming a pressing social issue, it is essential to prioritize rehabilitation over punishment to ensure the well-being of these vulnerable individuals. If the diversion mechanisms are not effectively implemented, children may be subjected to the negative impacts of the criminal justice system, which can lead to stigmatization and recidivism.

Moreover, strengthening the diversion process is critical for aligning Indonesia's legal practices with international standards for child protection. As the country aims to improve its approach to juvenile justice, it is vital to create a system that not only addresses criminal behavior but also promotes the holistic development of children, thereby fostering a safer and more supportive environment.

Previous research has explored various aspects of diversion in the juvenile justice system. For instance, Arief Gosita (1989) emphasized the importance of a humane approach to juvenile offenders,

advocating for measures that prioritize rehabilitation over punishment. Similarly, Abdullah (2023) examined the effectiveness of diversion programs, highlighting the challenges faced by law enforcement in implementing these alternatives to incarceration.

Another relevant study by Nuraini (n.d.) analyzed the implications of drug abuse among minors, stressing the need for comprehensive policies that support diversion mechanisms. This study found that existing laws often fail to provide clear guidance on the roles of law enforcement and social workers in the diversion process, contributing to inconsistent application across regions.

Furthermore, Cahyani et al. (2024) investigated the operational challenges faced by police departments in implementing diversion strategies. Their findings indicate that a lack of resources and training for investigators hampers the effectiveness of diversion, underscoring the need for systemic reforms to enhance the juvenile justice process.

Despite the existing literature, there remains a significant gap in understanding the specific obstacles hindering the implementation of diversion for juvenile narcotics offenders in Indonesia. Most studies have focused on general principles of juvenile justice or the effectiveness of diversion without delving into the practical challenges faced by law enforcement and social services in specific contexts.

This research introduces a novel perspective by combining a sociological approach with legal analysis to investigate the practical implementation of diversion for children involved in narcotics offenses. By focusing on the experiences of law enforcement officials and community stakeholders, this study aims to provide a comprehensive understanding of the barriers to effective diversion in the Indonesian context.

The primary objective of this study is to analyze the implementation of diversion for children involved in narcotics offenses at the Kuningan Police Department. The research aims to identify the factors that hinder successful diversion efforts and propose actionable recommendations for improving the juvenile justice process in Indonesia.

The findings of this research will be beneficial for policymakers, law enforcement officials, and child welfare advocates. By identifying the challenges and proposing solutions, this study aims to contribute to the development of a more effective juvenile justice system that prioritizes rehabilitation and supports the rights of children. Ultimately, this research seeks to enhance public confidence in the legal system and promote a safer environment for future generations.

METHOD

This research uses a juridical sociological approach, which is a method that combines the study of laws and regulations relevant to the research topic, with observations of the realities that occur in society. This approach aims to obtain a comprehensive picture of the implementation of the law in the field and the extent to which the regulations are effectively applied.

Nature of Research

The type of research used is descriptive, which is research that aims to provide a systematic and accurate description of the characteristics of a phenomenon, situation, or relationship between social symptoms that occur in society. Through this approach, the research seeks to reveal empirical facts in order to understand the patterns that arise in the practice of law implementation, especially in the context of diversion for juvenile drug offenders.

Data Sources

The data in this study were obtained from two types of sources, namely:

1. Primary Data

Is data collected directly from the first source through interviews. In this case, the author conducted interviews with law enforcement officials, especially investigators and assistant investigators at the Kuningan Resort Police, as a sample to obtain relevant field information.

2. Secondary Data

This data includes various official documents, scientific literature, previous research results, and other sources that support the analysis. Secondary data is used to understand, analyze, and strengthen the study of primary legal materials. The types of legal materials used include:

Primary legal materials

Namely legal sources that have direct binding force on the object of study, such as statutory provisions and court decisions (jurisprudence), including:

1. Constitution of the Republic of Indonesia Year 1945
2. Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP)
3. Law No. 2 of 2002 on the National Police of the Republic of Indonesia
4. Law No. 35 of 2009 on Narcotics
5. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
6. Other laws and regulations related to the subject matter.

- Secondary legal materials

A source that provides explanation and interpretation of primary legal materials, such as draft laws, results of scientific research, and opinions of legal experts.

- Tertiary legal materials

Is a supporting material that functions to explain or provide direction in understanding primary and secondary legal materials, such as the Big Indonesian Dictionary and legal dictionaries.

Data Collection Technique

To obtain the data needed in this research, the author uses two main methods:

a) Document Study (Literature Study)

Includes review of primary and secondary legal materials. In this data collection, each legal material used is first re-examined in terms of its validity and reliability to ensure that the data analyzed is truly accurate and relevant.

b) Interview

This is a direct interaction between the author and the source, which is conducted face-to-face. The interviewer asks structured questions to obtain in-depth information in accordance with the research focus. In this context, the author interviewed three respondents who were officers from the Kuningan Resort Police, namely: Kasat Narkoba, Kaur Operasional, and Kanit Narkoba.

Data Processing and Analysis

a) Data Processing

It is the process of compiling and structuring data that has been obtained from the field so that it is ready to be analyzed. This stage is carried out using the editing method, namely reviewing the notes and documents that have been collected by the data seeker in order to improve the quality and reliability of the information to be analyzed.

b) Data Analysis

After the data is collected and processed, the next step is to analyze it qualitatively. This analysis is carried out by interpreting data based on relevant literature and legal theories, to then draw conclusions which are compiled in the form of descriptive narratives.

RESULT AND DISCUSSION

Implementation of Diversion for Child Offenders of Narcotics Crimes in the Police Department

Research at the investigation stage at Kuningan Police Station shows that the implementation of diversion for juvenile drug offenders has achieved a success rate of more than 50%. This success cannot be separated from the various efforts made by the Kuningan Police. In the implementation of diversion at the investigation stage, Kuningan Police assigned seven investigators who met the criteria as stated in Article 26 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, namely:

1. Have experience as an investigator;
2. Have interest, attention, dedication, and understanding of children's issues; and
3. Have attended technical training related to juvenile justice.

In addition to the availability of investigators who are in accordance with these qualifications, the Kuningan Police also applies the principles of diversion as referred to in Article 68, including:

1. Achieve peace between the victim and the child;
2. Resolving children's cases without going through the judicial process;
3. Avoiding children from detention;
4. Invite community participation; and
5. Fostering a sense of responsibility in children.

The implementation of diversion at the investigation stage is carried out through a deliberation process involving the child and his/her parents or guardians, the victim and/or his/her parents/guardians, community advisors, and social workers. Although there is no Government Regulation that explicitly regulates the procedures for implementing diversion, the investigation still refers to the directives in the Secret Telegram of the Police Criminal Investigation Report Number 1124/XI/2006 as a guideline for the implementation of diversion by the Police. In this case, investigators are expected to be able to develop the concept of diversion as stipulated in Law No. 11/2012.

In its implementation, investigators consider a number of aspects in accordance with the provisions of Article 9 paragraph (1) of the SPPA Law, such as the type of criminal offense, the age of the child, the results of the social assessment from Bapas, and support from the surrounding environment. In addition, the diversion process also prioritizes the protection of victims, children's welfare, avoidance of negative stigma and retaliation, and maintaining norms of decency, morality, and public order as stipulated in Article 8 paragraph (3) of the SPPA Law.

As described in the previous chapter, to assess the effectiveness of a law, it is necessary to see the extent to which the law is obeyed by the majority of its targets. Based on the results of the above research, it can be concluded that the application of diversion at the investigation level by Kuningan Police, despite facing a number of obstacles, is quite effective.

The agreement on the results of the diversion is written in the form of a Diversion Report, which includes the identity of the Investigator and two Assistant Investigators, the parties involved in the process, and the points of the peace agreement, among others:

1. Both parties (the Reporter and the Reported Party) have reached a consensus;
2. The reporter stated that he/she would not continue the case to the prosecution stage;
3. The reported party was returned to his/her parents for guidance so as not to repeat his/her actions, considering his/her status as a child.

After reaching an amicable agreement signed by the Reporter, the Reporting Party, the parents/guardians of each party, and witnessed by Bapas, the Reporting Party's legal counsel, and two witnesses, the investigator will forward the Diversion Minutes to the Public Prosecutor to then submit a request for determination to the District Court.

The development of drug regulations in Indonesia cannot be separated from the legal implications of various international conventions that have been ratified by Indonesia. At the height of the Vietnam war around the 1970s, drug abuse experienced a global spike, particularly in the United States, and the majority of victims were teenagers.

Some of the international conventions that Indonesia has ratified include: Convention on Psychotropic Substances 1971 and United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. The first convention was ratified through Law No. 8 of 1996, while the second convention was ratified through Law No. 7 of 1997.

Criminal law policy in the effort to eradicate narcotics has been carried out for a long time, which began with the Drug Ordinance (Verdoovende Middelen Ordonnantie, Stbl.1927 No.278 jo. No.536). This regulation was later replaced by Law No. 9/1976 on Narcotics, and further revised into Law No. 22/1997 until finally replaced by Law No. 35/2009 as the last update.

The use of criminal law instruments in dealing with drug abuse by children has a dilemmatic nature. The criminal justice process is often only oriented towards “procedural justice” without adequately considering the interests and welfare of children.

Child protection aims to enable children to exercise their rights and obligations in a balanced and humane manner. This effort is realized through guidance, assistance, supervision, and arrangements that are educative and shape children physically and socially.

A child is an individual who has not yet reached maturity, physically, mentally and socially. Therefore, in order to protect the interests of children in the judicial process, Sudarto emphasized that:

“Every action in the juvenile justice process, whether by the police, prosecutors, or other officials, must be based on the principle: for the welfare and interests of the child. The judge's decision, whether in the form of punishment or action, must be based on considerations of what is best for the child, without overriding the interests of society.”

In line with this, Arief Gosita stated that:

“Efforts to hinder the realization of children's welfare in the name of national or community interests are actually a form of deviation that can lead to criminogenic factors (causes of crime) and victimogenic factors (causes of victims).”

Based on this view, children who violate the law are still entitled to protection and welfare, even though they have been sentenced to criminal sanctions. Therefore, an appropriate policy is needed, especially in terms of criminal sanctions against children.

Thus, the implementation of the SPPA Law must continue to be improved and receive support from various parties to ensure a legal process that guarantees the protection of children's rights. Children are the next generation that must be safeguarded and fostered so that they grow into moral individuals, benefit the community, and are protected from negative stigma due to the judicial process.

Factors that hinder the implementation of diversion for children of narcotics offenders

The application of the diversion concept provides an alternative to the formal justice system which has tended to focus on imprisonment, with the main objective of protecting children from the negative effects of imprisonment. Protection of children through diversion mechanisms can be carried out starting from the early stages, namely in the community, through preventive efforts before a violation of the law occurs. If the child has already committed an offense, it should not be processed directly to the police. However, if the child has already been arrested, then every stage of the judicial examination provides an opportunity to seek diversion, with the main objective of stopping the legal process in order to protect the interests of the child.

If the case has entered the court, the judge can apply diversion according to the procedure, with the hope that the child will be free from imprisonment. Detention of children must still refer to the rules that protect children's rights as stated in the Convention on the Rights of the Child. In terms of community protection, the effectiveness of imprisonment is measured based on its ability to reduce the number of crimes. In other words, the success of punishment lies in the general prevention that encourages people not to violate the law (Barda Nawawi Arief, 2002: 224-225).

Meanwhile, in terms of offender development, the effectiveness of punishment is more emphasized on special prevention. This means that the measure of criminal success is seen from the extent to which the punishment has an impact on changes in offender behavior. There are two

dimensions in the effect of punishment on the offender, namely the deterrent aspect and the rehabilitation aspect. In the context of deterrence aspect, the indicator that is often used is the recidivism rate. Based on this indicator, R.M. Jackson argues that a punishment is considered effective if the offender does not repeat the criminal offense within a certain period of time. Meanwhile, the rehabilitation aspect assesses the extent to which the punishment is able to shape changes in the offender's behavior, which is still a problem in its implementation.

The determination of whether someone is categorized as a child is based on age. For children aged 8-12 years, they can only be subjected to actions such as being returned to their parents, placed in a social institution, or handed over to the state. Meanwhile, children aged 12-18 years can be subject to criminal sanctions. This differentiation of treatment is based on the development of children in terms of physical, mental, social, psychological, and pedagogical aspects.

Obstacles arising in the process of implementing Diversion in the Juvenile Justice System:

1. Internal Barriers

Although the restorative justice approach and diversion have been widely recognized as alternatives to handling children in conflict with the law outside the conventional criminal justice system and have received support from various parties, a number of obstacles still hinder their implementation, among others:

- a. The increasing need is not proportional to the availability of adequate human resources and facilities;
- b. Differences in understanding among law enforcement officials in handling child perpetrators and victims;
- c. Lack of synergy between law enforcement officials and child social workers;
- d. Ethical and bureaucratic obstacles in exchanging data and information between legal institutions;
- e. Coordination between institutions such as the police, prosecutors, courts, advocates, bapas, detention centers, and prisons is often hampered by sectoral ego;
- f. There is not yet a common perception among legal officers regarding the approach that prioritizes the best interests of the child;
- g. Facilities and infrastructure to support the diversion process and the handling of children during the judicial process (both before and after the decision) are still limited;
- h. Lack of strategic policies that support social rehabilitation programs for troubled children, especially from the Ministry of Social Affairs and community organizations that play a role in education, training, and fostering children's work;
- i. Protection of juvenile offenders is still difficult to implement optimally because the juvenile correctional system does not support an ideal protection scheme.

2. External Obstacles

In the practice of implementing restorative justice and diversion, there are still various external obstacles, among others:

- a. The unavailability of a comprehensive legal umbrella has led to a lack of understanding by various parties regarding the main objective of restorative justice, which emphasizes the restoration of relationships between perpetrators, victims, and the community. This often invites the intervention of outside parties in the mediation process;
- b. Inconsistent application of rules and the absence of standardized regulations that are used as a reference by all law enforcement agencies. One example is the difference in the minimum age limit of children in various regulations, which has an impact on the inconsistency of the authorities' decisions in cases with similar characteristics;
- c. Weak collaboration between law enforcement agencies. Many law enforcement officers still consider mediation as an inferior method of case resolution. In fact, in the juvenile justice system, only judges are authorized to facilitate mediation, unlike in civil law which allows non-judges to become mediators in court.

Every investigator, prosecutor and judge is obliged to seek diversion during the examination of children in criminal cases, provided that the criminal offense:

- a. Carrying a prison sentence of under seven years; and
- b. Not classified as a recidivist offense.

(These provisions are contained in Article 3 paragraphs (1) and (2) of Government Regulation No. 65/2015 on Guidelines for the Implementation of Diversion and Handling of Children Under 12 Years of Age).

In general, diversion is regulated in Law No. 11/2012 on the Juvenile Criminal Justice System (UU SPPA) and Government Regulation No. 65/2015. In the legal context, children involved in criminal offenses are not only considered as perpetrators, but also as victims, especially due to parental negligence that has an impact on the actions of children. Although in criminal law children can be held accountable, parents also have a role and moral responsibility for their children's actions.

Psychological considerations are the main basis for refusing to detain children. Children who are detained are not necessarily proven guilty, and if they are combined with other child prisoners, it is feared that they will be negatively affected both in terms of attitude and mental development. In practice, detained children are sometimes placed with adult prisoners due to limited space in the Juvenile Correctional Institution.

CONCLUSION

Based on research conducted at three institutions representing each stage of the juvenile criminal justice process, it can be concluded that the implementation of diversion for children involved in narcotics abuse has aligned with Article 7 of Law Number 11 of 2012 concerning the Juvenile Justice System. Investigators are mandated to involve Community Supervisors once a complaint is filed, and both police and correctional institutions share a commitment to pursuing diversion to avoid criminal penalties for children, particularly under Article 127 paragraph (1) of Law Number 35 of 2009, which prescribes a maximum sentence of four years. While diversion has proven effective across investigation, prosecution, and trial stages, challenges persist, such as inadequate temporary custody facilities and difficulties in assembling all involved parties. Additionally, limited operational budgets at local police levels and low public awareness, including among parents, hinder progress, with some still advocating for punitive measures over rehabilitation. Therefore, diversion should be viewed not merely as an alternative but as a primary mechanism for removing children from the criminal justice system altogether, mirroring the Police Diversion model in Australia, which emphasizes informal resolution and rehabilitation. Future research should focus on evaluating the long-term outcomes of diversion programs and exploring innovative strategies for increasing community awareness and engagement in juvenile rehabilitation efforts.

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