

Implementation of Diversion in Courts to Realize Legal Protection for Children of Narcotics Crimes

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Abstract. *The aim of this research is to analyze current application of diversion in court is to provide legal protection for children who are perpetrators of narcotics crimes and Barriers to implementing diversion in court in providing legal protection for children who are perpetrators of narcotics crimes. This study uses a normative type of research using a case approach and a statute approach. The legal materials used are primary and secondary legal materials. The results of the study indicate that Perma Number 4 of 2014 regulates diversion against children whose charges are in the form of subsidiary, cumulative, alternative, or combined, one of which is threatened with under 7 (seven) years in prison. In its implementation, law enforcement, especially investigators and public prosecutors, do not seek diversion using Perma Number 4 of 2014 as a guide in resolving child narcotics crime cases because these regulations only apply in the court environment. In addition, there are differences of opinion among the judges, so that some judges use Perma Number 4 of 2014 as a guideline for implementing diversion in court to realize the protection of children who are perpetrators of narcotics crimes but on the other hand there are also those who do not use it. The conclusion that can be drawn from this writing is that diversion in court based on Perma No. 4 of 2014 has not fully provided legal protection for children, especially perpetrators of narcotics crimes, so the regulation needs further regulation to adjust to the provisions above so that it is not contradictory. Moving on from this, it is necessary to consolidate with other law enforcers so as not to create legal uncertainty and damage the essence of the juvenile criminal justice system.*

Keywords: *Diversion, Child Protection, Narcotics.*

1. Introduction

As a developing country, Indonesia is actively implementing development in all fields to realize the Nawacita program. National development, which is part of the modernization process, has both positive and negative impacts. One of the negative impacts that can arise from progress is

an increasing moral crisis in society which has the potential for legal violations in various forms.¹ These changes greatly influence the order of values that grow and develop in society, without exception also affecting the values and behavior of children.²

In recent times, various media have increasingly reported on the rise in criminal cases. More and more criminal acts are not only committed by adults, but quite a few of the perpetrators of criminal acts are children, including the forms and modes of action. However, when children are treated through criminal justice like adults, the resulting impact is not effective,³ It is not a deterrent effect that arises, but rather the majority of children who have gone through the criminal justice process actually experience prolonged trauma. This is because children are psychologically different from adults, so the concept of criminal justice which puts a lot of pressure on perpetrators of criminal acts is not appropriate to use on children.

Discussions about children and their protection will never stop throughout the history of life, because children are the next generation of the nation and the next generation of development, namely the generation that is prepared as the implementing subject of sustainable development and the holder of control over the future of a country, including Indonesia. As one of the countries that ratified the Convention on Children's Rights, Indonesia also guarantees in its constitution the rights of every child to survival, growth, development and protection from violence and discrimination.⁴

Protection of Indonesian children means protecting the potential of human resources and developing Indonesia as a whole, towards a just and prosperous society, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.⁵ Children, who in their nature are in the process of searching for their identity and becoming adults, are often contaminated by the negative impacts of globalization so that in the end more and more children have deviant behavior or even violate the law. Every year the number of child delinquents always shows an increase in the number, types of acts and modus operandi used by children.⁶

¹ Agung Nusa Pratidina, Marsella Marsella, Wessy Trisna, Penerapan Restorative Justice Terhadap Pencurian Buah Kelapa Sawit Oleh Anak Di Bawah Umur, *Juncto Jurnal Ilmu Hukum*, Vol 2 No 2, 2020, page 172-180

² Evi Aeni Rufaedah. Peranan Pendidikan Agama Dalam Keluarga Terhadap Pembentukan Kepribadian Anak-Anak. *Counselia; Jurnal Bimbingan Konseling Pendidikan Islam*, 1(1), 2020, page 8–25.

³ Fatiha Anwar Sidiq, P. D., & Saputra, T. Penerapan Sanksi Pidana Terhadap Anak Yang Berkonflik Dengan Hukum Berdasarkan Undang-Undang Sistem Peradilan Pidana Anak. *Jurnal Risalah Kenotariatan*, 5(2), 2024, page 10–23.

⁴ Pasal 28 B ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

⁵ Nashriana, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia*, PT.Grafindo Persada Indonesia, Jakarta, 2012, page. 1

⁶ Dini Hardiany, *Perlindungan Hukum Terhadap Hak-Hak Anak Sebagai Pelaku Tindak Pidana Dalam proses Penyidikan Dihubungkan Dengan Undang-Undang No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak*, Jurnal Hukum Magister Unpas, <http://repository.unpas.ac.id/id/eprint/30180>,

The promulgation of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System aims to create justice that truly guarantees the best interests of children in conflict with the law as the nation's successors. The most basic substance in this law is the strict regulation of Restorative Justice and Diversion which is intended to avoid and distance children from the justice process so that children in conflict with the law can be stigmatized and children can return to their normal social environment. This is due to the development of paradigms in the philosophy of juvenile criminal justice, which initially was retributive justice, then changed to rehabilitation, then finally became restorative justice.⁷

Criminal statistics data from the Directorate General of Corrections (Ditjenpas) states that more than 4,000 (four thousand) Indonesian children are brought to court every year for minor crimes, such as theft, in general they do not receive support either from lawyers or from social services, so it is not surprising that nine out of ten children are sentenced to criminal sanctions in correctional institutions.⁸ This condition is very worrying because many children have to deal with the criminal justice system and they are placed in correctional institutions with adults so they are vulnerable to violence.

Article 3 of the Government Regulation states the requirements for diversion⁹ as in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, namely that the penalty is less than 7 (seven) years and is not a repeat crime. With the enactment of Government Regulation no. 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children Who Are Not Yet 12 (twelve) Years Old, apparently has not answered the existing problems because there are also differences between the diversion requirements and the diversion requirements in PERMA No. 4 of 2014.

The Supreme Court regulations are internal provisions that apply within the Supreme Court so that it becomes a problem regarding their binding legal force on the relevant agencies in efforts to implement diversion and there is a lack of synchronization with the SPPA Law. Furthermore, the relevant law enforcement agencies also issued internal diversion guidance regulations for each agency, such as Attorney General Regulation Number 006/A/J.A/2015 concerning Guidelines for Implementing Diversion at the Prosecution level. The Indonesian National Police did not issue it but had previously issued a telegram for the Police Criminal Investigation Department Number: TR/1124/IX/2006 and Number TR/395/VI/2008 concerning the Implementation of Diversion and Restorative Justice in Handling Cases of Child Perpetrators and Fulfilling the Best Interests of Children in cases of Children as Perpetrator, Victim or witness. The

⁷ Priyadi, *Sosialisasi & Roadmap Implementasi UU No. 11 Tahun 2012*, diambil dari <http://jabar.kemenkumham.go.id/>

⁸ <http://www.Ditjenpas.go.id/index.php>, *Data Statistik criminal Direktorat Jenderal Pemasyarakatan*,

⁹ Neiska Aranafta Nurain, *Kesesuaian Syarat Diversi Dengan Konsep Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak*, *Recidive jurnal Hukum Pidana dan Penanggulangan Kejahatan*, Vol 10 No 2, 2021, page 81-89

reality is that in Indonesia there are still many children who have been sentenced after the enactment of the Juvenile Criminal Justice System Law and other regulations.¹⁰ The formal implementation of the legal process and the unsynchronized provisions regarding diversion will certainly create problems in efforts to realize the best interests of children in the juvenile criminal justice system. Legal protection for children in conflict with the law cannot be provided due to unclear provisions regarding diversion so that children must undergo a legal process.

Research conducted by Novi Novitasari with the title Law Enforcement Process for Criminal Acts of Narcotics Abuse Committed by Children. The research results showed that the factors that influence children to become perpetrators of narcotics abuse are legal substance, legal structure, facilities, legal culture and society. The most influential factor is internal to the child himself. Law enforcement against perpetrators of criminal acts of narcotics abuse committed by children has been effective. The role of parents is to educate children well so that they are not easily influenced to do things that violate the law. Especially for judges to carry out diversion against children who have committed criminal acts so that it has a good impact on the psychology of children who are in conflict with the law.¹¹

Research conducted by Ramdani Abd. Hafizh with the title Legal Protection for Children Perpetrating Narcotics Crimes in the Juvenile Criminal Justice System, Based on the results of the research that has been carried out, it can be concluded that the protection of children, especially children who are in conflict with the law, is considered very urgent/necessary because when children become perpetrators in a It is not impossible for criminal offenses to be handled the same way as adults, therefore it is very necessary and mandatory for law enforcement officers who handle children's cases to be given a corridor of rules and guidelines. Moreover, Indonesia as a member country has ratified the Convention on Children's Rights, where there are 4 principles that must exist as a basis for protecting children, especially as perpetrators of narcotics crimes.¹²

The aim of this research is to analyze The current application of diversion in court is to provide legal protection for children who are perpetrators of narcotics crimes and Barriers to implementing diversion in court in providing legal protection for children who are perpetrators of narcotics crimes.

¹⁰ Rika Apriani Minggulina Damanik, Hukum Pertanggungjawaban Pidana Anak Dalam Batasan Usia: Analisis Hukum Pidana Islam dan Undang-Undang Nomor 11 Tahun 2012, *Al Qanun Jurnal Kajian Sosial dan Hukum Islam*, Vol 1 No 3, 2020, page 274-302

¹¹ N. Novitasari, and N. Rochaeti, "Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak," *Jurnal Pembangunan Hukum Indonesia*, vol. 3, no. 1, Jan. 2021, page. 96-108,

¹² Ramdani Abd. Hafizh, Legal Protection Against Children Of Narcotics Offenses In The Juvenile Criminal Justice System, *Kertha Semaya*, Vol 10 No 2 (2022), page 356-370

2. Research Methods

In conducting this research, the type of research used is normative research, namely research through library research by studying and reviewing applicable legal provisions, documents or literature as well as conducting research on legal regulations, namely by analyzing legal regulations in the criminal system as follows: the starting point of the research.¹³ The approach method used is the statutory approach. This approach is carried out by reviewing all laws and regulations related to the legal issue being handled.¹⁴

3. Results and Discussion

3.1. The current application of diversion in court is to provide legal protection for children who are perpetrators of narcotics crimes

Principles regarding child protection, especially regarding the principle of non-discrimination which prioritizes the best interests of children and the right to life, survival and development so that respect for children's opinions is required.¹⁵ So an idea emerged for this, that perpetrators of criminal acts committed by children should be kept away from the criminal justice process as far as possible.

Based on this thinking, a concept called diversion was born, which in Indonesian is called diversion or diversion.¹⁶ Diversion has received a positive response from the government which has the power to make and implement laws and as a law maker in terms of the juvenile criminal justice system. So the DPR, one of its functions as a legislative institution, has issued Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or known as (SPPA) as a substitute for Law Number 3 of 1997 concerning Juvenile Courts, which was legally ratified on July 3 2012 . The legislative product regarding the juvenile criminal justice system is a step forward because the rights of children in conflict with the law are more guaranteed. The law on the juvenile criminal justice system upholds restorative justice, from this the implementation of diversion has been carried out with the concept of restorative justice where the solution involves victims and perpetrators as well as the parties involved in its implementation.

The provisions in the SPPA Law are still general in nature and do not regulate in detail how diversion is implemented. To clarify this, the government issued Government Regulation Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling Children

¹³ Soerjono Soekanto & Sri Mamuji, *Penelitian Hukum Normatif*, Rajawali, Jakarta, 1985, page. 70

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Prenadamedia Group, Jakarta, 2008, page. 133

¹⁵ DS. Dewi Fatahilla dan A.Syukur, *Mediasi Penal : penerapan restorative justice di pengadilan anak indonesia*, (Indie Pre Publishing, Depok), 2011, page 13.

¹⁶ Marlina, *Pengantar konsep diversi dan restoratif justice dalam hukum pidana*,(USU Press Medan), 2010, page. 1.

Under 12 Years of Age. As an implementing regulation of the SPPA Law, PP Number 65 of 2015 is quite detailed and regulates the implementation of diversion.

Then a problem arises regarding a child who is subject to more than one article but one of them is under 7 (seven) years of age.¹⁷ Due to this, the SPPA Law is considered to be insufficiently detailed in regulating diversion, so there is a legal vacuum. To answer this matter, the Supreme Court of the Republic of Indonesia then issued Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System.

In its considerations, this Supreme Court Regulation was issued based on Articles 5 to Article 14, Article 29, Article 42 and Article 52 paragraphs (2) to paragraphs (6) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which is obliged to strive for Diversion at the level investigation, prosecution and examination of children's cases in court by prioritizing a restorative justice approach.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is implemented with principles, one of which is protection. The General Explanation of Law Number 11 of 2012 concerning the Criminal Justice System states that; Considering the unique characteristics and characteristics of children and for the sake of protecting children, cases of children who are in conflict with the law must be tried in the children's criminal court within the general justice environment. The judicial process for children's cases from the time they are arrested, detained and tried must be supervised by special officials who understand children's problems. However, before entering the judicial process, law enforcers, families and the community are obliged to seek a resolution process outside of court, namely through Diversion based on a Restorative Justice approach.¹⁸

The most basic thing that appears in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is the emergence of the diversion process.¹⁹ This diversion is to divert the resolution of children's cases from the judicial process to outside the judicial process. However, not all cases of children in conflict with the law can be resolved by diversion because there are conditions that must be fulfilled as mentioned in article 7. The increasing number of criminal acts committed by children does not rule out the possibility that a child will be charged with

¹⁷ Sukmandari Putri, Ahmad Syaafi, Achmad Faishal, Perlindungan Hukum terhadap Anak yang Berkonflik dengan Hukum Melalui Diversi, *JIMPS*, Vol 8 No 4, 2023, page 3931-3949

¹⁸ Erny Herlin Setyorini Sumiati Pinto Utomo, Konsep Keadilan Restoratif Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak, *DiH: Jurnal Ilmu Hukum* Vol 16 No 2 Agustus 2020, page 149-159

¹⁹ Syafitri, H. N. Anugrah, P. D. Hulwa, H. A., Saputra, A. & Kamajaya, R. Perlindungan Hukum Bagi Anak Penyalahgunaan Narkotika Pada Sistem Peradilan Pidana Anak Di Indonesia. *Jurnal Review Pendidikan Dan Pengajaran (JRPP)*, 7(2), 2024, page. 5071–5080

more than one article in the form of subsidiarism. , alternative, cumulative, and combination (combined). This often happens when children's criminal acts are related to narcotics abuse.

In the event that a child is involved in narcotics abuse and is subject to more than one article with a criminal penalty of under 7 years and over 7 years, investigators and prosecutors do not make diversion efforts because they do not meet the requirements as stated in Article 7 of the SPPA Law so the case will continue in the trial process. During the trial process, judges can carry out diversion efforts using the basis of Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for Diversion in the Juvenile Criminal Justice System. However, in resolving cases of children involved in criminal acts of narcotics abuse, problems often occur so that many children have to serve prison sentences because of this.

3.2. Barriers to implementing diversion in court in providing legal protection for children who are perpetrators of narcotics crimes

Diversion is not only carried out to provide leniency for children or prevent children from the criminal justice process and its negative impacts.²⁰ The aim of implementing Diversion is to protect the rights of children as perpetrators of criminal acts. The application of diversion can be carried out for criminal acts that are punishable by up to 7 (seven) years in prison and are not repeated criminal acts.

Narcotics crime is a crime that is often associated with high threats. Article 7 Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System explains that criminal acts which are punishable by more than 7 (seven) years in prison cannot be applied for Diversion, whereas according to Article 3 of Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in The Juvenile Criminal Justice System explains that juvenile judges are obliged to seek diversion in the event that a child is accused of committing a criminal offense which is punishable by imprisonment for less than 7 (seven) years and is also charged with a criminal offense which is punishable by imprisonment of 7 (seven) years or more in the form of subsidiary, alternative, cumulative or combination indictment.

There are inconsistencies in these two regulations regarding diversion requirements, giving rise to different interpretations among law enforcement officials. This is what creates obstacles in resolving narcotics crime cases committed by minors. As happened in handling cases of children who were the objects of this research.²¹

Apart from causing problems in its implementation, this lack of synchronization can give rise to uncertainty in the law which ultimately cannot provide legal protection for children who commit

²⁰ Sakka, S. Diversi Dalam Tinjauan Usul Fiqh. *MADDIKA : Journal of Islamic Family Law*, 3(2), 2022, page. 12–28.

²¹ Resti Pangesti, Subekti, Sinkronisasi Pengaturan Diversi Dalam Memenuhi Hak Anak Berdasarkan Peraturan Perundang-Undangan Di Indonesia, *Recidive*, Vol 10 No 2, 2021, page 117-124

criminal acts, especially narcotics crimes. To overcome the obstacles faced in resolving child crime cases related to narcotics, you should be guided by higher regulations in accordance with the hierarchy of applicable laws and regulations.

In the author's opinion, in every criminal case, in this case where children participate or are usually called children in conflict with the law (ABH), especially children as perpetrators of criminal acts, protection is mandatory, where in this case diversion is regulated as a form of protection, diversion itself which means an extrajudicial process in which criminal justice is not carried out which will make the perpetrator's child feel discriminated against, diversion itself as a diversion of the justice process is required in every juvenile criminal justice process starting from the investigation, prosecution and trial process. This has been regulated in a limited way by the law on the juvenile criminal justice system, but considering that the conditions for diversion to be carried out must be a criminal offense that carries a threat of less than 7 years and is not a repetition of a criminal act, it is not impossible that this is specifically for narcotics crimes where children are the perpetrators. It is impossible to carry out diversion considering that the threat of narcotics crimes exceeds the provisions of the diversion requirements. If children want to be protected, it is not impossible to carry out a review of the diversion regulations. In this case, diversion as a form of legal protection for children who commit narcotics crimes in the juvenile justice system in Indonesia can be said to have failed completely.

The author's analysis in terms of child protection that has been implemented in Indonesia cannot be separated from previous regulations which are based on international legal instruments. Indonesia is also a country that has ratified the child rights convention, in this case it also contains very basic child protection principles.

Rules related to child protection were formed starting from the juvenile justice law, the child protection law, and finally as a form of protection for children who are perpetrators of criminal acts in the judicial process. Indonesia has a juvenile criminal justice system law which regulates the process. how to handle children in conflict with the law, the basic principles which are the principles of child protection are also regulated.

The protection of children in the law on the juvenile criminal justice system also provides a new breakthrough so that children are not processed through litigation, in this case diversion is formed, diversion is a process of resolving cases outside of juvenile criminal justice and must even be present in every process at the level of investigation, prosecution and trial but diversion has limitations, not all crimes where children are the perpetrators can be diverted, such as children in narcotics crimes.

4. Conclusion

Law enforcement in the criminal act of transferring the object of fiduciary collateral by a debtor based on restorative justice begins with receiving a report of the fiduciary crime, and then looks for the best way to reconcile the two parties through penal mediation so that both parties obtain a mutually beneficial result. Obstacles to law enforcement in criminal acts of transferring fiduciary collateral objects by debtors based on restorative justice Legal structure, lack of understanding Concerns of some police officers. The solution is to socialize and improve the quality of human resources in the police. Legal substance: There are no arrangements for resolving criminal cases involving the transfer of objects of fiduciary collateral using restorative justice through penal mediation. The resolution effort is to carry out an ideal legal construction in resolving criminal acts of transferring objects of fiduciary collateral by including penal mediation in the context of renewing the national criminal law. Legal culture, public attitudes, especially debtors who underestimate the ease of fiduciary guarantees in submitting credit applications; Lack of community legal awareness. The solution to this is socialization and guidance for the community regarding the importance of community legal awareness in the law enforcement process, and also the implementation of the community's obligations regarding agreements that have been made.

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