

Alternative Model of settlement of Narcotics abuse by Children through the mechanism of "Diversion" (case study in sambas district)

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Abstract— this case discusses about in narcotic narcotics version of child (case study in district of execution of diversion against child of perpetrator of narcotics crime pursuant to law no 11 year 2012 about juvenile criminal justice system from position of law of diversion to child abuse of narcotics in developmental perspective criminal law is a non-panel policy measure for handling child perpetrators of child criminal acts as their handling is transferred to the juvenile justice system.

related to the handling of children of narcotics abuse, the main problem that arises from the criminal justice process of a child or criminal decision is the stigma attached to the convict of narcotics abuse after the completion of the criminal justice process tends to increase the abuse of narcotics conducted by the child. the diversi- fication concept set forth in the Indonesian justice system is putting the obligation to divert in any judicial proceedings (investigation, prosecution, trial) of the diversion settings against the

perpetrators, the future narcotics crime concept of implementation is only a component and improved the structure of the Juvenile justice system as an alternative to formal criminal justice by placing diversionary efforts in every stage of the judicial process (investigation, prosecution and civil law). future divergence concepts not only as an alternative to the just legal system but the diversion that really excludes the process

Keywords—
(*diversity, crime, narcotic, children*)

Abstrak— kasus ini membahas tentang di versi tindak pidana narkoba terhadap anak(studi kasus di kabupaten sambas pelaksanaan diversi terhadap anak pelaku tindak pidana narkoba berdasarkan undang-undang no 11 tahun 2012 tentang sistem peradilan pidana anak ditinjau dari kedudukan hukum diversi terhadap anak penyalahgunaan narkoba dalam presfektif perkembangan hukum pidana merupakan langkah kebijakan non-panel penanganan anak pelaku tindakan pidana anak karena

penanganannya dialihkan ke jalur sistem peradilan anak.

berkaitan dengan penanganan anak penyalahgunaan narkoba permasalahan pokok yang di timbulkan dari proses peradilan pidana anak atau putusan pidana adalah stigma yang melekat pada terpidana penyalahgunaan narkoba setelah selesai proses peradilan pidana cenderung meningkatnya penyalahgunaan narkoba yang dilakukan oleh anak. konsep diversi yang diatur dalam sistem peradilan indonesia adalah meletakkan kewajiban untuk melakukan diversi dalam setiap proses tindak peradilan (penyidikan, penuntutan, pengadilan) pengaturan diversi terhadap para pelaku ,tindak pidana narkoba untuk masa yang akan datang konsep diversi yang di implementasikan di indonesia hanyalah sebuah komponen dan perbaikan struktur Sistem peradilan anak sebagai alternatif dari peradilan pidana formal dengan meletakkan upaya diversi dalam setiap tahap proses peradilan (penyidikan ,penuntutan dan peradilan). konsep diversi dimasa yang akan datang bukan hanya sebagai alternatif yang berhadapan dengan sistem hukum semata tetapi diversi yang benar-benar mengeluarkan dari proses peradilan pidana.

Katakunci—

(diversi, kejahatan, narkoba, anak)

I. INTRODUCTION

child protection is all efforts undertaken to create conditions for each child to exercise his / her rights and obligations for the proper development and growth of the child both physically and mentally and socially.

protection of the child of a manifestation of justice in a society, thereby protecting the child cultivated in various areas of the life of the state and society. child protection activities result in the law, both in relation to written and unwritten laws. law as a guarantee for child protection activities.

The use of criminal law as a means of crime prevention includes countermeasures of narcotics abuse, is getting under the spotlight as well as being a topic of long conceptual debate. Although the debate still spawned pros and cons against the use of criminal law as a means of crime prevention.

Conceptually, crime prevention can be done well with using the criminal justice (judicial) as well as other means outside the criminal justice (nonjudicial). This effort diverts the process from the judicial process to the non-judicial process in the prevention of narcotics abuse by the child, basically an attempt to solve the process of abuse of narcotics by the child out criminal justice.

With such diversion, the child will be spared and the application of criminal law which in many theories has been postulated as one of the criminogenic factors. Negative impacts on the application of criminal law, including to children will result in stigmatization and dehumanization which can be criminogenic factors. Thus, avoiding the child and the application of criminal law (depenalization) may preclude the existence of criminogenic factors, thus also avoiding the child and the possibility of being malicious again (recidivist), therefore also means to avoid the community and possibly become victims due to crime.

seen from the development of criminal law should also pay attention to

the victim of crime, where the orientation of criminal law which is only on the problem of acts (criminal) and perpetrator (daad-dader strafrecht) this condition also make idana law not care to narcotics victim especially child. should be in the context of the child as an abuse of narcotics, the child can not be directly accused of being a perpetrator, you must also be seen as a victim of that which requires the priority of the most dependence on narcotics.

Basically the criminal law policy in drug prevention in Indonesia has happened since long done. Beginning with the enactment of the Ordinance of Drugs (Verdoovende Middelen Ordonnantie, Stbl.1927No.278 jo. No.536). This ordinance was later replaced by Law no. 9 of 1976 on Narcotics. Furthermore, this law was changed to Law no. 22 of 1997 on Narcotics up to the Law no. 35 of 2009 as the latest update of the law on Narcotics.

in law No. 11 of 2012 on the juvenile justice system which makes the view that punishment should be a last resort for children in conflict with the law, so that the piadan approach should be changed under the juvenile justice system to put forward the form of retributive justice punishment. where this model is a recovery to the original condition and punishment as the last path so as to take precedence the last way out of court. one of which is the diversion of the transfer of the settlement of a child case from the criminal justice process to the criminal proceedings outside the criminal. Diversi is the right way for the child's efforts not to be brought to justice, so diversion must be the police's duty in every penance at the investigation level, prosecution up to court examination in court.

in the law no 11 of 2013 on the justice system in which the child is required every law enforcement officer: the police, the prosecutor, the judge to commit a diversion against a child committing a crime, this is described in article 7 paragraph 1 of law no 11 of 2012 on the child criminal justice system states that at the level of investigation the prosecution and examination of the child's case in the country's court is obliged to do a diversion. this shows that as much as possible the crime committed by the child does not proceed to the level of examination in the criminal court. but is carried out by way of restoring the mental condition and mental development of the child that may re-occur in a crime.

but that often happens in real life there are cases where the perpetrator who happened defendant is a child who is still under age to undergo the process to the level of prosecutor prosecution to the level of court examination process. which will be discussed in this paper about examples of cases of narcotics in children in Sambas district, through letter of Determination Number 6 / Pid.sus / anak / 2016 / Pn.Smbs, has stipulated the abrogation of child offender cases on behalf of ALDI aged 15 years. in this case aldi who as the perpetrator of narcotic crime charged under Article 112 paragraph (1) and Article 131 of Law No. 35 of 2009 on narcotics. In this case the judge considers the provisions of Article 12, Article 25, paragraph (5) of Law No. 11 of 2012 on the Juvenile Justice System and Law No. 8 of 1981 on the Criminal Procedure Code loyal to other laws and regulations in case-setting.

with the existence of Indonesian republican law No. 11 of 2012 on the juvenile justice system is able to provide a good legal basis to raise children before

the law so that the rights and duties of children are not deprived because of the criminal acts that he committed. special attention to restoring the future of the child as a good citizen and responsible in the life of the community.

II. RESEARCH METHODS

The methodology is generally defined as "a body of methods and rules followed in science or discipline". While the method itself is "a regular systematic plan for or way of doing something". The word method comes from the Greek term *methodos* (*meta* + *bodos*) which means way.

steps that start from the writing of this paper is to look for data data such as journals other data thesis such as books to support the writing of this paper.

Qualitative and quantitative research should not be conceived, the task of completion is contrasted. This contrast is necessary to see excellence and their respective weaknesses in solving problems and or in the development of theory. Qualitative and quantitative research methods each evolved based on a particular (different) paradigm that became the reference but in this paper also uses qualitative and quantitative methods.

in this paper Qualitative research approach is often called the naturalistic inquiry (natural inquiry). Regardless of the kind, manner or pattern of qualitative data analysis of a study, the initial action that is actually done is reading the phenomenon. Each qualitative has its own characteristics. Qualitative data is implicitly located in its data source. Sources of qualitative data are records of observations, transcripts of in-depth interviews (depth interview), and related

documents in the form of writing or drawing. in the explanation this papaer in dpatkan from the results of the journal along with books relating to the title of the paper in the lift. This writing including the type qualitative and descriptive because bersal from existing data in the form of journals and books and about the opinions of the author himself. data from the writing of this papar is the primary data obtained from the source in accordance with the journal that has been in carefully.

III. RESULTS AND DISCUSSION

A. *Principle of Juvenile Justice in Law Number 11 Year 2012*

- a. a. principle of protection
the principle of protection is a direct activity and direct action of the act of endangering the child either physically or psychologically.
- b. the principle of justice
where every case settlement should be based on the principle of justice for children not only children but family and society.
- c. the principle of non-discrimination
explanation of UUPA where the absence of different treatment is based on race, religion, culture, type of kelamin etc.
- d. he best interests of the child
for decision-making must always consider the survival as a victim or a child's growth and development that is the victim of abuse
- e. the principle of respect for children
any opinion of the child according to the UUPA respecting the right of the child to participate and

express his opinion in decision making, in priority for the future of the child.

- f. principles of coaching and mentorship of children namely the provision of demands to improve the quality of the devotion of the child to the omnipotent god.
- g. proportional principle every treatment to the child must pay attention to the limit of umr and age of the child.
- h. i.asas deprivation of independence and punishment as a last resort
- i. in the UUPA the principle of deprivation and punishment of the child's ultimate efforts basically the child can not be deprived of his independence unless without the benefit of settlement of the case.
- j. the principle of avoidance of retaliation in the UUPA where the principle of avoidance of retaliation is the principle of dropping retaliation efforts in the interest process of the case.

B. Implementation of Diversity Against Children Perpetrators of Narcotic Drugs Based on Law Number 11 Year 2012 on the Criminal Justice System of Children

Implementation of the criminal justice system of children aimed at tackling crimes against child offenders in Indonesia often encounters problems, including in the case of detention, a long trial process ranging from investigation, prosecution, judiciary, which eventually puts the convicted child in a traumatized prison and negative implications for children.

1. The position of the law of diversion against child abuse of narcotics in the perspective of the development of criminal law.

- a. diversified in the perspective of the development of child criminal law criminal law as a means of crime prevention including the prevention of narcotics abuse. is becoming a topic of discussion for now. conceptually, crime prevention can be done either by using criminal justice (judicial) as well as facilities outside the court (non-judicial) efforts to divert the process of the judicial process into a non-judicial narcotics process in the prevention of narcotics abuse by children. is basically an attempt to resolve abuse to prevent the child from applying criminal law and punishment.e Diversi in essence also has a purpose so that children avoid and develop negative criminal application. Diversity and essence still ensures children grow and develop both physically and mentally. Theoretically reviewed from the concept of objective statement, the process of transferring the process and the judicial process against non-judicial against children who do narrative settlement that will look relevant as follows:

1 in general the purpose of punishment is essentially composed and an attempt to protect the community on the one hand and protect the individual (the perpetrator) on the other side. The relevance of the transfer of processes and judicial processes to non-judicial processes in the prevention of narcotics abuse by children against the two main aspects of the purpose of

funishment, namely aspects of community protection and individual protection aspects.

- 2 In its development, criminal law also needs to pay attention to victims of crime. The orientation of criminal law which only tends to the problem of acts (criminal) and perpetrator (daad-dader strafrecht) has spawned a criminal law construction that does not respect against the victim. Whereas in the context, the child as the person doing the abuse of narcotics, he is not

can merely be seen as the perpetrator, but he must also be seen as a victim who needs a priority alleviation of his dependence with narcotics.

- 3) The transfer of the process from the judicial process to the non-judicial process is also very relevant to the philosophy of adherence in general philosophy treatment (philosophy treatment). Thus, the transfer of the process from the judicial to the non-judicial process also has relevance to the conceptual transformation in the criminal and criminal systems that occur in the world at large and the conception of retribution toward the conception of reform.

C. International Instruments relating to the Application of Criminal sanctions for Children

- a. The united nations guideline for the prevention of juvenile delinquency (the Riyadh guidelines)

One of the international instruments relating to the application of criminal law to children is the United Nations Guidelines for the Prevention of

Juvenile Delinquency set out in UN Resolution 45/112 of 14 December 1990. Some of the key points contained in UN Resolution 45/112 relate to the application of criminal for children among others:

1. The development of non-criminogenic (coercive and writer) attitudes among children and the community needs to be done, by utilizing useful social activity laws, improving the human approach to all aspects of community life, including the care and attention of children and adolescents in a humane way (coercive and writer).

2. Efforts to ensure the development of young people in harmony, for the sake of the growth of the child's personality from an early age, children and adolescents should not be the object of supervision and socialization, in this case including the understanding that children and adolescents who commit minor offenses should not be reacted with criminalization and punishment.

referring to the substance of the united nations guidelines for the prevention of juvenile delinquency (the Riyadh guidelines) with it the application of criminal for children there are various things to be noticed. there is an international agreement that children and teenagers who commit minor criminal offenses do not have to be reacted with the use of criminal law let alone proceed to criminal detention. it also emphasizes non-penal measures as anticipatory measures to reduce the negative impacts on the application of criminal law to something that should be prioritized specifically for minor offenses.

the riyah guidelines essentially want to provide a broad space to ensure the growth of the child's soul. this instrument is also that the process of youthfulness of children should also be avoided from possible treatment of the desert including by law enforcers.

b. *The united nations for the administrati of juveneli justice(the Beijing rules)*

The united nations for the administration of juvenile justice was approved in 6 September 1985 and in pbb resolution 40/33. Where the principal contains the following:

- a. There needs to be a comprehensive legal policy
 - b. Children who are in the process of investigation should be prevented from things that can harm the child.
 - c. In the process of adjudication and disposition, in the best judgment of a child's social investigation report, the principles and guidelines for the settlement of cases and the placement of children shall be necessary conditions to be considered.
 - d. Anak who have been through the adjudication process in place in the valley or outside the epidemic to be fostered.
- c. The united nations rules of for the protection of juvenile deprived of liberty based on the various things contained in the united nations of rules fot the protections of juvenile deproved of liberty can be concluded that although in defrivesion independence of

children (perpetrators of crime) but the prerequisite of the dsar to take deprivation of independence against the child so tight. may be exercised if only for the reason concerned has committed a crime.

D. *Diversity of Child Abuse of Narcotics in Indonesian Criminal Justice System*

the arrangement of narcotics in Indonesia is inseparable from the legal consequences of various international conventions on narcotics ratified by Indonesia. namely my convention of the psychotropic substance of 1971 and the national convention united against iilic traffic in narcotic drugs and psychotropic substances 1998.

Basically legal virtue has been overcome drugs in Indonesia is a long time done, with the help of Ordinance Drugs (verdoovindle Middelen Ordonantie.stbl.1972No.728.jo.536). then replaced by law no. 9/1997 about narcotics up to law no 35 in 2009 as a new renewal of the law on narcotics.

of the negative impacts caused to children due to criminal justice is very big influence the children who become perpetrators of narcotic crime. negative damages generated in the form of prisonisasi, dehumanisasi and stigmatisasi will disrupt the growth of the child's soul from the yistisial path to the non-judicial path of diversion.

Through the effort to divert the behavior or actions of children who deviate from the crime may be done better settlement, while still prioritizing the rights and obligations of a child who becomes the perpetrator of the crime of narcotics. this transfer policy is proposed to execute several cases involving

children as perpetrators of criminal acts specifically in the treatment of children of narcotics misuse. so it will be more appropriate and fairer to do the actions that need to be applied to it.

Narcotics abuse can be said to be crime without victim, thereby that the victim of a narcotics abuser's crime is the perpetrator itself. treatment of perpetrators of crime by treatment of victims is the same. so to understand the possi or state of the child involved in a criminal offense measure to see how far the accuracy level of treatment addressed to him. the handling of child victims of narcotics abuse can be used alternative punitive efforts with restorative prinsif. where the child is positioned as the last resort instead of the first resort. in criminal law is also referred to as "ultimum remidium", aiming for children can improve himself in the face of the law. although in fact criminal is the most powerful or powerful form to counter narcotics crime but punishment is not also one of the good ways to improve the circumstances of the crime especially the child.

TABLE 1.
NARCOTIC ABUSE TREATED BY
CHILDREN START YEAR 2000 UNTIL BY
2004 BASED ON AGE OF PERMAKER

| Periode/ Tahun | Usia/Th | | Jumlah |
|-------------------|---------|---------|--------|
| | < 16 | 17 - 30 | |
| 2000 | 208 | 1561 | 1769 |
| 2001 | 385 | 1946 | 2332 |
| 2002 | 227 | 3456 | 3683 |
| 2003 | 378 | 2786 | 3164 |
| 2004 | 331 | 2932 | 3263 |

Sumber: Bahan Hukum Sekunder diolah

seen from table 1 above dmana that the number of abuse of narcotics in children do tend to increase. see in 2000 the number of underage children who become perpetrators of narcotics abuse 208 people and the number of children over 16 years (17-30) 1561 people. if it can be assumed that 25% of the amount is done by children between the ages of 17-18 ie those who are qualified as children, the number of 2000 is 208 plus 390 equals 598 people. so with the views of the chart it can be deduced that the peroid of 2000 recorded there were about 598 children who do abuse of narcotics.

E. The Diversion Arrangement of the Perpetrators of Narcotics Crimes for the foreseeable Future

1. The Concept of Handling Diversity of Child Abuse Narcotics In System Indonesian Child Criminal Court For The Future

article 1 number 7 is mentioned where the diversion is the transfer of the settlement of a child case from criminal proceedings outside the criminal court. because the diversionary function is that the child facing the law is not stigmatized over the judiciary it undergoes.

a child who commits a crime by violating the law or committing a crime in which it can occur due to several other factors outside the child. factors that can be the influence of children to commit a crime that is a factor, association, wrong education, playmates or the surrounding environment is indeed a condition that is less good environment.

the child's child becomes influenced by it to do what he or she does not know

about the impact it will have on it. to protect children from the influence of the formal process of the criminal justice system. therefore the experts to make the formal rules of action to remove (remove) against someone who melakukan violation of judicial law pdana provide an alternative effort to provide a good way for the case of children, therefore diverted from the name.

where the juvenile justice philosophy emphasizes the protection and rehabilitation of youthfull offender in which the person still has some limitations when compared to the adult person. children who still need protection and education or direction from the state and society in the future to come for the future.

concepts and references that should be properly applied in Indonesia in the foreseeable future may not be far from the australia system not far from the diversion imposed by Australia is the police diversion

which is based on the consideration of the police as the first form to deal with the conflict with the law which determines whether a person will continue in court or other actions.

to combat crime by using procedural criminal procedural as described above must start from the police level either as investigator or investigator. kentuk criminal lane also preceded the police path first. as from the part of the police criminal justice sub-system which also has such wide authority as the institution that initiates the operation of the criminal justice system.

for the upcoming diversion as the first law institution of the police in this case one of the most helpful things which can be seen from the police community as directly as the community. because to

protect the child that the child should be kept away from the judicial process. should remain a priority to be kept away from those associated with law enforcement officers. This does not necessarily mean that they should be relieved of their sense of responsibility for acts violated by the child. but within the limits of tolerance that assure the protection of children's rights and interests. in the handling of these crimes polsisi also in accordance with the substance in accordance with the best efforts.

IV. CONCLUSIONS

from the writing of the above papers whose source comes from journals and the punishment I can conclude that, the implementation of diversion as an alternative attempt to abuse narcotics by children based on Law No. 11 of 2012 on the Criminal Justice System of Children. Judging from the legal versus illegal drug abuse in the perspective of the development of criminal law in which the step is a non-penal policy of handling children as perpetrators of criminal acts, because the handling is carried out in a non-criminal justice system. Diversi itself is born from the assumption that if the handling is done in the criminal justice system more likely negative impact than positive for the development of children. The problem of children who abuse narcotics is the basic problem after the judicial process is the stigma of children attached to the child after the criminal penalty process tends to increase the crime of narcotics done for the child support to try the crime committed by the child with the approach Diversi Retroative justice in its development is the provision of child crime cases that

have been carried out by various other countries, including Indonesia which regulated in Law no. 11 of about Criminal Justice System and Government Regulation no. 65 of 2015. Diversi as a concept that is set in the judicial system in Indonesia is upholding the obligation to divert in every trial process (investigation, prosecution and trial).

diversion arrangement for the time to be implemented in Indonesia is only a component of the improvement of some Criminal Justice System structures as an alternative to formal criminal justice, ie placing divergences at every stage of the trial process (investigation, prosecution, and trial). the concept in Indonesia is not much different from the australia police Diversion. that is to be suppressed on the consideration of the police as the first legal guardian to decide whether to follow up to court or not.

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