

IMPLEMENTATION OF DIVERSION TOWARDS CHILDREN WHO COMMIT CRIMINAL ACTS OF DRUG ABUSE IN DENPASAR CITY RESORT POLICE

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Abstract

This study aims to determine the application of diversion for children who commit narcotics abuse in the Denpasar City Police, as well as to identify the obstacles encountered in carrying out diversion related to cases of narcotics abuse crimes committed by children in the same jurisdiction. The research method used is empirical legal research by analyzing the gaps between "das sollen" (what should be) and "das sein" (what is). The approach used is the statutory approach and the fact approach. Data collection techniques include literature search, documentation, and interviews. Furthermore, both primary and secondary data were qualitatively analyzed. The results of this study indicate that investigations into narcotics crimes committed by children in the jurisdiction of the Denpasar City Police involve asking for consideration or advice from the Community Advisor after a crime is reported or complained about. In cases of children who are in conflict with the law related to narcotics crimes during 2020, 2021, and until the end of August 2022, investigators did not make diversion efforts because the child perpetrators had repeatedly committed the same offense. Therefore, the diversion requirements were not met in accordance with the Juvenile Crime Justice System Law. However, in 2019, there was one successful case of diversion attempt. This was because it was the first time the child in conflict with the law was involved in narcotics abuse.

Keywords: Denpasar City Police, Diversion, Investigation, Narcotics Crime

1. INTRODUCTION

The current issue of drug abuse among children is a cause for concern for many people, and it is frequently discussed and publicized. In fact, the problem of drug abuse has become a concern for various groups, and almost everyone emphasizes and desires that Indonesian society, especially children, should never try or consume drugs. Unfortunately, as witnessed almost every day through print and electronic media, the circulation of drugs has spread everywhere regardless of age, especially among children. Childhood is a period of self-identity search when children become curious, want to explore, and try various new things, even those with high risks (Setiawan & Purwanto, 2019). Therefore, it is highly likely that the number of drug crimes committed by dealers and users among children will continue to increase day by day.

Children require protection or diversion as they are the future of the nation and a valuable asset for national development. Without a clear future and reliable quality of life for children, it is difficult to carry out national development, and the fate of the nation is at stake (Punyantari & Windia, 2018). Philosophically, children are part of the younger generation and have the potential to fulfill the nation's aspirations in the future. They have unique roles and characteristics, and thus, require special guidance and protection (Maswandi & Kartika, 2019). Child protection is a way to ensure that children receive fair treatment and do not face negative threats. According to Arif Gosita in Salam (2005), children have the right to grow up in a healthy and positive environment, and taking care

of them is a moral obligation. The criminal procedures can cause trauma and stigma in children, and they may also be influenced by adults. Moreover, there are no special cells or locations for children, and diversion is an effective way to prevent them from getting involved in drug abuse or other criminal activities, while also protecting them from excessive trauma and stigma.

The definition of a child, according to Article 1 paragraph (1) of Law No. 23 of 2014 concerning Child Protection, is "a person who has not yet reached 18 years of age, including a baby still in the womb." As mandated by the 1945 Constitution of the Republic of Indonesia, every child has the right to survival, growth, and development, as well as protection from violence and discrimination. Therefore, Indonesia enacted Law No. 11 of 2012 concerning the Juvenile Justice System, which emphasizes the diversion of child crime. Diversion is the transfer of juvenile cases from the criminal justice system to a process outside the criminal justice system (Article 1 Number 7 of Law No. 11 of 2012 concerning the Juvenile Justice System). This transfer is an option that is in line with various international legal standards. The aim of diversion is to keep juvenile offenders away from the justice system and instead guide them into the social system. Judicial institutions can use various considerations to make this transfer, and children can be entrusted to their parents, the Social Services Office, and the government.

According to Article 8 paragraph 1 of the law, the diversion procedure can be based on a restorative justice approach and carried out through discussions involving the child, their parents or guardians, the victim and/or their parents/guardians, community support workers, and professional social workers. Deliberation may be used where necessary involving community members and/or social welfare workers. The interests of the victim, the welfare and responsibility of the child, avoiding negative stigma and retaliation, social harmony and propriety, decency, and public order all need to be considered during the diversion process. The examination stage at the investigation level, the examination stage at the prosecution level, and the examination stage at the court session are the three stages of the process and mechanism for resolving criminal cases in the Criminal Procedure Code (KUHAP).

Drug abuse is a prevalent issue in every society, including the abuse of drugs by children, which is a growing concern for communities. Based on data from the National Narcotics Agency (BNN), there were 12.858 reported cases of drug and psychotropic substance use by perpetrators with education levels ranging from elementary school up until 2007. In July 2019, the Denpasar Police successfully arrested 29 underage drug abusers in Denpasar City.

It seems that the *SatResnarkoba* unit or Drug Investigation Unit of the Denpasar City Police discovered cases of drug abuse involving minors in July 2019. They handled a total of 26 cases, which involved 29 suspects. The lack of harmony between "*das sein*" (legal reality) and "*das sollen*" (what should be) can lead to legal disparities if laws are not properly enforced. The latest law governing narcotics is Law No. 35 of 2009, but when it comes to criminal acts committed by children, it must be synchronized with Law No. 11 of 2012 concerning the Juvenile Justice System and decision-making efforts regarding the resolution of criminal cases involving children. Given this disparity, it is essential to conduct research.

In order to provide a comparison, this research will be compared to two previous studies. The first study was conducted by Virginia Christina from Hasanuddin University in Makassar, with the title "Implementation of Diversi in Cases of Assault Committed by

Children (Case Study No. 20 / Pid.Sus-Anak / 2014 / PN.Mks)." The study aimed to provide information on the implementation of diversion in cases of assault committed by children and the readiness of relevant agencies to implement diversi in the case study No. 20/Pid.Sus-Anak/2014/PN.Mks. The second study was conducted by Mayasari from Sunan Kalijaga State Islamic University in Yogyakarta, with the title "Implementation of Diversi for Offenders (Case Study of the Selaman District Attorney's Office)." This study aimed to provide information on the implementation of criminal law and the protection of the rights of child offenders during the diversion process in the Selaman District Attorney's Office.

Both of these studies differ from this research. While the first study focuses on cases of assault committed by children, this research examines the mechanism of implementing diversion for children who commit drug and psychotropic abuse crimes, based on Law No. 11 of 2012 on the Juvenile Justice System. It aims to address the challenges faced and solutions to implementing diversion related to drug and psychotropic abuse cases committed by children. Similarly, while the second study focuses on the protection of the rights of child offenders during the diversion process, this research also examines the challenges and solutions to implementing diversion for children who commit drug and psychotropic abuse crimes, based on Law No. 11 of 2012 on the Juvenile Justice System.

Based on the background information, the main objective of this research is to investigate the implementation of diversion for children who commit drug abuse crimes in the Denpasar City Police Resort, and to identify the challenges encountered in implementing diversion in cases of drug abuse committed by children in the Denpasar City Police Resort.

2. RESEARCH METHODS

This research was included in empirical research as it aimed to determine the application of diversion to children who committed crimes of drug abuse and psychotropic substances. The approach used in compiling this research was The Statute Approach and The Case Approach to find out the responsibility and legal protection for children who committed criminal acts of abuse of Narcotics and Psychotropics (Daniswara & Purwanto, 2022). The data source for this research was obtained from primary data sources in the form of a number of juvenile cases from 2019 until the end of August 2022 obtained directly from the Denpasar City Police Resort. Meanwhile, the secondary data were in the form of documented legal materials called secondary data. This type of data came from literature studies, not directly from primary sources. Primary legal materials, secondary legal materials, and tertiary legal materials were all types of legal materials. The data collection technique was obtained from the results of interviews, and the data was processed using descriptive qualitative methods.

3. RESULTS AND DISCUSSION

3.1. Implementation of Diversion Against Children in Narcotics Abuse Crimes at the Denpasar City Police

In the Denpasar City Resort Police, diversion is prioritized in cases involving children who are in conflict with the law (drug abusers). The Law on Juvenile Criminal Justice System in Indonesia, Law Number 11 of 2012, which came into effect on July 30,

2014, includes provisions on diversion. Based on this law, not all cases involving children can be requested for diversion. In order for a case involving a child to be considered for diversion, the offender must still be a child (aged 8 to 18 years old), the offense must carry a sentence of less than seven years, and the offender must not have committed a new offense.

In 2020, 2021, and until the end of August 2022, all cases involving children who had committed drug-related offenses were not considered for diversion because these children had already been considered for diversion more than twice in previous processes. Only one case in 2019 was considered for diversion and succeeded because the child involved was a first-time offender. The use of drugs by children is caused by several factors, including environmental factors such as having friends who use or even sell drugs, lack of parental supervision, allowing children to hang out late at night without knowing what activities they are involved in, and excessive pocket money given to schoolchildren.

Based on the interview conducted by the author with Mr. IPDA I Wayan Sudarsana, as the Head of Sub-Division 1 of the Narcotics Unit of the Denpasar City Police, it was explained that "In cases involving children in conflict with the law, especially in 2021 and until the end of August 2022, investigators did not attempt diversion because the child offenders had done it repeatedly or more than once, so the diversion requirements were not met according to the Law on the Criminal Justice System for Children, and only in 2019 and 2020 were there 2 (one) cases of diversion that were attempted and successful, this was because the children involved in the legal process were only involved in drug abuse for the first time" (Interview on February 2, 2023).

Children are so vulnerable that many become victims of drug crimes, especially in the jurisdiction of the Denpasar City Police (Afifah, 2014). As with gambling, narcotics crimes where the perpetrators are identified as narcotics abusers and the perpetrators are also identified as victims of drug abuse is one of them. crime which is classified as having its own uniqueness in cases of juvenile delinquency related to narcotics. It is not surprising that narcotics crime can be described as a victimless crime where the perpetrator also acts as a victim. or drug crime. Gambling, drinking, pornography and prostitution are also victims of crime, apart from drugs. Often, the relationship between the perpetrator and the victim is not seen in victimless crimes. Because everyone is involved and part of the crime, there are no target victims. He can be both a victim and a perpetrator (Devi & Purwanto, 2014).

However, upon deeper scrutiny, the term "victimless crime" is actually inappropriate because all crimes must have a victim or an impact, either directly or indirectly. Using religious language, such changes often have more harm than good. Crimes that are more commonly known as consensual crimes (Makarao, 2013). Article 127 paragraph 3 of the Indonesian Law Number 35 Year 2009 concerning the Child Criminal Justice System, as amended by Indonesian Law Number 11 Year 2012, defines a child victim of drug abuse as a child who unintentionally uses drugs because they were persuaded, deceived, coerced, or threatened to use drugs. According to Graham Blaine, a psychiatrist cited in Anhari (2012) mentioning the causes of drug abuse are as follows:

- 1) To demonstrate bravery by taking risky and dangerous actions;
- 2) To oppose parents, teachers, law enforcement, or regulatory authorities;
- 3) To facilitate sexual actions and distribution;
- 4) To avoid feelings of loneliness and experience emotional satisfaction;

- 5) To try to find a sense of purpose in life;
- 6) To fill a void and alleviate boredom caused by a lack of activity;
- 7) To alleviate frustration and anxiety caused by insurmountable obstacles and dead ends, particularly for those whose personalities clash;
- 8) To follow the desires of friends and foster friendship solidarity;
- 9) To entertain or out of a sense of curiosity.

According to Graham Blaine in Rahayu (2015), the nine causes of drug abuse above do not only affect adults; In fact, several causes of drug abuse also affect children, especially the ninth cause, namely children who abuse drugs because they are curious or just for fun. In addition, Soedjono Dirdjosisworo revealed, the reasons for teenagers using drugs and the age of the child can be broken down into three categories, namely: (Dirdjosisworo, 1982):

- 1) Those who are interested in experiencing (experience seekers), especially those who seek thrills and new experiences through drug use;
- 2) Those who intend to escape or avoid the realities of life (the oblivion seekers), especially those who see being in a stupor as the most beautiful and comfortable escape;
- 3) Those who want to change their personalities (personality change), especially those who believe that drug use can change their personalities, such as becoming more flexible in relationships.

An interview with Mr. IPDA I Wayan Sudarsana, as the Head of Sub-Division 1 of the Narcotics Detective Unit of Denpasar City Police, resulted in an explanation that the examination of children who face the law in various cases, including drug-related cases, must be done very carefully and must focus on their rights. The assessment should be done in a family atmosphere, the questions should not contain coercion, especially for children who are facing legal cases for the first time (or what is known as a criminal offense for adults), the investigator will first attempt diversion.

3.2. Obstacles Faced and Solutions in the Implementation of Diversion Related to Cases of Crime of Narcotics Abuse by Children at the Denpasar City Police

The Police Resort (Polres) has a strategic position in handling drug cases that arise in the community because they are a unit equivalent to the district military command (KOD). To stop the spread of the disease in society, it is crucial for the police to eradicate drugs, especially at the KOD level. The Criminal Law Enforcement Operations Unit, Intelligence Unit, Security and Order Unit, Partnership Development and Community Empowerment Unit, as well as cooperation with the community and related agencies to create synergy, are all needed for the KOD unit to handle drug cases that have recently been rampant in various regions in order to enforce the law at the KOD level between internal and external policies (Dahniati et al., 2021). That is certainly not as simple as discussed in public. In the process of investigating drug crimes committed by children, the Denpasar City Police investigators face several obstacles regarding the diversion process and the investigation of drug crimes committed by children.

Based on the author's interview with Mr. IPDA I Wayan Sudarsana, as the Subsection Chief of *SarResnarkoba* of Denpasar City Police Resort, it was explained that "the basic problem lies with the fact that they are placed near the location of adult examinations, so the information provided during the examination process is not optimal and the lack of facilities is also a major obstacle in carrying out their duties by the

investigators of the Denpasar City Police Narcotics Unit is an internal and very typical obstacle. However, they continue to work professionally and as best as possible with the facilities and budget available, with the hope that both can be improved in the coming years. The minimal arrest time given by the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Justice System, which is 1 x 24 hours as stipulated in Article 30 paragraph (1), and still having to wait for the results of forensic laboratory examinations by the investigators are other internal obstacles."

According to the interview conducted by the author with IPDA I Wayan Sudarsana, the Head of the Sub-Division 1 of the Drug Enforcement Unit of Denpasar City Police Resort, there are also external factors related to the challenges faced in handling drug cases involving children. Sudarsana stated that "the work of the Drug Enforcement Unit of Denpasar City Police Resort could be made easier and lighter if family members could take care of the child and maximize parental supervision, especially when the offender is a child. In addition, the investigators greatly need the awareness of the community to cooperate with the Drug Enforcement Unit of Denpasar City Police Resort in uncovering drug crimes, especially if the perpetrators are children."

The strategy for overcoming drug crimes is carried out, among others, by enforcing the law and meeting the expectations of the community. Countermeasures can be done in several ways, among others

- a. In the eradication of drug crimes, the Indonesian National Police Chief (Kapolri) collaborates with related institutions such as the National Narcotics Agency (BNN), Department of Education, Department of Social Affairs, social organizations, and student organizations.
- b. Indonesian National Police members at the level of Regional Police Chief (KOD) who achieve success are rewarded or punished by the Kapolri, as well as anyone who violates policies related to drug crimes.
- c. The Kapolres (Regional Police Chief) collaborates with several non-governmental organizations (NGOs) that handle drug-related issues to help them as effectively as possible.
- d. The Kapolres collaborates with print and electronic mass media to broadcast public service announcements about the dangers of drugs to the younger generation.
- e. The National Police Chief coordinates drug operations with partners and Samapta and other functional units at the KOD level, such as criminal justice, intelligence and security.
- f. The Kapolres conducted a drug operation simulation in which fostered partners and Samapta, in addition to operational units at the KOD level, both criminal and intelligence, participated in drug operations.
- g. The Police Chief appealed to the public to report drug-related activities in the community and involve the community in combating narcotics.
- h. The Kapolres routinely conducts secret operations or raids in public places such as campuses, malls, schools and other nightlife venues.
- i. The Head of Police provides guidance to the general public about the dangers of opiates in the local area so that people are aware of the dangers of opiates.
- j. The police chief gave directions to guardians so that they generally take care of their children to avoid chronic drug use.
- k. The National Police Chief educates the younger generation about the dangers of drugs in schools and campuses.

- l. In order to make the public aware of the dangers of drugs, the National Police Chief organizes various activities involving religious leaders, community leaders, and youth leaders.
- m. In order to educate the public about the dangers of drugs, the National Police Chief makes public service advertisements in the form of posters, brochures, booklets, pamphlets and other outreach tools (Albar, 2022).

The Indonesian National Police (Polri) is demanded to work professionally, and the number of cases they handle is not proportional to the state budget allocated to them. As a result, the handling of cases and the availability of adequate facilities to support the handling of drug crimes within society are greatly affected by these internal obstacles.

4. CONCLUSION

The Denpasar City Police Resort prioritizes diversions in cases involving children in conflict with the law for drug abuse, seeking advice and considerations from Social Counselors in the investigation of such cases. However, in cases where children have previously committed drug crimes more than twice, no diversion efforts were made in 2020, 2021, and late August 2022. Only one case was successfully diverted in 2019. Investigators faced several obstacles during the diversion process, including a lack of public cooperation with investigators and the Satresnarkoba or Drug Investigation Unit of the Denpasar City Police Resort in uncovering drug crimes committed by children, and the public's protective attitude towards these children. Additionally, a lack of attention from family members or parental supervision of children who are vulnerable to outside influences can easily lead them to engage in criminal activities.

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