



Problems of Central Aceh Resort Police Investigators in Implementing Diversion Against Children as Perpetrators of Narcotics Crimes

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ABSTRAK

Satuan Narkoba Kepolisian Resor Aceh Tengah mengungkap 9 (sembilan) kasus narkoba yang ditangani pihaknya, dimana 3 (tiga) dari 9 (sembilan) tersangka diketahui masih berstatus di bawah umur. Undang-undang sistem peradilan pidana anak mewajibkan setiap aparat penegak hukum untuk melakukan diversi terhadap perkara tindak pidana yang dilakukan oleh anak. Tujuan dilakukannya penelitian ini, untuk mengetahui proses penyidikan terhadap anak sebagai pelaku tindak pidana narkoba dan untuk mengetahui problematika penyidik dalam penerapan diversi terhadap anak sebagai pelaku tindak pidana narkoba. Penelitian ini adalah penelitian yuridis normatif dengan menggunakan pendekatan kasus dan peraturan perundang-undangan. Hasil penelitian ini menjelaskan bahwa, proses penyidikan terhadap anak sebagai pelaku tindak pidana narkoba mempergunakan cara-cara yang telah diatur dalam perauran sistem peradilan pidana anak. Problematika penyidik dalam penerapan diversi, penyidik menilai bahwa tindak pidana narkoba memiliki ancaman hukuman diatas 7 tahun, sehingga penerapan diversi terhadap anak pelaku tindak pidana narkoba tidak dapat dilakukan, serta belum adanya pedoman (SOP) dari pimpinan Polri dalam hal diversi sehingga penyidik hanya beracuan pada undang-undang sistem peradilan pidana anak.

Kata Kunci : Problematika; Penyidik; Diversi; Anak.

ABSTRACT

The Narcotics Unit of the Central Aceh Resort Police revealed 9 (nine) drug cases handled by his party, of which 3 (three) of the 9 (nine) suspects were known to be underage. The law on the criminal justice system for children requires every law enforcement officer to carry out diversification of cases of criminal acts committed by children. The purpose of this research is to find out the process of investigating children as perpetrators of narcotics crimes and to find out the problems of investigators in applying diversion to children as perpetrators of narcotics crimes. This research is a normative juridical research using a case approach and laws and regulations. The results of this study explain that the process of investigating children as perpetrators of narcotics crimes uses methods that have been regulated in the regulations of the juvenile justice system. Problems with investigators in the application of diversion, investigators consider that narcotics crimes carry a penalty of more than 7 years, so that the application of diversion against children who commit narcotics crimes cannot be carried out, and there are no guidelines (SOP) from the National Police leadership in terms of diversion so that investigators only rely on juvenile justice system law.

Keywords: Problems; investigator; Diversion; Child.



I. Introduction

Indonesia is a country based on law, not based on power as explicitly mandated in Article 1 paragraph (3) of the 1945 Constitution which reads "Indonesia is a country based on law". With the development of the times, the problem of criminal acts in Indonesia is increasing and of course increasingly worrying. One of the problems of criminal acts that shackles the Indonesian state places the Indonesian state into the subject matter which is already very concerning, namely Narcotics. Narcotics crimes have been transnational in nature, carried out using high *modus operandi*, sophisticated technology, supported by a wide network of organizations, and have caused many victims, especially among the nation's younger generation, which are very dangerous to the life of society, nation and state.

According to Taufik Makarao et al, the problem of narcotics is actually not a new problem in Indonesia. In the early 1970s drug abuse was increasingly common in society. It is this fact that encourages awareness of the need to immediately form a law that can create fear for members of the public not to commit acts that qualify as narcotics crimes (Makarao dkk, 2003). The rise of abuse of various types of narcotics, the state must not be permissive in dealing with it. The state must present an integrated and integrated prevention system and mechanism, especially in rehabilitating narcotics addicts/abusers as one of the goals of the narcotics law.

Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics provides the understanding that Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can lead to dependence. If you look at the facts that currently exist in Indonesia, there are not a few who are victims of narcotics abuse, both from parents, teenagers to children, and according to the results of existing observations, that the consumers of psychotropic addicts are on average teenagers and young people (Sunarso, 2004).



As was the case recently, the Narcotics Unit of the Central Aceh Police revealed 9 (nine) drug cases handled by his party, where 3 (three) of the 9 (nine) suspects were known to be underage. Children who abuse narcotics are not only perpetrators of crimes, but also as victims, that children who abuse narcotics are also victims, so efforts to provide protection for children who abuse narcotics are also a priority. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System requires every law enforcement officer, be it the Police, Prosecutors and Judges, to diversify criminal cases committed by children.

The statement of the article above shows that as far as possible criminal acts committed by children are endeavored not to continue at the level of examination in court to conviction, but efforts are made to restore them to their original condition because they are related to the condition and mental development of children who are still unstable. But in reality, children who are involved in narcotics crimes sometimes have to go through a legal process, and not infrequently they are sentenced to prison terms. Law enforcement officials, especially the Central Aceh Resort Police, rarely use the diversion route but instead settle it through legal channels which lead to the conviction of children who commit narcotics crimes.

Based on the description above, the problems that will be examined and discussed in this study can be formulated: First, how is the process of investigating children as perpetrators of narcotics crimes by police investigators in the Central Aceh resort. Second, what are the problems with the Central Aceh Resort Police investigators in applying diversion to children as perpetrators of narcotics crimes?

II. Methode

This research is normative juridical using a case approach and a statutory approach. The method of collecting data is done by means of interviews and document studies. The method of data analysis is processed and analyzed qualitatively, namely a method of research that produces



descriptive analysis data. from these results then drawn a conclusion which is the answer to the problems raised in this study.

III. Discussion and Analysis

Process of Investigating Children as Perpetrators of Narcotics Crimes by Central Aceh Police Investigators

In this day and age, the world is growing and crime is also growing. As an example that can be found in society, one of them is the Narcotics Crime. Not only individuals who commit this crime but also involve certain groups in society. If narcotics are misused, it will have a negative impact on the life of society, nation and state. In criminal law, narcotics crime is one of the special acts against the law. This arrangement for narcotics crimes is outlined in Law Number 35 of 2009 concerning Narcotics.

Crimes in the field of narcotics are not entirely committed by adults, but there are times when these crimes are also committed together with children. Children who are immature tend to be easily influenced to commit acts related to narcotics, because their souls are not yet stable due to physical and psychological development. Children are also often victims of exploitation by adults to trick the authorities, and use minors as bait. There are factors such as being promised large rewards to improve the family's poor economic situation, at the behest of parents who are involved in narcotics trafficking, and various other factors (Syamsuddin, 2004).

Based on criminal statistical data from the Central Aceh Resort Police, there has been an increase in cases of children as perpetrators of crimes, especially in cases of narcotics crimes, as illustrated in the table below.

Table 1.
Number of Child Cases in the Central Aceh Resort Police
Years 2020-2022

No	Year	Type of Case		
		General Crime	Narkotics Crime	Immoral Crime
1	2020	4	3	5



2	2021	6	5	7
3	2022	2	1	2
Amount		12	9	14

Referensi : Central Aceh Resor Police Criminal Investigation Unit in 2022

Based on table 1 above, it can be explained that the number of criminal cases during the last 3 (three) years handled by investigators from the Central Aceh Resort Police, especially in the PPA Unit, was 35 cases consisting of 12 general criminal cases, 9 cases of narcotics crimes, and 9 cases of narcotics crimes. immoral crimes as many as 14 cases. Factors that encourage children to commit criminal acts or other unlawful acts include, namely, lack of or not receiving love, care, guidance and coaching in the development of attitudes, behavior, adjustment, and supervision from parents, guardians or foster parents. It is easy to get dragged into the flow of social interaction in society and its environment which is unhealthy and detrimental to personal development (Prasetyo, 2015).

According to Ridho Rizky Melala, I used cannabis-type narcotics at first just wanted to try something my friend gave me for free. After that, I felt addicted to using this type of cannabis narcotic by buying cannabis using my own money or jointly with other friends. The same thing was stated by Raymond Batary as Head of Idik II Narcotics Research Unit of the Central Aceh Resort Police, the cause of children committing crimes is due to promiscuity, lack of attention from parents, economic factors, factors of low education and environmental factors or place of residence, factors technology media that are freely accessible at this time.

A child in conflict with the law is a child who is involved in legal issues or is a perpetrator of a crime, while the child is not yet considered capable of being held accountable for his actions, considering that he is immature and still growing, so he has the right to be protected in accordance



with the law. Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

According to Raymond Batary, in conducting investigations of children as perpetrators of narcotics crimes, investigators use language that is easy for children to understand, does not force children, does not wear official attributes and uniforms that can cause children to feel threatened so that it can cause fear and trauma. Raymond Batary added, when conducting child investigations, investigators asked for advice or advice from community advisors (Bapas) or if necessary from education experts, religious leaders, psychologists and other experts in Central Aceh District.

In addition, in the process of investigating child cases there are also arrests and detentions. In the sense of Article 1 point (20) of the Criminal Procedure Code "arrest is an act of an investigator in the form of temporarily restraining the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution or justice in matters and according to the method stipulated in the law". In the case of an arrest, it may only be carried out based on an order from the investigator, unless the perpetrator is caught red-handed, namely by direct action to immediately secure the perpetrator along with the evidence to the investigator.

According to Raymond Batary, in making arrests of children as perpetrators, the principle of presumption of innocence must still be respected in accordance with the dignity of the child. Our arrests of children are carried out humanely, don't equate these children with arrests of adults, in general, they are carried out with a little violence. In addition, children must also be understood as people who have not been able to understand the legal problems that occur to them.

The same thing was stated by Wawan Darmawan as Head of the Narcotics Unit of the Central Aceh Resort Police, in the arrest of minors investigators may not dress in official uniforms because it will cause fear of



the children. During the arrest, investigators coordinated with local officials and the child's parents/guardians. After the arrest, the child was examined at the Narcotics Agency and placed in a special detention room for children.

Based on this, when examining children who commit criminal acts, they must receive legal protection in accordance with applicable regulations. The special criminal justice system for children certainly has a special purpose for the future interests of children and society. One form of protection for children in conflict with the law is through divers, which is intended to avoid and keep children away from the formal justice process so as to avoid stigmatization of children in conflict with the law and it is hoped that children can return to the social environment fairly.

According to Wawan Darmawan, because the perpetrators are still minors, the Investigators of the Drug Criminal Investigation Unit of the Central Aceh Police always try to divert the perpetrators who are attended by the Correctional Center (BAPAS) and attended by parents or guardians.

Based on the explanation from the results of the research above, the investigation of children as perpetrators of narcotics crimes, starting from the process of examination, detention and arrest by investigators of the Narcotics Research Police of the Central Aceh Resort Police, uses the following methods: (1) does not use official attributes; (2) include an arrest warrant for parents or guardians to know; (3) bringing the child to the police by placing the child in a position that is not flanked or between police officers; (4). Diversion is carried out against children who commit criminal acts.

Problems of Central Aceh Resort Police Investigators in Implementing Diversion Against Children as Perpetrators of Narcotics Crimes

Crime is behavior that is prohibited by the state, because it is an act that is detrimental to the state and to that action the state reacts with punishment as the last resort or known as *Ultimum Remedy*. Crime has also spread to children. Not only are children victims of violence against children,



what is most concerning now is that when the child himself becomes the perpetrator of a crime (Kusumaningrum, 2014). Crimes committed by children start from the attitude of the child deviating from societal norms that tend to lead to criminal acts or often referred to as juvenil delinquency (Gultom, 2006).

Romli Atmasasmita, argued that the emergence of juvenile delinquency is not only a disturbance to public security and order, but also a danger that can threaten the future of a nation (Atmasasmita, 1985). What was stated by Romli Atsasmita, if it is related to the problem of child and juvenile delinquency today is true, so it is fitting that the problem of child delinquency/juvenile delinquency needs serious attention because the problem of juvenile delinquency is not a problem that arises in a small scope but almost happened in all cities in Indonesia (Winna A, dkk, 2018).

Kartini Kartono states that the behavior of children who have problems and can be categorized as juvenile delinquency is (Kartono, 1992) :

1. Speeding on the streets which can disrupt traffic safety, endanger yourself and others;
2. Reckless, delinquent, sloppy behavior that disrupts the peace of the surrounding environment. This behavior stems from an excess of energy and uncontrollable primitive urges and a preference for terrorizing the environment;
3. Fights between gangs, between groups, between schools, between tribes (brawls), which sometimes result in fatalities;
4. Skipping school and then wandering along the streets or hiding in secluded places while experimenting with various kinds of wickedness and immoral acts;
5. Crimes against children, adolescents and adolescents include acts of threatening, intimidating, extorting, stealing, pickpocketing, depriving, mugging, attacking, robbing, disturbing, mugging, committing murder by



slaughtering the victim, strangling, poisoning, acts of violence, and other violations;

6. Having a party while being drunk, having casual sex, or orgi (drunkenness which causes chaos) which disturbs the surroundings;
7. Rape, sexual aggression, and murder with social motives, or driven by compensatory reactions of feelings of inferiority, demands for self-recognition, depression, a sense of loneliness, emotions, revenge, disappointment rejected by a woman and others;
8. Addiction and addiction to drugs (drugs, drugs, opium, marijuana) which are very closely related to crime;
9. Acts of sexual immorality are blatantly shameless in a violent way. There is sex and unrestrained love driven by hypersexuality, compulsions for rights, and other attempts at compensation which are criminal in nature.

Law Number 11 of 2012 Concerning the Juvenile Criminal Justice System emphasizes the definition of a child who commits a crime in Article 1 point (3) it states that: "A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (two fifteen) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. The term "children in conflict with the law" is part of the process of labeling (an identity given by a group to individuals who tend to have deviant behavior) or stigmatization (a person who is considered to have disgraceful traits) for a child, which in sociological and psychological studies is feared will actually have a negative effect on the physical and mental growth and development of the child.

The legal process for perpetrators of criminal acts who are still minors must prioritize aspects of protecting the rights of these children. Not being old enough is an excuse for mitigating punishment because it allows children to improve their behavior and is expected to become good citizens. The same thing was stated by Dheny Wahyudhi, child cases can not only be resolved



through the judicial process, but can also be resolved through the criminal justice process or what is known as diversion, where the settlement involves perpetrators, victims, families of perpetrators/victims and related parties to be together, together seek a fair solution by emphasizing restoration to its original state, and not retaliation which is known as a restorative justice justice approach (Wahyudhi, 2015).

This diversion process is useful for children facing legal cases to avoid the negative effects of subsequent judicial processes in the administration of juvenile justice, such as labeling or stigmatization as a result of a statement of guilt or sentencing. Arrangements regarding diversion are emphasized in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which aims to: a). To achieve peace between victims and children; b). Resolving child cases outside the judicial process; c). Prevent children from deprivation of independence; d). Encouraging the community to participate; and e). Instill a sense of responsibility in children.

According to Irwan, several criteria for crimes involving children as perpetrators, which must be resolved using the principle of diversion approach are as follows (Irwan, 2020) :

- 1) Categories of criminal acts that are punishable by criminal sanctions of up to 1 year must be prioritized for diversion. Criminal acts that are punishable by criminal sanctions of more than 1 year up to 5 years may be considered for diversion. All cases of theft must be pursued by the application of diversion unless it causes or results in harm related to body and soul.
- 2) Paying attention to the age of the perpetrator, the younger the perpetrator, the more urgent the application of the principle of diversion is.
- 3) The results of research from BAPAS, if it is found that the motivating factors for children to be involved in criminal cases are factors that are



beyond the child's control, then the application of the principle of diversion is increasingly needed.

- 4) Losses caused by juvenile offences, if the consequences are material in nature and are not related to a person's body and life, then the application of diversion is increasingly necessary.
- 5) The level of public anxiety caused by the actions of children.
- 6) Consent of the victim/family.
- 7) Willingness of the perpetrator and his family.
- 8) In the event that a child commits a crime together with an adult, the adult must be prosecuted according to the law according to normal procedures.

Furthermore, Article 7 paragraph (1) of Law Number 11 of 2012 stipulates that at every level of handling criminal acts committed by children starting from the investigation, prosecution and examination of child cases in the District Court, it is mandatory to seek a diversion process. This confirms that diversion at the police investigation stage is the main or first gate of the juvenile justice system and is the first party with the authority to determine the position of a child who has problems with the law.

According to Wawan Darmawan, police investigators in implementing diversion against children do not apply to all children who are undergoing legal proceedings for perpetrators of narcotics abuse, but only in the case of victims of narcotics abuse whose maximum sentence is 4 years, this is according to what is meant in Article 127 paragraph (3) Law Number 35 of 2009 concerning Narcotics.

Wawan Darmawan added, as Head of Narcotics Unit of the Central Aceh Resort Police, narcotics crime is one of the crimes that is often associated with high threats. Article 7 paragraph (2) of the Law on the Juvenile Criminal Justice System stipulates that criminal acts punishable by more than 7 years in prison cannot be applied to diversion against children. The same thing was stated by Raymond Batary, there are no implementing



regulations from Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially regarding diversion and there is no SOP for the police regarding diversion for narcotics cases as mandated by Law Number 11 of 2012 concerning the System Juvenile Criminal Justice.

Based on the description above, it can be concluded that investigators have problems in applying diversion to children as perpetrators of narcotics crimes. diversion can be carried out, this is due to the absence of guidelines (SOP) from the leadership of the National Police in terms of diversion so that police investigators only refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

According to Rullyanto as a Correctional Center Officer, in practice, the Public Prosecutor is still guided by the Law on the Juvenile Criminal Justice System (SPPA), even though the issuance of Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion, this Perma is a publication of the Supreme Court even though it is out, so that the Prosecutor does not use guidelines from other agencies. However, the Prosecutor also seeks that Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion can be used/applied in court by way of the prosecutor making subsidiary indictments, so that the judges themselves can consider them in the trial process.

Central Aceh resort police investigators should not simply let go of diversion in narcotics crimes but also observe that diversion in juvenile offenses must be carried out even if the crime is punishable by more than 7 (seven) years and without any victims. Law enforcers should be able to uphold justice for children who themselves have privileges and rights that must be maintained so that in the future children can be directed to be able to grow and develop properly considering that children are the next generation of the nation.

IV. Conclusion

The process of investigating children as perpetrators of narcotics crimes by the narcotics detectives of the Central Aceh Police, begins with the process of examination, detention and arrest using the following methods: (1) not using official attributes; (2) include an arrest warrant for parents or guardians to know; (3) bringing the child to the police by placing the child in a position that is not flanked or between police officers; (4). Diversion efforts are carried out against children who commit criminal acts. Problems with investigators in applying diversion to children as perpetrators of narcotics crimes, investigators consider that narcotics crimes have a penalty of more than 7 years, so that the implementation of diversion against children of narcotics offenders cannot be carried out, and there are no guidelines (SOP) from the National Police leadership in diversion so that police investigators only refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.



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C. Regulation

The 1945 Constitution of the Republic of Indonesia

Law Number 35 of 2009 concerning Narcotics

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System