

# LEGAL ANALYSIS AND IMPLEMENTATION OF DIVERSION APPROACHES IN NARCOTICS CASES INVOLVING CHILDREN IN INDONESIA

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## **Abstract**

*Handling children involved in narcotics crime cases in Indonesia through diversion approach is regulated in various laws, including Law Number 11 of 2012 on the Juvenile Criminal Justice System (SPPA) and Law Number 35 of 2009 on Narcotics. Although this legal framework aims to avoid stigmatization and provide rehabilitation and social reintegration opportunities for children, its implementation still faces various challenges. These challenges include a lack of understanding among law enforcement officers, suboptimal inter-agency coordination, limited rehabilitation facilities, and societal resistance and stigma. To overcome these obstacles, increased training and socialization for law enforcement, strengthened inter-agency coordination, additional rehabilitation facilities, and public education are needed. With these efforts, diversion approach are expected to be more effective in supporting children's recovery and reintegration into society, as well as creating a more humane and just juvenile criminal justice system.*

*Keywords: diversion, narcotics crime, juvenile criminal law*

## **1. Introduction**

Children involved in narcotics-related criminal cases often face stigma and negative impacts that can significantly affect their future. Handling children within the criminal justice system requires a different approach compared to adults, emphasizing rehabilitation and social reintegration. Diversion, as one approach to handling children in conflict with the law, aims to shift case resolution from the criminal justice process to an out-of-court process, focusing on the child's recovery and avoiding early criminal labeling.

According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), diversion must be sought at every stage of the examination for children suspected of committing a criminal offense, including narcotics offenses. This approach not only aims to protect children from the judicial process, which can damage their psychological well-being, but also provides an opportunity for them to reform and return to the right path. Diversion emphasizes restorative resolutions, where the case resolution process involves the offender, the victim, and the community with the aim of restoring the damage caused by the criminal act.

However, the implementation of the diversion approach in Indonesia still faces many challenges. Studies show that one of the main obstacles is the lack of understanding and coordination among law enforcement agencies, such as the police, the prosecutor's office, and juvenile courts. Additionally, the limited availability of rehabilitation facilities for children involved in narcotics cases poses a significant barrier to ensuring that these children receive

adequate care and support. This limitation is often exacerbated by the negative perceptions and stigma from society towards children in conflict with the law, which can hinder efforts for their rehabilitation and reintegration into society.

Besides these challenges, there are also issues in the application of restorative principles within diversion. In some cases, diversion is only understood as an effort to avoid formal judicial proceedings without truly prioritizing the child's recovery and reintegration. This highlights the need for a deeper and more comprehensive understanding of diversion and restorative approaches in handling children in conflict with the law.

## **2. Methodology**

This study utilizes a normative juridical method with a qualitative approach. The normative juridical method is employed to analyze various legal regulations governing the diversion approach for children involved in narcotics-related criminal cases in Indonesia. This approach involves a review of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), its implementing regulations, and other relevant legal documents.

Primary data for this research is obtained through in-depth interviews with law enforcement officials, such as police officers, prosecutors, juvenile judges, and rehabilitation officers. Additionally, interviews are conducted with legal practitioners and experts who have experience in the application of diversion for children involved in narcotics-related criminal cases. Secondary data is gathered from literature reviews, including scientific journals, books, research reports, and official documents from relevant institutions.

Data analysis is carried out using qualitative analysis methods, which involve data collection, reduction, and presentation, as well as conclusion drawing. The first stage involves collecting data from various relevant sources, followed by reducing the data by selecting and filtering information that aligns with the research focus. Subsequently, the reduced data is presented in a narrative form to facilitate the drawing of comprehensive conclusions.

The results of this research are expected to provide a clear picture of the legal framework and implementation of the diversion approach for children in narcotics-related criminal cases in Indonesia, as well as identify existing obstacles and offer recommendations for improvement.

## **3. Discussion**

### **A. Legal Provisions Governing the Diversion Approach for Children in Narcotics-Related Criminal Cases in Indonesia**

The handling of children involved in narcotics-related criminal cases in Indonesia is specifically regulated through various laws and regulations that emphasize restorative and rehabilitative approaches. One of the primary provisions regulating the diversion approach for children is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This law aims to provide legal protection for children in conflict with the law, including those involved in narcotics cases, by prioritizing the principle of the best interests of the child and the principle of non-discrimination.

According to Article 7, paragraph (1) of the SPPA Law, diversion is mandatory at every stage of examination in the juvenile criminal justice system, from investigation to prosecution and trial. Diversion refers to the process of redirecting the resolution of juvenile cases from the criminal justice process to an alternative process outside the criminal justice system, with the primary goal of avoiding stigmatization and providing children with the opportunity to rehabilitate. In the context of narcotics-related offenses, the implementation of diversion is expected to help children receive appropriate rehabilitation and care tailored to their needs.

Article 9 of the SPPA Law explains that diversion can be undertaken by considering the type of offense committed, the age of the child, the results of social research by the Correctional Center (Bapas), and the support of the family and community environment. Furthermore, Article 11 of the SPPA Law stipulates that the outcomes of diversion must consider the interests of the victim, the restoration of the situation, and the child's responsibility for their actions, which should be documented in an agreement signed by all involved parties.

Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children in Conflict with the Law provides further guidance on the implementation of diversion, including mechanisms, procedures, and the institutions involved. This regulation underscores the importance of coordination among the police, prosecutors, courts, and the Correctional Center in carrying out diversion. Additionally, it emphasizes the need for community and social institution involvement in supporting the child's rehabilitation process.

In the context of narcotics-related offenses, Law Number 35 of 2009 concerning Narcotics also gives special attention to the handling of children involved in narcotics abuse. Article 54 of the Narcotics Law mandates that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. This aligns with the principle of diversion, which prioritizes recovery and rehabilitation over criminal punishment.

Despite the comprehensive legal framework governing the diversion approach, its implementation in practice faces several challenges. Studies indicate that a lack of understanding and coordination among law enforcement agencies often hampers the implementation of diversion. Furthermore, the limited availability of rehabilitation facilities and the negative societal perceptions of children involved in narcotics cases also pose significant obstacles to the successful application of the diversion approach.

To overcome these obstacles, further efforts are needed to enhance the capacity and coordination of the relevant institutions and to educate the public on the importance of a rehabilitative approach for children involved in narcotics cases. By doing so, the diversion approach can more effectively support the recovery and reintegration of children into society and reduce the negative impacts of their involvement in the criminal justice system.

## **B. Implementation of the Diversion Approach for Children in Narcotics-Related Criminal Cases in Indonesia**

The implementation of the diversion approach for children in narcotics-related criminal cases in Indonesia faces various challenges and obstacles. Although the existing legal framework provides a solid foundation, there are still many aspects that need to be improved to achieve the goals of diversion, namely the recovery and reintegration of children, optimally.

First, one of the main challenges in implementing diversion is the lack of understanding and awareness among law enforcement officers regarding the importance of a restorative approach. Research indicates that many law enforcement officers tend to favor formal judicial processes because they are perceived as more straightforward and direct. The lack of training and socialization about diversion and its benefits hampers the effective application of this approach.

Second, coordination among law enforcement agencies such as the police, prosecutors, courts, and the Correctional Center (Bapas) is often suboptimal. The lack of cooperation and effective communication between these institutions can result in the diversion process not running smoothly. For instance, in some cases, information about the child's condition and recommendations from Bapas are not fully considered by other law enforcement officers, rendering the diversion decisions ineffective.

Third, the rehabilitation facilities available for children involved in narcotics cases are still very limited. These limitations include the number of facilities, capacity, and the quality of services provided. According to data from the National Narcotics Agency (BNN), many children who should receive adequate care and rehabilitation do not receive the necessary facilities due to space constraints. Moreover, existing rehabilitation programs are often not integrated with social reintegration efforts, so children who have completed rehabilitation continue to face stigma and difficulties in readapting to society.

Fourth, resistance and stigma from society toward children involved in narcotics cases also pose significant barriers to the implementation of diversion. Society often views these children as criminals who need to be punished, rather than as individuals who require help and rehabilitation. This can hinder the child's reintegration into their social environment and exacerbate their psychological condition.

Additionally, the inconsistency in the application of diversion across different regions presents its own challenges. Research shows that areas with better resources tend to have more effective diversion implementation compared to less developed regions. This inconsistency creates inequality in the treatment of children in conflict with the law, depending on their geographical location.

To address these challenges, several recommendations can be made. First, there should be increased training and socialization for law enforcement officers regarding the importance of diversion and restorative approaches. Second, coordination and cooperation among law enforcement agencies need to be strengthened through more systematic and structured mechanisms. Third, the government should increase the number and quality of rehabilitation facilities specifically for children involved in narcotics cases, and ensure that existing rehabilitation programs are integrated with social reintegration efforts. Fourth, public education and socialization about the importance of rehabilitation and reintegration of children should be enhanced to reduce stigma and resistance.

With these efforts, it is hoped that the implementation of the diversion approach for children in narcotics-related criminal cases in Indonesia can run more effectively and provide maximum benefits to children in conflict with the law. This will not only assist them in the recovery and reintegration process but also support the creation of a more humane and just juvenile criminal justice system.

#### **4. Conclusion**

The handling of children involved in narcotics-related criminal cases in Indonesia through the diversion approach is clearly regulated in various laws and regulations, including Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) and Law No. 35 of 2009 concerning Narcotics. This legal framework aims to avoid stigmatization and provide opportunities for children to receive rehabilitation and social reintegration. Diversion emphasizes a restorative approach involving the offender, the victim, and the community with the aim of restoring the harm caused by the criminal act.

However, the implementation of the diversion approach in Indonesia still faces various challenges that hinder its effectiveness. These challenges include the lack of understanding and awareness among law enforcement officers regarding the importance of the restorative approach, as well as suboptimal coordination between law enforcement agencies such as the police, prosecutors, courts, and the Correctional Center. Additionally, the limited availability of rehabilitation facilities for children, resistance and stigma from society, and inconsistencies in the application of diversion across different regions pose significant barriers to the implementation of this approach.

To address these obstacles, it is necessary to increase training and socialization for law enforcement officers regarding the importance of diversion and the restorative approach. Moreover, enhancing coordination and cooperation among law enforcement agencies should be reinforced through more systematic and structured mechanisms. The government also needs to improve the quantity and quality of rehabilitation facilities specifically for children involved in narcotics cases and ensure that existing rehabilitation programs are integrated with social reintegration efforts. Education and socialization to the public about the importance of rehabilitation and reintegration of children should also be enhanced to reduce stigma and resistance.

With these efforts, it is hoped that the implementation of the diversion approach for children in narcotics-related criminal cases in Indonesia can be more effective and provide maximum benefits to children in conflict with the law. This will not only assist them in the recovery and reintegration process but also support the creation of a more humane and just juvenile criminal justice system.

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