

The effectiveness of diversion for children committing narcotics abuse crimes in the jurisdiction of the Banda Aceh district court

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Abstract

Children involved in drug abuse still have the right to protection and guidance in the legal process. Law Number 11 of 2012 on the Juvenile Criminal Justice System mandates diversion efforts, but their implementation for children abusing narcotics within the jurisdiction of the Banda Aceh District Court has not been fully effective. Data from 2022–2024 shows that there were 10 cases, with 6 cases successfully resolved through diversion and 4 cases proceeding to formal judicial proceedings. This research aims to analyse the effectiveness of the implementation of diversion, the factors influencing it, and efforts to improve the effectiveness of diversion. The research uses a juridical-empirical method with an approach based on legislation and criminal studies, through interviews and literature studies that are analysed descriptively-qualitatively. The research results indicate that the implementation of diversion is not yet optimal, especially at the investigation and prosecution stages due to time constraints in handling cases, considerations of the amount of evidence, and the use of Article 112 of the Narcotics Law as the primary charge, which carries a criminal threat of more than 7 years. Diversion is more frequently carried out at the trial stage by considering the alternative charge of Article 127 of the Narcotics Law based on Supreme Court Regulation (PERMA) Number 4 of 2014. Based on Soerjono Soekanto's theory of legal effectiveness, the condition is influenced by legal factors and law enforcement, while Correctional center (bapas), National Narcotics Agency (BNN), family, and society serve as supporting factors in the rehabilitation of children. Therefore, it is necessary to optimise diversion from the early stages, enhance coordination among law enforcement with Correctional center (bapas) and National Narcotics Agency (BNN), and strengthen post-diversion assistance to support social reintegration and prevent recidivism.

Keywords: Effectiveness of Diversion, Juvenile Offenders, Drug Abuse

Introduction

Children hold an important position in the sustainability of the nation's life, so the fulfillment and protection of their rights become the responsibility of the state. This is emphasized in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right of children to live, grow, and develop, as well as to receive protection from violence and discrimination. Protection of children is then realized through various laws and regulations, one of which is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). In its implementation, the Juvenile Criminal Justice System Law (UU SPPA) places the best interests of the child as one of its main principles by prioritizing a restorative justice approach through diversion mechanisms.^[1]

The issue of child protection becomes increasingly complex when children are involved in drug abuse. The involvement of children in drug-related cases not only requires handling from the law enforcement aspect but also necessitates attention to the child's condition and future through guidance and rehabilitation. Law Number 35 of 2009 on Narcotics regulates the abuse of narcotics for oneself in Article 127. For users of Class I narcotics, the provision stipulates a maximum prison sentence of four years. In addition to imprisonment, the provision also directs judges to consider medical and social rehabilitation for users who are proven to be victims of drug abuse.^[2]

In the framework of the Juvenile Criminal Justice System, a child aged 12 but not yet 18 years old who is suspected of committing a crime is categorized as a child in conflict with

the law. Therefore, children involved in drug abuse still receive special protection as regulated in the SPPA Law. One form of this protection is the obligation to seek diversion at every stage of the case examination. Article 7 of the SPPA Law stipulates that diversion must be sought by investigators, public prosecutors, and judges for criminal acts that meet the requirements, including a prison sentence of less than seven years and not being a repeat offense. Thus, drug abuse as referred to in Article 127 of the Narcotics Law can normatively be resolved through diversion because the prison sentence is below the seven-year threshold.^[3]

The investigation stage is an important part because it is the initial stage when a child begins to face the criminal justice system. The implementation of diversion from this stage can reduce the likelihood of the child undergoing a lengthy judicial process while also preventing the emergence of negative stigma against the child. In narcotics cases, the application of a restorative justice approach is also grounded in the Indonesian National Police Regulation Number 8 of 2021. Based on Article 9 of the regulation, the resolution of cases through a restorative justice approach can be applied to addicts and victims of narcotics abuse by meeting several requirements, including not being involved in narcotics trafficking networks, obtaining comprehensive assessment results, and being willing to undergo rehabilitation.^[4]

Although there is a legal basis that provides room for the application of diversion, its implementation for children who misuse narcotics still faces various issues. One of them relates to the application of the articles used in the investigation process. In several cases, drug abuse can be

linked to Article 112 or Article 114 of the Narcotics Law, which carry a criminal threat of more than seven years. This condition can cause the case to be considered not meeting the diversion requirements based on the SPPA Law. Additionally, differing understandings of whether the child is an abuser, a victim of abuse, or involved in a drug trafficking network can also influence law enforcement's decision on whether diversion can be applied.^[5]

The issue illustrates a discrepancy between legal provisions and their implementation in practice. Normatively, Article 127 paragraph (1) letter a of the Narcotics Law imposes a maximum prison sentence of four years, which meets the criminal threat threshold for the implementation of diversion based on Article 7 paragraph (2) of the SPPA Law. However, in investigative practice, narcotics abuse cases can be charged or linked to other provisions with higher criminal threats. The difference in application has the potential to hinder the implementation of diversion, which is fundamentally intended as a form of protection for children. This condition is relevant to be studied within the jurisdiction of the Banda Aceh District Court. Based on data from the Case Tracking Information System (SIPP) of the Banda Aceh District Court for the period 2022–2024, there were 10 juvenile cases involving drug abuse offenses. Of that number, 6 cases were successfully resolved through diversion, while the other 4 cases could not be resolved through diversion and ended with various forms of sanctions, such as imprisonment, community service, vocational training, probation, and rehabilitation outside of institutions. The data shows that although diversion has been applied in some cases, its implementation for children who misuse narcotics is still not fully optimal.

Research Method

This research uses a juridical-empirical method, which examines legal provisions while also looking at their application in practice and social reality. The approach used is legal sociology to understand how legal norms are applied and how the parties respond and interact in the implementation of diversion.^[6] The research was conducted at the Banda Aceh District Court and related institutions, with research subjects selected through purposive sampling, based on knowledge, experience, authority, and involvement in the implementation of diversion. The sources consist of judges, prosecutors, investigators, Bapas officers, and BNN officers, while the PTSP staff of the Banda Aceh District Court serve as supporting informants.^[7] The research data consists of primary and secondary data. Primary data is obtained through interviews with informants directly involved in handling juvenile drug abuse cases, while secondary data is obtained through literature study of laws and regulations, court decisions, books, journals, and relevant documents.^[8]

The case data used to support the research includes 10 cases of children abusing narcotics at the Banda Aceh District Court during 2022–2024, with 6 cases successfully resolved through diversion and 4 cases not successfully diverted.^[9] Data collection was conducted through field research with interviews and library research. Next, the data were analyzed descriptively-qualitatively by outlining and interpreting the data from interviews, documents, and legal materials to obtain an overview of the implementation of diversion for children abusing narcotics.^[10]

Conclusion

The Implementation of Diversion for Children Involved in Narcotics Abuse in the Jurisdiction of the Banda Aceh District Court

The resolution of cases involving children who misuse narcotics must prioritize the protection and best interests of the child through the mechanism of diversion. Based on Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion must be pursued for crimes punishable by imprisonment of less than seven years and not involving recidivism.^[11]

SIPP data from the Banda Aceh District Court for the years 2022–2024 shows that there were 10 cases of children abusing narcotics, with 6 cases successfully going through diversion and 4 cases not succeeding and resolved with other sanctions. The forms of sanctions imposed include imprisonment, community service, vocational training, probation, and rehabilitation outside of institutions.

At the investigation stage, diversion must start no later than 7 days from the beginning of the investigation and be completed no later than 30 days. However, research results show that cases of children abusing narcotics are generally still continued through the formal judicial process. Investigators more often continue cases to the prosecution stage, although the child still receives assistance during the examination process. Bapas plays a role in providing assistance and preparing a social research report (litmas) that includes the child's family conditions, education, social environment, and character as considerations in the case resolution.^[12]

At the prosecution stage, diversion also faces obstacles because some drug abuse cases are charged under Article 112 of Law Number 35 of 2009 on Narcotics, which carries a criminal threat above the threshold required for diversion. The prosecutor explained that Article 127 is often used as an alternative charge, so if the requirements for diversion are met, the judge can still pursue resolution through diversion at the trial stage.^[13] Diversion is then more successful at the trial stage when the judge determines that the case meets the legal requirements.^[14]

The judge applies the principle of *ultimum remedium* and the best interests of the child by considering the child's age, psychological condition, development, and future. This approach prioritizes guidance, rehabilitation, and recovery over imprisonment. The success of diversion is also influenced by family support, social environment, as well as guidance and supervision from Bapas. The Community Supervisor explained that assistance through social inquiry reports, guidance, and periodic supervision helps the child improve their behavior and resume their social functions.

Based on Soerjono Soekanto's theory of legal effectiveness, the application of diversion for children who misuse narcotics within the jurisdiction of the Banda Aceh District Court has not been fully effective. The main obstacles lie in legal factors and law enforcement, particularly regarding the limitations of diversion requirements and the tendency for cases to be processed through formal judicial mechanisms. Meanwhile, Bapas, BNN, families, and the community serve as supporting factors in the implementation of child rehabilitation and recovery. Therefore, it is necessary to enhance understanding and coordination among investigators, public prosecutors, judges, Bapas, BNN, families, and the community so that diversion can be optimized from the investigation stage.

Factors Influencing the Implementation of Diversion for Children Involved in Narcotics Abuse in the Jurisdiction of the Banda Aceh District Court

The success of diversion is influenced by the cooperation between judges, public prosecutors, community advisors, legal counsel, parents or guardians, children, and other related parties. The family plays a role in supervision and guidance, the Bapas provides mentoring and supervision, while the community supports the child's social reintegration process. However, at the investigation stage, there are still procedural obstacles because some investigators believe that the deliberation of diversion takes a considerable amount of time, so they prioritize the completion of case files to be immediately submitted to the public prosecutor.^[15] In fact, the SPPA Law requires investigators to strive for diversion within a maximum of 7 days from the start of the investigation, and the process can last a maximum of 30 days. These conditions indicate that the obstacles to the implementation of diversion are more related to the enforcement of legal provisions and the understanding of the authorities rather than the weaknesses of the diversion mechanism itself.

According to the Community Counselor, family conditions and the social environment are important factors in the success of diversion. Attention, supervision, and family guidance help children improve their behavior and stay away from environments that are at risk of drug abuse. Community Supervisors also conduct social investigations, counseling, guidance, and periodic supervision, and coordinate with families, schools, and the community.^[12] At the prosecution stage, the prosecutor explained that drug abuse among children can be influenced by weak family supervision, peer group environment, low understanding of the dangers of drugs, and invitations from adults. Therefore, the effectiveness of diversion requires consistent cooperation between law enforcement, Bapas, families, and children.^[13]

At the trial stage, the judge assesses the fulfillment of legal requirements, the attitudes of the parties, and the results of the community study as important factors in determining the success of diversion. Agreement is more easily achieved when the child, parents, victim, law enforcement officers, and Community Supervisors have good faith and the same goal of prioritizing the best interests of the child.^[14] The litmas report also helps the judge understand the family's condition, education, social environment, and the child's development before determining the form of case resolution. Meanwhile, the BNN assesses that the social environment, the desire to try, weak family supervision, and limited knowledge about the dangers of narcotics are factors contributing to the abuse. Rehabilitation followed with discipline and continuous family support can help recovery and prevent the child from repeating their actions.^[16]

Based on Lawrence M. Friedman's legal system theory, the effectiveness of diversion is influenced by the legal structure, legal substance, and legal culture. From a structural aspect, the implementation of diversion heavily relies on the coordination and commitment of investigators, public prosecutors, judges, Bapas, and BNN, which in practice has not been optimal, especially at the investigation stage. From a substantive aspect, the SPPA Law has regulated the obligation of diversion, but its implementation is still influenced by the provisions in the Narcotics Law, which causes some cases not to meet the diversion

requirements. From the aspect of legal culture, support from family, school, and community, as well as the willingness of the parties to carry out guidance and rehabilitation, become supporting factors. Thus, the suboptimal implementation of diversion is caused by the lack of alignment in the structure, substance, and legal culture in the implementation of the juvenile criminal justice system.

Efforts to Improve the Effectiveness of Diversion Implementation for Children Involved in Narcotics Abuse in the Jurisdiction of the Banda Aceh District Court

The improvement of diversion effectiveness needs to begin with the optimization of its implementation at the investigation stage. Research results show that diversion at the investigation stage is generally not implemented due to the assumption that deliberation takes a considerable amount of time. In fact, Article 29 of the SPPA Law has provided investigators with a maximum of 7 days to initiate diversion from the start of the investigation and to carry it out within a maximum period of 30 days. Therefore, better coordination is needed between investigators, Bapas, public prosecutors, and related parties so that diversion can be carried out without hindering the investigation process.^[15] The utilization of social research results (litmas) also needs to be improved so that it does not only serve as an administrative requirement but becomes the basis for determining resolutions that are in accordance with the conditions and best interests of the child.

The Community Supervisor explained that continuous guidance, supervision, counseling, and assistance are important factors in the success of diversion. The family plays a primary role through attention, supervision, and guidance toward the child, while schools and the community support the process of social reintegration by creating a conducive environment and not stigmatizing. Inter-agency coordination also needs to be strengthened so that the guidance, supervision, and evaluation of children can be carried out in an integrated manner.^[12] Coordination between institutions also needs to be strengthened so that the guidance, supervision, and evaluation of children can be carried out in an integrated manner.

At the prosecution stage, the prosecutor emphasized the importance of prevention through education about the dangers of narcotics from a young age. Programs like Prosecutors in Schools can raise children's legal awareness and prevent involvement in drug abuse. Prosecutors also believe that coordination between the police, the prosecutor's office, the courts, Bapas, BNN, schools, families, and the community is necessary to strengthen rehabilitation and prevent recidivism.^[13] Meanwhile, the judge emphasized the need for the commitment of officials in implementing diversion for eligible cases, improving the quality of deliberations, and strengthening the competence of officials in understanding child law, restorative justice, mediation, and psychological approaches toward children.

^[14] Meanwhile, the judge emphasized the need for commitment from the authorities in implementing diversion for eligible cases, improving the quality of deliberations, and strengthening the competence of the authorities in understanding child law, restorative justice, mediation, and psychological approaches toward children.

BNN plays a role through assessment, rehabilitation, and monitoring of children who misuse narcotics. The results of the assessment and monitoring can be taken into consideration in determining the resolution of the case through diversion. Medical and social rehabilitation should be prioritized for children classified as abusers, accompanied by family support and continuous supervision. The improvement of specialized rehabilitation services for children and the utilization of prevention programs such as Ananda Bersinar are also necessary to support the recovery, development, and social reintegration of children.^[16]

Based on Howard Zehr's restorative justice theory, the improvement of diversion effectiveness must be oriented toward restoration, social relationship repair, guidance, and the involvement of children, families, and communities. Research results show that diversion is still rarely implemented at the investigation stage, so it needs to be optimized through the utilization of social inquiry, strengthening inter-agency coordination, enhancing the competence of officials, and reinforcing rehabilitation and mentoring. Thus, the effectiveness of diversion does not only depend on legal regulations but also on the commitment of all parties to prioritize the best interests, rehabilitation, and future of the child.

Conclusion

Based on the research results, it can be concluded that the implementation of diversion for children who misuse narcotics in the jurisdiction of the Banda Aceh District Court for the period 2022–2024 has not been fully optimal. Out of 10 cases, 6 cases were successfully resolved through diversion, while 4 cases continued through formal legal proceedings. The application of diversion at the investigation and prosecution stages still faces obstacles, particularly differences in understanding regarding the implementation of diversion, time limits, the amount of evidence, and the use of Article 112 of the Narcotics Law as a primary charge, which has the potential to limit the application of diversion. Diversion is more often implemented at the trial stage through the judge's consideration of alternative charges, including Article 127 of the Narcotics Law. Based on Soerjono Soekanto's theory of legal effectiveness, the implementation of diversion is influenced by legal factors, law enforcement, means and facilities, society, and culture. Legal factors and law enforcement are the main obstacles, while the support of Bapas, BNN, family, and the community plays a role in the guidance, rehabilitation, and prevention of recidivism by children.

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