


## Application of Diversion to Children in Narcotics Crimes

Riska Agustina<sup>1\*</sup>, Muhammad Nurcholis Alhadi<sup>2</sup>, Ikhwanul Muslim<sup>3</sup>

<sup>1,2,3</sup> Faculty of Law, Universitas Muhammadiyah Kalimantan Timur, Samarinda, Indonesia.

 : riskaag747@gmail.com

Corresponding Author\*



### Abstract

**Introduction:** The criminal justice system that has been in place so far, punishment for children involved is not criminal and does not create justice, both for the perpetrator (child) and also the victim.

**Purposes of the Research:** Explain the implementation of diversion as a method of resolving cases of diversion applications for children involved in legal cases related to drugs.

**Methods of the Research:** This study applied an empirical legal approach, and the location of the study was at the Samarinda City Resort Police. The primary and secondary data used came from interviews, surveys, and document studies. Qualitative analysis was carried out on this data.

**Findings of the Research:** The results of the study show that the purpose of the implementation of the diversion system at the investigation stage is to realize restorative justice. This study shows that the role of the police in settling sentences using diversion in child crimes in the Samarinda City Resort Police area is very important. As part of the criminal justice system, the police try to protect the welfare and interests of children when handling cases related to the law.

**Keywords:** Children; Diversion; Crime; Narcotics.

Submitted: 2025-04-04

Revised: 2025-06-17

Accepted: 2025-06-27

Published: 2025-06-30

How To Cite: Riska Agustina, Muhammad Nurcholis Alhadi, and Ikhwanul Muslim. "Application of Diversion to Children in Narcotics Crimes." TATOHI: Jurnal Ilmu Hukum 5 no. 3 (2025): 178-184. <https://doi.org/10.47268/tatohi.v5i4.2986>

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## INTRODUCTION

Children determine the future of the family, nation, country, or society, because of their young age, they need special care in order to grow and develop naturally, physically, and spiritually. Therefore, the Indonesian constitution clearly regulates children, especially regarding human rights, which includes the child's right to growth and protection. One part of the effort to produce the next generation who can realize the nation's values in the future is to take care of children. Health, comfort, safety, and proper education are some aspects of child protection. Unlawful acts, such as juvenile delinquency, are often associated with child problems. These actions can occur at home or in educational institutions or in their neighborhood. Juvenile delinquency is a bad act or criminal act, an act taken by a child due to social neglect, can trigger deviant behavior.<sup>1</sup> The government guarantees justice for children who have established the rules as they should to protect children who violate the law. Affirm that children involved in violations are children who are victims of criminal acts, people who witness criminal acts, children suspected of being involved in criminal acts, and that the child must be at least 12 years old or 18 years old. Today, the juvenile justice system is used to stop and control child delinquency, or policies against children. In general, this happens because it mimics or is affected by the bad behavior of adults or the surrounding environment. The justice system often provides severe punishments for a child's development when suspected of committing an offense. Sentencing children with a

<sup>1</sup> Kartini Kartono, *Kenakalan Remaja* (Jakarta: Raja Grafindo Persada, 2008), p. 6.

formal criminal justice system, including incarceration, does not always deter them or make them better people at helping them develop.

Prison often increases the likelihood of children committing more serious crimes. Children are not small replicas of adults therefore, they must be treated in a different way, taking into account their rights and their future survival.<sup>2</sup> Not only are children victims of criminal acts, child protection also includes children involved in breaking the law. Therefore, a child's background is very important in legal proceedings, especially in criminal decision-making. A country's most important asset is its children, as the country's future depends on the quality of its next generations. The future of the country will be bright if the conditions of the children are good, but if the quality of the children is poor, the future of the country will also be threatened. On the other hand, children are considered a valuable human resource and are a topic of national development both now and in the future. All countries face the problem of crimes committed by children. The government and related institutions in Indonesia often hold seminars and discussions to discuss this issue. Rehabilitation and prevention efforts, especially in the field of juvenile criminal law, are driven by the increasing trend of crime committed by children or underage offenders and resulting in criminal acts. This is related to the special means given to juvenile offenders.

The restorative justice approach is considered to be the latest innovation, many of the concepts and procedures used by the criminal justice system to resolve criminal cases. This rule is even considered a model that can be used as a strategic basis in dealing with criminal problems, especially those related to children, after the Law on the Juvenile Criminal Justice System is enacted. The Juvenile Criminal Justice System Act brought major changes in the criminal justice system. This provision is different from the provisions in force in the Child Protection Law, which only allows investigators to release a child in conflict and hand him or her over to his or her parents, guardians, or adoptive parents. The official in charge of children's cases should be responsible for all legal proceedings related to children, from arrest and detention to trial. Families, communities, and law enforcement must find solutions outside of the court channels before starting legal proceedings. One method to achieve an out-of-court settlement is to use a diversion-based restorative justice approach<sup>3</sup>.

This approach is used to carry out diversion, particularly in dealing with criminal cases where the child, parent or guardian is asked to speak. The transfer process applies to criminal cases with a threat of punishment of less than 7 years. To protect children's rights by avoiding stigmatization that can harm them, diversion is used. Law enforcement officials at the police, prosecutor's office, and court levels can use this mechanism to shift legal proceedings from formal justice to alternative settlements. Outside the criminal courts. Criminal justice sometimes faces major problems in dealing with children who abuse narcotics. When the criminal justice stage is completed, the perpetrators of narcotics abuse are also stigmatized.<sup>4</sup> The handling of the problem of drug abuse in children through criminal law seems to be out of context. This theory is based on several reasons. First, because criminal law is used as a tool to eradicate crime only for the prevention and prosecution of crimes after the crime has occurred. This method is acceptable if it is aimed only at criminals. In fact, children who abuse drugs are not only perpetrators but also victims. Second, because we know that children who abuse drugs are also victims, it is important to protect them. Based on the principle of rehabilitation, alternative sanctions can

<sup>2</sup> Agung Wahyono dan Sit Rahayu, *Tinjauan Peradilan Anak di Indonesia*, (Jakarta:Sinar Grafika, 1983), p. 2

<sup>3</sup> Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak*, (Yogyakarta: Laksbang Grafika, 2012), p. 234

<sup>4</sup> Jonlar Purba, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan dengan Restoratif Justice*, Jakarta: Jala Permata Aksara, 2017.

be applied to actions taken against children victims of drug abuse. According to this principle, the criminalization of children is a "last resort" rather than a "first attempt". Criminal law theory, also known as the Final Solution. While punishment is a tool that states can use to combat crime, there are many other ways that can improve the situation. To deal with children who abuse drugs, a combination of law enforcement and prevention efforts is needed. Therefore, diversion is very important for the restoration of justice for children who commit drug offenses. This must be done to safeguard the best interests of the child. Overall, there are 2,549 victims of drug addiction in Indonesia, according to National Police data. Someone who is still a student. The suspects are 18 adults, and one other person is still being questioned by police in the case.

This data shows that governments and society should consider the effects of drugs on children. More than 2,000 students reported using drugs, which is 9.1% of all reported drug use from the beginning of the year to date. The highest number of students and students is ranked fourth according to this figure. Drug abuse and distribution are still a big problem for the country. In 2022, 851 cases were solved, 1,350 people were arrested, and 41 drug networks were identified throughout Indonesia. Most drug addicts in the country are between the ages of 15 and 64. Drugs were originally created for medical purposes, but with the development of international political relations, they began to be abused by certain groups to gain an advantage by adding harmful addictive substances. They can lead to hallucinations, addiction, tissue and nerve damage, and even death. Many countries have strict policies to prohibit drug sales to protect people from drug abuse. However, this ban actually triggered illicit trade, which is increasingly rampant around the world, including in Indonesia. Indonesia, an archipelagic country with a large population, is an attractive market for domestic and international drug traffickers. Indonesia is also famous as a producer of drugs, such as drugs such as methamphetamine and ecstasy.<sup>5</sup> According to this background, it is hoped that this research will be useful theoretically by outlining several complete conceptual frameworks on the implementation of diversion for children who are directly involved in narcotics offenses, and this study aims to find out how the application of diversion to children in narcotics crimes and its implementation in the Samarinda City Resort Police.

## METHODS OF THE RESEARCH

This method applies an empirical juridical approach. Writing that examines legal theory, literature and legal regulations applicable in society as well as observation or research directly in the field.<sup>6</sup> The object of this research is to evaluate the application of the implementation of diversion in handling the case of children of narcotics crimes involved in legal problems within the Samarinda Police Department. This research will emphasize the various phases of implementation, challenges, and progress it produces.

## RESULTS AND DISCUSSION

### A. Regulations for the Implementation of Diversion at the Samarinda City Resort Police

#### 1. Diversion Regulations According to the Constitution

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<sup>5</sup> Kompas.Com. Kementerian PPPA: Naiknya Kasus Narkoba Anak Jadi Alarm bagi Orangtua. <https://nasional.kompas.com/read/2020/06/26/17590051/kementerian-pppa-naiknya-kasus-narkoba-anak-jadi-alarm-bagi-orangtua> (diakses pada 15 Agustus 2023)

<sup>6</sup> Wirta Griadhi, I Ketut, 2006, *Metode Penelitian dan Penulisan Hukum (Intisari Kuliah)*, Fakultas Hukum universitas Udayana, Denpasar, p. 25

As stated earlier, diversion is a shift in how juvenile criminal cases are resolved from criminal justice to criminal cases outside the diversion law. The concept of the application of diversion, the child in question is a child whose case is threatened with imprisonment of less than 7 years and is not a repetition of a criminal act; However, in cases where the threat of imprisonment is above 7 years, diversion can be carried out. One of the components of the juvenile criminal justice system is the implementation of diversion, which provides protection to children who violate the law who are victims or witnesses of criminal acts.

## 2. Diversion Regulations at the Samarinda City Resort Police Station

Police Secret Telephone Crime Bureau: TR/1124/XI/2006, change from a formal offense to a substitute admission. This method is considered to meet the needs. Children can be considered as a transfer of handling cases involving minors who are suspected of being involved in criminal acts committed outside the formal judicial mechanism, either through legal processes or without legal processes. Thus, the diversion process can be used to resolve the case of a child involved in a legal conflict or a child who commits a crime.<sup>7</sup>

## 3. Diversion Regulations in Narcotics Crimes

Crime is a human act that is threatened by criminal punishment, and children also have the ability to do so. Restorative justice decides cases of violence against children that receive a lot of attention in the media and electronic media. This ruling involves the perpetrator, the victim, the family member, and other parties, by demonstrating restoration to its original form rather than compensation, we achieve a fair solution to the protection function ensuring that children who are problematic with the rules are not discriminated against in the court process. Only law enforcement agencies (police, prosecutors, judges, and others) that deal with violations of the law that harm children can take advantage of this amendment process. Formal courts are not included in this case. The purpose of the implementation of the ban is to reduce the negative effects of children's involvement in the judiciary.<sup>8</sup> The process of implementing the transfer involves several different rules and has been established within the police. According to Perma Number 4 of 2014, it was carried out by direct investigators from the Criminal Investigation Unit, which handles various types of child crimes and is not limited to child cases. There are a number of community counselors and social workers involved in this implementation, by prioritizing the restorative justice approach, the purpose of diversion at the investigation level is to avoid children from the formal justice process. We know that diversion of children must begin with existing procedures and in accordance with Indonesian law, such as investigators handling child cases must be certified and specially trained to ensure that children have fair rights during the legal process. Investigators typically consist of two to three people, with two main investigators handling cases and being directly responsible during the investigation. If the child's case is severe and risky, investigators can also be added if needed. During the investigation, investigators can also be assisted by operational teams such as intelligence, forensic laboratories, and experts from the National Narcotics Agency, as well as field teams that are always coordinating with the unit. In addition to considering various procedures, its implementation must consider the conditions mentioned in the Supreme Court Regulation Number 4 of 2014, namely: first, the case of children with the

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<sup>7</sup> Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*. (Purwokerto: Genta Publishing, 2011), p. 201

<sup>8</sup> Ramukti, Angger Sigit dan Fuady Primaharsya, 2015, *Sistem Peradilan Pidana Anak*, (Yogyakarta: Pustaka Yustisia.)



threat of imprisonment under 7 years in prison; second, the child has never committed a criminal act or recidivism again; third, the age of the child, whether he is still a child.

#### 4. Implementation of Diversion Implementation at the Samarinda City Resort Police

In an interview with Mr. Tarwoko, a member of the police department in charge of narcotics operational development for children, he explained that the diversion at the Samarinda City Resort Police had been completed properly and in accordance with procedures and legal rules. This process includes diversion preparation, deliberation, and settlement of an agreement on the outcome of whether the diversion fails or succeeds. Mr. Purwanto, the narcotics investigation officer of the Samarinda City Resort Police, explained that the diversion was carried out in accordance with the rules and there were no obstacles.

**Table 1.**

**Data on Child Narcotics Crimes of the Samarinda City Resort Police  
Period 2019-2024**

No.	Age Range (Years)	Number of Items	Diversion
2019	< 15	2	√
	16 - 18	11	√
2020	< 15	1	x
	16 - 18	13	x
2021	16 - 19	6	x
2022	< 16 - 19	8	x
2023	< 15	1	x
	16 - 19	10	x
2024	16 - 19	1	x

**Source: Samarinda City Resort Police Data**

The results of the diversion from the data of children of narcotics crimes are shown in table 1 which shows two cases of children handled at the Samarinda City Resort Police in 2019. In addition, there has been a failure in handling child crimes for the past three years. Mr. Purwanto further explained that "the failure of diversion in handling children is not caused by poor implementation, but by the actions of children who do not comply with the rules or procedures necessary to allow the diversion process to be carried out". In addition, he stated that he wanted to allow different processes for cases of child crimes involved in the network, either as perpetrators or victims, or as users or dealers, The second factor is his age, whether he is still in the category of children or adolescents or adults, and the third condition is based on the punishment given for crimes committed by the child who does not receive rehabilitation.

**Table 2.**

**Data on Children of Narcotics Crimes in Correctional Centers  
Period 2019-2023**

Year	Criminal Cases	Diversion Efforts	Number of Items
2019	Drugs	Succeed	2
2020	Drugs	Fail	-
2021	Drugs	Fail	-
2022	Drugs	Fail	-
2023	Drugs	Fail	-

**Source: Samarinda Correctional Center Data**

The results found from narcotics crimes against children can also be seen at the Samarinda Correctional Center which shows that diversion efforts were successful in two cases in 2019, based on table 2 data, in his interview with the author, Mr. Fitriadi Muchransyah, stated that the application of diversion to children who commit crimes in the Samarinda area is in accordance with procedures and rules and is carried out well. In cases of child drug crimes, diversion efforts failed because of cases of children who did not meet the requirements or rules that had been set. In addition, coordination between the father and the police is very effective in the field and in other matters related to the case of children against the law.

## **B. Factors Influencing the Implementation of Diversion at the Samarinda City Resort Police Station**

The implementation of legal policies, of course, has components that hinder and support its implementation. Similarly, the application for placement at the Samarinda City Resort Police. Based on an interview with the Samarinda City Resort Police Drug Resort Unit Unit, the supporting factor for the implementation at the Samarinda City Resort Police is the existence of legal rules that regulate this in the office. In addition, the success of the diversion process is influenced by several factors that are of concern in the implementation process, such as the good faith of the parties and good communication between cooperating agencies. On the other hand, the percentage of success of the diversion process is still low due to factors related to the internal or external nature of the parties. Another factor is that the cases that occurred at the Samarinda Police were not included in the scope of diversion actions. Law enforcement officials of the Samarinda Police, the government, and internal parties have made various efforts to overcome the factors that hinder the implementation of diversion. The government made efforts by providing legal sanctions to law enforcement who did not apply diversion to the criminal activities of children there. In addition, the police also tried to eliminate factors that hindered the implementation of the implementation. A narcotics officer interviewed stated that "the police will always apply diversion according to the rules and will not do anything beyond our authority. The same thing is also applied in the police, namely to continue to improve the ability of officers, including investigators, in handling child cases by providing training or education that discusses more deeply about diversion through programs to encourage or prevent bad behavior for children. This training can be in the form of workshops or seminars. All of this is part of an effort to apply diversion to children.

## **CONCLUSION**

Diversion is an effort to transfer formal cases out of court by prioritizing the right of children to be protected from various societal stigmas for their criminal acts. Children in the application of diversion include children who are 12 years old and not yet 18 years old. In addition, the criminal act committed is not less than 7 years and does not constitute criminal repetition or recidivism. The implementation of diversion at the Samarinda Police can be declared quite successful in its implementation, according to the provisions of diversion, it has successfully handled child cases in 2019. As for cases that cannot be diversified in 2020 – 2023, regardless of the factors that support or hinder implementation, namely the laws and regulations that govern and the intention of the parties to the case. The factors that are considered to be inhibiting are from internal and external parties. The type of child cases that occur also does not include child cases that can be diversified. The Samarinda City

Resort Police carried out the diversion, has carried out several stages in accordance with the procedures of the Supreme Court Regulation Number 4 of 2014.

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