



Progressive Legal Perspective of the Settlement Child Criminal Action as a Narcotics User in the Malang City Police Resort

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Abstract

The application of criminal conviction against children often causes debate. The philosophy of the juvenile justice system prioritizes the protection and rehabilitation of child perpetrators. Article 1 number 7 Indonesia Juvenile Criminal Justice System Law Number 12 of 2012 states the diversion is a diversion of the settlement of juvenile cases from the criminal justice process to the outside the criminal justice process. In the period 2017 to 2020, there were 12 suspected child users of narcotics crime at the Malang City Police Resort. Of the 12 cases of children as users of narcotics crimes handled by the Malang City Police Resort, none of which could be attempted by diversion. This means that all cases concerning children as perpetrators of narcotics crimes are all P21 or go to court. According to progressive law, cases of children should not be resolved in the mechanism stated in the existing formal text of the rules. The use of a progressive legal approach in solving cases of narcotics abuse by children is more effective because children are the future of the next generation of the nation's struggle and for the best interests of the children themselves.

Keywords: *Progressive Legal Perspective; The Settlement; Child Criminal Action; A Narcotics User*

Introduction

The treatment of children suspected of committing criminal acts is often very repressive. The judicial process against children often loses its essence as a mechanism that must end to protect the best interest of the child. The juvenile criminal justice process often presents itself as a mechanism that is only oriented towards formal law enforcement and is not oriented towards children's interests (Koesno Adi, 2009).

Child as a narcotics criminal has developed some good modus operandi, both as a courier and directly involved in drug abuse. Based on data from the Indonesian Child Protection Commission, during 2017 there were around 22 cases of children who were drug couriers, then around 46 children who were victims of drug abuse (Indonesian Child Protection Commission, 2019).

Based on existing data from 2017 to 2020, 12 suspected children used narcotics crimes at the Malang City Police Resort. If detailed in 2017 there were 2 cases, in 2018 there were 6 cases, and 2019 did not exist and in 2020 4 cases concerning children as perpetrators of narcotics crimes. Of the 12 cases of children as users of narcotics crimes handled by the Malang City Police Resort, none of which could be attempted by diversion. This means that all cases concerning children as perpetrators of narcotics crimes are all P21 or go to court.

Indonesia Juvenile Criminal Justice System Law Number 12 of 2012 (IJCJS Law) requires every law enforcement officer, be it the police, prosecutors, and judges to diversify cases of criminal acts committed by children. This is confirmed in Article 7 paragraph (1) of the IJCJS Law, which states that "at the level of investigation, prosecution and examination of juvenile cases in district courts, diversion is mandatory". The statement of this article shows that as far as possible criminal acts committed by children should be endeavored not to continue to the level of examination in court to punishment, but to be attempted to recover back to their original condition because they are related to the child's unstable mental condition and development.

The IJCJS Law gives new roles and obligations to the police in addition to the authority to carry out investigations and investigations in dealing with crimes committed by children. This authority is the authority to carry out a diversion in criminal acts committed by children and prevent the case from continuing to the level of prosecution and case examination in court.

There is a limit to the provision of diversion contained in Article 7 paragraph (2) of the IJCJS Law which reads:

Diversion as referred to in paragraph (1) shall be implemented in the event of a criminal act that is committed:

- a. threatened with imprisonment of less than 7 (seven) years; and
- b. is not a repetition of a criminal act.

There is a contradiction when a criminal act which is an extraordinary crime, which the problem of narcotics cannot be tolerated, is confronted with a child as a user of the crime of narcotics crime. On the one hand, the child must be given protection and as much as possible to be given diversion, on the one hand, he commits a crime. Extra Ordinary Crime, namely narcotics crimes.

The way to handle the case above, sometimes we refer to what Satjipto Rahardjo stated in his progressive law. Satjipto Rahardjo interprets progressive law with the sentence, first, the law is for humans and not the other way around. Law does not exist for him but for something broad, namely for human dignity, happiness, welfare, and human dignity (Satjipto Rahardjo, 2006). Both laws are not absolute and final institutions because the law is always in the process of being (law as a process, law in making) (Satjipto Rahardjo, 2002).

The promulgation of Regulation the Indonesia Head of the National Police Number 6 of 2019 concerning Criminal Investigation (Perkap Number 6 of 2019), criminal cases do not have to go to the trial process. But the solution can be done using restorative justice. This means that the settlement of a criminal case involves the perpetrator, the victim, the family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to its original state, and not retaliation.

Article 12 Perkap Number 6 of 2019 explains that in the investigation process restorative justice can be carried out if the following conditions are met:

- a. material, including:
 1. does not cause public unrest or there is no community resistance;
 2. does not have an impact on social conflicts;
 3. there is a statement from all parties involved not to object, and to waive their right to prosecute before the law;
 4. limiting principle:
 - a) to the perpetrator:
 - 1) the level of the perpetrator's error is relatively minor, namely the mistake in the form of deliberate action; and
 - 2) the perpetrator is not a recidivist;
 - b) for criminal acts in the process:
 - a) investigation; and
 - b) investigation, before the SPDP, is sent to the Public Prosecutor;
- b. formal, including:
 1. a letter of request for conciliation of both parties (reporter and reported);
 2. a statement of conciliation and settlement of disputes of the parties in a case (the reporter, and/or the family of the reporter, the reported and/or the reported family and representatives of community leaders) known to the investigator's superior;
 3. minutes of additional examination of the party in a case after the settlement of the case is carried out through restorative justice;
 4. recommendation of a special title that approves the settlement of restorative justice; and
 5. the perpetrator does not object and is carried out voluntarily for responsibility and compensation.

Handling a criminal act is obliged to mediate between the victim and the perpetrator. Settlement of cases through restorative justice methods must comply with Article 12 in the Perkap Number 6 of 2019 above, including, not causing public unrest or rejection, not having an impact on social conflicts, and a statement from all parties involved not to object so that the existence of this new Perkap makes the law more beneficial. rather than certainty. In this Perkap Perkap Number 6 of 2019 also, the police have an obligation, not only to enforce the law but also to provide guidance to the community. The function of community development is prioritized.

This article is limited to two problem formulations as follows: 1) What was the background of the Malang City Police Resort's investigator for not implementing the Perkap Number 6 of 2019 for children as narcotics users?; 2) How the socio-criminological implications of not implementing the Chief of Police Regulation No. 6 of 2019 concerning the Criminal Investigation of children as narcotics users from a progressive legal perspective?

Research Methods

This type of research is socio-legal with a sociological approach and a conceptual approach. The reason for choosing the research location was because there were many cases of children who used narcotics in the jurisdiction of Malang City Police Resort. Types and sources of data consist of primary data, secondary data, and tertiary data. Primary data collection techniques by interview and secondary and tertiary data with the study of legislation and literature study. The data analysis technique uses descriptive analysis.

Research Result and Discussion

The application of criminalization against children often creates debate, because in this case, it has very broad consequences both regarding behavior and stigma in society and also within the child, but with the issuance of the IJCJS Law which has been in effect since 30 July 2014, the application of punishment is more of a fostering and protective character for children, compared to Indonesia Juvenile Court Law Number 3 of 1997 which is no longer relevant because it is not by the times. The implementation of the juvenile criminal justice system which aims to tackle crimes against child criminal offenders in Indonesia often experiences problems, including in terms of detention of children, a long judicial process starting from the investigation, prosecution, justice, which ultimately places the child convicted in a correctional facility cause trauma and negative implications for children. There is a view that the use of criminal law as a means of overcoming crime cannot be justified with the understanding that its use must still be subsidiary in nature. This means that as long as the use of facilities outside the criminal justice system is seen as more effective, the use of criminal justice should be avoided as much as possible (Ira Handayani, 2018).

The philosophy of the juvenile justice system is to emphasize the protection and rehabilitation of child offenders (emphasize the rehabilitation of youthful offenders) as people who still have several limitations compared to adults. Children need protection from the state and society for the long term. For children who have already become perpetrators of a criminal act, a strategy of the criminal justice system is needed, namely striving for a minimum of intervention in the criminal justice system. Children who violate the law or commit crimes are strongly influenced by several other factors outside of the child, such as relationships, education, playmates, and so on. To protect children from the influence of the formal process of the criminal justice system, human or legal and humanitarian experts think to make formal rules for removing a child who has violated the law or committed a criminal act from the criminal justice process by providing other alternatives. which is considered better for children (Ira Handayani, 2018).

The IJCJS Law adopts a double-track system. What is meant by a double-track system is a two-track system in which in addition to regulating criminal sanctions it also regulates actions. Through the application of a double-track system, the sanctions imposed will better reflect justice, both for perpetrators, victims, and the community in solving child crimes (Sudarsono, 1995). Through a two-channel system, the judge can determine the imposition of sanctions against children that are appropriate and appropriate to be held accountable by children in conflict with the law. Imposing criminal sanctions against lawbreakers is often seen as the goal of criminal law. If the offender has been brought to trial and then sentenced to a criminal sanction, then the legal case is considered to have ended. This view has positioned justice in criminal law and the enforcement of criminal law is a criminal sanction as threatened in the articles that are violated.

A child who is subject to criminal action for being a drug user will also be processed through the same laws and regulations even though the trial process is different from that of adults. This is related to the special protection given to children by the state as mandated in Article 59 paragraph (1) and paragraph (2) of Indonesia Child Protection Law (Law Number 23 of 2002 which has been amended by Law Number 35 of 2014), states:

1. The government, regional governments, and other state institutions are obliged and responsible for providing special protection to children.
2. Special Protection for Children as intended in paragraph (1) is given to:
 - a. Child in emergencies;
 - b. Children in conflict with the law;
 - c. Children from minority and isolated groups;
 - d. Children who are exploited economically and/or sexually;

- e. Children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances;
- f. Children who are victims of pornography;
- g. Children with HIV / AIDS;
- h. Child victims of kidnapping, sale, and/or trafficking;
- i. Child victims of physical and/or psychological violence;
- j. Child victims of sexual crimes;
- k. Child victims of terrorism networks

Based on the above, the mandate of Article 59 paragraph (1) and paragraph (2) of Indonesia Child Protection Law as mentioned above, there is special protection provided by the Government or other institutions to children who have problems or do not have a life like other children, including children who use drugs.

Children's rights in the criminal justice process are also regulated in the IJCJS Law. Article 7 of the IJCJS Law explains that:

1. At the level of investigation, prosecution, and examination of a child's case in a district court, Diversion must endeavor.
2. Diversion as referred to in paragraph (1) shall be implemented in the event of a criminal act that is committed:
 - a. threatened with imprisonment of less than 7 (seven) years; and
 - b. is not a repetition of a criminal act.

According to Article 1 point 7 of the IJCJS Law, diversion is the transfer of settlement of juvenile cases from the criminal justice process to the process outside the criminal court. Diversion is an alternative to divert the process from judicial to non-judicial processes in overcoming narcotics abuse by children. This diversion is carried out to prevent the child from applying the criminal law.

Based on data from the Malang City Police Resort, 12 children faced the law as narcotics abusers from 2017 to 2020. Of the 12 cases, all P21 (Notification of Complete Investigation Results) means that all cases of children as perpetrators of narcotics abuse go to court. The Malang City Police Resort has never conducted diversions against child offenders who use narcotics crime, because of the threat of punishment narcotics crime by children over 7 years (Alldino Rahma Gandhi A., 2020). Based on Article 7 paragraph (1) of the IJCJS Law states what can be diversified is a case with a threat of punishment under 7 years (Aris Zanuvar N., 2020).

Data from the Malang City Police Resort regarding children who are faced with the law as perpetrators of narcotics abuse in 2017 are as follows:

Table 1. Police Report of Children as Narcotics Users in 2017

Number	Police Report	The Identity of the child offender	The Suspected Article	Information
1	LP/A/26/II/2017/ JATIM/RES MLG KOTA, February 4, 2017.	BOCIL (Initials), 14 years old, Malang May 16, 2002.	Article 111 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
2	LP/A/234/X/2017/ Jatim/Res Mlg Kota, October 7, 2017	NM (Initials), 17 years old, Malang, January 15, 2000.	Article 111 paragraph (1) juncto Article 132 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21

Source: The Malang City Police Resort, January, 2021.

Based on Table 1 above, there were 2 cases of children who committed narcotics abuse in the Malang City area in 2017. The alleged article is Article 111 paragraph (1) in conjunction with Article 132 paragraph (1) of Indonesia Narcotics Law as in the table above. The case of children as perpetrators of narcotics abuse in 2017 went to court. For data on cases of children who are faced with the law as perpetrators of narcotics abuse in 2018 as follows:

Table 1. Police Report of Children as Narcotics Users in 2018

Number	Police Report	The Identity of the child offender	The Suspected Article	Information
1	LP/A/217/IV/2018/ Jatim/Res Mlg Kota, April 14, 2018.	SUMBING (Initials)	Article 112 paragraph (1) and/or Article 132 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
2	LP/A/70/IV/2018/ Jatim/Res Mlg Kota, April 14, 2018	DA (Initials)	Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
3	LP/A/73/IV/2018/ Jatim/Res Mlg Kota, April 16, 2018	FDP (Initials) 17 years old, Malang August 16, 2000.	Article 114 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
4	LP/A/97/V/2018/ Jatim/Res Mlg Kota, May 15, 2018	AMDPS (Initials) 16 years old.	Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
5	LP/A/130/VII/2018/ Jatim/Res Mlg Kota, July 27, 2018	FRPA (Initials), 17 years old	Article 114 paragraph (1) and/or Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
6	LP/A/154/VIII/ Jatim/ Res Mlg Kota, 21 August, 2018	RFR (Initials), 17 years old	Article 111 paragraph (1) and/or Article 132 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21

Source: The Malang City Police Resort, January, 2021.

Based on Table 2 above, there were 6 cases of children who committed narcotics abuse in the Malang City area in 2018. The suspected articles are Article 111 paragraph (1) in conjunction with Article 132 paragraph (1), Article 112 paragraph (1), and Article 114 paragraph (1) of Indonesia Narcotics Law as in the table above. The cases of children as perpetrators of narcotics abuse in 2018 all went to court. There are no cases of children as perpetrators of narcotics abuse in 2019, while data on cases of children who are faced with the law as perpetrators of narcotics abuse in 2020 are as follows:

Table 1. Police Report of Children as Narcotics Users in 2018

Number	Police Report	The Identity of the child offender	The Suspected Article	Information
1	LP/A/02/X/2020/ JATIM/ RESTA MLG KOTA, January 3, 2020	SA (Initials), Samarinda, February 5, 2002.	Article 114 paragraph (1) and/or Article 111 paragraph (1) and Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
2	LP/A/63/I/2020/ Jatim/Resta Mlg Kota, January 29, 2020	SNS (Initials), 16 years old	Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
3	LP/A/76/VII/2020/ Reskrim/Kota Malang/SPKT Polsek Sukun, July 9, 2020	FS (Initials), Malang, October 6, 2002.	Article 111 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21
4	LP/A/178/VIII/ RES.4.2/2020/NKB/ SPKT Polresta Malang Kota, August 10, 2020	HIR (Initials) Malang, October 31, 2003	Article 112 paragraph (1) Indonesia Narcotics Law Number 35 of 2009.	P21

Source: The Malang City Police Resort, January, 2021.

Based on table 5 above, there were 4 cases of children who committed narcotics abuse in the Malang City area in 2020. The suspected articles are Article 111 paragraph (1), Article 112 paragraph (1), and Article 114 paragraph (1) of the Indonesia Narcotics Law as shown in the table above. All cases of children as perpetrators of narcotics abuse in 2020 go to court (P21).

If you pay close attention, the contents of the articles suspected of being perpetrators of narcotics crime abuse are based on data from the Malang City Police Resort from 2017 to 2020, indicating that children who commit narcotics abusers will be given severe legal sanctions, whose criminal charges exceed 7 years. Meanwhile, Article 7 paragraph (2) of the IJCJS Law states that the limit for granting diversion is a maximum penalty of 7 years. For example, the suspected article is Article 111 paragraph (1) of the Indonesia Narcotics Law states:

"Everyone without rights or against the law planting, maintaining, possessing, keeping, controlling, or providing Narcotics Category I in the form of plants, the threat of punishment is minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiahs) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiahs)."

Article 112 paragraph (1) of the Indonesia Narcotics Law states:

"Any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I not plants, with the threat of imprisonment of at least 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiahs) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiahs)."

Article 114 paragraph (1) of the Indonesia Narcotics Law states:

“Any person who without rights or against the law offers to sell, sell, buy, receive, become an intermediary in buying and selling, exchanging, or handing over Narcotics Category I, with the threat of imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000.00 (ten billion rupiahs).”

There has not been a single case in Malang City Police, where children as narcotics users are suspected under Article 127 paragraph (1) of the Indonesia Narcotics Law which states “Every Abuser: (a) Narcotics Category I shall be punished with a maximum imprisonment of 4 (four) years; (b) Narcotics Category II shall be sentenced to a maximum imprisonment of 2 (two) years; (c) Narcotics Category III shall be punished by imprisonment for a maximum of 1 (one) year.” Article 127 paragraph (1) of the Indonesia Narcotics Law can be imposed on narcotics users whose maximum punishment is 4 years.

Related to the knowledge of the police officers (investigators) of the Perkap Number 6 of 2019 at the Malang City Police Resort to children as users of narcotics crimes. Alldino Rahma Gandhi A cites Article 23 paragraph (6) Perkap Number 6 of 2019 states that “Examination of children who conflict with the law is carried out by the provisions of laws and regulations.” (Alldino Rahma Gandhi A., 2020).

The Laws and Regulations referred to here are the IJCJS laws. The same opinion conveyed by Aris Zanuvar N stated that each investigator referred to the statutory provisions in carrying out the process of investigating child offenders as narcotics users starting from the investigation, after obtaining sufficient initial evidence, then an arrest was made, urine check was carried out, against child perpetrators, then an examination of witnesses; examination of child offenders (who must be accompanied by parents/guardians, Social Service (Dinas Sosial/Dinsos), and lawyers / legal advisors), then send the suspect and evidence/stage II, then community research from the Correctional Hall (Balai Masyarakat/BAPAS) to child perpetrators, send SPDP, search administration and confiscate evidence, send the case file/stage I, and detain the child offender (if there is no request, no detention will be made) (Aris Zanuvar N, 2020).

According to Eko Wahyudi, related to the investigator's understanding of the Perkap Number 6 of 2019 to children as users of Narcotics crimes, based on Article 23 paragraph (6) Perkap Number 6 of 2019 states “Examination of children who conflict with the law is carried out by the provisions of laws and regulations”, and the statutory regulations referred to the IJCJS Law which regulates the procedures and processes for investigating children (Eko Wahyudi, 2020). Evi Andriani Ginting also explained that the investigator's background did not implement Perkap Number 6 of 2019 against children as users of Narcotics crimes because of the existence of the IJCJS Law which has regulated the process or procedure for conducting investigations against child perpetrators (Evi Andriani Ginting, 2020).

Regarding the attitude of the investigators towards the Perkap Number 6 of 2019 against children as users of Narcotics crimes, according to Kukuh Wibowo, Investigators cannot apply the Perkap Number 6 of 2019 against child perpetrators who use Narcotics crimes because the perpetrators are still underage (not yet 18 years old) the investigation process uses the IJCJS Law (Kukuh Wibowo, 2020). The same opinion conveyed by Lutfi Nuhadinar, Malang City Police investigators have never provided diversion because it refers to the provisions of Article 7 paragraph (2) of the IJCJS Law that limits the provision of diversion to children as narcotics users if the criminal threat does not exceed 7 years (Lutfi Nahadinar, 2020). Based on the above, the behavior of law enforcement officers or investigators at Malang City Police is too positivistic and views the law as mere formal legality that must be carried out and implemented to achieve legal certainty. Whereas the purpose of the law is not only legal certainty but to uphold justice.

Article 28H paragraph (2) of the Indonesia Constitution of 1945 states that "Everyone has the right to receive special facilities and treatment to obtain equal opportunities and benefits to achieve equality and justice". Especially for a child who still needs special protection because he is the next generation of the nation's struggle.

Based on this, there needs to be protection for children, especially those related to their civil rights. Article 37 of the Convention on the Rights of the Child (which has been ratified by Presidential Decree Number 36 of 1990) states that the state must guarantee:

- a. No child can be subjected to abuse, or any other cruel, inhuman, or degrading treatment. Neither the death penalty nor life imprisonment without the possibility of acquittal, shall not be imposed for offenses committed by persons under the age of eighteen;
- b. No child can be deprived of liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child must be by the law, and should be used only as a last resort and for the shortest appropriate period;
- c. Every child deprived of liberty must be treated with humanity and respect for inherent human dignity, and in a manner and bearing in mind the needs of the person at his age. In particular, every child deprived of liberty must be separated from adults unless such placement is considered in the interests of the child and must have the right to maintain contact with the family by correspondence and visits, except in exceptional circumstances.
- d. Every child deprived of liberty has the right to immediate access to legal aid and other appropriate assistance, as well as the right to deny the lawfulness of deprivation of liberty, before a court or other competent authority, independent and just, and to an immediate judgment regarding any such action.

The Indonesian government has made efforts to provide special protection to children as perpetrators of narcotics abuse as mandated in Article 67 of the Indonesia Child Protection Law which states that "Special protection for children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances and children who are involved in their production and distribution are carried out through efforts of supervision, prevention, care, and rehabilitation".

In the future, the attitude and behavior of Malang City Police investigators in handling cases of children as perpetrators of narcotics abuse should be more humane and pay attention to the psychological condition of a child and efforts should be made to provide a diversion to a child as a perpetrator or drug user. Seeing the phenomenon of children as perpetrators of abuse of narcotics crimes that are legally processed when viewed from the progressive legal approach put forward by Satjipto Rahardjo. The paradigm of progressive law strongly rejects mean streams like this that are centered on positivistic legal rules/mechanisms, and progressive law reverses this understanding. Honesty and sincerity are the crowns of law enforcement. Empathy, caring and dedication to bring justice into the spirit of law administrators. Human interests (welfare and happiness) become the point of orientation and the ultimate goal of the law. Law enforcers are the spearheads of change (Sudjiono Sastroatmodjo, 2005).

Progressive law is an institution that aims to lead people to a just, prosperous life and make humans happy. This means that the progressive legal paradigm says that law is for humans. This grip, optics, or basic belief does not see the law as something central in law, but humans are at the center of the cycle of the law. The law revolves around the human being at the center. Law is there for man, not man for the law. If we hold on to the belief that man is for the law, then that human being will always be endeavored, maybe even forced, to enter into the schemes that have been made by the law (Satjipto Raharjo, 2007).

According to progressive law, cases of children should not be resolved in the mechanism stated in the existing formal text of the rules. One of the implementations of the progressive legal concept is the settlement of cases outside the court (out-of-court settlement). This is a common thing because this study prioritizes the function of case resolution prioritizing formal and legalistic forms (Fadil Andi Natsif, 2016). The use of a progressive legal approach in solving cases of narcotics abuse by children is more effective because children are the future of the next generation of the nation's struggle and for the best interest of the child.

Conceptually the child who commits narcotics abuse, in addition to his qualifications as a perpetrator, is also a victim. The existence of negative impacts with the application of criminal sanctions shows that the purpose of punishment with the application of criminal sanctions in the form of imprisonment in the case of children who abuse narcotics is not appropriate, the judge in his decision should apply appropriate criminal sanctions so that children avoid the negative impacts of the application of these imprisonment penalties. which can affect the fulfillment of the purpose of criminalizing children, namely by paying attention to the best interests of the child to ensure the protection of the child in carrying out his criminal threat (Indira Hapsari, Eko Sopyono & R.B. Sularto, 2016).

As stipulated in the provisions of the Indonesia Child Protection Law, it is necessary to pay attention to the legal protection of children. This is regulated in the Indonesia Child Protection Law Number 23 of 2002 which affirms special protection for children who conflict with the laws stipulated in Article 59 and Article 64. On this basis, to fulfill the purpose of punishing judges in their decisions can guarantee the best interests of children and the sanctions imposed are more beneficial to children and not a criminal sanction in the form of imprisonment, then the judge should be able to issue a verdict against a child who is a narcotics abuser in the form of rehabilitation or return of the accused or suspect to the child's parent or guardian because there are losses as a result of the application of criminal sanctions in the form of imprisonment.

The imposition of a verdict on a child who uses narcotics in the form of rehabilitation or return of the accused or suspect to the child's parent or guardian is expected to reduce the negative impact of imprisonment for children. If the judge's decision, namely in the form of returning the defendant to the defendant's parents by remembering Article 127 Paragraph (1) of the Indonesia Narcotics Law, Article 7 paragraph (1) of the IJCJS Law and the Articles of Laws, and other Regulations concerned are by the objectives of the Juvenile Justice System as well as the Beijing Rules in Rule 5.1., namely advancing the welfare of children by returning the defendant to his parents, it is hoped that the defendant can be guided to become better and children can be provided with knowledge that is more useful for children for their future.

Conclusion

The background of the investigators at the Malang City Police Resort that they did not implement the Perkap Number 6 of 2019 for children as narcotics users is due to Knowledge, Understanding and Attitudes and Behaviors of Law Enforcement Officials or Malang City Police Resort investigators who are too inclined to be positivistic and view the law as mere formal legality that must be carried out and implemented, namely still referring to to the provisions of Article 7 paragraph (2) of the IJCJS Law regarding the limits on granting diversion to achieve legal certainty.

It should be noted that the purpose of the law is not only legal certainty but to uphold justice. The provisions of Article 7 paragraph (2) of the IJCJS Law regarding the limits on granting diversion for the future, should be amended and include children as perpetrators of narcotics abuse.

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Interview Result

- Interview with Alldino Rahma Gandhi A., Member of the Satresnarkoba at the Malang City Police Resort, in the Satresnarkoba Room at the Malang City Police Resort, Saturday, November 28, 2020.
- Interview with Aris Zanuvar N., Member of the Satresnarkoba at the Malang City Police Resort, in the Satresnarkoba Room at the Malang City Police Resort, Saturday, November 28, 2020.
- Interview with Eko Wahyudi, Member of the Satreskrim Unit PPA at the Malang City Police Resort, in the Solution Room at the Malang City Police Resort, Saturday, November 28, 2020.
- Interview with Evi Andriani Ginting, Member of the Satreskrim Unit PPA at the Malang City Police Resort, in the Solution Room at the Malang City Police Resort, Saturday, November 28, 2020.
- Interview with Lutfi Nuhadinar, Member of the Satreskrim Unit PPA at the Malang City Police Resort, in the Solution Room at the Malang City Police Resort, Saturday, November 28, 2020.

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