

BUILDING A MODEL OF LEGAL PROTECTION FOR CHILDREN DEALING WITH CRIMINAL LAW

Hj. Indra Retnowati, S.H., M.H.

ABSTRACT

This study raises the theme of legal protection for children dealing with criminal law due to narcotics and drug abuse. This research also seeks an effort to resolve the problem through diversion in realizing restorative justice. The method used in this study is a juridical-normative approach with descriptive-qualitative research type. This research will criticize the enactment of Article 127 Paragraph (1), Article 128 paragraph (1), Article 134 Paragraph (1) and Paragraph (2) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. These articles state that children who abuse narcotics or parents who do not report violations committed by their children in using narcotics can be sentenced for up to six months imprisonment. This study will also criticize Article 7 paragraph 2 (a) of Law Number 11 of 2012 concerning the Juvenile Criminal System which states that the implementation of diversion/settlement of cases outside the court is only carried out for children who are sentenced to a minimum of 7 years imprisonment. However, children who abuse narcotics are triggered by various factors. One of them is the lack of integrity and environmental factors. Therefore, this research suggests the Indonesian government to revise the Law as mentioned above, by strengthening regulations regarding diversion for children who abuse narcotics in realizing restorative justice.

Key words: narcotics, diversion, justice, criminal, children.

1. INTRODUCTION

Narcotics abuse is an act that violates the Law of the Republic of Indonesia Number 36 of 2009 concerning Health and violates the provisions of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. Narcotics abuse can endanger health and can even lead to paralysis and death. Article 4 of the Republic of Indonesia Law Number 36 of 2009 concerning Health states that "everyone has the right to healthcare". In International Journal of Indian Psychology, Priyanka Yadav stated in her study entitled *Juvenile Delinquency as a Behavioural Problem* that the Juvenile Delinquency is an expression of unsatisfied desires and urges for a delinquent. A deviant act is a normal response to one's inner desire. Like a non-delinquent, a delinquent is also conditioned by various attending and prevailing circumstances around the individual.¹ Delinquency consists of *status delinquency offender*, namely a child who has committed an offence, and *juvenile (criminal) delinquency offender*, namely a term in which if done by an adult is considered as a crime, but not if it is done by a child.

Drugs consist of narcotics, psychotropic substances, and other addictive substances. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Article 1 Paragraph (1) defines Narcotics as substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change of consciousness, loss of taste, reduce and eliminate pain, and can cause dependence. Narcotics precursors are substances or starting materials or chemicals that can be used in making narcotics. According to the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics Article 1 Paragraph (2), Narcotics Precursors are the basic materials or substances or chemicals that can be used in Narcotics production.

Law of the Republic of Indonesia Number 5 of 1997 concerning Psychotropic Article 1 Paragraph (1) defines Psychotropic as a substance or drug, both natural and synthetic non-narcotics that has psychoactive properties through selective influence on the central nervous system that causes typical changes in mental activity and behaviour.

Based on the Republic of Indonesia Government Regulation Number 109 of 2012 Article 1 Paragraph (1), Addictive Substances are defined as substances that cause addiction or dependence that endanger health which is characterized by changes in behaviour, cognitive, and physiological phenomena, a strong desire to consume the substance, difficulty in controlling its use, giving priority to the use of the substance rather than other activities, increase in its tolerance and can cause drug withdrawal.

Attachment to the Regulation of the Minister of Health of the Republic of Indonesia Number 50 of 2018 concerning Amendments to the Narcotics Classification which was approved by Nila Farid Moeloek classifies the types of narcotics as follows:

- (1) List of Narcotics Type I: *Papaver Somniferum L*, Raw Opium, Ripe Opium (*candu, jicing, jicingko*), Coca (Erythroxyton or Erythrocyllaceae), dried coca leaves, raw cocaine, cocaine and methyl edter-1-bensoil oil ecgonine, cannabis, Tetrahydrocannabinol, Delta 9 tetrahydrocannabinol, ASETORPHINE, ASETHYL-ALPHA-METHYLFENTANYL, ALPHA-METHYLTHIOFENTANYL, BETA HYDROXIFENTANYL, BETA-HYDROXY-3-METHYL-FENTANYL, DESOMORPHINE, ETORPHINE, HEROINE, KETOBEMIDONE, 3-

¹ Priyanka Yadav, *Juvenile Delinquency as a Behavioural Problem*, The International Journal of Indian Psychology, October 2016, Pp. 294-309, Page 294, ISSN 2348-5396 (Online), ISSN 2349-3429 (Print), Volume 4, Issue 1, Number 76, DIP: 1801.002/20160476, ISBN 978-93-86162-13-7, Mental Health A Journey from Illness to Wellness, Research Scholar in Psychology, GKV, H.N-13, Near Pump House, Rewari, Haryana, India, Accessed from <http://creativecommons.org/licenses/by/2.0>, <https://ijip.in/wp-content/uploads/ArticlesPDF/article-d234861e69403dfb6a1b82592911782d.pdf>, in Semarang, on February 10, 2019, at 00.00 a.m. Western Indonesian Time.

METHYLFENTANYL, 3-METHYLTHIOFENTANYL, MPPP, PARA-FLUOROFENTANYL, PEPAP, THIOFENTANYL, BROLAMFETAMINE or (DOB), DET, DMA, DMHP, DIMETHYLTRIPTAMINE or DMT, DOET, ETICYCLIDINE or PCE, ETRIPTAMINE, CATHINONE, (+)-LYSERGIDE or LSD and LSD-25, MDMA, Mescaline, METHCATHINONE, 4-METHYLAMINOREX, MMDA, *N-ETHYL* MDA, *N-HIDROXY* MDA, PARAHXYL, PMA, PSILOCIN and PSILOTSIN, PSILOSIBYN, ROLICYCLIDINE or PHP and PCPY, STP and DOM, TENAMFETAMINE or MDA, TENOCYCLIDINE or TCP, TMA, AMPHETAMINE, DEXAMFETAMINE, PENETHYLINE, PENMETRAZINE, PHENCYCLIDINE or PCP, LEVAMFETAMINE, LEVMETAMFETAMINE, MECLOQUALONE, METHAMPHETAMINE, METHAQUALONE, ZIPEPROL, opium and/ or mixtures with other non-narcotics substances, 5-APB, 6-APB, 25B-NBOMe, 2-CB, 25C-NBOMe or 2C-CPNBOMe, DIMETHYLAMPHETAMINE or DMA, DOC, ETHCATHINONE or *N-ethcathinone*, JWH-018, MDPV or 3,4-METHYLENEDIOXYPYROVALERONE, MEPHEDRONE or 4-MMC, METHYLONE or MDMC, 4-METHYLETHCATHINONE or 4-MEC, MPHP, 251-NBOMe or 2C-I-NBOMe, PENTEDRONE, PMMA and METOXYMETAMPHETAMINE or PARA- METOXYMETAMPHETAMINE or 4-MMA, XLR-11, 5-FLUORO AKB 48 or 5F-APINACA, MAM-2201, FUB-144 or FUB-UR-144, AB-CHMINACA, AB-FUBINACA, FUB-AMB- or AMB-FUBINACA, AB-PINACA, THJ-2201, THJ-018, MAB-CHMINACA or ADB-CHMINACA, ADB-FUBINACA, MDMB-CHMICA or MMB-CHMINACA, 5-FLUORO-ADB, AKB-48 or APINACA, 4-APB, ETHYLONE OR MDEA, MDEC, TFMPP, ALPHA- METHYLTRYPTAMINE, 5-MeO-MiPT, METHOXETAMINE or MXE, BUPHEDRONE or METHYLAMINO- BUTYROPHENONE (MABP), 4- CLOROMETHCATHINONE or 4-CMC-KLEFEDRON, AH-7921, 4-MTA, AM-2201 or JWH-2201, ACETYLFENTANYL, MT-45, ALPHA-PVP, 4,4'-DMAR or 4,4'- DIMETHYLAMINOREX, RACEMIC METHAMPHETAMINE, JWH-073, JWH-122, 5-KLORO AKB 48 or 5-C1-APINACA, 5-FLUOROPAMB or 5-FLUORO-AMP and 5F-AMB-PINACA, SDB-005, 5-FLUORO-ADBICA, EMB-FUBINACA, MMB-CHMICA, 2C-I or 4-IODO-2,5-DMPEA, 2C-C or 2,5-DIMETOXY-4- CHLORPHENIRAMINE, 2C-H, PMEA, *p*- METOXYETHYLAMPHETAMINE, MEXEDRONE, PENTYLONE or bk-METHYL-K, bk-MBDP, EPHYLONE or *N*-ETHYLPENTILON, 4-CEC or 4- CHLOROMETHCATHINONE, BENZEDRONE or 4-MBC, U-47700, METHYLOPROPAMINE or MPA, 4-FLUORO-ALPHA-PVP or 4-FLUORO-PVP, 4-KLORO-ALPHA-PVP, 4-BROMOALPHA-PVP, *N*- ETHYLHEXEDRONE or HEX-EN, PB-22, -5-FLUORO-PB-22 or 5F-PB-22 and QUPIC, FDU-PB-22, FUB-FB-22, KHAT (*Catha edulis*), *Banisteriopsis caapi* and *Psychotria viridis* or AYAHUASCA, *Mimosa Tenuiflora*, BUTYRFENTANYL or BUTYRYL FENTANYL, CARFENTANIL or 4- METHOXYCARBONYLFENTANYL, CARISOPRODOL or ISOMEPROBAMATE and SOMA and ISOBAMATE, OKFENTANIL or OKPHENTANYLO and OKPHENTANYLUM, FURANYLFENTANYL or 2- FURANYLFENTANYL, FU-F, ACRYLOFENTANYL or ACRYLFENTANYL, 4-FLUOROISOBUTYRYLFENTANYL or *p*- FLUOROISOBUTYRYLFENTANYL or *N*-(4FLUOROFENIL)-2PMETHYL-*N*-[1-(2-PHENETYL)PIPERIDIN-4-IL] PROPANAMIDE, TETRAHYDROFURANYL FENTANYL or TETRAHYDROFURAN FENTANYL, 4- FLUOROAMPHETAMINE or 4-FA,PAL-303, 3-FLUOROAMETHAMPHETAMINE or 4-FMA, *p*- FLUOROAMETHAMPHETAMINE, 3-FLUOROAMETHAMPHETAMINE or 3-FMA, *m*- FLUOROAMETHAMPHETAMINE, FUB-AKB-48 or FUB-APINACA, UR-144, DIPHENIDINE, METHOXPHENIDINE or 2-MXP, 3-METHOXPHENIDINE or 3-MXP, 4-METHOXPHENIDINE or 4-MXP, Salts of Narcotics in the above groups.

- (2) List of Narcotics Type II: ALPHACETYLMETHADOL, ALPHAMEPRODINE, ALPHAMETADHOL, ALPHAPRODINE, ALFENTANIL, ALLYLPRODINE, ANILERIDINE, ACETYLMETHADOL, BENZETHIDINE, BENZYL MORPHINE, BETAMEPRODINE, BETAMETHADOLE, BETAPRODINE, BETACETYLMETHADOL, BEZITRAMIDE, DEXTROMORAMIDE, DIAMPROMIDE, DIETHYLTHIAMBUTENE, DIPHENOXYLATE, DIFENOXIN, DIHYDROMORPHINE, DIMEFHEPTANOLE, DIMENOXADOLE, DIMETHYLTHIAMBUTENE, DIOXAFETHYLE BUTYRYL, DIPIANONE, DROTEBANOLE, Ecgonine includes esters and derivatives equivalent to Ecgonine and cocaine, ETHYLMETHYLTHIAMBUTENE, ETOXERIDINE, ETONITAZENE, FURETIDINE, HYDROCODONE, HYDROXIPETIDINE, HYDROMORPHONE, ISOMETHADONE, PHENADOXONE, PHENAMPROMIDE, PENTAZOCINE, FENOPROFEN, PHENOPERIDINE, FENTANYL, CLONITAZENE, CODOXIME, LEVOPHENACYLMORPHAN, LEVOPHENACYLMORPHAN, LEVOMORAMIDE, LEVOMETHORPHAN, LEVORPHANOL, METHADONE, METHADONE INTERMEDIATE, METAZOCINE, METHYLDESORPHINE, METHYLDIHYDROMORPHONE, METOPON, MIROPHINE, MORAMIDE INTERMEDIATE, MORPHERIDINE, MORPHINE-*N*-OKSIDA, Morphine Metobromide and other pentavalent nitrogen derivatives include morphine-*N*-oxide derivatives, which is codeine-*N*-oxide only, Morphine, NICOMORPHINE, NORASIMETHADOL, NORLEVORFANOL, NORMETHADONE, NORMORPHINE, NORPIANONE, OXYCODONE, OXYMORPHINE, PETHIDINE INTERMEDIATE A, PETHIDINE INTERMEDIATE B, PETHIDINE INTERMEDIATE C, PETHIDINE, PIMINODINE, PIRITRAMIDE, PROHEPTASINE, PROPERIDINE, RASEMETORPHAN, SUFENTANIL, THEBAINAE, TBACON, TILIDINE, TRIMEPERIDINE, BENZYLPIPERAZINE (BZP) and *N*- BENZYLPIPERAZINE, METHA-KLOROFILPIPERAZIN (MCP), DIHYDROETORPHINE, ORIPAVINE, REMIFENTANIL, and salts of narcotics in the above groups.
- (3) List of Narcotics Type III: ACETYLDIHYDROCODEINE, DEXTROPROPOXYPHENE, DIHYDROCODEINE, ETHYLMORPHINE, CODEINE, NICODICODEINE, NICOCODEINE, NORCODEINE, POLCODEINE, PROPIRAM, BUPRENORPHINE, CB 13 or CRE 13 or SAB-378, salts of narcotics mentioned above, mixtures of

diphenoxides with other non-narcotics substances, and mixtures of diphenoxylates with other non-narcotics substances.²

The formulation of child protection is contained in the 1945 Constitution of the Republic of Indonesia Article 28B Paragraph (2) which states that every child has the right to live, grow and develop and is entitled to protection from violence and discrimination.

2. LEGAL ISSUES CONCERNING CHILDREN DEALING WITH THE LAW

The crime rate in children who conflict with criminal law is increasing. On the other hand, fewer children get diversion than those who are convicted. It can be seen that one of the few children who did not get diversion can be identified as follows:

The decision of the Kepahiang District Court Number 06/Pid.Sus-Anak/2015/PN.Kph stipulates the status of the defendant to a child who is caught having Type I cannabis drugs. The child store and use the narcotics for themselves, not sold or supply to others, and consume them by hand-rolled using tobacco paperboard. Children are sentenced by Article 127 Paragraph (1) Sub-Paragraph a of Law Number 35 of 2009 concerning Narcotics Juncto Law Number 23 of 2002 amended by Law Number 35 of 2014 concerning Child Protection. The judge sentenced a six months' imprisonment and required the child to undergo treatment and care through medical and social rehabilitation at the Rehabilitation Institute for six months which counts by the criminal period imposed.³ Children should not be convicted since the maximum threat of criminal punishment is under seven years. In this case, the maximum penalty for adults is five years imprisonment but the child is 1/2 (one half) the maximum threat of imprisonment for adults.

One of the objectives of diversion in Article 6 of Law Number 11 of 2012 concerning the Juvenile Justice System is to prevent children from deprivation of independence. Article 7 paragraph (2) letter a states that diversion is carried out in the event that the criminal acts carried out are threatened with 7 (seven) years imprisonment. This occurs a gap regarding discrimination in the treatment of diversion against children who are dealing with criminal law since there are those who get diversion and those who do not. Children who get fewer diversions than children who are convicted will need to strengthen diversion for children who are dealing with the law through the Restorative Justice approach. The legal issue of this research is the strengthening of diversion in children dealing with the law through the Restorative Justice approach.

Law Number 35 of 2009 concerning Narcotics provides criminal sanctions for children who use narcotics and their families who fail to report them. These sanctions are considered as violating human rights. Ideally, children who use narcotics are not convicted but cured through the rehabilitation process in hospitals and returned to their parents to be educated.

Risk factors of children who use narcotics can be found through various types. Anthony k.Nkyi stated that the risk factor for drug abuse in children comes from having a parent with a drug abuse problem. On the other hand, the protective factor is coming from high academic achievement. The higher the number of risk factors given by their parents, the greater his or her risk will be for developing the same drug abuse behaviour.⁴ One of the factors causing children to become drug users is also due to the influence of the environment in the form of invitations by friends to commit crimes.

Benjamin Mambende, Thelma Nyandoro, Levison Maunganidze, Abigirl Sawuti argues that broken families potentially produce delinquent children. Broken homes often promote delinquency since the risk factors such as parental conflict, criminal or anti-social parents, low family income, or poor child-rearing methods are present in such families.⁵ Divorce will inflict damage on children psychology which causes them to become depressed and get a bad assessment from their environment.

One of the causes of delinquency in children is an environmental factor where children are affected to commit crime through the invitation of a friend. According to Baysinger Henson Reimerand Cresswell PPLC Attorneys, another factor that causes juvenile delinquency the environment. Children with drug addicts are more common to be found in poorer neighbourhoods. While all neighbourhoods are not exempt from malicious activities, it is believed they happen more in areas

² https://laboratorium.bnn.go.id/assets/document/PMK_50_2018.pdf, Accessed in Semarang, on December 11, 2019, at 00.05 a.m. Western Indonesian Time.

³ Tri Jata Ayu Pramesti, August, 19, 2019, *Jerat Hukum Bagi Pelajar yang Menggunakan Ganja*, Jakarta, Accessed from <https://googleweblight.com/?u=https://www.hukumonline.com/klinik/detail/ulasan/It51beb81b14ffe/jerat-hukum-bagi-pelajar-yang-mnggunakan-ganja/&hl=id-ID>, in Semarang, on December 11, 2019, at 00.05 a.m. Western Indonesian Time.

⁴ Anthony k.Nkyi, Adolescent Use of Alcohol, Tobacco, and Marijuana: The Gateway to Other Drugs, *International Journal of Psychology and Behavioral Science*, Volume 5(4), 2015, Page 6, P-ISSN: 2163-1948, e-ISSN: 2163-1956, doi: 10.5923/j.ijpbs.20150504, University of Cape Coast, Ghana, Email: Nkyi_kwabena@yahoo.com, Accessed from <http://article.sapub.org/10.5923.j.ijpbs.20150504.04.html>, on December 12, 2019, at 00.10 a.m. Western Indonesian Time.

⁵ Benjamin Mambende, Thelma Nyandoro, Levison Maunganidze, Abigirl Sawuti, *Factor Influencing Youth Juvenile Delinquency at Blue Hills Children's, Prison Rehabilitation Centre in Gweru, Zimbabwe, An Explorative Study*, *International Journal of Humanities Social Sciences and Education (IJHSSE)*, Volume 3, Issue 4, April 2016, Pp. 27-34, Page 32, ISSN 2349-0373 (Print), ISSN 2349-0381 (Online), <http://dx.doi.org/10.20431/2349-0381.0304004>, www.arcjournals.org, Midlands State University, P. Bag 9055 Gweru, Zimbabwe, Accessed from <https://www.arcjournals.org/pdfs/ijhsse/v3-i4/4.pdf>, in Semarang, on December 14, 2019, at 03.00 a.m. Western Indonesian Time.

where children must struggle to sustain their habit by committing crimes.⁶ Prevention of narcotics use in children can be done by attending religious education, family, and school and counselling about the adverse effects of consuming narcotics.

3. RESULTS AND DISCUSSION

The settlement of child cases must use diversion through the Restorative Justice approach. The definition of Restorative Justice has been regulated in Article 1 Paragraph (6) of Law Number 11 of 2012 concerning the Child Criminal Justice System which formulates that, "*Restorative Justice is the settlement of criminal cases involving the perpetrators, victims, the perpetrators/victims, and parties others related to jointly seek a just solution by emphasizing restoration to its original state, not retaliation.*"

The definition of diversion in Article 1 Paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Justice System defines that "diversion is the transfer of the settlement of a child case from the criminal justice process to processes outside the criminal justice." Muladi and Diah Sulistyani R.S. in his book entitled *The Complexity of the Development of Criminal Acts and Criminal Policy* stated:

*"In restorative justice, crime is seen as a violation of one person against another person in society. In this case, crime has two dimensions, namely individual and social. Abuse creates responsibility and focuses on solving the problem. Responsibility is defined as accepting responsibility and being willing to repair/compensate, prioritize dialogue and negotiation."*⁷

The main objective of the non-penal approach is to improve certain social conditions that have a deterrence effect on crime, including social education through moral and religious education to improve the character of children and adolescents. Actions that taken in dealing with children who abuse drugs are done through rehabilitation and sanctions (without imprisonment) in the form of social sanctions (decriminalization) or civil sanctions or administrative sanctions (depenalization) if reciprocal social are insufficient to change the delinquent's behaviour in children.

This study analyzes child offenders of all types of criminal acts and narcotics users who are increasing in Indonesia. The government enacted the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics to prevent and deal with children who abuse narcotics. However, the law makes children who use narcotics go to prison. For this reason, the law needs to be reviewed and reconstructed so that the number of children who go to prison can be reduced.

The focus to be investigated is the prevention of drug abuse against children. Prevention and mitigation efforts are carried out through non-penal law enforcement. This research aims to benefit all countries, especially Indonesia, in order to learn that children do not need to be convicted. Sanctions for children dealing with the law are enough to use non-penal sanctions in the form of social services to the community such as cleaning up the environment, raising funds for victims of natural disasters, planting trees for greening, preservation of the nation's culture such as through *wayang golek*, *wayang kulit*, and batik clothes skills.

The contribution in this research is to develop knowledge in handling child cases and legal protection for children who are dealing with criminal law. This is done so that law enforcement in investigating and prosecuting children is more concerned with the psychological, physical, and adverse effects on children when a child is convicted. In addition, through this research, all countries can learn that the punishment of children will produce more adverse effects than good effects for children that are very detrimental. Criminal sanctions should only be used as a last resort if other alternative sanctions cannot be overcome, such as civil sanctions in the form of compensation for victims as well as sanctions for actions in the form of social services to the community.

The policy implication in this research is the existence of children who use narcotics as a type of methamphetamine convicted with a maximum penalty of under seven years but did not get diversion. The child should not be convicted and get diversion subject to the maximum threat of a criminal under seven years. This is contrary to the Convention on the Rights of the Child in Article 2 paragraph (2) which has been ratified in Presidential Decree Number 36 of 1990 concerning the Convention on the Rights of the Child in Supplement to the State Gazette of the Republic of Indonesia Number 57 states that "*participating countries will take all reasonable steps to ensure that the child is protected against all forms of discrimination or punishment based on the status, activities, expressed opinions, or beliefs of the child's parents, representatives or family members of the child.*"

Philip Bruggmann and Jason Grebely comment in their journal regarding the prevention, treatment, and care of hepatitis C virus infection among people who inject drugs:

"Despite the looming public attention. This silent disease often progresses with few symptoms, even during advanced stages of the disease. As a blood-borne virus, the major route of transmission in most countries is through injecting a

⁶ Baysinger Henson Reimerand Cresswell PLLC Attorneys, *Factors Contributing to Juvenile Delinquency*, Oklahoma, March 13, 2018, Page 1, Accessed from <https://baysingerlaw.com/2018/03/factors-contributing-juvenile-delinquency/>, in Semarang, on December 13, 2019, at 08.00 p.m. Western Indonesian Time.

⁷ Muladi and Diah Sulistyani R.S., *Komplektas Perkembangan Tindak Pidana dan Kebijakan Kriminal*, First Edition, P.T. Alumni, Bandung, 2016, pp.114.

drug. People Who Inject Drugs (PWID) are heavily affected by this infections disease. However, despite the high prevalence, ongoing transmission and increasing HCV (Hepatitis C Virus)-related disease burden among PWID. HCV testing, prevention, assessment, and treatment remain suboptimal in this group, and the time-bomb still ticks on. Over recent years, the development of simple, reliable and highly effective interferon-free Directly Acting Antiviral (DAA)-based therapies for HCV infection has brought great optimism to the sector. However, for the roll-out of these new IFN-free regimens to eliminate HCV among PWID, drastic changes and the breaking of some taboos will be required.”⁸

Drug prevention efforts can be done through controlling children and adolescents by providing supervision of children from negative influences from the environment.

Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children under 12 (twelve) Years Old in Supplement to the State Gazette of the Republic of Indonesia Number 5732. Article 67 states that in the case of children under 12 (twelve) years old committing or allegedly committed a criminal offence, Investigators, Community Guides, and Professional Social Workers make decisions to: a). Returning to their parents/guardians, or b). Assign them in education, coaching and mentoring programs, in Government Agencies or LPKS in agencies that handle social welfare both at the central and regional levels for a maximum period of 6 (six months).

In Indonesia, non-penal sanctions against children dealing with the law have not yet been enacted. This refers to Article 71 of the Child Criminal Regulation System Law. The best sanctions for children thus should be in the form of non-penal sanctions.

Diversion aims to (a) achieving peace between victims and children; (b) settle children's cases outside the judicial process; (c) prevent children from deprivation of independence; (d) encourage the community to participate; (e) instil a sense of responsibility to the child.

Article 2 of the Supreme Court Circular Number 4 of 2014 concerning Guidelines for the Implementation of Diversion reads “diversion is carried out on children under 12 (twelve) years of age or 12 years old even though they have been married but have not yet been 18 (eighteen) years of age who are suspected of committing criminal offences.” Article 3 of the Supreme Court Circular Letter Number 4 of 2014 concerning Diversion Implementation Guidelines states that “Judges must pursue diversion to children who are convicted of a criminal offence with imprisonment for under 7 (seven) years, or to children who are punishable with imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative, or combination indictments.”

Article 3 Paragraph (1) Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspected and/or Defendants of Drug Addicts into the Rehabilitation Institution states that “Drug Addicts and Narcotics Abuse Victims without rights and are against the law as Suspects and/or Defendants in Narcotics abuse that is undergoing the process of investigation, prosecution, and trial in the court is given the treatment, care, and recovery in a rehabilitation institution

Amrizal Siagian in his journal entitled Criminal Law Enforcement against Narcotics Addict Victims in Indonesia explained:

“The legal and political policy construction of Law Number 35 of 2009 explicitly mentions the decriminalization of narcotics abuse by children and adolescents. It is described that abusers who carry, possess, control and consume certain amounts of narcotics for daily use are illegal. However, if the person concerned violates the law he or she would be given a substitute penalty in the form of rehabilitation obligation.”⁹

The data on cases of children who abuse narcotics in Indonesia in 2015 to 2019 are as follows: According to National Narcotics Agency data from 2015 to 2016, there were 1,706 cases of health problems and drug problems affecting children.¹⁰ In 2017, there were 2,218 cases related to health and drug problems, as many as 15.69 percents of them were children who were

⁸ Philip Bruggmann and Jason Grebely, *Prevention, Treatment and Care of Hepatitis C Virus Infection among People who Inject Drugs*, International Journal of Drug Policy 26 (2015) S22-S26, Page 3 of 19, Published by ELSEVIER, E-mail address: P.bruggmann@arud.ch, Arud Centres for Addiction Medicine and Zurich, Switzerland and The Kirby Institute, The University of New South Wales Australia, Sydney, Australia, Accessed from https://www.researchgate.net/publication/265470588_Prevention_treatment_and_care_of_hepatitis_C_virus_infection_among_people_who_inject_drugs, in Semarang, on December 15, 2019, at 09.00 p.m. Western Indonesian Time.

⁹ Amrizal Siagian, *Penegakan Hukum Pidana terhadap Korban Pecandu Narkotika di Indonesia*, Master Program, Faculty of Law, Universitas Islam Syarif Hidayatullah, Jakarta, 2015, pp.4 of 8, rizalamrizal@yahoo.com, Accessed from <http://repository.uinjkt.ac.id/dspace/bitstream/123456789/31368/1/Amrizal1%20Siagaan.pdf>, in Semarang, on December 15, 2019, at 01. 00 a.m. Western Indonesian Time.

¹⁰ Indrawati dan Byrna Mirasani, 2018, *Diversi terhadap Anak Pelaku Penyalahgunaan Narkotika*, Jurnal Cakrawala Hukum, Jurnal Home, <http://journalunmer.ac.id/index.php/jch/>, Journal Email, journalcakrawalahukum@unmer.ac.id, ISSN PRNT 2356-4962, SSN ONLNE 2538, Faculty of Law, Universitas Merdeka, Malang, Jl. Terusan Dieng, No.62-64, Malang 121, Accessed in Semarang, on December 1, 2019, at 11.55 p.m. Western Indonesian Time.

addicted to narcotics and 8.1 per cent were drug dealers.¹¹ In 2018, there were 45,237 cases of children who abuse narcotics, and in 2019 there were 39,794 cases.¹²

According to the National Narcotics Agency (BNN), the number of children in Junior High School who abuse narcotics that were convicted in 2015 at was 12,765 (twelve thousand seven hundred sixty-five) people.¹³ Based on the projection of the National Narcotics Agency (BNN) for 2016, there are more than 1.2 (one point two) million people as drug users who are still students aged between 12 (twelve) to 21 (twenty one) years.¹⁴

Heru Winarko explained that according to data from the National Narcotics Agency (BNN) in 2017, the national prevalence of drug abuse reached 1.77% or around 3.37 million people with an average presentation of 59% of the workforce or productive group of earners, and the remaining 245 were student group.¹⁵ In 2018, the prevalence of drug abuse among students in 13 (thirteen) provincial capitals in Indonesia reached 3.2% (three point two percent) or equivalent to 2.29 (two point twenty nine) million people.¹⁶

In 2019, the number of students who have consumed drugs has increased significantly, reaching 28 (twenty eight) per cent of 6.412 million children.¹⁷ Application of a sense of responsibility towards children can make children live independently without having to depend on others. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law of the Republic of Indonesia Number 35 of 2014 concerning Protection of Children aims to protect children from deprivation of independence. However, there are still many children who are convicted. Every year, the number of children convicted in Indonesia is increasing.

In 2015, the number of cases that entered the District Court was 5,426 people and children who received diversion by 3% or equivalent to 5,263 people who did not get diversion. In 2016, the number of cases that entered the District Court was 6,679 (six thousand six hundred seventy-nine). About 4% of all these cases were received diversion. In other words, there are 6,412 children who did not get diversion.¹⁸ In 2017, there were 90 children in the Special Child Development Institute (LPKA), and there were 179 children in the Temporary Placement Institution (LPAS).¹⁹

In 2018, 7,000 (seven thousand) children were processed in court. As many as 90 per cent or 6,300 (six thousand three hundred) children get sentences of imprisonment. Only 10 per cent or 700 (seven hundred) children get diversion.²⁰ In November 2019, the number of detainees/child prisoners in the Penitentiary/State Detention Center/Child Welfare Development Institution in Indonesia were 495 (four hundred ninety-five) people.²¹ Therefore, legal protection is needed following the Convention on the Rights of the Child, the 1945 Constitution and Human Rights.

Based on the description above, the research problem was formulated to find a solution to the handling of criminal acts of drug abuse against children. In addition, the development of a legal protection model for children who abuse drugs is pursued through a diversion and restorative justice approach. Legal construction is carried out by looking for legal principles that deviate from the Act or have not been found in the Act to be renewed to provide welfare to the people.

¹¹ Annisa Ulva Damayanti, 2018, *5,9 Juta Anak Indonesia jadi Pecandu Narkoba*, Accessed from <https://nasional.okezone.com/read/2018/03/06/337/1868702/5-9-juta-anak-indonesia-jadi-pecandu-narkoba>, in Semarang, on January 15, 2020, at 03.19 a.m. Western Indonesian Time.

¹² Eko Daniyanto, December 31, 2019, *Sepanjang Tahun 2019 Kasus Narkoba Turun 12,03 persen*, Accessed from <http://cakrawalanews.co/2019/12/31/polri-sepanjang-tahun-2019-kasus-narkoba-turun-1203-persen/>, in Semarang, on January 5, 2020, at 03.39 a.m. Western Indonesian Time.

¹³ Scholastica Gerintya, July 28, 2017, *Anggaran BNN Meningkatkan Narkobapun Meningkat*, Di Akses di Semarang, Accessed from <https://tirto.id/anggaran-bnn-meningkat-tersangka-narkoba-pun-meningkat-cty9>, in Semarang, on January 1, 2020, at 01.00 a.m. Western Indonesian Time.

¹⁴ Michael Lim, December 30, 2016, *Memberantas Penyalahgunaan Narkoba di Kalangan Pelajar SMA*, Jakarta, Accessed from <https://googleweblight.com/i?u=https://www.balitbangham.go.id/detailpost/memberantas-penyalahgunaan-narkotika-di-kalangan-pelajar-sma&hl=id-ID>, in Semarang, on January 1, 2020, at 01.13 a.m. Western Indonesian Time.

¹⁵ Cipta Permana, Tuesday, February 2019, *Pelajar Pengguna Narkotika di Indonesia Tercatat 24% dari Total Pengguna Sebanyak 3,37 Orang*, Accessed from <https://jabar.trbunew.com/2019/02/26/pelajar-pengguna-narkoba-di-indonesia-tercatat-24-persen-dari-total-pengguna-sebanyak-337-orang>, in Semarang, on January 1, 2020, at 01.20 a.m. Western Indonesian Time.

¹⁶ Christoforus Ristiano, June 26, 2019, *Badan Narkotika Nasional Sebut Penyalahgunaan dan Peredaran Narkotika Semakin Meningkat*, Editor Ingried Dwi Wedhaswary, Jakarta, Accessed from <https://googleweblight.com/i?u=https://nasional.kompas.com/read/2019/06/26/11421691/bnn-sebut-penyalahgunaan-dan-peredaran-narkotika-semakin-meningkat&hl=id-ID>, in Semarang, on January 1, 2020, at 01.28 a.m. Western Indonesian Time.

¹⁷ Heru Winarko, 2019, *Penyalahgunaan Narkoba di Generasi Muda Naik 28 Persen*, Jakarta, Accessed from <https://m.detik.com>, on January 1, 2020, at 01.35 a.m. Western Indonesian Time.

¹⁸ M. Dani Pratama Huzaini, December 20, 2017, *Melihat Capaian Implementasi Undang-Undang Sistem Peradilan Anak*, Accessed from <https://m.hukumonline.com/berita/baca/lt5a3a308a56714/melihat-capaian-implementasi-uu-sistem-peradilan-pidana-anak/>, in Semarang, on January 1, 2020, at 00.01 a.m. Western Indonesian Time.

¹⁹ Susanto, on Desember, 18, 2017, *Laporan Tahunan KPAI, Indonesia Belum Aman untuk Anak-Anak*, Jakarta, Accessed from <https://merahputih.com/post/read/laporan-tahunan-kpai-indonesia-masih-belum-aman-untuk-anak-anak>, in Semarang, on January 30, 2020, at 00.11 a.m. Western Indonesian Time.

²⁰ Deny, 2018, *Hanya Sepuluh Persen Kasus Pidana Anak Diselesaikan Secara Pantas*, Jakarta, <https://jateng.tribunews.com/2018/05/01/Di-Akses-Tanggal-31-Januari-2020,-Jam-24.48-W.I.B.>

²¹ Suhadi, Wednesday, December 18, 2019, *Musuh Terbesar Kita Sekarang Ini adalah Narkotika*, <https://googleweblight.com/?u=https://www.pamempawah.go.id/portal/114-informasi-pengadilan/687-Dr-suhadi-musuh-terbesar-kita-sekarang-ini-adalah-narkotika&hl=id-ID>, Accessed in Semarang, Thursday, January 31, 2020, at 24.44 O'clock Time of Indonesia in West part.

According to the Great Indonesian Dictionary, reconstruction defines as the returning to the former.²² Black Law Dictionary, however, defines reconstruction as the act or process of rebuilding, recreating, or reorganizing something.²³ The reconstruction of the law regarding the crime of drug abuse by children is a reform of the regulations contained in Law Number 35 of 2009 concerning Narcotics that violates human rights. This research found weaknesses in Articles 111 to 126, Articles 127, 128, and 134 in Law Number 39 of 2009 concerning Narcotics. First, Articles 111 through 126 and 128 provide the threat of imprisonment between twelve years and twenty years in prison for adults. According to Article 79 Paragraph (2) and Article 80 Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the threat of imprisonment against children who commit crimes is one half of the maximum threat of imprisonment for adults. The threat is significantly high and burdensome for children. The rules in Article 79 paragraph (2) and Article 80 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regarding the threat of imprisonment against children who commit a criminal offence should be one-third of the maximum limit of the threat of imprisonment for adults. Second, Article 127 Paragraph (1) formulates, "Every abuse of: a. Type I Narcotics for self-consumption shall be sentenced to a maximum imprisonment of 4 (four) years; b. Type II Narcotics for self-consumption shall be sentenced to a maximum imprisonment of 2 (two) years; and c. Type III Narcotics for self-consumption shall be sentenced to a maximum imprisonment of 1 (one) year." In this regulation, it should be added, "children who abuse drugs but fail to report are not convicted and must be given rehabilitation". Third, Article 128 Paragraph (1) reads, "Parents or guardians of underage addicts, as referred to in Article 55 Paragraph (1) who intentionally do not report, are convicted with imprisonment for a maximum of 6 (six) months or a maximum fine a lot of Rp1,000,000.00 (one million rupiahs). " This rule should be changed to "*Parents or guardians of underage addicts, as referred to in Article 55 Paragraph (1) who intentionally do not report, are not convicted and are not subject to criminal fines.*" Article 134 Paragraph (1) states that "Adult narcotics addicts who deliberately do not report themselves as referred to in Article 55 Paragraph (2) shall be liable to a maximum imprisonment of 6 (six) months or a maximum fine of Rp2,000,000.00 (two million rupiahs) This regulation should be changed to become, "Narcotics addicts who are old enough and deliberately do not report themselves as referred to in Article 55 Paragraph (2) are not criminally charged and are not subject to criminal fines." Fourth, Article 134 Paragraph (2) states that "the family of narcotics addicts as referred to in paragraph (1) who intentionally do not report narcotics addicts shall be sentenced to a maximum imprisonment of 3 (three) months or a maximum fine of Rp.1,000,000.00 (one million rupiahs)". This rule should be changed to, "*Families of narcotics addicts as referred to in paragraph (1) who deliberately do not report narcotics addicts are not convicted and are not subject to fines.*"

Article 7 paragraph (2) letter a should be replaced by diversion which is carried out in the case of a child committing a crime that is punishable by imprisonment for under ten years. This is due to the mental and physical reasons for children who are inadequately strong to stay in jail for a long period and could potentially get a negative influence from their fellow inmates.

The criminal disparity can occur with a judge's decision. The criminal disparity will be fatal after the convicted person compares the criminal imposed on him with those imposed on others. Efforts to minimize criminal disparity are carried out with a balanced principle of the interests of the community, the interests of the state, the interests of the perpetrators of crime, and the interests of victims of criminal acts.

In criminal law enforcement, there are several criminal theories which can be categorized as follows:

1. Absolute theory (Retributive Theory)

According to Leden Marpaung, the aim of punishment is "retaliation for mistakes committed that are oriented towards action and lies in the crime itself."²⁴ Retaliation against children who commit criminal acts aims to deter people from committing crimes.

2. Relative Theory (Theory of Purpose)

Anselm Van Feuerbach in Samidjo argued that criminal threats alone would not be adequate but also required criminal conviction of criminals.²⁵ Criminal sentences should ideally be handed down to children who commit serious crimes, but diversion without discrimination should still sought.

3. Combined Theory

The combined theory requires that criminalization provide physical and spiritual suffering to the perpetrators of crime in addition to providing guidance and education.²⁶ This is a combination of absolute theory and relative theory aimed at the perpetrators of criminal offences to be aware.

Reporting must be carried out by narcotics addicts who aim to fulfil the right of narcotics addicts to receive treatment and/or treatment through medical rehabilitation and social rehabilitation. Reporting Obligations by narcotics addicts are regulated in Article 3 through Article 5 of the Republic of Indonesia Government Regulation Number 25 of 2011 concerning the Implementation of Narcotics Addicts Reporting Obligations. The mandatory procedures for Reporting are listed in Articles 6 to

²² Great Indonesian Dictionary, Accessed from <http://jurnal.unissula.ac.id/index.php/jhku/issue/view/248>.

²³ Bryan A. Garner, Black Law Dictionary, ST. Paul Minn, West Group, 1999, Page1278, Accessed from http://googleweblight.com/i?u=http://eprints.umm.ac.id/454485/3/BAB%25201.pdf&grqid=9r5xSE_S&s, in Semarang, on December 26, 2019, at 09.15 p.m. Western Indonesian Time.

²⁴ Leden Marpaung, *Asas Teori Praktek Hukum Pidana*, P.T. Sinar Grafika, Jakarta, 2009, pp.105.

²⁵ Anselm Van Feuerbach in Samidjo, *Pengantar Hukum Indonesia*, P.T. Armico, Bandung, 1985, pp.153.

²⁶ *Ibid.*, pp.153.

12 of the Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning the Implementation of Narcotics Addicts Obligatory Reporting. Rehabilitation for narcotics addicts is regulated in Article 13 to Article 17 of the Republic of Indonesia Government Regulation Number 25 of 2011 concerning the Implementation of the Obligatory Report of Narcotics Addicts. Article 18 to Article 21 Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning the Implementation of Narcotics Addicts Obligatory Regulations concerning Reporting, Monitoring, and Evaluation, Criminalization is explained in Article 22 of the Republic of Indonesia Government Regulation Number 25 of 2011 concerning the Implementation of Reporting Obligatory Narcotics Addicts. The Transitional Provisions are explained in Article 23-24 of the Republic of Indonesia Government Regulation No. 25/2011 concerning the Implementation of Narcotics Addicts Obligatory Reporting. Also, the Final Provisions are mentioned in Article 25 of the Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning the Implementation of the Obligatory Report of Narcotics Addicts.

Rehabilitation measures against drug abuse are in the form of depenalization and decriminalization, namely narcotics addicts and drug abusers must undergo rehabilitation. Rehabilitation can be done voluntarily, namely reporting themselves voluntarily or compulsively determining rehabilitation, namely by a judge's decision. Narcotics crimes can be subjected to rehabilitation crimes if the arrest of the accused is caught red-handed by investigators, and there is evidence with a minimum limit regulated in the Circular of the Supreme Court of the Republic of Indonesia Number 4 of 2010, as well as positive using drugs and not proven as a dealer. If all of these conditions are met, then it can be recommended for rehabilitation.

The medical rehabilitation program through the voluntary system has been implemented and suggestions for improvement have been submitted to their respective institutions. Currently, the Ombudsman is monitoring the implementation of the recommendations. In addition, the Report Obligatory Recipient Institution (IPWL) program has been determined to be free of charge as stipulated in Article 2 paragraph (1) of the Republic of Indonesia Minister of Health Regulation No. 50 of 2015 concerning Technical Guidelines for the Implementation of Reporting Obligation and Medical Rehabilitation for Narcotics Addicts and the Victims.

Legal comparisons can be made by people who speak the language in the country where the study was conducted. According to Gary Bell, comparative law as part of legal reform or improvement of the law is conducted to harmonize the law and study the laws that exist in various countries by comparing each law.²⁷

Comparative Laws regarding the legal protection of children dealing with criminal law in Scotland, the Philippines, New South Wales and Indonesia will be explained as follows:

- a. Legal Comparison Concerning Legal Protection of Children Dealing with Criminal Law in Indonesia. Article 32 of the Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that a fourteen-year-old child can be convicted of a crime. Article 5 of the Republic of Indonesia Law No. 11/2012 concerning the Child Criminal Justice System for Settling Child Cases by prioritizing diversion through the Restorative Justice approach.
- b. Legal Comparison Concerning Legal Protection of Children Dealing with Criminal Law in the Philippines. Law of the Republic of the Philippines Number 9344 of 2006 in Chapter 2, Section 6, states that the minimum age for criminal liability of children is 15 (fifteen) years and children under 18 (eighteen) years will be exempt from criminal law and subject to intervention.²⁸

Diversion with a Restorative Justice approach based on Title V, Chapter 2, Sections 2 and 3, Law of the Republic of the Philippines Number 9344 of 2006 states that children dealing with the law must undergo the diversion program without undergoing litigation under the provisions listed namely: (a) Diversion is carried out if the crime has been threatened not more than 6 (six) years; (b) in the case of victimless crimes, where the threat of a sentence of no more than 6 years receives diversion and rehabilitation; (c) if the crime committed is imprisoned for more than 6 (six) years, the act of diversion can only be committed by the Court.²⁹

- c. Legal Comparison Concerning Legal Protection of Children Dealing with Criminal Law in New South Wales. New South Wales Law No. 54 of 1997 concerning the Juvenile Criminal Justice System Section 1, Article 4, paragraph (4) defines, "a child is a person over the age of 10 (ten) years and under 18 (eighteen) years. " Children must familiarize themselves with discipline and independence and become more useful when they grow up.

Diversion through the Restorative Justice approach to children dealing with the law is regulated in the New South Wales Young Offender Act Number 54 of 1997 in Part 2, Article 7 letters c and d: (c) The principle of criminal proceedings must not be institutionalized against children if there are alternatives and the right way to deal with this problem; (d) the principle of criminal proceedings must not be institutionalized against children solely to provide the assistance or services needed to advance the welfare of the child or family or family group.³⁰ Raising children to be lazy

²⁷ Gary Bell, 21 October 2015, *Perbandingan Hukum Penting Untuk Harmonisasi*, National University of Singapore, Editor by Yanto Rahmat, Accessed from <https://googleweblight.com/i?u=https://bandung.bisnis.com/read/20151021/549/1077177/perbandingan-hukum-penting-untuk-harmonisasi&hl=id-ID>, in Semarang, on December 18, 2019, at 02.36 a.m. Western Indonesian Time.

²⁸ Law of the Republic of Phillipines Number 9344 of 2006 Thirteenth Congres, Second Regular Session, Accessed from https://lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html, on January 19, 2020, at 11.45 p.m. Western Indonesian Time.

²⁹ *Ibid.*

³⁰ New South Wales Act Number 54 of 1997 concerning Child Criminal Justice System on Criminal Young Offender in Section 2, Article 7, Letter c and d, Accessed from <https://www.legislation.nsw.gov.au>, on January 19, 2020, at 00.33 a.m. Western Indonesian Time.

and spoiled will make a child's soul does not develop and always depend on others and easily exposed to bad influences from others.

- d. Legal Comparison Concerning Legal Protection of Children Dealing with Criminal Law in Scotland. Based on Chapter 1, Article 4 of Law Number 1 of 2019 concerning the Age of Criminal Liability of Children in Scotland, the minimum age for child criminal responsibility is 12 (twelve) years and under 18 (eighteen) years.³¹ Keeping children away from bad environments can prevent children from committing crimes.

Diversion with the Restorative Justice approach based on Amendments to Article 44 paragraph (1) letter d concerning Social Workers in Scottish Law Number 440 of 1968 states that "to perform unpaid community services as an implementation deemed appropriate for child therapy, bearing in mind the age, mental, and physical condition of the children."³² The best prevention to overcome child crime by providing religious education, family, community through youth groups, and schools.

4. METHODOLOGY

This study uses a normative juridical method which is normative research that uses secondary data in the form of (1) primary legal material in the form of Law Number 35 of 2009 concerning Narcotics, Government Regulation Number 25 of 2011 concerning the Implementation of Narcotics Addicts Obligatory Reporting, (2) secondary legal materials in the form of library materials, documents, literature, (3) internet tertiary legal materials, bibliography. This research uses descriptive-qualitative analysis.

The benefits of this research are contributing to the government to conduct a review of Law No. 35 of 2009 concerning narcotics to protect children who abuse narcotics among children and adolescents from deprivation of liberty in the form of punishment.

5. CONCLUSION

Legal construction is finding weaknesses in the rules of the law to contribute ideas to the governments of countries, especially in Indonesia so that they can be taken into consideration in reviewing these laws and regulations.

The Construction of Diversion Law finds weaknesses in the regulations governing diversion in the Juvenile Criminal Justice System law so that it can be taken into consideration in reviewing the diversion regulation in the juvenile criminal justice system legislation without discrimination.

In legal reconstruction, "re" means the reconstruction of a system or legislation that does not harm the interests of the community or can provide justice and welfare for the community. Reconstruction of diversion law searches for weaknesses in the rules in implementing diversion as in Article 7 paragraph (2) letter a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System so that there is no gap in the treatment of diversion or discrimination of diversion against children who conflict with criminal law, such as in the case of one party get diversion and the other is not. This reconstruction was carried out as a contribution to the governments of all countries, especially the Indonesian government, in consideration of amending the law on the protection of children dealing with the law.

Failure of diversion against children dealing with criminal law that is due to the absence of a peace agreement, the existence of very high compensation, child victims of criminal acts continue to insist that children of criminal offences are convicted, diversion agreements have been reached but not implemented, law enforcers who do not understand diversion, people who still have the opinion of a crime must be rewarded with a punishment worthy of the deeds committed by the offender's child to have a deterrent effect. Law enforcers should consider the psychological and physical characteristics of children and the adverse effects of making criminal decisions on children dealing with the law.

Prison is not the best education centre and can be fatal for children, it is proven that children who have been convicted are even more professional in committing crimes because they are getting worse influence from their peers' inmates who are more professional and then children repeat the crime back.

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Hj. Indra Retnowati, S.H., M.H.
Faculty of Law
Universitas 17 Agustus 1945 Semarang
Email: retnowatiindra78@gmail.com