

## Legal Protection for Children as Victims of Narcotics Abuse (Research Study at the Belawan District Attorney's Office)

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### Abstract

*Children as drug abusers, are just victims. So it is not appropriate for the state to give punishment by looking at the same between child abusers and real adult criminals (dealers). As victims, children as narcotics abusers must get protection. Based on the results of an interview with Bastian Sihombing as the Head of the Pre-Prosecution at the Belawan State Prosecutor's Office, from 2019 to 2022 around 41 cases were resolved by diversion. This study aims to analyze the criteria for the age of children facing the law in narcotics crime, the factors that cause children to become victims of narcotics abuse and legal protection for children as victims of narcotics abuse at the Belawan District Attorney's Office. This research method uses empirical research with primary data types, by conducting interviews at the Belawan District Attorney. Based on the results of the study, the Belawan District Attorney's Office carried out rehabilitation measures as an effort to protect children from narcotics abuse victims in the juvenile criminal justice system, which must be pursued, with agreed terms and conditions set forth in conclusions and diversion agreements, or if rehabilitation must be carried out, the child will be immediately asked for an assessment by the integrated assessment team.*

**Keywords:** Protection, Child, Victim, Abuse, Narcotics.

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### A. Introduction

The development of narcotics regulation in Indonesia is inseparable from the legal consequences of various international conventions on narcotics ratified by Indonesia. When the Vietnam war was at its peak in the 1970s, almost all countries in the world, especially in the United States, drug abuse was increasing and most of the victims were young people.<sup>1</sup> The case of narcotics abuse has become a dark spot in the development of the nation and state, thus making this narcotics abuse case a very special concern for the government to eradicate it. Victims of narcotics abuse are not only from the lower classes, even in recent times many from the upper classes such as officials, top artists, or businessmen who are entangled in narcotics. Not only adults but minors are also exposed to the abuse of these illicit goods.

In the current narcotics distribution, children are often victims of exploitation by adults to deceive the authorities, and use minors to be used as bait. The existence of factors such as the promise of a large reward to improve the family's unfavorable economic situation, on the orders of his parents who were involved in drug trafficking, and various other factors.<sup>2</sup>

Children as drug abusers, are just victims. So it is not appropriate for the state to give punishment by looking at the same between child abusers and real adult criminals (dealers). As victims, children as narcotics abusers must get protection. Child protection is an effort made to create conditions so that every child can carry out his rights and obligations for the development and growth of children fairly, physically, mentally and socially.<sup>3</sup>

<sup>1</sup> A. R. Sujono & Bony Daniel, *Komentar & Pembahasan Undang Undang Nomor 35 Tahun 2009 tentang Narkotika*, Jakarta: Sinar Grafika, (2013): p.8.

<sup>2</sup> Aziz Syamsuddin, *Tindak Pidana Khusus*, Jakarta: Sinar Grafika, (2004): p.90.

<sup>3</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak di Indonesia*, Bandung: Refika Aditama, (2008): p.33.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is mandatory for every law enforcement officer, be it the police, prosecutors and judges, to diversify cases of crimes committed by children. This is confirmed in Article 7 paragraph 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that at the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought. The statement of this article shows that as far as possible the crime committed by the child is attempted not to proceed to the level of examination in court to sentencing, but strives to restore it to its original condition because it is related to the condition and mental development of the child who is still unstable.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides new roles and obligations to the police in addition to the authority to carry out investigations and investigations in dealing with criminal acts committed by children. That authority is the authority to carry out diversion in criminal acts committed by children and to try to prevent cases from proceeding to the level of prosecution and examination of cases in court.

Enforcement of criminal law in reality cannot be expected as the only means of effective crime prevention, given the possibility that there are perpetrators of criminal acts outside the framework of the criminal justice process. The application of criminal law as a means of overcoming crimes committed by children is basically a dilemma. On the one hand, the use of criminal law as a means of overcoming crimes committed by children by placing children as perpetrators of crime has a very complex negative impact, but on the other hand the use of criminal law as a means of overcoming child crimes is actually considered a rational and legal choice.<sup>4</sup> One form of deviation from the norm is the abuse of narcotics by children. Today, many children commit narcotics crimes, such as consuming and trading without permission. Efforts are needed to develop and protect children so that children avoid drug abuse.<sup>5</sup>

Deviant behavior or unlawful acts including narcotics abuse. Based on Article 1 paragraph 15 of Law Number 35 of 2009 concerning Narcotics (Law on Narcotics), narcotics abusers are people who use narcotics without rights or against the law. Furthermore, Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), confirms that a child in conflict with the law is a child who is 12 (twelve) years old, but not yet 18 (eighteen). ) years who are suspected of committing a crime. Children as narcotics abusers referred to in this study are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old, who are suspected of using narcotics without rights or against the law.

So that what is meant by a child as a narcotics abuser is a child suspected of committing a narcotic crime. Even though they are suspected of committing narcotics crimes, children are still children with all their shortcomings and limitations. Therefore, the protection of children as drug abusers is important.<sup>6</sup>

The provisions of the article above are only imposed on people who take advantage of children or exploit children who are not yet adults, while children who are involved in narcotics crimes can still be processed through appropriate legal channels for children. Children are legal subjects of a special nature, whose rights are protected and regulated in special laws and regulations. In relation to cases of children committing narcotics crimes, the Law on Child Protection and the Law on the Juvenile Criminal Justice System regulates the legal protection of children in conflict with the law. So in this case the sanctions for adults and children are different.<sup>7</sup>

Based on the descriptions above, the researchers are interested in conducting research with the title "Legal Protection of Children as Victims of Narcotics Abuse (Research Study at the Belawan District Attorney)". The research method used is empirical legal research, namely by formulating legal principles to formulate legal provisions, both from social data and positive written facts.<sup>8</sup> The data collection tool is carried out by field research with three techniques, namely interviews, questionnaires or

<sup>4</sup> Indira Hapsari, "Kebijakan Hukum Pidana dalam Upaya Penanggulangann indak Pidana Narkotika Pelaku Anak", *Diponegoro Law Journal* 5, No. 3, (2016): p.2.

<sup>5</sup> Rachmadhani Mahrufah Riesa Putri, et.al, "Tindak Pidana Penyalahgunaan Narkotika Pada Anak Dalam Hukum Positif Di Indonesia", *Recidive* 8, No. 3, (2019): p.203.

<sup>6</sup> Erni Agustina, et.al. "Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia", *Prosiding Seminar Hasil Pengabdian Kepada Masyarakat*: p.3.

<sup>7</sup> Sunarso Siswantoro, *Penegakan Hukum Psikotropika*, Jakarta: Rajawali Pers, (2004): p.142.

<sup>8</sup> Amarudin & Zainal Asikin in Surya Perdana, et.al., "Advantages and Disadvantages of Electronic Mortgage Registration Based on the Perspective of Business Administration Law", *IJRS: International Journal Reglement & Society* 3, No. 3, (2022): p. 179.

questionnaires and observation.<sup>9</sup> In addition, it is also carried out with library research, namely research on written documents.<sup>10</sup> This legal material will also serve as an interesting literature review and evaluate a variety of different sources including academic articles, and professional journals, books, and web-based resources.<sup>11</sup>

The procedure used to collect data in this study is in the form of documentation, namely: guidelines used in the form of notes or quotes, searching legal literature, books and others related to identifying problems in this study offline and online.<sup>12</sup> Analysis of legal materials is carried out using the content analysis method which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion,<sup>13</sup> through a statutory approach, namely formulating a legal definition based on legal principles from the results of a study of legislation by looking at various opinions of experts and writers related to the issues discussed.<sup>14</sup>

## B. Discussion

### 1. Criteria for Age of Child Facing the Law in Narcotics Crime

Children are the future of the nation. Because it is the future of the nation, children need special attention for their growth and development towards good and dignified maturity. The age of 18 years is the age limit for minors according to criminal law and 21 years according to civil law. At this age children tend to always want to do deviant actions. For example, engaging in promiscuity, trying to drink alcohol, and even trying to use other prohibited substances such as narcotics.<sup>15</sup> The target of drug trafficking was initially limited to nightclubs, but then it spread to university students, students (children), executives, businessmen and the wider community who were victims of drug abuse.<sup>16</sup>

Determining the criteria for a child, besides being determined on the basis of age limits, can also be seen from the growth and development of the soul he experiences. In terms of the phases of development, a child goes through three phases:<sup>17</sup> First, childhood, is divided into infancy, namely the time a child is born until the age of 2 years; the first childhood, namely children aged 2-5 years; The last childhood is between the ages of 5-12 years. Second, Adolescence; Between the ages of 13-20 years. Adolescence is a time of rapid change in all fields; on the body from the outside and inside; changes in feelings, intelligence, social attitudes, and personality. Third, young adulthood; Between the ages of 21-25 years. In young adulthood, data is generally still grouped into the younger generation. Although in terms of physical development and intelligence have really matured, in this condition the child is stable. However, in terms of religious and ideological stability, it is still in the process of stabilization

Several laws and regulations in Indonesia provide different age limits. The difference depends on the angle from which the child's understanding is seen and interpreted. There is a consideration of psychological aspects concerning the maturity of one's soul.<sup>18</sup> In the laws and regulations in Indonesia, there are differences between one law and another in determining the age category of children, namely as follows:<sup>19</sup>

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<sup>9</sup> Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif*, Yogyakarta: Pustaka Pelajar, (2010): p.280.

<sup>10</sup> Rahmat Ramadhani, "Kedudukan Hukum Perjanjian Perikatan Jual Beli (PPJB) dalam Kegiatan Pendaftaran Peralihan Hak Atas Tanah", *IURIS STUDIA: Jurnal Kajian Hukum* 3, No. 1, (2022): p. 47.

<sup>11</sup> Rahmat Ramadhani, "Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat", *Seminar Nasional Kewirausahaan*, 2, No. 1, (2021): p. 280.

<sup>12</sup> Rahmat Ramadhani, "Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemi Covid-19", *Seminar Nasional Hukum, Sosial dan Ekonomi (SANKSI)*, 1, No. 1, (2022): p. 3.

<sup>13</sup> Rahmat Ramadhani & Ummi Salamah Lubis, "The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes", *IJRS: International Journal Reglement & Society* 2, No. 3, (2021): p. 138.

<sup>14</sup> Farid Wajdi & Rahmat Ramadhani, "Legal Problems of Land Services Online", *IJRS: International Journal Reglement & Society* 3, No. 1, (2022): p. 20.

<sup>15</sup> Oktafianus Tampi, "Perlindungan Hukum Terhadap Anak Di Bawah Umur Dalam Tindak Pidana Narkotika", *Jurnal Lex et Societatis* III, No. 10, (2015): p.28-37.

<sup>16</sup> Dimas Adit Sutono, et.al, "Penerapan Sanksi Pidana Kepada Anak Dibawah Umur Pemakai Narkotika (Studi Pada Polresta Medan)", *Journal Society Law (JSL)* I, (2020).

<sup>17</sup> Marsaid, *Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam (Maqasid Asy-Syari'ah)*, Palembang: NoerFikri, (2015): p.57.

<sup>18</sup> Abintoro Prakoso, *Hukum Perlindungan Anak*, Yogyakarta: LaksBang PRESSindo, (2016): p.42-43

<sup>19</sup> Agustinus Danan Suka Dharma, "Keberagaman Pengaturan Batas Usia Dewasa Seseorang Untuk Melakukan Perbuatan Hukum Dalam Peraturan Perundang-Undangan Di Indonesia", *Jurnal Repertorium* II, No. 2, (2015).

1. According to Article 45 of the Criminal Code, it is stated that the age limit for children is 16 years.
2. Article 47 of Law Number 1 of 1974 concerning Marriage stipulates that marriage is only permitted if the male party reaches the age of 19 years and the female party has reached the age of 16 years. However, this Law further opens the opportunity for child marriage to occur by requesting a dispensation from the Court if the age of the prospective bride and groom does not meet the age set.
3. Article 1 number 26 of Law Number 13 of 2003 concerning Child Labor states that everyone is under the age of 18 (eighteen) years.
4. Article 1 point 3-5 of Law Number 11 of 2012 concerning the Juvenile Justice Act states that a child is a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected of committing a crime. Children who become victims of criminal acts, hereinafter referred to as child victims, are children under the age of 18 (eighteen) years who experience physical, mental, and/or economic losses caused by criminal acts. Children who become witnesses to criminal acts, hereinafter referred to as children witnesses, are children who are not yet 18 (eighteen) years old who can provide information for the purposes of investigation, prosecution and examination in court regarding a criminal case that has been heard, seen, and/or experienced. alone.
5. Article 1 number 5 of Law no. 39 of 1999 concerning Human Rights states that a child is every human being under the age of 18 (eighteen) years and unmarried, including children who are still in the womb if this is in their interest.
6. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is someone who is not yet 18 years old, including children who are still in the womb. A person who is under 18 years of age is classified as a child so that he is entitled to be given protection for the rights that he must obtain. This provision is different from the Marriage Law which provides a limit of 16 years for women and 19 years for men.
7. Article 1 number 4 of Law Number 44 of 2008 concerning Pornography states that a child is someone who is not yet 18 (eighteen) years old.
8. Law Number 12 of 2006 concerning Citizenship stipulates a limit of 18 years or having been married to be able to obtain citizenship. The granting of citizenship in this Law is in accordance with the age standard of children in the Child Protection Act, which is 18 years. But on the other hand, this article tolerates someone who is under 18 years old but already married to get citizenship as well. This provision opens the opportunity for marriage at the age of a child which is supported by the granting of a marriage dispensation permit for those who will marry under a predetermined age.
9. Law Number 23 of 2006 concerning Population Administration stipulates that residents of Indonesian citizens and foreigners who have permanent residence permits who are 17 (seventeen) years old or have been married or have been married are required to have an ID card. This provision provides an opportunity for someone who is still a child, under the age of 17 who has been married to obtain an Identity Card (KTP). In addition to obtaining recognition as a local resident, with this card, the person concerned can be given the same rights as adults, such as getting the right to vote in elections. Law Number 22 of 2007 concerning the Implementation of Elections confirms that voters are Indonesian citizens who have reached the age of 17 (seventeen) years or more or have been/have been married. The Population Administration Law and the Election Organizing Law both state the age of 17 as a limit for a person to obtain an ID card and the right to vote in elections. This is also different from the age limit for children in the Child Protection Act.
10. Article 1 number 5 of Law Number 21 of 2017 concerning Eradication of the Crime of Trafficking in Persons, states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.
11. Article 1 point 8 of Law no. 12 of 1995 concerning Corrections states that Correctional Students are:
  - a. Criminal child, namely a child who based on a court decision has served a sentence in a juvenile prison for a maximum of 18 (eighteen) years;

- b. State children, namely children who based on court decisions are handed over to the state to be educated and placed in child prisons at the latest until the age of 18 (eighteen) years;
  - c. Civilian children, namely children who at the request of their parents or guardians obtain a court order to be educated in child prisons up to the age of 18 (eighteen) years.
12. 12. In the Civil Code, it is distinguished in Article 421 and Article 426 which distinguishes between full maturity requirements, at least 20 years old, and limited maturity requirements, at least 18 years old. For the adult age itself is determined in Article 330 of the Civil Code, which is 21 years.

The law that discusses child crimes other than the third and latest Criminal Code is Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. According to Article 1 paragraph 3 "Children in conflict with the law are children who are 12 (twelve) years old but not yet 18 (eighteen) years old and suspected of committing a crime." However, in detention a child is carried out if he is 14 (fourteen) years old and is suspected of committing a crime with a threat of 7 (seven) years in prison.<sup>20</sup>

So the SPPA Law in defining children is different from the Criminal Code, the SPPA Law uses an age limit of 12 (twelve) years to 18 (eighteen) years which makes a person fall into the child category. And according to the SPPA Law, children who have problems with the law can be detained if they are 14 (fourteen) years old.

The implementation of the concept of diversion must also be with the consent of the child as the perpetrator of the crime, his parents or guardians and require cooperation and the role of the community in connection with programs such as: supervision, guidance, recovery, and compensation to victims. The diversion process must take into account: the interests of the victim, the welfare and responsibility of the child, avoidance of negative stigma, avoidance of retaliation, community harmony, propriety and public order.<sup>21</sup>

The diversion process is intended so that the settlement of children's cases is carried out through deliberation, this step is made to prevent the child from the next legal action. However, if the deliberation fails, the next action must refer to the due process of law. So that children's rights are still protected even though they are in trouble with the law.<sup>22</sup>

It should be noted that in fact the image and understanding of humans and humanity is a dominant factor in dealing with and solving child protection problems which are problems of human life as well. Here, the object and subject are child protection services and activities that both have rights and obligations, a person's motivation to participate diligently and persistently in every child protection activity, the view that every child is natural and has the right to mental and physical protection. and social from parents, community members and the State.<sup>23</sup>

## **2. Factors That Cause Children to Become Victims of Narcotics Abuse**

The criminal law enforcement process has very strong ties to criminology, criminology itself can provide input to criminal law based on criminology that will be able to assist criminal law enforcement which is being processed in court. Criminology is a science that studies good crimes committed by individuals, groups, or communities and the causes of crime and the efforts to overcome them so that people do not commit crimes again and are victims of crime.<sup>24</sup>

Drug abuse is the use of drugs that are not for medicinal purposes, but in order to enjoy their effects, in excessive amounts, on a more or less regular basis, lasting long enough, causing physical health problems, mental health problems, and social life. Drug abuse by teenagers is a serious problem, because drug abuse can damage the future of teenagers. According to a report from the Drug Addiction Hospital (RSKO) in Jakarta, of the sufferers who are generally aged 15-24 years, many are still active in junior and senior high schools, and even universities. The younger generation is a strategic target for the drug trafficking mafia. Therefore, the younger generation is very vulnerable to this problem.<sup>25</sup>

<sup>20</sup> Lilik Mulyadi, *Wajah Sistem Peradilan Pidana Anak Indonesia*, Bandung: PT Alumni, (2014): p.3

<sup>21</sup> Marlina, *Peradilan Pidana Anak di Indonesia*, Bandung: Refika Aditama, (2012): p.162.

<sup>22</sup> *Ibid.*, p.135.

<sup>23</sup> Shanti Delliya, *Wanita dan Anak Dimata Hukum*, Yogyakarta: Liberty, (1988): p.15.

<sup>24</sup> Ediwarman, *Penegakan Hukum Pidana Dalam Perspektif Kriminologi*, Yogyakarta: Genta Publishing, (2014): p.6.

<sup>25</sup> Lydia Herlina Martono & Satya Joewana, *Belajar Hidup bertanggung Jawab, Menangkal Narkoba dan Kekerasan*, Jakarta: Balai Pustaka, (2008): p.26.

The factors causing drug abuse according to Utami in Abu Hanifah and Nunung Unayah are:<sup>26</sup> Family Factors, Personality Factors, Peer Group Factors, Opportunity Factors. Several factors that led to the emergence of narcotics abuse according to Ar. Sujono include the following:<sup>27</sup> Individual Factors, Socio-Cultural Factors, Environmental Factors and Narcotics Factors themselves According to Yustinus Semiun, there are eight kinds of factors that cause dependence and drug abuse, namely: Exposure; situational factors; Family characteristics; Personality; expectations; Physiological factors. There are many factors why drugs are abused, including being accepted by the environment, reducing stress, being free from depression, overcoming personal problems and others.<sup>28</sup>

According to the National Narcotics Agency, several factors cause a person to use drugs, namely:<sup>29</sup>

1. Internal factors, including; First, I want to know. The feeling of curiosity is usually owned by the younger generation at the same age as elementary, middle and high school students. If in front of a group of young people there is someone who demonstrates the pleasure of taking drugs, then it is also driven by the instincts of young people, namely curiosity, then one of the group will come forward to try it. Second, want to be considered great. One of the positive traits of the younger generation is competitiveness. Because of ignorance, this positive trait can also be applied to negative problems. If this competitive attitude is directed to take drugs, the consequences are truly dire, namely life failure and misery. Third, feeling loyal friends. The loyal nature of friends is a positive trait, but if these positive traits are used for negative things, it will have very dangerous consequences. Fourth, feeling disappointed, annoyed and frustrated. Feelings of disappointment, frustration and excessive irritation make a person run away from reality and assume that drugs are a comfortable place to run to forget for a moment the problems of life.
2. Family Environmental Factors; Conflict in the family can encourage family members to feel frustrated so they are trapped in choosing drugs as a solution, usually the most vulnerable to stress are children, then husband, wife as the last bastion.
3. Social Environmental Factors; Humans are individual beings as well as social beings. A child who is in his teens is easily influenced by the environment around him. In addition to positive influences that lead to goodness, teenagers also get negative influences from their friends.
4. Economic Factors; The high unemployment rate in Indonesia is one of the triggers for the problem of an unemployed teenager involved in the illegal trade in narcotics and psychotropic substances. This is because to become a seller and dealer of narcotics and psychotropics does not require special skills, while the benefits are very large compared to working normally.
5. Other People's Reasons; Many drug use is initially due to the influence of others. The forms of influence of others can vary, ranging from deceit, persuasion and coercion.
6. Opportunity Factor; The availability of drugs and the ease of obtaining them can also be said to be a trigger. Indonesia, which has become a destination for the international narcotics market, makes these substances easily available.
7. Age factor; The age of the perpetrators of narcotics abuse begins when they are teenagers who are experiencing rapid biological, psychological and social changes until they reach adulthood.
8. The basis of religion is not strong; Religious education is very dominant in protecting children from outside influences from drug abuse. However, children (the younger generation) who have never received religious education are very prone to committing criminal acts such as drug addicts, drinking and others.
9. Global Culture Incoming via print media and online media; Global culture is very dominant in influencing the youth of our generation. Our youth are quick to imitate foreign cultures that are not in accordance with the nation's personality so that they don't look out of date. So that what he sees through electronic media such as television, internet and others, is quickly absorbed without considering the good or bad, which is important trend.
10. Extensive distribution network that is easy to obtain.

<sup>26</sup> Abu Hannifah & Nunung Unayah, "Mencegah Dan Menanggulangi Penyalahgunaan Napza Melalui Peran Serta Masyarakat", Jurnal Informasi 16, No. 1, (2011): p.35-36.

<sup>27</sup> AR. Sujono dan Bony Daniel, *Komentar dan Pembahasan Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika*, Jakarta: Sinar Grafika, (2013): p.7

<sup>28</sup> Maidin Gultom, *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung: Refika Aditama, (2012): p.121.

<sup>29</sup> Tim Penyusun, *Bahaya Narkoba (penyalahgunaan Narkoba) Jilid 2*, Surakarta: Tirta Asih Jaya, (2015): p.16-34.

### 3. Legal Protection for Children as Victims of Narcotics Abuse at the Belawan District Attorney

The process of punishment given to children through the formal criminal justice system by placing children in prison did not succeed in deterring the child and becoming a better person to support the process of growth and development. Prison often makes children more professional in committing crimes. In dealing with children in conflict with the law, law enforcers must always pay attention to the conditions of children who are different from adults.<sup>30</sup>

For children who are in conflict with the law, whether they are perpetrators of crimes or victims, they will undergo a diversion process as the first stage in resolving conflicts. This initial stage must be taken by stakeholders implementing the juvenile criminal justice system. In the diversion deliberation at the Court level the parties will seek a solution to the crime committed by the child, if the parties agree then the Head of the District Court will ratify the stipulation of the diversion agreement, but if in the diversion deliberation the parties cannot reach a consensus (consensus) then the settlement is continued to the next stage, namely the child trial process.

In order to carry out the mandate of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, it is obligatory to seek diversion at the level of examining children's cases in the Court by prioritizing a Restorative Justice approach. This Restorative Justice Approach is implemented by taking into account the matters as regulated in Article 3 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System as follows:

1. Treated humanely by taking into account the needs according to their age;
2. Separated from adults;
3. Obtain legal and other assistance effectively;
4. Carry out recreational activities;
5. Free from torture, punishment, or other cruel, inhuman and degrading treatment;
6. Not sentenced to death or life imprisonment;
7. Not arrested, detained or imprisoned, except as a last resort and for the shortest time;
8. Obtain justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;
9. His identity is not published;
10. Obtain assistance from parents/guardians and people who are trusted by the child; k. Obtaining social advocacy;
11. Acquire a personal life; m. Gaining accessibility, especially for children with disabilities;
12. Obtaining education;
13. Obtaining health services;
14. Obtain other rights in accordance with the provisions of the legislation.

Terms, procedures and policies at the Belawan District Attorney's Office, in carrying out diversion, of course, must be in accordance with the provisions of UURI No. 11 of 2012 concerning the Juvenile Criminal Justice System, where the threat of the article being violated is not less than 7 (seven) years in prison and is not a repetition of a crime, then diversion MUST be implemented but if an agreement is not reached then the case will proceed to the prosecution process by delegating the case file to the Court.

If the child's case is narcotics, the Public Prosecutor will provide instructions to the Investigator to conduct an assessment by the Integrated Assessment Team based on the recommendations of the assessment results of the Community Advisor (PK) at the Correctional Center and the plan for the rehabilitation of the case in question based on Restorative Justice Guidelines Number 18 of 2021 dated November 1, 2021 concerning Completion of the Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as Implementing the Dominus Litis Principle The prosecutor is submitted to the leadership through a case title whether it meets the conditions such as:

1. The child has committed a crime for the first time;
2. Criminal acts are threatened with Article 127 paragraph (1) letter a of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics with a maximum imprisonment of 4 (four) years;
3. Based on the results of the forensic laboratory, the child's urine is positive for using narcotics;

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<sup>30</sup> M. Joni & Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Bandung: Citra Aditya Bakti, (1999): p.1.

4. The results of the Integrated Assessment Team (TAT) examination stating the child's qualifications as Narcotics Addicts / Abusers, are not included in the narcotics illicit traffic network, and are end users, and were arrested with evidence of shabu, the amount of which does not exceed the amount used. 1 (one) day, so it is recommended to undergo treatment/treatment through inpatient medical and social rehabilitation, for example for 6 (six) months at a Rehabilitation Institute;
5. The background of the occurrence / committing of a criminal act of abusing narcotics for oneself to increase energy and enthusiasm, or just to join friends;
6. There is a letter of application and guarantee from the family/guardian to undergo rehabilitation.

The obstacles faced by the Belawan District Attorney's Office in carrying out diversion and rehabilitation measures for child victims of narcotics abuse include:<sup>31</sup>

1. the child has been punished before, the child is not known to be the last user (end user).
2. the evidence is not only methamphetamine and suction devices, but empty plastic and scales, arrested not using narcotics (just bought or as an intermediary), so a single article cannot be applied.
3. The assessment team witnesses are not used as witnesses or experts in the BAP.
4. there is no cost in undergoing self-rehabilitation.
5. the results of the child diversion agreement tend to be troubling to local residents who want their child to be sentenced to prison so that no consensus is reached.

### C. Conclusion

Article 1 point 3-5 of Law Number 11 of 2012 concerning the Juvenile Justice Act states that a child is a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years who are suspected of committing a crime. The factors that cause children to become victims of drug abuse are family factors, personality factors, peer group factors, and opportunity factors. At the State Attorney's Office, efforts to carry out rehabilitation measures as an effort to protect children from narcotics abuse victims in the juvenile criminal justice system are something that must be pursued.

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<sup>31</sup> Results of an interview with Bastian Sihombing at the Belawan District Attorney on March 21, 2022.



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