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## Balance of monodualistic principles in different efforts at the level of investigation on child abuse of narcotics crime

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### ABSTRACT

Based on the setting for determining criminal policies that are in accordance with the values of people's lives, the setting for determining criminal policies is contained in the Criminal Code as general provisions and in the special criminal provisions of Law No. 35 of 2009 as a special crime that regulates narcotics. Based on this, the problem that will be discussed is how the monodualistic principle in eradicating criminal acts of narcotics abuse committed by children is contrary to the law related to Law No. 35 of 2009 and Law No. 11 of 2012. This research is normative juridical research, namely research conducted by examining library materials or secondary data. In terms of implementing the diversion, there are several things that make it impossible. There are several factors that cause the diversion of children who abuse narcotics to not be achieved, namely internal and external factors.



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## Introduction

In the Juvenile Justice System Law, what is called 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 old who is suspected of committing a crime. Meanwhile, children who are 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. With the existence of the Juvenile Justice System Act, juvenile justice is distinguished from general justice so that law enforcement against children is not the same as that of adults/general courts. There are several factors that collectively cause the occurrence of child crime, both internal and external factors. In the internal context, what affects children's crimes are personality, self-concept, social adjustment, developmental tasks and low problem-solving abilities. While external factors are how the family environment such as parenting, school environment and peer environment affect children (Anderson & Buckley in Allen et al., 2018).

Pancasila as the basis of the state are the main ideas that contain legal ideals and become a source of legal order, the implementation of which is through the 1945 Constitution which is stated as the legal basis, so that every legal product which includes statutory regulations and government regulations is guided by the basics thereof. which cannot be contradicted (Emilia et al., 2022). With the promulgation of Law Number 35 of 2009 concerning Narcotics, the perpetrators of special crimes whose existence is outside the Criminal Code, both users, dealers and narcotics law can be arrested in accordance with the provisions of the Integrated Criminal Justice System, where the authority of the Police and the National Narcotics, through investigators, has the right to make an official report on the examination of a suspect to be submitted to the Prosecutor's Office as a public

prosecutor and continue at the District Court level in the defendant's trial to obtain a decision, whether the court in the follow-up examination and under its authority has permanent legal force, so that he becomes a convict to be placed in custody. Correctional Institutions as prisoners who are part of the inmates.

By applying a monodualistic point of view, the Indonesian nation places all matters of concern in two components that are bound into one. This monodualism is appointed as an *xi oma*, which is used to give meaning to the problems it faces. This monodualistic view is applied in giving meaning to human nature, about the nature of life, and so on. According to Nabillah & Nisa (2023), human nature is monodual: it is both individual and social. As a result, every person, ethnicity, race, group, class, and religion is unique. The concept that the state represents the mono-dual essence of human nature, which means that humans are both individual and social. In an effort to find the truth about the nature or identity, human self is applied this monodualistic view. Humans consist of two elements, each of which is recognized for its existence, but both are bound to become one unit. Losing one element will result in the loss of human existence itself. Likewise in viewing society, that society cannot be separated from the individuals who make up that society. Individuals and society are two "elements that form a unity. Individuals are recognized for their existence, recognized for their dignity. But society also exists. Between society and individuals are two elements that are bound to become one. Individuals alone will not form society, nor will society exist without individuals.

Cases involving children as criminals are a different phenomenon from adult criminals. Children as perpetrators of criminal acts who are sentenced to be fostered in Child Correctional Institutions, need to receive special treatment in serving their criminal period. There are many cases of criminal acts involving minors lately, one of which is narcotics abuse. The National Narcotics Agency of the Republic of Indonesia (2021), a government agency dedicated to combating drug use and distribution, estimated that 3.3 million Indonesians between the ages of 10 - 59 participated in drug usage in 2017. There were 2.29 million cases of drug usage among students in Indonesia in 2018. In fact, compared to other age groups, the younger generation (15-35 years old) has a larger probability of being afflicted by drug usage. The younger generation is therefore more susceptible to drug misuse (BNN RI, 2019). Narcotics are substances or drugs that are natural, synthetic, or semi-synthetic which cause a decrease in consciousness, hallucinations, and excitability (Hutahaean, 2022). Meanwhile, according to the Narcotics Law Article 1 paragraph 1 states that narcotics are artificial substances or those originating from plants that have hallucinatory effects, decrease consciousness, and cause addiction.

It is not uncommon for drug dealers to take advantage of minors. Lack of knowledge about narcotics, and the inability to refuse and fight makes minors the target of drug dealers to distribute narcotics widely and covertly. This issue is certainly a very serious problem, because it can plunge minors into the illicit narcotics business. These drugs can cause addiction if used excessively. The use of these substances is as a painkiller and provides calm. Misuse can be subject to legal sanctions. To find out what types of drugs and the dangers of drugs for health, see the following review.

**Types of Drugs (Narcotics and Drugs)** The content contained in these drugs can indeed have a bad impact on health if misused. According to the Law on Narcotics, the types are divided into 3 groups based on the risk of dependence. Narcotics: (1) group 1 Narcotics such as marijuana, opium, and coca plants are very dangerous if consumed because of the high risk of causing addiction effects. Narcotics, (2) group 2 can be used for treatment as long as it is in accordance with a doctor's prescription. There are approximately 85 types of this group, some of which are morphine, alphaprodina, and others. Group 2 also has a high potential to cause dependence. Narcotics, (3) group 3 has a fairly mild risk of dependence and is widely used for treatment and therapy. As mentioned above, there are several types of drugs that can be obtained naturally, but some are made through chemical processes.

Diversion and Restorative Justice have been regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) prioritizes peace over the formal legal process. The juvenile criminal justice system recognizes the term restorative justice. Restorative justice is the spirit or legal principle behind the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation. Restorative Justice is the goal of implementing diversion in the juvenile criminal justice system. Considering that diversion is a (formal) criminal law institution and can also be seen as a form of restorative justice whose origins cannot be separated from the purpose of implementing diversion in the Juvenile Criminal Justice System.

Efforts to protect children as perpetrators in Law no. 11 of 2012 where in the criminal justice process for children children's rights must be protected at every level, this protection is one of the respects for children's human rights. The protection of children in conflict with the law undergoes a fundamental change, namely the strict regulation of "restorative justice and diversion". ". This arrangement aims to avoid and avoid children from

the judicial process, so as to avoid bad stigma against children in conflict with the law. And to carry out guidance and provide protection for children, support is needed, both concerning institutions and legal instruments that are more stable and adequate, therefore provisions regarding the administration of courts for children need to be carried out specifically. On the basis of the principle of proportionality, this principle is emphasized as a means to curb punitive sanctions. The principle reminds that the response and reaction of the community is proportional to an anti-social act, which means that the response and reaction is not only based on the weight of the act, but also pays attention to the child's environment, such as social status, family circumstances, and other factors that cause the emergence of anti-social behavior of children.

To ensure the implementation of children's rights based on Law Number 23 of 2002 concerning Child Protection (UUPA), the government is obliged to carry out supervision. The supervision carried out must really aim at the implementation of children's rights, so it takes an institution that is really expected to be able to realize children's rights as mandated by law. For this reason, the state has formed a commission that specifically handles all aspects of children's lives, namely the Indonesian Child Protection Commission (KPAI) in accordance with Article 74 of the UUPA.

The SPPA Law regulates the obligations of law enforcers to seek diversion (transfer of the settlement of children's cases from the judicial process to a process outside of criminal justice) at all stages of the legal process. Restorative Justice as the implementation of diversion, the issuance of PP which is a derivative of the SPPA Law. The Supreme Court issued PERMA Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. Where the most important point in PERMA is that a judge is obliged to solve the problem of children in trouble with the law (ABH) by means of diversion and contains the procedures for implementing diversion which are the judge's guidance in solving juvenile criminal cases. According to prior study by Warijan (2021) on the issue of restoring justice for children who have committed crimes, there is no justice.

Based on this, the author tries to find and to get the purpose of punishment and the implementation of diversion in the juvenile criminal justice system implemented in an integrated manner by law enforcement officials, symbolizes the Gold Chain as a symbol of humanity and human rights. Based on regulations to determine criminal policies in accordance with the values of people's lives, the regulations for determining criminal policies are contained in the Criminal Code as general provisions and specifically criminal provisions. UU no. 35 of 2009 as a special crime that regulates narcotics. Based on the background of the problems described above, the problems to be discussed in this paper are as follows how is balance of monodualistic principles in different efforts at the level of investigation on child abuse of narcotics crime.

## Method

This research is a normative juridical, namely research conducted by examining library materials or secondary data (Zulyadi, 2020). The implementation of normative research is broadly aimed at: (1) research on principles law, (2) research on systematics law, (3) research on synchronization law, (4) research on history law, (5) research on comparison law. The data used in this study are primary data and secondary data. In this study, primary data was sourced from interviews and secondary data was obtained from primary legal materials, secondary legal materials and tertiary legal materials (Budianto, 2020). Primary legal materials.

## Results and Discussions

In In Article 1 paragraph (1) of Law Number 11 of 2012 it has been stated that what is meant by the Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the stage of guidance after serving a crime. An investigation is a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence which with that evidence makes clear about the criminal act that occurred and in order to find the suspect. Investigations in criminal cases committed by children are carried out by child investigators as regulated in Article 1 Number 8 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law).

Investigation of Child Cases carried out by Child Investigators at the Toba Police Police must be packaged in a family atmosphere, as regulated in Article 18 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. This provision requires that the examination be carried out with an effective and sympathetic approach. Effective means that the examination does not take long, using language that is easy to understand and can invite the defendant to give as clear a statement as possible. While sympathetic can be interpreted at the time of

examination, investigators are polite and friendly and do not scare the suspect. On the other hand, in conducting investigations of children, investigators are obliged to ask for consideration or advice from community counselors or if necessary, from educational experts, psychologists, psychiatrists, religious leaders, social workers and other experts. 2).

Investigations of children's cases must be kept confidential, investigators' actions in the form of arrests, detentions and other actions carried out starting from the investigation stage to the investigation stage, must be carried out in secret, so that it is not easily known to the public which can cause depression, shame or inferiority and so on. which will have a psychological impact on the growth and development of children in the community. The scope of criminal law includes three provisions, namely criminal acts, liability, and punishment.

The criminal provisions contained in Law no. 35 of 2009 concerning Narcotics is formulated in Chapter XV of Criminal Provisions Articles 111 to 148. Law no. 35 of 2009 concerning Narcotics, there are four categorizations of unlawful acts that are prohibited by law and can be threatened with criminal sanctions, namely: (1) The first category is acts in the form of possessing, storing, controlling or providing narcotics and narcotics precursors (Articles 111 and 112 for narcotics class I, Article 117 for narcotics class II and Article 122 for narcotics class III and Article 129 letter (a)); (2) The second category, namely acts in the form of producing, importing, exporting, or distributing narcotics and narcotic precursors (Article 113 for narcotics class I, Article 118 for narcotics class II, and Article 123 for narcotics class III and Article 129 letter (b) )); (3) The third category, namely acts in the form of offering for sale, selling, buying, receiving, intermediary in buying and selling, exchanging, or delivering narcotics and narcotics precursors (Article 114 and Article 116 for narcotics class I, Article 119 and Article 121 for narcotics class II, Article 124 and Article 126 for narcotics class III and Article 129 letter (c)); (4) The fourth category, namely acts in the form of carrying, sending, transporting or transiting narcotics and narcotics precursors (Article 115 for narcotics class I, Article 120 for narcotics class II and Article 125 for narcotics class III and Article 129 letter (d)).

For children who are victims of narcotics abuse, diversion must be sought by taking into account Article 127 of Law Number 35 of 2009 concerning Narcotics. Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics states that every abuser of class I narcotics for oneself is sentenced to a maximum of 4 years in prison and is required to carry out medical or social rehabilitation or can be returned to his parents for treatment. nurtured and educated. At the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought as referred to in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion is only carried out in the case of a crime committed: (1) Threatened with imprisonment under 7 (seven) years; and (2) it is not a repetition of a crime.

The enactment of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, investigators, both POLRI Investigators and Civil Servant Investigators (PPNS) are given a new predicate, which is referred to as a special child investigator. Special investigators for children are not investigators as referred to in the Criminal Procedure Code. Special child investigators obtain a legal basis for conducting diversion at the investigation level. Special child investigators are required to seek diversion within a maximum of seven days after the investigation begins. The diversion process is expected to be carried out within a maximum of seven days, carried out no later than thirty days after start of diversion. If, in the event that the diversion process is successful in reaching an agreement, the investigator shall submit the diversion report along with the diversion agreement to the head of the district court for a determination to be made. Meanwhile, if the diversion fails, the investigator is obliged to continue the investigation and delegate the case to the public prosecutor by attaching the diversion report and community research report.

Basically, criminal law policies in dealing with drugs in Indonesia have been carried out for a long time. Beginning with the enactment of the Drug Ordinance (Verdoovende Middelen Ordonnantie, Stbl.1927No.278 jo. No.536). This ordinance was later replaced by Law no. 9 of 1976 concerning Narcotics. Subsequently this law was changed to Law no. 22 of 1997 concerning Narcotics until the emergence of Law no. 35 of 2009 as the latest update of the Law on Narcotics. In an effort to provide protection for children in the judicial process, so that the interests and welfare of children are still considered and can be realized, Sudarto in Parisman & Gorda (2022) said that:

*"All activities carried out in the context of juvenile justice, whether they are carried out by the police, prosecutors or other officials are carried out by the police, prosecutors or other officials, must be based on a principle: for the welfare of the child, for the benefit of the child. So whether the judge will impose a sentence or the action must be based on what criteria are best for the welfare of the child concerned, of course without reducing attention to the interests of the community."*

Settlement of criminal cases committed by the investigator's child can resolve the case by not following the formal criminal justice system, but investigators through their authority as regulated in Law Number 2 of 2002 concerning the Indonesian National Police can resolve using their authority as stated in Article 18 Law Number

2 of 2002 concerning the Indonesian National Police. Such authority is referred to as discretion. In other words, according to the authority possessed by the police in resolving cases involving children as perpetrators of criminal acts, they can take settlements outside the court, one of which is mandated by law is through diversion and is mandated in the Standard Minimum Rules for the Administration of Juvenile Justice (SMR). -JJ) or the Beijing Rule where it is important to ensure that law enforcement officers take policy actions in resolving cases involving children by not taking formal steps such as stopping or not continuing through the criminal justice process or submit to the community or parents and other forms of social activities. The existence of the SPPA Law aims to create a judiciary that guarantees the protection of the best interests of children in conflict with the law. One of the basic substances in the SPPA Law is a strict regulation of restorative justice and diversion which aims to avoid stigmatization of children in conflict with the law.

Restorative justice is a diversion process, in which all parties involved in a particular crime work together to overcome problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to repair, reconciliation, and pacify the heart that is not based on vengeance. Diversion is the transfer of the settlement of children's cases from the criminal justice process to processes outside of criminal justice. General Explanation of Law no. 11 of 2012 stated that the most basic substance in Law no. 11 of 2012 is a strict regulation regarding restorative justice and diversion. This is intended to avoid and keep children away from the judicial process, so as to prevent stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally. In accordance with Article 7 paragraph (2) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion can be applied if the child offender is threatened with imprisonment under 7 (seven) years and is not a repetition of a crime, taking into account the category of crime, the age of the child, the results of community research from the Fathers and Family Support. and the community (Putri, 2019).

Other regulations governing diversion are also contained in Government Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System and also in Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Guidelines for Implementing Diversion and Handling of Children Under 12 (twelve years. SPPA Law, Article 8 has determined that: the diversion process is carried out through deliberation involving the child and his/her parents/guardians, victims and/or parents/guardians, community advisors, and workers Professional Social based on Restorative Justice approach.

Article 10 of Law Number 11 of 2012 states that paragraph (1) of the Diversion Agreement is to settle criminal acts in the form of violations, minor crimes, crimes without victims, or the value of the victim's loss is not more than the value of the local provincial minimum wage as referred to in Article 9 paragraph (2) can be carried out by investigators together with the perpetrators and/or their families, Community Advisors, and can involve community leaders. If we examine more deeply the sound of the article above, we can see that in terms of resolving a crime without a victim, it can only be carried out by the investigator together with the perpetrator and his family.

The forms of the diversion agreement in Law Number 11 of 2012 are: (1) refund of losses in the event of a victim, (2) medical and psychosocial rehabilitation, (3) handing back to parents/guardians, (4) participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months; or (5) community service for a maximum of 3 (three) months. The enactment of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, investigators, both POLRI Investigators and Civil Servant Investigators (PPNS) are given a new predicate, which is referred to as a special child investigator. Special investigators for children are not investigators as referred to in the Criminal Procedure Code. Special child investigators obtain a legal basis for conducting diversion at the investigation level.

Special child investigators are required to seek diversion within a maximum of seven days after the investigation begins. The diversion process is expected to be carried out within a maximum of seven days, carried out no later than thirty days after start of diversion. If, in the event that the diversion process is successful in reaching an agreement, the investigator shall submit the diversion report along with the diversion agreement to the head of the district court for a determination to be made. Meanwhile, if the diversion fails, the investigator is obliged to continue the investigation and delegate the case to the public prosecutor by attaching the diversion report and community research report.

Be given restoration of his rights, so that it does not disturb the child's psyche and mentality. child. For this reason, a solution is needed that does not harm the rights of victims and perpetrators, but on the one hand provides appropriate compensation to victims, meaning that there is an adequate form of protection between perpetrators and victims, especially for minors. Diversion in the Juvenile Criminal Justice System and is based on discretionary authority as stated in Law Number 2 of 2002 concerning the Indonesian National Police Article

18. diversion has been running effectively with several considerations as mentioned above although in fact there are no implementing guidelines, the procedure for diversion is as stated in Article 15 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Diversion at the Police against criminal acts of narcotics abuse committed by children is basically the same as the diversion mechanism in general. As the Police Report and the reported persons who are underage, they must be returned to their parents for better guidance and supervision from their parents. With the result of the agreement on the diversion deliberation, the Investigator submits an Application for Determination of Diversion to the District Court. The application for the determination of this diversion by attaching: (1) police Report No, (2) investigation Warrant Number, (3) inspection minutes, (4) letter of Minutes of Follow-up Examination.

### **Factors Causing Not Achieving Diversion Agreements Against Child Perpetrators of Narcotics Abuse at the Investigation Level.**

#### **Internal factors**

The police as investigators act outside the law where the police or Polres interpret personally stating that the state has suffered losses so that it can be said that the state is a victim of criminal acts committed by children. As a result of this interpretation, 1 (one) more variable arises which causes the state to participate in the diversion of narcotics abuse cases.

Why did the country suffer a loss so that the police summoned the BAS to represent the country as a victim, which due to the absence of a legal basis for this matter caused a lack of understanding on the part of the BOD who would act on behalf of the state as a victim. In the case of handling children in conflict with the law, it should not only be the Police, Prosecutors, or Juvenile Judges who must have special qualifications related to handling children in conflict with the law who can handle the case, but it is also hoped that legal advisors must also be trained to have special skills. This is because not all legal advisors understand the psychology of children, including the handling of diversion, in addition to the lack of understanding of the parties regarding the implementation of diversion. Especially for those who are victims, sometimes they still feel dissatisfied in the settlement through diversion because they think that diversion is only in favor of the perpetrator (Kusmayati, 2023).

Legal Substance Factors, namely there are no implementing regulations from the Act Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially regarding Diversion, there is no SOP for the police regarding diversion for narcotics cases as mandated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The legal culture factor is when collecting the parties, the length of time to agree and the suspicion of some residents, and the lack of understanding of the community regarding diversion so that there is a need for socialization regarding diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

#### **External Factors**

Basically, children are not to be punished but must be given guidance and coaching, so that they can grow and develop as normal children who are healthy and fully intelligent. Children are a gift from God Almighty as a candidate for the nation's next generation who are still in a period of physical and mental development (Djamil, 2013). Sometimes children experience difficult situations that lead them to act against the law. However, children who violate the law do not deserve to be punished, let alone then put in prison.

Children have the right to be diversified, but in daily practice there are several obstacles, both from internal and external factors. When doing the diversion, there were several obstacles that the Fathers found, including: (1) in terms of criminal threats that are punishable by 7 years and above according to Article 7 SPPA No. 11 of 2012 (Eleanora & Wahyuni, 2020), (2) the child has repeated the crime, (3) the victim does not want to carry out diversion, (4) the victim and the child perpetrator did not reach an agreement, (5) investigators want the case to be continued (diversion at the investigative level), so that the child's case continues to stage II to the Prosecutor's Office, and even to the Court.

The apparatus must know the meaning and purpose of the diversion before carrying out the diversion. If the apparatus performs diversion as a task, then the apparatus must be able to take appropriate action with regard to diversion, because they assume that there is an imbalance in its implementation and diversion is the arbitrariness of the apparatus in translating its power. The limitation of the diversion implementation policy is carried out by the apparatus that handles a criminal act. Diversion guidelines for law enforcement officers are very necessary, to direct the freedom of the apparatus in determining their actions.

In addition to the inhibiting factors for reaching the diversion agreement, it turns out that there are also factors that hinder the implementation of the results of the diversion agreement, namely because there is no Temporary Child Placement Institution, hereinafter abbreviated as LPAS or Social Welfare Organization,

hereinafter abbreviated as LPKS. In the event that a child under the age of 12 (twelve) years of age commits or is suspected of committing a criminal act, investigators, community advisors, and professional social workers make a decision to include them in the education, coaching and mentoring program in government agencies or LPKS in agencies dealing with the welfare sector. social services, both at the central and regional levels, for a maximum of 6 (six) months. Children's rights need to be protected, considering that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia.

Protection of children is a natural action, because children are buds, potentials, and the younger generation who succeeds the ideals of the nation's struggle, has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Arrested children must be placed in a special child service room. In the event that a special service room for children does not yet exist in the area concerned, the child is deposited in the LPKS

Mono-dualistic, namely the existence of a balance of interests between individual/individual interests and public/society interests, including a balance between the interests of the perpetrators, victims, witnesses, as well as the subjective objective elements of the perpetrators from the *Daad Dader Strafrecht* principle, which in the end requires a balance between the principles of Legality and principle of justice. With this understanding, criminal responsibility is not only based on the principle of culpability (principle of error) as a representation of the principle of legality, but also places criminal responsibility as a principle of justice that lives (formerly) outside the Criminal Code, namely the principle of *Afwijzigheid Van Alle Schuld* (no crime without guilt). ) and *Afwijzigheid Van Alle Materiele Wederrechtelijkheid* (no crime without violating material law) as the principle of Justice which will be paired with the principle of Legality.

From the opinion above, the monodualistic principle function approach to the implementation factor of diversification against children who commit criminal acts, especially non-narcotics crimes can also be the basis. In line with the era of globalization, the increase in crimes of special crimes in organized relationships with narcotics, the number of prisoners concerned with these acts is increasing (Sinaga in Fata, 2022). Observing the regulations in the non- narcotics law that does not include the delivery of children, which is not balanced with the number of residents, this causes an overcapacity which must increase

Monodualism is an understanding which assumes that the essence of something is two elements that are bound into one whole. Humans were created by the almighty as individual beings and social beings, these cannot be separated from each other because these two elements are absolute. Humans as individual beings have physical and spiritual elements, physical and psychological elements, body and soul elements. A person is said to be an individual human when these elements are integrated into his nature. If these elements are no longer united then a person is not called an individual.

As for examples of the role of humans as individual beings, among others: (1) strive to fulfill basic human rights, (2) meet the needs and interests of self for the welfare of life, (3) preserve and maintain their dignity. Apart from being individual beings, humans are also social creatures, which means that humans cannot live alone in this world. Humans are said to be social creatures, also because in humans there is an urge to relate (interact) with other people. There is a social need to live in groups with other people. A human will not be able to live without other people, a human life also depends on other humans. Humans are said to be social creatures, for several reasons, namely: (1) humans are subject to rules, social norms, (2) human behavior expects a judgment from others, (3) humans have a need to interact with other people, (4) human potential will develop when he lives in the midst of humans.

Therefore, the material for the Draft Criminal Code which will contain the material criminal law system and the principles of criminal law that underlies it, is compiled and formulated with an orientation to various basic thoughts and basic ideas of balance, which include: a. monodualistic balance between "public/public interest" and "individual/individual interest"; b. a balance between the protection or interests of the perpetrator of a crime (the idea of criminal individualization) and the victim of a crime (victim of crime); c. balance between "objective" (action/outward) and "subjective" (person/inner/inner attitude) elements/factors; the idea of "*Daad-dader Strafrecht*"; d. balance between "formal" and "material" criteria; e. balance between "legal certainty", "flexibility, elasticity, or flexibility", and "fairness"; and f. balance of national values and global, international, or universal values; The basic idea of "balance" is embodied in the three main problems of criminal law, namely: a. regulation of criminal acts or acts that are against the law (criminal act); b. regulation of crime or criminal responsibility (criminal responsibility); and c. regulation of criminal and action systems (punishment and treatment system).

## Conclusions

Based on the explanation above, it can be concluded from writing this thesis as follows: In principle, since the state is responsible for the protection of human rights with its criminal law, it is only natural that the criminal law itself should not contradict or violate human rights. The state can limit human rights, as stated in Article 28J of the 1945 Constitution. Diversion is not a peaceful effort between children in conflict with the law and victims or their families; it is a form of punishment for children who are in conflict with the law informally. The implementation of diversion in restorative justice in the Juvenile Criminal Justice System involves the transfer of child cases from the criminal justice process to processes outside of fair criminal justice, with an emphasis on returning them to their original state. The existence of peace agreements, restitution or compensation for victims, and diversion based on the principle of restorative justice in the settlement of crimes committed by children by involving the perpetrator, victim, family of the perpetrator or victim, and other related parties to jointly seek justice solutions by emphasizing the restoration of the original state and not retaliation. There are several factors that cause the diversion of children who abuse narcotics not to be achieved, namely internal and external factors. In terms of internal factors, obstacles are one of the things that are detrimental to the state. Regarding external factors that raise children's values, where children are interpreted as something valuable and must be respected, there is no place or LPA to accommodate children with drug abuse.

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