

The Correctional Institution Recommendation As Judge's Consideration In Making A Decision Against Child Narcotics Abuser

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ABSTRACT

Recalling that children are individuals who are still emotionally unstable but have become legal subjects, so the handling of narcotics abuse cases committed by children needs special attention and protection from the state. However, in deciding the case of the child, the judge has things that are often taken into consideration, such as the results of community research which later become the basis for the recommendation of the Correctional Center as regulated in Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This study examines the recommendations of the Correctional Center as a judge's consideration in making decisions against children who abuse narcotics. The research method used in this research is descriptive analysis. The purpose of this study was to determine the role of the correctional center in juvenile criminal justice and the recommendations of the correctional center as a judge's consideration in making decisions against children who abuse narcotics. Correctional Centers have an important role in the success of the juvenile criminal justice system, namely by providing assistance, guidance, coaching, and supervision of children who are dealing with the law. The goal of the juvenile justice system can be achieved maximally, namely to ensure the protection of the best interests of the child. In making a decision on a child who abuses narcotics, the Judge has considered the recommendation of the Correctional Center, but the judge did not heed the recommendation of the Correctional Center. This can be seen in several decisions in cases of child drug abusers who are still sentenced to prison by the judge, where the recommendations of the Correctional Center tend to suggest imposing sanctions of treatment against children. The judge should give priority to the best interests of the child to avoid imprisonment as referred to in the recommendation of the Correctional Center by using the independence and freedom of the judge.

Keywords: : Child Narcotics Abuser, Correctional Institution, Judge Consideration

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ABSTRAK

Mengingat anak merupakan individu yang masih labil emosinya namun sudah menjadi subyek hukum, maka penanganan kasus penyalahgunaan narkotika yang dilakukan oleh anak perlu mendapat perhatian dan perlindungan khusus dari negara. Namun dalam memutus perkara anak, hakim memiliki hal-hal yang sering menjadi pertimbangan, seperti hasil penelitian masyarakat yang kemudian menjadi dasar bagi rekomendasi Balai Pemasyarakatan sebagaimana diatur dalam Pasal 60 ayat (3) UU No. Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak. Penelitian ini mengkaji tentang rekomendasi Balai Pemasyarakatan sebagai bahan pertimbangan hakim dalam menjatuhkan putusan terhadap anak penyalah guna narkotika. Metode penelitian yang digunakan dalam penelitian ini adalah deskriptif analisis. Tujuan penelitian ini adalah untuk mengetahui peran Balai Pemasyarakatan dalam peradilan pidana anak dan rekomendasi Balai Pemasyarakatan sebagai bahan pertimbangan hakim dalam menjatuhkan putusan terhadap anak yang menyalahgunakan narkotika. Balai Pemasyarakatan mempunyai peran penting dalam mensukseskan sistem peradilan pidana anak yaitu dengan memberikan pendampingan, pembimbingan, pembinaan, dan pengawasan terhadap anak yang berhadapan dengan hukum dan menjamin perlindungan kepentingan terbaik bagi anak. Dalam menjatuhkan putusan terhadap anak yang menyalahgunakan narkotika, Hakim telah mempertimbangkan rekomendasi dari Lembaga Pemasyarakatan, namun hakim tidak mengindahkan rekomendasi dari Balai Pemasyarakatan. Hal ini dapat terlihat pada beberapa putusan dalam kasus penyalahguna narkoba anak yang masih divonis pidana penjara oleh hakim, dimana rekomendasi dari Balai Pemasyarakatan cenderung menyarankan pemberian sanksi tindakan terhadap anak. Hakim hendaknya mengutamakan kepentingan terbaik bagi anak untuk menghindari pidana penjara sebagaimana dimaksud dalam rekomendasi Balai Pemasyarakatan dengan menggunakan kemandirian dan kebebasan hakim.

Kata Kunci: Rekomendasi BAPAS, Anak Penyalah Guna Narkotika, Pertimbangan Hakim

I. Pendahuluan

According to Article 1 paragraph (1) of Law Number 35 of 2014 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Samuel Panjaitan dkk, 2021: 83). Children are an inseparable part of human living and the viability of a nation and state. A child is also an asset of the nation and as part of the younger generation so that children play a strategic role as heirs of the nation, successors to the ideals of the nation as well as potential human resources for national development. (Zuhdi Madi, 2009: 19). They also have the right to survive, thrive, be protected and participate in decisions that impact their lives.

The development of children's lives that have occurred in the last few years is quite worrying. Many legal events involving children, ranging from

student brawls that tend to occur between children, criminal cases, exploitation, sexual harassment, until drug abuse. Drug abuse among children and adolescents occurs mainly through wrong friendships. At least, 92.6 percent of users get drugs for the first time from friends and almost 80 percent are given for free. Children are still the target of the drug market, this includes reasons for drug abuse for the first time by 40.5 percent because they want to try and 35.2 percent because of the persuasion of friends. Based on BNN data, drug abuse in Indonesia in 2017 was 3,376,115 people in the age range of 10-59 years old. (<https://Nasional.Kompas.Com/Read/2020/06/26/17590051/Kementerian-Pppa-Naiknya-Kasus-Narkoba-Anak-Jadi-Alarm-Bagi-Orangtua?Page=All.05/20/2021>).

Recalling that children are individuals who are still emotionally unstable but have become legal subjects, so the handling of narcotics abuse cases committed by children needs special attention and protection from the state. Article 28B paragraph (2) Amendment IV of the 1945 Constitution is the basis that children must be protected, which reads: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." The article implies that the State is mandated to provide and ensure protection for all children to live, grow and develop like other children's lives (Gultom, 2010: 33). The implementation of protection for children is important to ensure that all children can be cared for and raised in a supportive environment that can fulfill all their basic rights in accordance with their physical, psychological and social needs so that they can grow and develop optimally.

Children have the right to protection and the state is obliged to provide protection for the rights of citizens and guarantee the lives of future generations (Marlina, 2009: 1). Based on Pancasila and the 1945 Constitution of the Republic of Indonesia with the container of the Unitary State of the Republic of Indonesia in international order that is peaceful, fair and prosperous (Wagiati Sutedjo, 2006: 62). The difference in behavior of children and adults must also be a concern in efforts to protect children as part of the younger generation who are the foundation and hope of the future of the nation (Alvi Syahrin, dkk, 2015: 168), but it is also possible that children can commit criminal acts that are usually committed by adults.

Drug abuse is one of the crimes that can be committed by children. Article 1 point (1) of Law Number 35 of 2009 concerning Narcotics defines Narcotics as

substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain and can cause pain. cause dependence, which is divided into groups as attached in this Law. The establishment of Law Number 35 of 2009 concerning Narcotics aims to ensure the availability of Narcotics in the interest of health services and/or the development of science and technology, prevent, protect, and save the Indonesian nation from the abuse of Narcotics, eradicate the illicit trafficking of Narcotics and Narcotics Precursors, and guarantee regulation of medical and social rehabilitation efforts for narcotics abusers and addicts (Aziz Syamsuddin, 2014: 90).

Based on the article 1 point (15) of Law Number 35 of 2009 concerning Narcotics, Narcotics abusers are people who use Narcotics without rights or against the law. Narcotics abuse can be committed to other people or to themselves. Children who become drug abusers are usually influenced by other people, including their peers. Due to the tendency of children (especially teenagers) who want to look great among their friends, they often commit delinquency that plunges them into criminal acts. Children who commit criminal acts, in this case as stipulated in Article 1 point (1) of Law Number 11 of 2012 concerning the Juvenile Justice System: "Children in Conflict with the Law, hereinafter referred to as Child, is child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime". (Arsyad dan Tri Imam Munandar, 2020: 471).

Criminal provisions regarding narcotics abuse are regulated in articles 111 to 127 in the Law Number 35 of 2009 concerning Narcotics, with various threats of imprisonment, ranging from 2 (two) years in prison to the death penalty. However, if the perpetrators of narcotics abuse are children, they will be sentenced to half of the threats and are not allowed to be sentenced to death. Often children who should be kept away from prison are still sentenced to prison when they become narcotics abusers. Whereas in handling cases of Children (included Child Victims, and/or Child Witnesses) Community Counselors (*Pembimbing Kemasyarakatan*), Professional Social Workers and Social Welfare Workers, Investigators, Public Prosecutors, Judges, and Advocates or other legal aid providers must pay huge attention to the best interests of the Child and strive

for a family atmosphere maintained. (See Article 18 Law Number 11 Of 2012 Concerning The Juvenile Justice System).

In deciding cases of children, judges actually have independence or freedom in considering the severity or type of sanctions to be imposed on children. This judge's independence is absolute and cannot be intervened by others so that it can guarantee that the judge's decision is truly objective. However, in deciding the case of the child, the judge has things that are often taken into consideration, such as the results of community research (*Penelitian Kemasyarakatan*) which later become the basis for the recommendation of the Correctional Center (*Balai Pemasyarakatan*) as regulated in Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System: "Judges are obliged to consider the community research report from the Community counselor before making a case decision". This makes the basis that the judge is obliged to consider the recommendations or suggestions of the Correctional Center in making their decision on the case of a child who abuses narcotics.

Although, in reality there are still many decisions in cases of child drug abusers who do not pay attention to the recommendations of the Correctional Center by imposing imprisonment on children. A child undergoing a criminal justice process must be paid more attention to the best interests of the child and must be avoided from all things that have negative impacts on the child, especially deprivation of liberty by placing the child in prison. As one of the efforts to make this happen, that is by involving the Correctional Center in the juvenile criminal justice system as the maker of community research which then becomes the recommendation of the Correctional Center as a consideration for the judge in determining sanctions for children.

Based on the background described above, this study examines the recommendations of the Correctional Center as a judge's consideration in making decisions against children who abuse narcotics.

The research method used in this research is descriptive analysis. Research using descriptive analysis is research that only describes the state of an object or event without an intention to draw general conclusions. Based on the nature of the research, this research leads to a normative juridical research approach. The purpose of this study was to determine the role of the correctional

center in juvenile criminal justice and the recommendations of the correctional center as a judge's consideration in making decisions against children who abuse narcotics.

II. Discussion

2.1. The Role Of The Correctional Center In Juvenile Criminal Justice

Correctional Center (*Balai Pemasyarakatan*) is a correctional technical implementation unit that carries out the duties and functions of community research, guidance, supervision, and assistance (Rama Yulianto, Ali Muhammad, 2021: 62). The definition of Correctional Center is stated in Article 1 Paragraph (24) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System about general provisions. While in Law Number 12 of 1995 concerning Penitentiary, explained the meaning of Correctional Centers, namely institutions to carry out Correctional Client Guidance. The duties of the Correctional Center are to assist investigators, public prosecutors and judges in cases of children in conflict with the law, both inside and outside the trial (Darwan Prinst, 1997: 30).

The Correctional Center as one of the special institutions that handles children in conflict with the law (Mourin, Agata Ascourlina, Hery Firmansyah: 2019) has a main task that must be carried out, namely providing community guidance and alleviation of children in accordance with applicable laws and regulations. Based on the Decree of the Minister of Justice of the Republic of Indonesia Number: M.02-PR.07.03 of 1987 dated May 2, 1987 concerning the Organization and Work Procedure of the Correctional Center, the main tasks and functions of the Correctional Center are as follows:

1. Carry out community research (LITMAS);
2. Carry out registration of Correctional Clients;
3. Carry out community guidance and alleviation of children;
4. Attending juvenile court hearings at the District Court, TPP (Penitentiary Observer Team) sessions at the Correctional Center (BAPAS), Correctional Institutions (LAPAS), and Detention Centers (RUTAN);

5. Provide guidance assistance to former convicts, students, and correctional clients;
6. Carry out administrative affairs of the Correctional Center.

The Correctional Center has a very important role in dealing with children who are faced with the judicial process. Assistance and supervision of children in conflict with the law starting from the investigation process to the trial is one of the most important roles in the settlement of children's cases which in this case the role and function are carried out by the Community Counselor. In carrying out its duties, the Correctional Center is assisted by Community Officers consisting of: (Margaretha, Dkk, 2012: 45-46).

- a. Community Counselors, namely functional law enforcement officials who carry out community research, guidance, supervision, and assistance to children both inside and outside the criminal justice process (See Article 1 Paragraph (13) Of Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System).
- b. Professional Social Worker, namely someone who works, both in government and private institutions who have the competence and profession of social work as well as concern in social work obtained through education, training, and/or experience in social work practices to carry out service tasks and handling children's social problems (See Article 1 Paragraph (14) Of Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System)
- c. Social Welfare Personnel, namely someone who is educated and trained professionally to carry out service tasks and handling social problems and/or someone who works in both government and private institutions, whose scope of activities is in the field of social welfare for children (See Article 1 Paragraph (15) Of Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System).

Of the several tasks carried out by the Community Counselor, making a community research is the most important task in determining the success of the settlement of child criminal cases. Community research or case studies are very important as an approach method in the context of

fostering lawbreakers and very useful in helping judges to make an appropriate and fair decision (Gultom, 2013: 150).

Community research is used for the process of investigation, prosecution, and in the trial process which will be used as a judge's consideration in deciding cases of children in conflict with the law. Therefore, the community research of the Correctional Center can be said to be a major influence in determining sanctions for children in conflict with the law.

The community research that will be used as the basis for judge's considerations should at least contain: personal data on children, family, education, and social life; the background of the crime being committed; the condition of the victim in the event that there is a victim in a crime against the body or life; other things deemed necessary; diversion report; conclusions and recommendations from the Community Counselor (See Article 57 Paragraph (2) Of Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System). The main purpose of making the Community Counselor is as a judge's consideration and it is hoped that the Community Counselor can assist judges in deciding the fate of children, where community research can be one of the sociological considerations of judges in deciding children's cases (Anggraeni U. R, 2013: 116).

Talking about community research, there are three things related to the scope of Community Research, namely;

- a. Community research activities, the community research activities include social research such as the client's biography; client's response to the problems encountered; family descriptions and responses; view of the client's social environment; and so forth. In addition to social research, there are case studies and research on the circumstances of someone who commits a crime or violation. Case research is more about finding out whether the crime was committed alone or together; whether the main doer or assistant; whether it is a premeditated act or not; and so forth. While research on the condition of a person who commits a crime such as physical, psychological, or other factors behind the perpetrator committing a crime.

- b. Mechanism for making community research, the mechanism for making community research after there is a request from investigators, public prosecutors, or courts, the Community Advisors carry out their duties by:
1. Visiting detention centers, residences, neighbors, schools, workplaces, victims, and other parties deemed necessary (Meilanny Budiarti, Rudi S. Darwis: 64)
 2. Collecting data by means of observation and/or interview
 3. Preparation of Research Reports.
- c. The Role of Community Research in the Juvenile Court process, the role of Community Research in the court process is more related to investigation, prosecution, and trial (Wahyudi, 2011: 239).

Community counselors from the correctional center have an important role in the child suspect or defendant in the trial process, specifically accompanying the child and then conveying the results of community research to the judge. As stipulated in Article 23 paragraphs (1) and (2) of Law Number 11 of 2012 concerning the juvenile criminal court system. The presence of Community Counselors in addition to assisting children also aims to convey and explain the results of the research on community advisors in the trial as stipulated in Article 57 paragraph (1) and Paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The report on the results of community research is one of the most important materials for judges in making decisions based on Article 60 paragraphs (3) and (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Based on the explanation of the article that the judge is obliged to consider the results of public research in his decision and if neglected, the decision will result in null and void (See Commentary Of Article 60 Paragraph (4) Law Number 11 Of 2012 Concerning The Juvenile Criminal Justice System, Null And Void In This Provision Is Without Being Requested To Be Canceled And The Decision Has No Binding Legal Force).

As it is known that every child in conflict with the law has the right to receive protection, whether physical, mental, spiritual or social in

accordance with the principles of the Convention on the Rights of the Child and the Child Protection Act which include: (Maulana dkk, 2018: 287-300)

1. Non-Discrimination
2. The best interests of children
3. Right to life, survival and development
4. The views of the child

Based on these principles, the Correctional Center through the Community Counselor has the power to determine the best decision for the child, through recommendations in Community Research and in mentoring. Theoretically, the choices of sanctions that can be imposed on children are to make the best decisions for children. Children who are in conflict with the law sociologically cannot be declared to be wrong themselves because they have not realized the consequences of their actions and have not been able to choose which actions are good and which actions are not good for themselves and for others.

Correctional Center has an important role in the success of the juvenile criminal justice system, especially by providing assistance, guidance, coaching, and supervision of children in conflict with the law so that the objectives of the juvenile justice system can be achieved to the maximum, that is ensuring the protection of the best interests of children. In carrying out its role related to mentoring, the Correctional Center also carries out its function, namely conducting community research and submitting the results of the community research to the judge in the form of a recommendation from the Correctional Center as a consideration for judges in deciding cases of child drug abusers. These roles and functions are carried out by Community Officers through Community Counselors. Although in fact not entirely Correctional Center recommendations can be accepted by the judge.

2.2. The Recommendations Of The Correctional Center As A Judge's Consideration In Making Decisions Against Children Who Abuse Narcotics

The Correctional Center is one of the parties involved during the juvenile justice process in conflict with the law from the time the child is arrested until the child completes their sentence. This makes the

Correctional Center have an important role in the judicial process for children in conflict with the law. In general, the role of the Correctional Center in the judicial process for children in conflict with the law is divided into 3 stages, namely the pre-trial stage (pre-adjudication) or the investigation, the stage during court hearings (adjudication) or assistance in the trial and the post-adjudication stage namely supervision and guidance for children in conflict with the law (Nashriana, 2012: 110-116).

Community research for juvenile court hearings, that is requested by other law enforcement officers in this case the Police, Prosecutors, Courts or from other Correctional Centers for the process of handling children with legal problems in the criminal justice system (Ripres Iksanto, 2018:185). This community research aims to find out the background and factors of children to commit criminal acts both from the children themselves (internal) such as the behavior of children in the family, school and community, as well as environmental factors, namely family and society (external) such as the habits of parents in educating children and attitudes of parents to children. Community research also aims to find out things that can be taken into consideration in deciding the child's case, such as the status of whether the child is still in school or not, the socioeconomic conditions of his family, the ability of parents to educate children, the responses of various parties to the child, including the community and local government (Efi Siti Fatonah: 2021).

Suggestions submitted in Community Research for juvenile court trials can be in the form of (See Article 59 Paragraph (2) Of Law Number 3 Of 1997 Concerning Penitentiary):

- Recommendations regarding sanctions imposed on children who have legal problems, whether in the form of punishment, namely: imprisonment, fines, or conditional penalties, or in the form of actions: returned to their parents, handed over to the state as a child of the state, or submitted to the Ministry of Social Affairs or other institutions social services such as boarding schools and rehabilitation houses.
- Recommendation that children should not be detained during the legal process.

- Considerations and the level of risk for any sanctions imposed on children, for example: "If the client undergoes a sentence that is too long, it will have a negative impact on the client's psychological and sociological development, and the client is threatened with dropping out of school."

The following is the examples of decisions on a child abuser of narcotics and recommendations from correctional center.

Tabel 1:
Court decisions of narcotics abuse committed by children

Decision Number and Child Identity	Proven Article	Correctional Center Recommendation(s)	Judge's Verdict
<p>Decision number : 14/Pid.Sus.Anak/2019/PN Ckr</p> <p>Full name : xxxxxx; Place of Birth: Bekasi Age/Date of Birth: 17 years / 02 January 2001 Gender : Male Nationality : Indonesian Address : Cimuning Village Rt.002 Rw.006 Cimuning Village, Mustikajaya District, Bekasi Religion : Islam Occupation: Student</p>	<p>Article 114 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics</p>	<p>If the client is proven guilty without reducing the authority of the Public Prosecutor and the Judge, the client may be sentenced to "Criminalization in an Institution by placing a child in a Children's Social Home with the Law, Cileungsi, Cipicung Village RT.12 RW.05 Mekarsari Village, Cileungsi District, Bogor Regency, call/Fak (021) 8231746 ", as referred to in Article 71 paragraph (1) letter (d) and the explanation in Article 80 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Imprisonment is the last resort and not the best solution.</p>	<ol style="list-style-type: none"> 1. To declare that the child named Xxxxxx has been legally and convincingly proven guilty of committing the crime of "without rights or against the law selling Narcotics Category I in the form of plants"; 2. Imposing a punishment on a child named Xxxxxx with imprisonment for 2 (two) years, and fines that are not paid are replaced with mandatory Job Training for 3 (three) months; 3. To determine the length of time a child named Xxxxxx is detained, deducted entirely from the sentence imposed; 4. To stipulate that the child in conflict with the law remains in custody;
<p>Decision number : 14/Pid.Sus.Anak/2019/PN Rap</p> <p>Full name : Xxxxxxx Place of birth: Aek Pamingke Age / Date of Birth : 17 Years 3 Months / April 20, 2002 Male gender Nationality : Indonesian Address : Dusun IV Padang Maninjau Padang Village Maninjau Aek Kuo District, Labuan Regency North Rock</p>	<p>Article 112 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics</p>	<p>So that the client is decided according to the level of offense in order to improve the future of the client where the Community Advisor recommends that the child be rehabilitated in the field by considering the age of the child and the willingness of the child's parents who are still able to foster the child, on the recommendation.</p>	<ol style="list-style-type: none"> 1. To declare that the child Xxxxxxx above has been legally and convincingly proven guilty of committing a crime without rights and against the law possessing Narcotics class I, not Plants as stated in the subsidiary indictment Prosecutor 2. Sentencing a child Xxxxxxx with imprisonment for 2 (two) years and job training for 3 (three) months 3. Determine that the period of arrest and detention that has been served by the child is deducted entirely from the sentence imposed; 4. Determine that the child remains in custody;

<p>Religion : Islam Occupation: living with parents</p>			
<p>Decision number : 42/Pid.Sus.Anak/2020/PN Kis</p> <p>Full name : Xxxxx Place of birth: Sentang Age/Date of Birth : 17 years/ March 17, 2003 Gender : Male Nationality : Indonesian Address : Asahan Regency Religion : Islam Occupation : Student</p>	<p>Article 114 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics</p>	<p>The background of children violating the law is that they have a very low mindset and are very easily influenced by their social environment. Children have been following new education and have never left class, are active in school in class XII, so recommendations in the form of action sanctions are the best for children. The punishment of children is certainly not possible to be equated with adults, the level of skill and understanding of matters concerning the law must not be understood in depth. So from this psychic and intention that must be considered by law enforcement officials through legal protection efforts based on Law Number 35 of 2014 concerning Child Protection. Every child should be given special protection, especially for children who are in conflict with the law and children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances. And in this case there has been exploitation of children when children are used as narcotics couriers while this is expressly prohibited by law as stated in Article 59 paragraph (2) letter d of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;</p>	<ol style="list-style-type: none"> 1. To declare that the above-mentioned child has been legally and convincingly proven guilty of committing the crime of "unlawfully acting as an intermediary for the sale and purchase of Narcotics Category I in the form of non-plants", as stated in the first alternative indictment; 2. Imposing a criminal sentence to the child, therefore, with imprisonment for 3 (three) months and job training in the Social Service for 2 (two) months; 3. Determine the period of arrest and detention that the child has served is deducted entirely from the sentence imposed; 4. Determine that the child remains in custody;
<p>Decision number : 1/Pid.Sus.Anak/2019/PN Cag</p> <p>Full name : Xxxxxxx Place of birth: Pulo Tinggi Age/date of birth : 16 Years /10 October 2003 Gender : Male Nationality : Indonesian Address : Pulo Tinggi Village, Pasie Raya District, Aceh Jaya</p>	<p>Article 111 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics</p>	<p>Based on the conclusion, the motive is because of curiosity about the sensation produced by marijuana. In solving problems, it is hoped that the best for the child's physical, psychological and psychosocial development, the child is expected to receive good coaching and guidance from various parties as well as a deterrent effect. Results of community research reports Children from Community Counselors which basically: recommends Child Clients so</p>	<ol style="list-style-type: none"> 1. Declare: I. Child Xxxxxxx, II. The child Xxxxxxx above, was legally and convincingly proven guilty of committing the crime of "Participating Without Right or Against the Law of Planting, Maintaining, Possessing, Storing, Controlling, or Providing Narcotics Category I in the Form of Plants" as stated in the Second Alternative indictment of the Public Prosecutor; 2. Imposing a criminal sentence on the Children,

<p>Regency Religion : Islam Occupation: Student (MTs Teunom);</p> <p>Full name : xxxxxxx Place of birth: Blang Baro Age/date of birth : 17 Years / 15 July 2002 Gender : Male Nationality : Indonesian Address : Blang Baro Village, Teunom District, Aceh Jaya Regency Religion : Islam Occupation: Ex Student (dropped out of elementary school)</p>		<p>that they can be sentenced to criminal conditions as referred to in article 71 paragraph (1) letter (b) number (2) in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. What is meant is to help clean the Meunasah / Mosque in the Village where each Child lives and continue with the Maghrib Prayer in congregation at the Meunasah / Mosque every day for 3 (three) months;</p>	<p>therefore, each with imprisonment for 1 (one) year minus the period of Arrest and Detention that has been served;</p> <p>3. Determining that the sentence does not need to be carried out unless in the future there is a judge's decision that determines otherwise because the convict committed a crime before the probationary period of 3 (three) months ended and with special conditions for cleaning the Meunasah / Mosque, namely For Child I Zulkhairil Bin Dodi in Pulo Tinggi Village, Pasie Raya District, Aceh Jaya Regency, while for Child II Zainal Abidin Bin Asmadi in Blang Baro Village, Teunom District, Aceh Jaya Regency every day for 3 (three) months provided that it is carried out for 1 (one) hour every day and followed by the Maghrib Prayer in congregation at the Meunasah / Mosque;</p>
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Based on the table above, it can be concluded that in deciding cases of child narcotics abusers, there are still many judges who have not followed the recommendations of the Correctional Center, where the recommendations of the Correctional Center generally contain matters that prioritize the best interests of the child. When the judge does not agree with the community counselor, therefore the judge will impose a prison sentence (Rati Puspita, 2020: 1186) on the child in the hope that the child can be fostered and receive training provided by the Detention Centers in this case, namely participating in worship activities and skills training and in the Indonesian criminal system that the punishment imposed is given to children aims to provide lessons for children so that they can improve their behavior and not repeat their actions in the future, especially for children who are still under age (Marsaulina dkk, 2010: 130).

On the other hand, there are judges who follow some of the advice of the Correctional Center in the form of giving treatment sanctions to children, but still impose imprisonment as the main punishment for children

Narcotics abuse by children is more of a failure of the socialization process and weak social control of children (Friendly Juin Umpele, 2018: 183). Therefore, the judge's decision in a child case must consider the actual condition of the child or the child's social reality, not only looking at the criminal aspect. They're supposed to get treatment instead of penalization as what implied in the basic idea of double track system.

Children who are in conflict with the law should not be penalized (Dimas Pangestu, Hafrida, 2020: 107) if the child is sentenced, the other rights of the child guaranteed by law and the child's growth will be disrupted. In addition, it is also known that the best place for education or child development is the family. If the family is not able to educate children, then there are many alternative substitutes for families who can be given the task of guiding children in accordance with the Indonesian social system, namely extended family relatives. However, the judge has his own judgment based on the facts in court and the aggravating circumstances.

In court, the fate of the child depends on the judge's decision (Okky, 2017: 166) Juvenile judges as decision makers in children's cases have an important role in determining the fate of children in the future. As emphasized by Purniati and colleagues in their book Sri Sutatiek that "in the justice system in Indonesia, judges are the institutions that determine the fate of children" (Sutatiek, 2013: 29). Juvenile judges in deciding cases of children must prioritize the interests and welfare of the children themselves. The priority of putting the interests and welfare of children above the interests of the community. This is as conveyed by the late Prof. Sudarto in an anthology of criminal law that "Although in the draft law it is stated that the juvenile court prioritizes the welfare of the child in addition to the interests of the community, he still believes that the interests of children should not be sacrificed for the sake of the community" (Muladi Dan Barda Nawawi, 2010: 120).

In making a decision against a child who abuses narcotics, the Judge has considered the recommendations of the Correctional Center as referred to in Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Agus Murdani, Rizanizarli :2020) but the judge cannot solely apply the recommendations

of the Correctional Center. This is because the judge has other considerations regarding the quality of the narcotics crime itself. Narcotics abuse and illicit trafficking can result in greater danger to the life and cultural values of the nation which in the end will be able to weaken national resilience, this is what makes narcotics abuse considered critical to be eradicated so that sanctions for abusers are threatened with high criminal threats. As referred to in the chapter on criminal provisions of Law Number 35 of 2009 concerning Narcotics, all criminal acts of narcotics abuse are subject to imprisonment and fines. But on the other hand, the recommendations of the Correctional Center tend to suggest imposing sanctions on children who abuse narcotics.

III. Conclusion

From the results of research and discussion on the role of the Correctional Center Recommendation As a judge's consideration in making decisions against children who abuse narcotics, Correctional Centers have an important role in the success of the juvenile criminal justice system, namely by providing assistance, guidance, coaching, and supervision of children who are dealing with the law The goal of the juvenile justice system can be achieved maximally, namely to ensure the protection of the best interests of the child. In carrying out its role related to mentoring, the Correctional Center also carries out its function, namely conducting community research and submitting the results of the community research report to the judge in the form of a recommendation from the Correctional Center as a consideration for judges in deciding cases of child drug abusers. These roles and functions are carried out by Community Officers through Community Counselors. In making a decision on a child who abuses narcotics, the Judge has considered the recommendation of the Correctional Center as referred to in Article 60 paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, but the judge did not heed the recommendation of the Correctional Center. This can be seen in several decisions in cases of child drug abusers who are still sentenced to prison by the judge, where the recommendations of the Correctional Center tend to suggest imposing sanctions of treatment against children. The judge's decision in imposing imprisonment on a child who abuses narcotics is based on the criminal

provisions referred to in Law Number 35 of 2009 concerning Narcotics and the nature of the narcotic crime itself. Thus, the judge is considered not to have applied the recommendation of the Correctional Center in making a decision against a child who abuses narcotics. The judge should prioritize the best interests of the child to avoid imprisonment as referred in the recommendation of the Correctional Center by using the independence and freedom principle of the judge, because what is stated in the recommendation of the Correctional Center has been based on the social research conducted by the Community Counselor in depth on the child, the environment in which they live, their family life to the background of the child committing the related crime. Imprisonment sentences imposed by judges on children who abuse narcotics should be made as a last resort and through careful consideration.

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