

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach



Relita Paraniba Sangjaya¹, Supardi²

^{1,2}Master of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia

ABSTRACT: This thesis examines the involvement of children in narcotics crimes. This research aims to examine the suboptimal implementation of the Restorative Justice process for children who are perpetrators of narcotics crimes. The effectiveness of prison sentences for children who abuse narcotics is weakened when the responsibility for their rehabilitation is not borne by law enforcement officials. The problems in this research include two main questions regarding what existing regulations relate to legal protection for children involved in drug abuse and how the application of Restorative Justice methods can improve legal protection for children involved in drug abuse. The research methodology used in this research is normative juridical, with qualitative descriptive data analysis techniques. Research findings show that legal protection for children involved in drug abuse in Indonesia is realized through the implementation of the Juvenile Criminal Justice System Law, the Narcotics Law, and the Child Protection Law. Problem solving for minors involved in drug abuse must be based on the principles of restorative justice, which emphasizes restoration of their original condition, and not imprisonment as a form of retaliation. From the perspective that the incorporation of a restorative justice framework must become an integral part of the criminal justice system, it is important to consider the restorative approach as a new paradigm that offers greater effectiveness compared to the punitive strategies used in dealing with cases of child drug abusers.

KEYWORDS- child; narcotics abusers; restorative justice.

I. INTRODUCTION

As a form of behavior that is contrary to the rules, crime often harms both the person who commits it and society at large. Crimes can be committed by both adults and children, depending on their abilities and potential. Children are the potential for creating superior human resources. Human resources that are superior, physically and spiritually strong, and of good quality will have a positive influence not only in increasing the nation's competitiveness and independence, but also in encouraging national development. The best way to invest in creating the best human resources for a country is to educate children well.

An important factor in the maturation of a child is the environment in which he is raised, both in the family and in the surrounding environment. As the child grows, he or she contributes to an increasing degree in shaping his growing environment, although this varies according to the context. A child will be shaped into a good person by his environment and the people he associates with, and vice versa (Rosichin Mansur, 2023: 38). Promiscuity in an environment that is not conducive will cause a child to grow up to become a deviant or even a criminal. An unstable environment, domestic violence, neglect, lack of supervision, or association with individuals who engage in deviant or criminal behavior can increase a child's risk of engaging in similar behavior.

Based on Atmasasmita's analysis, juvenile crime refers to the commission of an offense by someone who is legally classified as a minor, but whose actions are considered to violate the legal framework applicable in a country. Apart from that, society considers and interprets these actions as morally reprehensible (Romli Atmasasmita, 1983: 58). Normatively, children as perpetrators of criminal acts are regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU No. 11 of 2012) Article 1, namely: (1) The Juvenile Criminal Justice System is the entire process of resolving cases involving children Law, from the investigation stage to the guidance stage after serving a sentence; (2) Children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts; and (3) Children in Conflict with the Law, hereinafter referred to as Children, are Children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

A child can do many wrong things or commit crimes. One form of deviation is the phenomenon of children being involved in narcotics crimes. Narcotics are a class of substances that have the potential to change a person's state of consciousness and mental

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

state (Soedjono, 1985: 1). Narcotics are very valuable for the progress of humanity and the scientific community, especially in the field of medicine. On the other hand, these drugs can actually cause dependence and also have the ability to increase the dose of the drug so that it can have an effect that can cause death due to overdose if the dose is increased to a high enough level (Soedjono, 1985: 1). As a result, its application should be very limited, and should be reserved only for the use of medical professionals for certain types of therapeutic purposes.

Children's use of narcotics is influenced by their frequently changing emotions and their interest in new things, which can encourage them to do bad things. Sudarsono said that someone who is addicted or dependent on narcotics will not only harm themselves, but can also harm other people, even if the person using it is a child (Sudarsono, 1995: 68). The large number of narcotics abusers among children is very worrying considering that they have to face the law for committing crimes and must be held accountable for their actions. A child who becomes a narcotics abuser will be subject to the same laws and regulations as an adult perpetrator, except that the judicial procedures for child perpetrators are different from those for adult perpetrators, namely guided by Law no. 11 of 2012.

Law Number 35 of 2009 and Law Number 23 of 2002 provide special protection to children involved in narcotics abuse. Children who commit violations of the law are regulated by Law Number 11 of 2012. The government has established the Special Child Development Institute (LPKA) as an educational and rehabilitation institution for child prisoners. Juvenile Prison has been changed to LPKA since the enactment of Law Number 11 of 2012. Law enforcement also seeks diversion for children who have committed narcotics crimes in accordance with Supreme Court Regulation Number 4 of 2014. Supreme Court Circular Letter Number 4 of 2010 also regulates placement. Narcotics abusers and addicts in medical and social rehabilitation institutions. However, law enforcement is still less effective and efficient due to various different interpretations of these regulations from law enforcement officials (Slamet Tri Wahyudi, 2022: 12).

Facts on the ground show that the implementation of Law no. 35 of 2009, Law no. 11 of 2012, PERMA no. 4 of 2014, and Sema No. 4 of 2010 for children is still not optimal. Children who abuse narcotics are more often sent to LPKA rather than receiving medical rehabilitation that is more in line with children's rights. The development of children who abuse narcotics at LPKA is not appropriate because these children need medical rehabilitation for physical, mental and mental recovery after falling into narcotics abuse. Furthermore, the Surabaya High Court decision case shows inconsistencies in the punishment of these children.

Based on the author's research, apart from the Surabaya High Court Decision Number: 42/Pid.Sus.Anak/2016/PT.Sby, there are several other court decisions, namely: 1) Decision Number: 13/Pid.Sus-Anak/2016/PN .Rhl who sentenced the child to imprisonment for 1 (year) year; 2) Decision Number: 53/Pid.Sus-Anak/2017/PN.Jkt.Brt which sentenced the child to imprisonment for 2 (two) years and even imposed a fine on the child amounting to Rp. 800,000,000,- (eight hundred million rupiah) with subsidiary imprisonment for 1 (one) month; 3) Decision Number: 28/Pid.Sus-Anak/2020/PN.Mre which sentenced the child to imprisonment for 2 (two) years and job training for 6 (six) months at the Social Welfare Implementation Institution (LPKS) Marsudi Putra Dharmapala Indralaya Ogan Ilir; and 4) Decision Number: 02/Pid.Sus-Anak/2022/PN.Crp which sentenced the child to imprisonment for 3 (three) years and 6 (six) months respectively at the Special Child Development Institution (LPKA) Class II Bengkulu.

One approach concept that can be proposed to provide more legal protection for children who abuse narcotics is through the Restorative Justice approach (Koesriani Siswosoebroto, 2009: 16). This concept is a strategy model developed in the 1960s as part of efforts to resolve legal problems involving criminal acts. In contrast to the approach used in the traditional criminal justice system, this approach places greater emphasis on the direct participation of those who commit criminal acts, as well as victims of these criminal acts, and members of the general public, in the process of resolving criminal cases. because this method is still discussed at a theoretical level, even though this perspective is actually developing and significantly influencing legal policy and practice in various countries (Eva Achjani Zulfa, 2009: 1).

Regulations regarding the Restorative Justice approach in handling criminal acts can be found in Prosecutor's Regulation Number 15 of 2020 and Attorney General's Guidelines Number 18 of 2021. Public prosecutors have authority in cases that will be delegated to court based on the responsibilities given by investigators. The indictment is the result of a research process carried out by the public prosecutor. Article 37 Law Number 16 of 2004 jo. UU no. 11 of 2021 states that the Attorney General is responsible for prosecutions carried out independently for the sake of justice based on law and conscience. The institutions of law enforcement officers are regulated by Law no. 16 of 2004 jo. UU no. 11 of 2021 which also mentions Restorative Justice as a goal that must be achieved.

The Restorative Justice approach has been accommodated in Law no. 11 of 2012 with the term diversion. The diversion process involves children, parents/guardians, and victims based on a Restorative Justice approach. However, implementing this approach is difficult in cases of children who abuse narcotics because of the instructions in Law no. 11 of 2012 requires that there be a perpetrator and a victim. This causes children who abuse narcotics to not receive legal protection. Apart from that, diversion in Law no. 11 of 2012 only applies to children under 12 years, while the definition of children in Law no. 23 of 2002 jo. UU no. 17 of 2016 states that a child is someone who is not yet 18 years old.

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

The use of criminal law as a means of dealing with narcotics abuse by children in reality only appears as a "legal machine" that prioritizes procedural justice, so that it often ignores the welfare and best interests of children. Therefore, based on the description above, it would be relevant for the author to formulate the problem, namely what are the rules for legal protection for children who abuse narcotics and how the Restorative Justice approach can provide more legal protection for children who abuse narcotics.

II. MATERIALS AND METHODS

Scientific research is carried out by people who channel their curiosity, accompanied by the belief that every symptom can be studied and the causes and effects can be found. A research that begins when someone tries to solve a problem systematically using a certain method, namely the scientific method to find the truth. Therefore, research is basically an important part of science which aims to know more and deepen all aspects of life (Soerjono Soekanto, 1990: 3). Research is a careful systematic study of nature and society to validate and refine existing knowledge and to produce new knowledge according to certain rules, namely methods. Thus, research is an activity to obtain or increase knowledge, which is carried out to enrich and improve "understanding" about something (Tejoyuwono Notohadiprawiro, 2006: 1).

The research method used in this thesis is normative juridical research, normative legal research can only be carried out by a lawyer who is consciously trained to understand and master the legal discipline. According to Hartono, the use of normative legal research methods is to know or recognize whether and how positive law is in relation to a particular problem, to be able to compile legal documents, to write essays or lectures or law books, to explain or explain to others what and how law is. it deals with a particular event or problem, carries out basic research in the field of law, drafts new legislation and prepares a Legal Development Plan.

III. RESULT AND DISCUSSION

Arrangements for Legal Protection for Children who Abuse Narcotics

When legal protection is explained literally, it can give rise to various different interpretations. In particular, legal protection can mean the protection given to the law so that it is not interpreted differently by law enforcers, and it can also mean the protection given by the law to something (Sudikno Mertokusumo, 2013: 38). Legal protection can also raise questions that make people doubt the existence of the law.

The law must protect everyone, regardless of legal status, because everyone has the same place before the law. Law enforcement officers are required to enforce the law, and if the rule of law operates, then the law will indirectly protect every legal relationship or every part of society's life that is regulated by law. The legal protection provided to the people is an application of the principles of a rule of law based on Pancasila and respect and protection of human dignity. Everyone has the right to legal protection. In general, the law should protect all legitimate relationships. As a result, legal protection appears in various forms.

A. Child Protection in Positive Law

The definition of a child includes when the child exists. Children are social creatures who need attention, affection and space for their development. They have their own feelings, thoughts and desires, which develop at each phase of development during childhood. Children are also capable of feeling a variety of emotions and experiencing joy, disappointment, or frustration. Unfortunately, children often become victims of crimes such as violence, exploitation, sexual abuse, child trafficking, etc., in various contexts including in the family, school, community, or online. It is important to protect children and ensure they grow up in a safe and supportive environment, which requires cooperation between individuals, families, communities and governments. Even though children are often considered as successors and symbols of the future, meeting their needs in the context of child protection is still not optimal. Children are actually valuable assets in various aspects of life, including social, cultural, economic, political, legal and generational continuity. The cultural values instilled in them are a valuable family asset and also the heir to the future of the tribe, nation and economy. In the realm of law, children have a strategic position and special rights that must be protected (Emeliana Krisnawati, 2015: 5).

According to Locke, children are born without any knowledge or understanding, and they learn through experience and interaction with the environment. Parents and educators have an important role in shaping children and helping them develop rational thinking abilities. Child protection involves initiatives that create an environment that supports children's physical, cognitive, emotional, and social growth. It is considered a fundamental aspect of justice in society, with child protection efforts involving the prevention, rehabilitation, and empowerment of children who are victims of violence, exploitation, and neglect. The basis for child protection includes Pancasila as the fundamental basis, the principles of professional ethics, and the legal basis contained in the 1945 Constitution. The implementation of child protection also prioritizes the best interests of children, starting from an early age, and involving the collective involvement of the community (John Locke, 2010: 19). Based on this, child protection in general is an order of life and livelihood for children that can guarantee their normal growth and development, both spiritually, physically and socially (John Locke, 2010: 19).

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

Child protection must meet several requirements to be optimal. First, all parties involved must understand child protection issues well in order to overcome the challenges that arise with appropriate action. Second, child protection measures must be implemented fairly and involve all members of society and collaborate with the government. Third, child protection initiatives require cooperation and coordination between relevant stakeholders. Constructive communication and education should also be promoted to reduce conflict. Fourth, to formulate effective policies, it is necessary to carry out a comprehensive assessment of the factors that hinder and facilitate the implementation of child protection. Fifth, the child's perspective must be prioritized in formulating child protection provisions regulated by law. Sixth, child protection requires integration and active participation of all individuals in society. Seventh, children must be given the capacity and opportunity to engage in efforts to protect themselves. Eighth, child protection must be based on philosophical, ethical and juridical principles that are in accordance with the research foundation. Ninth, the implementation of child protection must not make individuals feel inadequate or suffer losses. Tenth, child protection measures must be based on promoting and recognizing their basic rights. Child protection must be a top priority because it reflects justice, benefits and legal certainty in society. The absence of child protection can cause social problems and disrupt development. Therefore, legal provisions are needed that ensure child protection in all activities. Efforts to achieve legal certainty are very important to maintain the smooth implementation of child protection and prevent violence that endangers children's welfare (Arif Gosita, 2004: 18).

Children have the right to care and protection, both in the womb and after birth. They also have the right to protection from the environment that could harm their development. When in danger, children have the right to receive help, assistance and protection. Parents, families, communities and the state have a responsibility to protect children from situations that endanger them. Children's safety must be guaranteed so that they can grow and develop normally. The happiness of children is the happiness of parents, and protecting children means protecting happiness itself. If protection is carried out well, parents, society and the government will also feel happiness.

The international community has shown strong attention to child protection through various international rules governing children's rights. The principle of child protection in international law states that children have the right to special protection and provisions in all aspects of their lives. This protection must be provided in an environment that respects the child's freedom and dignity. The main consideration in regulations relating to the protection of children must be their optimal welfare. The Child Protection Law in Indonesia states that a child is someone who is not yet 18 years old, including those who are still in the womb. Children are considered legal subjects from the moment they are born, and if the child dies at birth, they are considered to have never existed. This law is a reference for child protection provisions in Indonesia.

Humans are legal subjects, which means they have rights and obligations in relation to legal traffic. However, not all humans are considered capable of doing it. According to Article 1330 of the Civil Code, people who are not legally competent include: "People who are not yet adults, those who are placed under guardianship." Children in a community are bringers of happiness; This can be shown at every wedding, there is a prayer of blessing and hope that the bride and groom will be blessed with children. Children are bringers of happiness (Maidin Gultom: 68).

B. Legal Protection of Children Who Abuse Narcotics in the Juvenile Criminal Justice System

The 1945 Constitution states that the state protects the poor and neglected children. Poverty is the main cause of child crime and child neglect by parents is caused by poverty. Even though there is legal protection for victims of criminal acts, the impact on underage victims has not been fully felt due to inadequate regulations. Apart from law enforcement, Law no. 23 of 2002 jo. UU no. 17 of 2016 provides extra protection for children who are victims of addictive substance abuse. The government and state institutions are tasked with protecting children, especially children who experience addictive substance abuse. UU no. 35 of 2009 regulates the government's responsibility in preventing narcotics abuse, including through narcotics education in the school curriculum. In the juvenile justice system in Indonesia, children who abuse drugs can go through the judicial process like perpetrators of other crimes. The juvenile justice process involves the police, prosecutor's office, parole institutions, juvenile courts and penal institutions (Purnianti, Mamik S.S and Ni Made M.T, 2003: 4).

The juvenile justice process aims to examine and decide what is best for the child. Police, prosecutors, judges and other officials must follow principles that focus on the welfare and interests of children. The juvenile justice system includes examining and resolving juvenile cases, from investigation to conviction. Children involved in criminal justice are vulnerable and experience negative impacts. They often experience physical, psychological and sexual violence, such as beatings, threats, insults, etc. The psychological impact can cause trauma, fear, sleep disturbances, and emotional instability. The long judicial process also leaves a bad impression on children, including social stigma.

The criminal justice process can lead to unintended consequences, such as trauma, embarrassment, and exclusion from school. Children who commit delinquencies also often receive negative stigma and are expelled from school. To avoid this negative impact, Law no. 11 of 2012 accommodates the diversion program, which moves the resolution of children's cases outside of criminal justice. This diversion protects children's rights and at the same time provides protection for children involved in drug

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

abuse. Placing children in the formal justice system can have detrimental consequences for them. Therefore, implementing diversion is important to safeguard children's human rights and provide protection for them (Beniharmoni Harefa, e.d., 2016: 85).

Therefore, diversion is a legal protection effort for children who abuse narcotics, to prevent children from the negative impacts of the criminal justice process, as regulated in Law no. 11 of 2012. This form of transfer of children as narcotics abusers is possible by handing them back to their parents/guardians or participating in education and training as well as community service. The authority for this assessment is of course in the area of investigation, namely the Indonesian National Police or the National Narcotics Agency (BNN). So that children really get protection. Children who abuse narcotics are diverted, by helping the child to be free from narcotics in the future.

C. Analysis of the Punishment of Children Who Abuse Narcotics from the Perspective of Child Protection Law

Several court decisions show that the implementation of Law no. 35 of 2009 and Law no. 11 of 2012 for children who have narcotics abuse problems is not yet fully effective. Many children who abuse narcotics are often sentenced to prison rather than receiving rehabilitation. In fact, a medical approach in treating children who abuse drugs is better in fulfilling their rights than prison. Some court decisions also punish children with prison sentences and fines, which is illogical because children cannot legally earn a living.

The Surabaya High Court in decision Number 42/Pid.Sus.Anak/2016/PT.Sby replaced the child's sentence by transferring him to a Special Children's Development Institution. However, in Cassation Decision Number 2232 K/Pid.Sus/Anak/2016, the child was instead sentenced to 1 year in prison and 3 months of work training at a Special Children's Development Institution. There are also several other decisions that sentence children to imprisonment and job training in different institutions.

In reality, handling children who abuse narcotics still prioritizes punishment rather than protection for children. In fact, the prison environment can exacerbate or strengthen criminal behavior in children. The prison experience can lead to stigmatization and social isolation, making it difficult for children to find employment and support in the community.

The government should focus more on rehabilitation for children who abuse drugs. Currently, there are not many treatment options available to them. Existing rehabilitation programs focus more on physical recovery and pay less attention to the psychological and social aspects of children. Children need ongoing support after rehabilitation therapy in order to maintain their recovery. Their surrounding environment can also influence the risk of returning to drug abuse.

It is important to provide comprehensive and ongoing support to children during and after rehabilitation therapy. This includes emotional support, stress management skills, adequate drug education, and establishing a supportive environment. Apart from that, it is also important to strengthen social support and reduce the stigma towards children who abuse drugs.

The rights of children who abuse drugs are often not prioritized or violated. They do not have adequate access to the education, health and care they should receive. They are also at risk of violence, exploitation and discrimination in the justice system. Although there are steps taken by the Indonesian government to improve legal protection for children who use drugs, there is still room for further improvement.

Children involved in drug abuse are not only lawbreakers, but also victims. Better legal protection needs to be provided to them. There needs to be a law that sees children as victims and not as perpetrators.

Restorative Justice as an approach to protecting children who abuse drugs

Regarding punishment in Indonesia, the types of punishment as contained in Article 10 of the Criminal Code (Law Number 1 of 1946 concerning Regulations on Criminal Law) have been formulated inseparable from the conditions of society that existed at the time the Criminal Code was formed. Thus, it is not excessive if in drafting the new Criminal Code (Law Number 1 of 2023 concerning the Criminal Code) which replaces the Criminal Code originating from WvS, a review of the types of crimes is carried out and then adjusted to current conditions. In the implementation process, determining sanctions and criminal actions is a legislative and/or judicial program activity to formalize the types and forms of sanctions as a basis for the legitimacy of law enforcement through the application of sanctions (M. Solehuddin, 2003: 80-81).

The philosophy of punishment is essentially related to the justification (revenge, profit/benefits, and intentional retaliation) for the existence of criminal sanctions. The philosophy of punishment is the philosophical basis for formulating a measure or basis for justice in the event of a violation of criminal law. The philosophy of justice in criminal law has two strong influences, namely justice based on the philosophy of retributive justice and justice based on the philosophy of restoration or restoration (Restorative Justice) (M. Solehuddin, 2003: 80-81). Whether the perpetrator is punished or not depends on whether he is guilty or not. If the person who committed the crime makes a mistake, of course he will be punished. However, he will not be punished if he is innocent even though he has committed a prohibited and reprehensible act. The principle "there is no punishment if there is no mistake" is the basis for punishing perpetrators (Roeslan Saleh, 1983: 75).

Protecting and directing children to become quality future generations who are responsible to their families, communities and the state. The rights of children in conflict with the law constitute special protection for children in the justice system. The definition of children in Law no. 23 of 2002 jo. UU no. 17 of 2016 has been expanded to cover unborn children. There are 31 children's rights in the law, which include survival, growth and development, protection and participation. These rights include

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

civil rights and freedoms, the right to care, the right to free time, the right to health and welfare, as well as the right to education and culture. According to UNICEF, a child in conflict with the law is someone under 18 years of age who faces the criminal justice system, whereas according to Law no. 11 of 2012, children in conflict with the law are children aged 12-17 years who are suspected of committing a crime.

A. Best Interests of Children in Conflict with the Law

Criminal penalties against children who violate the law must be *ultimum remedium*. This shows that criminal prosecution of children who violate the law must be the last alternative after all other legal remedies that benefit children no longer exist. In addition, punishment for criminal acts committed against children should prioritize the welfare of children and strive to increase and reduce the number of criminal acts committed by children. Through the juvenile justice system which is regulated implicitly by Law no. 11 of 2012, the application of the *ultimum remedium* principle is carried out in various forms.

Settlement of children's cases must be based on a fundamental premise that prioritizes the best interests of the child. The above concept requires that the use of formal justice procedures in cases involving children must be considered as a last resort (*ultimum remedium*) (Y. A Triana Ohoiwutun, e.d., 2017: 47).

Applying the concept of *ultimum remedium* to children involved in criminal activities is important in ensuring the protection of children's rights and overcoming challenges in administering punishment. Data shows a shortage of Special Child Development Institutions in several locations in Indonesia. The idea of *ultimum remedium* should be a guiding principle for judges when making decisions, which should be in line with the best interests of the child. The constitution guarantees children's rights to survival, growth, development, and protection from violence and discrimination. The sustainability of children's future must be prioritized by providing facilities and developing their potential.

The principle of the best interests of children is a form of protection used in resolving cases of children involved in criminal activities. In some cases, actions that are not regulated by law can be considered a violation of public order, and this challenges the legality of the punishment that can be given by the judiciary (Kamaruddin Jafar, 2015: 86-87). The failure to provide medical and social rehabilitation to children involved in criminal activities has resulted in an inadvertent disregard for the idea of prioritizing the best interests of the child. Remembering that children have different boundaries compared to adults. In addition, it is important to realize that children play an important role in upholding the principles and values of the Indonesian nation. As a result, the application of prison sentences to child perpetrators without accompanying rehabilitative intervention will most likely give rise to detrimental social perceptions and hinder the child's overall growth and progress (Afni Zahra, e.d., 2017: 19). In addition, it is important to realize that children play an important role in upholding the principles and values of the Indonesian nation. As a result, the application of prison sentences to child perpetrators without accompanying rehabilitative intervention will most likely give rise to detrimental social perceptions and hinder the child's overall growth and progress (Afni Zahra, e.d., 2017: 19).

The formal justice process, which begins with the arrest and detention of the child, culminating in the imposition of criminal consequences, has the potential to have a negative impact on the child's future. The concept of criminal individualization which is oriented towards the interests of children who abuse narcotics must prioritize efforts to protect and benefit children, or at least as an effort to prevent and not merely punish, because children who abuse narcotics are both victims and perpetrators. Settlement of children's cases must be based on the spirit of restorative justice which prioritizes restoration to the original state, and not imprisonment as retaliation.

B. Restorative Justice and the Juvenile Criminal Justice System

Currently, the Criminal Justice System is still believed to be a system that is capable of resolving every criminal case based on the purpose of the system's existence. The criminal justice system is a system built to overcome and control crime within acceptable limits of tolerance (Mardjono Reksodiputro, 1994: 140). The benchmark for the success of this system is if the majority of reports and complaints from the public stating that they are victims of a criminal act can be resolved by bringing the perpetrator to court and being punished (Mardjono Reksodiputro, 1994: 140).

The current criminal justice system focuses on court proceedings, but its primary goal is the reintegration of lawbreakers into society. Criminal cases are often handled in correctional institutions. The concept of punishment still dominates the criminal justice system, but a restorative approach is a more constructive alternative. The restorative approach focuses on repairing the harm caused by crime. The ultimate goal is to restore balance through dialogue, reconciliation and healing. Perpetrators of crimes must admit and be responsible for their actions, and try to repair the losses caused to victims and society. This approach turns mistakes into efforts to improve through actions that involve all related parties, including perpetrators, victims and the community (Mudzakir, 2013: 28).

Resolving criminal cases through Restorative Justice aims to change the perpetrator's mistakes with a remedial approach. This involves actions that reflect changes in the attitudes of all parties involved, with the aim of improving the situation. Stakeholders, including perpetrators, victims and the community, play a role in this process. However, the sustainability of Restorative Justice as an alternative for resolving criminal cases depends on the legal culture and community law enforcement officials. This concept

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

cannot be accepted by a justice system that only focuses on proving guilt and punishment. Restorative justice pursues the resolution of interpersonal conflict rather than incarceration, with a focus on integration and building positive relationships in society.

C. Restorative Justice for Children who Abuse Narcotics

Article 1 number 15 Law no. 35 of 2009 states that narcotics abuse is the use of narcotics without rights or breaking the law. There are three types of drug abusers: self-abusers, abuse victims, and non-reporting addicts. Self-abusers are people who use narcotics without authorization or in violation of the law for their own consumption, not for sale. Victims of narcotics abuse are people who accidentally use narcotics because they are forced or threatened. Addicts who do not report are people who use or abuse narcotics and are physically and psychologically dependent. Rehabilitation is only available to those who have been identified as addicts and victims of narcotics abuse. However, individuals who abuse narcotics are also responsible for their ownership and management. This causes confusion in the application of the law. The restorative justice approach focuses on restoring conditions before the crime occurred. The criminal approach prioritizes punishment and resocialization. Restorative justice emphasizes the interests of victims, accountability of perpetrators, and restoring relationships. Currently, rehabilitation is still seen as part of punishment. The court has the freedom to choose between rehabilitation and imprisonment under Law no. 35 of 2009. Rehabilitation is still considered part of the punishment.

Sentencing in Indonesia still follows a double track system, which involves criminal action and rehabilitation. A focus on rehabilitation can help individuals involved in drug abuse to recover and return to society. Concrete rehabilitation efforts can include medical detoxification programs, medical and psychological rehabilitation, social recovery, education and prevention, access to mental health services, and social reintegration. These programs should be based on a holistic approach that considers the physical, mental, emotional, and social aspects of the individual. It is also important to provide long-term support after the individual leaves the rehabilitation program to prevent returning to old habits. By involving medical personnel, counselors, families and the community, the state can help children who abuse drugs to restore their quality of life.

Apart from that, the Restorative Justice Approach is now also regulated in Prosecutor's Regulation Number 15 of 2020 and Attorney General's Guidelines Number 18 of 2021. These guidelines provide a reference for public prosecutors to optimize the resolution of criminal cases of narcotics abuse through rehabilitation with a restorative justice approach. The aim of forming this Guideline is to improve the resolution of criminal cases of narcotics abuse through rehabilitation using a Restorative Justice approach. This is done because the current punitive criminal justice system is still not providing optimal results, as can be seen from the density of prisoners in prisons and detention centers, most of whom are convicts of narcotics crimes.

For children who abuse narcotics, the Public Prosecutor can implement a rehabilitation program based on Attorney General's Guidelines Number 18 of 2021 as a form of protection and justice. This policy is in line with the mandate of the Attorney General, ST Burhanuddin, for the Prosecutor's Office to implement more humane law enforcement. For the author, rehabilitation through Attorney General's Guidelines Number 18 of 2021 is a humanist form of law enforcement because it provides protection to children who abuse narcotics.

The issue of more than one's own capacity is a serious concern for society and the government as stated in the 2020-2024 National Medium Term Development Plan in the context of improving the criminal justice system through a Restorative Justice approach (Marfuatul Latifah, 2021: 1). Therefore, strategic criminal policies are needed, especially in handling criminal cases of narcotics abuse, one of which is through reorienting law enforcement policies in the implementation of Law no. 35 of 2009. Through this reorientation of law enforcement policies, the implementation of the duties and authority of the Prosecutor's Office in the field of prosecution is carried out by optimizing rehabilitation institutions. The prosecutor's office as case supervisor based on the Dominus Litis principle can resolve narcotics abuse cases through rehabilitation at the prosecution stage. Completion of the handling of criminal cases of narcotics abuse through rehabilitation is a mechanism that cannot be separated from the implementation of Restorative Justice, with the spirit of returning to the original situation which is carried out by restoring narcotics abusers, which is a victimless crime.

Rehabilitation in handling narcotics abuse cases focuses on restorative justice, expediency, fast, simple and cheap justice. Guideline No. 18 of 2021 covers pre-prosecution, prosecution, supervision, guidance and financing for rehabilitation of narcotics abuse using a Restorative Justice approach. The explanation by the Deputy Attorney General for General Crimes, Fadil Zumhana, shows a positive trend in the implementation of restorative justice in narcotics cases. Violators will be evaluated based on various factors, including evidence, individual qualifications, type of crime, and related legal provisions. The Public Prosecutor also has a special responsibility to ensure that the suspect is an end user and understands the suspect's profile and environment. Rehabilitation is only provided to addicts and victims of narcotics abuse. For those who possess small amounts of narcotics for personal consumption, rehabilitation can also be carried out. This guideline provides legal protection to children who abuse drugs by providing opportunities for rehabilitation and reintegration into society. The approach to children who violate the law focuses more on guidance, rehabilitation and self-recovery so that they become productive members of society. Restorative Justice for children who abuse drugs is important to improve their behavior and help in their recovery.

CONCLUSIONS

Legal protection for children who abuse drugs in Indonesia is regulated by several laws and several court decisions have been issued regarding their implementation. Judicial practices still tend to send child abusers to correctional institutions rather than using a medical rehabilitation approach. Some decisions even impose prison sentences or fines on children, which is not legally logical because children do not yet have the legal skills to work to earn money. Even though there are child protection provisions in legislative documents, fulfilling the provisions alone is not enough to eliminate the bad conditions experienced by children who abuse drugs. Child protection requires comprehensive implementation in various government and social fields.

The resolution of cases involving children who abuse drugs is currently still dominated by retribution rather than recovery. A restorative justice approach can be a more constructive solution, where children are invited to admit their actions, take responsibility, and repair the harm caused. This approach focuses on improvement and shared goals to achieve recovery. However, the application of this approach depends on the legal culture of society and law enforcement officials.

Rehabilitation for children who abuse drugs is still part of the punishment. Article 54 Law no. 35 of 2009 states that narcotics addicts are required to undergo medical and social rehabilitation. However, rehabilitation is currently still considered part of the sentence and the rehabilitation period is counted as a criminal period. Concrete rehabilitation efforts involve medical detoxification programs, medical and psychological rehabilitation, social recovery, education and prevention, access to mental health services, and social reintegration. The aim is to help children who abuse drugs recover physically, mentally and socially so they can contribute back to society as productive citizens free from drug addiction.

REFERENCES

- 1) Afni Zahra dan RB. Sularto. "Penerapan Asas Ultimum Remedium dalam Rangka Perlindungan Anak Pecandu Narkotika". Law Reform. Vol. 13, No. 1 (2017). hlm. 19.
- 2) Arif Gosita. 2004. Masalah Perlindungan Anak. Jakarta: Bhuana Ilmu Populer.
- 3) Beniharmoni Harefa dan Vivi Ariyanti. 2016. Seputar Perkembangan Sistem Peradilan Pidana Anak & Tindak Pidana Narkotika di Indonesia. Yogyakarta: Deepublish.
- 4) Emeliana Krisnawati. 2015. Aspek Hukum Perlindungan Anak. Bandung: Utomo.
- 5) Eva Achjani Zulfa. 2009. Keadilan Restoratif di Indonesia: Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif Dalam Praktek Penegakan Hukum Pidana. Disertasi. Program Doktor Ilmu Hukum Universitas Indonesia. Jakarta.
- 6) John Locke dalam Irma S. Soemitro. 2010. Aspek Hukum perlindungan Anak. Jakarta: Bumi Aksara.
- 7) Kamaruddin Jafar. Restorative Justice atas Diversi dalam Penanganan Juvenile Delinquency (Anak Berkonflik Hukum). Al-'Adl. Vol. 8, No. 2 (2015). hlm. 86-87.
- 8) Koesriani Siswosobroto. 2009. Pendekatan Baru dalam Kriminologi. Jakarta: Penerbit Universitas Trisakti.
- 9) M. Solehuddin. 2003. Sistem Sanksi dalam Hukum Pidana di Indonesia, Ide Dasar Double Track System Implementasinya. Jakarta: Raja Grafindra Persada.
- 10) Maidin Gultom. Perlindungan Hukum terhadap Anak dan Perempuan.
- 11) Mardjono Reksodiputro. 1994. Mengembangkan Pendekatan Terpadu Dalam Sistem Peradilan Pidana (Suatu Pemikiran Awal) dalam kumpulan tulisan Kriminologi dan Sistem Peradilan Pidana, Buku Kedua. Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia.
- 12) Marfuatul Latifah. 2021. Optimalisasi Rehabilitasi Bagi Pecandu dan Penyalahguna Narkotika, Isu Sepekan Bidang Hukum. Pusat Penelitian Badan Keahlian DPR RI.
- 13) Mudzakir. 2013. Analisis Restorative Justice: Sejarah, Ruang Lingkup, dan Penerapannya. Jakarta: Macanan Jaya Cemerlang.
- 14) Purnianti, Mamik Sri Supatmi dan Ni Made Martini Tinduk. 2003. Analisa Sistem Peradilan Pidana Anak (Juvenile Justice System). Jakarta: Unicef Indonesia.
- 15) Roeslan Saleh. 1983. Perbuatan Pidana dan Pertanggungjawaban Pidana. Jakarta: Aksara Baru.
- 16) Romli Atmasasmita. 1983. Problem Kenakalan Anak-anak atau Anak: Yuridis Sosio Kriminologis. Bandung: Armico.
- 17) Rosichin Mansur. Lingkungan Yang Mendidik Sebagai Wahana Pembentukan Karakter Anak. Vicratina: Jurnal Pendidikan Islam, Vol. 8, No. 1 (2023). hlm. 38.
- 18) Slamet Tri Wahyudi. 2022. Design Restorative Justice Terhadap Penyalahguna Narkotika. Bahan Presentasi dalam FGD Puslitbangkumdil MA RI. Jakarta.
- 19) Soedjono Soekanto. 1985. Narkotika dan Anak. Bandung: Alumni.
- 20) Soerjono Soekanto. 1990. Ringkasan Metodologi Penelitian Hukum Empiris. Jakarta: Ind-Hill-Co.
- 21) Sudarsono. 1995. Juvenile Delinquency. Jakarta: Rineka Cipta.
- 22) Sudikno Mertokusumo. 2013. Penemuan Hukum. Bandung: Citra Aditya Bakti.
- 23) Tejoyuwono Notohadiprawiro. 2006. Metode Penelitian dan Penulisan Ilmiah. Yogyakarta: Universitas Gajah Mada.

Legal Protection of Children of Narcotics Abusers with A Restorative Justice Approach

- 24) Y. A Triana Ohoiwutun dan Samsudi. Penerapan Prinsip Kepentingan Terbaik Bagi Anak dalam Kasus Tindak Pidana Narkotika Kajian Putusan Nomor 229/Pid.B/2012/PN.Jpr. Jurnal Yudisial. Vo. 10, No. 1 (2017), hlm. 47.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.