

RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW IN NARCOTICS CASES

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Abstract: The aim of this study is to examine the implementation of restorative justice for juveniles involved in narcotics cases within the context of law enforcement. The research adopts a normative legal approach with a descriptive nature, focusing specifically on the analysis of the ambiguity within Article 82 of Law Number 11 of 2012 regarding the Juvenile Criminal Justice System. Both statutory and conceptual approaches are employed in this legal inquiry. The findings reveal that efforts to address narcotics-related offenses among juveniles are pursued through a combination of non-penal and penal policies. Non-penal measures involve preventive and repressive strategies, including counseling, awareness campaigns, distribution of informative materials such as pamphlets and billboards, engagement with traditional and religious leaders, and community guidance. In conclusion, this research underscores the necessity of integrating restorative justice principles into the handling of juvenile offenders involved in narcotics cases. It emphasizes the importance of a multifaceted approach that encompasses both preventive and punitive measures within the legal framework.

Keywords: children, restorative justice, drugs.

1. INTRODUCTION

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence. Narcotics cases are a concern for all countries in the world so that the increasing number of cases of abuse and illicit trafficking of narcotics makes this narcotics crime referred to as an extraordinary crime. Regarding this matter, *"Extraordinary crime must be treated with an extraordinary way. The increase of narcotics illicit trafficking number directly proportional to the number of narcotics addict and narcotics abuser increased. So, it needs massive and comprehensive handling. The pattern of narcotics crime case*

handling is continuously developing. Through National Narcotics Board, government intensified efforts to prevent, combat, and rehabilitation.” (Saefudin, Agus, & Budiono, 2017)

Indonesia's Non-Ministerial Government Institution, the National Narcotics Agency, issued a stance in its 2020 year-end press release entitled "The National Narcotics Agency's Stance is Firm, Realizing a Drug-Free Indonesia". That based on data from the UNODC World Drug Report in 2020, the National Narcotics Agency revealed: "there are around 269 million people in the world abusing drugs (2018 research). This number is 30% more than in 2009 with the number of drug addicts recorded at more than 35 million people. UNODC also released a global phenomenon where until December 2019 there have been reported additional findings of new substances of more than 950 types. Meanwhile in Indonesia, based on data from the National Narcotics Agency Laboratory Center, to date 83 New Psychoactive Substances have been detected, of which 73 NPS have been included in the Regulation of the Minister of Health of the Republic of Indonesia Number 22 of 2020" (Badan Narkotika Nasional, 2020).

Since the enactment of Law No. 11/2012 on Juvenile Justice System replacing Law No. 3/1997 on juvenile justice, the system of special punishment for children has changed. In the new law, the concept of children is recognized more broadly, consisting of children in conflict with the law, which is further divided into three, namely children in conflict with the law, children who are witnesses and children who are victims of criminal acts. The most prominent aspect of the punishment system in the new law is restorative justice, which is known as a system to restore the child's position to its original state, in other words, if the child is included as a child in conflict with the law, then the crime he committed can be reconciled with the victim.

Meanwhile, when children in conflict with the law enter the prosecution stage, the role of the prosecutor in determining what actions are applied is very vital. Law No. 11/2012 also explicitly instructs investigators, prosecutors and judges to prioritize diversion in resolving children's cases. In terms of investigators, we all know that investigators have always adhered to the principle of legality in carrying out their duties as law enforcers to resolve the cases they face. This pattern has been running for a

long time, then a new style of investigation was born, namely when examining children's cases that have been mandated by the Law to prioritize diversion. In reality, there will indeed be an adaptation process that is quite energy-consuming for investigators, prosecutors and judges to implement this new style is restoratif justice.

Restorative justice is considered a new method of thinking/paradigm in seeing a crime committed by a person, especially in the case of a child. Due to the high number of children in conflict with the law which ultimately leads to punishment, which is not in accordance with the objectives of the Convention on the Rights of the Child, namely the best interests of the child. Arrest, detention, investigation, and investigation are the authority of the police in the implementation of the juvenile criminal justice system. In carrying out the process of implementing diversion in juvenile criminal justice from the police investigation, they are given an authority called discretionary power.

The problem that arises is the application of restorative justice in narcotics cases committed by children, or the children referred to here are known as children in conflict with the law. Normatively, this restorative problem in narcotics crimes has a legal umbrella only in the form of a police regulation. Namely Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. The starting point of the problem arises regarding the authority to resolve this issue only based on sectoral regulations (police regulations) while a case should not be resolved by a sectoral regulation alone. Because the case will continue to a higher level, for example not only in the investigation but will continue to the prosecution stage and then examination in court. The problem limitation in this thesis research is that children in conflict with the law must be carried out restorative justice in the investigation of narcotics cases.

2. METHODS

This research will employ a qualitative approach to gain an in-depth understanding of the implementation of restorative justice for children in conflict with the law in narcotics cases. The research design will be descriptive, focusing on detailed analysis of how restorative justice is applied in cases involving children engaged in narcotics-related offenses. Subjects will include children involved in narcotics cases who

have undergone restorative justice processes, as well as restorative justice practitioners, social workers, and legal officers involved in the process. Data will be collected through in-depth interviews with the involved children, restorative justice practitioners, social workers, and legal officers. Additionally, direct observation of the restorative process will be conducted to enhance understanding. Qualitative data will be analyzed thematically, involving transcription of interviews, coding of data, identification of main patterns and themes, and interpretation of findings to develop a holistic understanding of the application of restorative justice in narcotics cases. Data validity will be ensured through data triangulation, comparing data from different sources to verify consistency. Reliability will be strengthened through consistent research methodology and clear guidelines in data collection and analysis. The research will adhere to principles of research ethics, including confidentiality, privacy, and safety of research subjects, obtaining ethical approval from relevant authorities before commencing the research.

Through this research methodology, it is expected to gain an in-depth understanding of the application of restorative justice for children in conflict with the law in narcotics cases, as well as the potential and challenges associated with this approach in the context of narcotics law.

3. RESULTS AND DISCUSSION

3.1. Children in Conflict with the Law

The national definition of a child is based on the age limit of the child in criminal law and civil law. Internationally, the definition of a child is contained in the 1989 United Nations Convention on the Rights of the Child. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rule") of 1985 and the Universal Declaration of Human Rights of 1948.

Nationally, the definition of a child according to legislation states that a child is a person who has not reached the age of 21 (twenty-one) years or has not married. There are also those who say that a child is a person who is not yet 18 (eighteen) years old. Article 1 point 1 of Law No. 23 of 2002 jo Law No. 35 of 2014 concerning Child

Protection states that a child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb, while Article 1 point 3 of Law No. 11 of 2012 concerning the Child Criminal Justice System states that a child is a person who has reached the age of 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a criminal offense.

There is a wide range of opinions as to the prospective legal provisions for determining the maximum age of a child. The proper age of a child in terms of national law and international law (Convention on the Rights of the Child/CRC), has been formulated into notions defined by legal specifications, such as the following:

- a. The age limit according to Civil Law places the age limit of children based on Article 330 paragraph (1) of the Civil Code as follows:
 - 1) The limit between the age of immaturity (minderjarigheid) and maturity (meerderjarigheid), which is 21 (twenty-one) years old;
 - 2) And a child under the age of 21 (twenty-one) years who has married is considered an adult.
- b. The age limit of children according to Law No. 1 of 1974 concerning Marriage, Article 7 paragraph (1), and Article 50 paragraph (1), is as follows:
 - 1) Article 7 paragraph (1), states that the minimum age for marriage for a man is 19 (Nineteen) years old.
 - 2) Article 47 paragraph (1), states that the minimum age of 18 (eighteen) years is under the authority of the parents as long as that authority is not revoked.
 - 3) Article 50 paragraph (1) mentions the age limit of children who have not reached the age of 18 (eighteen) years or have never been married are in the status of guardianship.
- c. The age limit of children according to Law No. 4 of 1979 concerning Children's Health Article 1 point 2, states that a child is a person who is not yet 21 (twenty-one) years old and has never been married.
- d. The age limit of children according to the Convention on the Rights of the Child in Article 1 section 1 of the Convention on the Rights of the Child states that as follows: "A child is any human being under the age of 18 (eighteen) years unless under the law applicable to children maturity is attained sooner."
- e. The age limit of children according to Law No. 23 of 2002 jo Law No. 35 of 2014 concerning Child Protection is a person who is not yet 18 (eighteen) years old, including children who are still in the womb.
- f. The age limit of children according to Law No. 11/2012 on Juvenile Justice System Article 1 point 3, Article 1 point 4, Article 1 point 5, as follows:
 - 1) Article 1 point 3 states that children in conflict with the law, hereinafter referred to as children, are children who have reached the age of 12 (twelve

- years), but not yet 18 (eighteen) years old who are suspected of committing a criminal offense.
- 2) Article 1 point 4 states that a child who is a victim of a criminal offense, hereinafter referred to as a child who is under 18 (eighteen) years of age who has experienced physical, mental or emotional suffering.
 - 3) Article 1 point 5, states that a child witness to a criminal offense, hereinafter referred to as a child witness, is a child who is not yet 18 (eighteen) years old who can provide information for the purpose of investigation, prosecution, and court hearing about a criminal case that he/she has heard, seen, or experienced himself/herself.

This grouping is intended to recognize the exact factors that cause responsibility for children, the process of Juvenile Criminal Justice starting from investigation, prosecution, court, and in carrying out court decisions in juvenile correctional institutions must be carried out by officials who are specially educated or at least know about children's issues. Treatment during the juvenile criminal justice process must pay attention to the principles of child protection and continue to uphold the dignity of the child without neglecting the implementation of justice, and not making the child's human value lower. For this reason, it is important that law enforcers are not experts in the field of law, but rather are honest and wise, and have a broad and deep view of the weaknesses and strengths of people and society.

Article 2 of the Juvenile Criminal Justice System Law stipulates that the Juvenile Criminal Justice System is implemented based on the principles of protection, justice, non-discrimination, best interests of the child, proportionality, deprivation of liberty, and punishment as a last resort, and avoidance of retaliation.

Handling problem children through the implementation of juvenile criminal justice, directed to stick to the principle that the implementation of juvenile criminal justice is an integral part of child welfare efforts, which can provide assurance that every reaction to children in conflict with the law is always treated proportionally in accordance with the situation of the perpetrator's environment or his actions.

The juvenile criminal justice system is of course different from the adult criminal justice system, juvenile criminal justice includes all activities of examining and deciding cases that involve the interests of children. Emphasizing or focusing on the interests of

children must be the center of attention in juvenile criminal justice. In juvenile criminal justice there are several elements including:

- a. Child Investigator;
- b. Juvenile Public Prosecutor;
- c. Juvenile Judge;
- d. Juvenile Correctional Officer.

The position of Law No. 11/2012 on Juvenile Criminal Justice System has achieved legality procession, then positioned the principles of criminal procedure law more prospectively. The formulation of the provisions of Law No. 11/2012 on Juvenile Criminal Justice System becomes the objective of legal principles in the process of juvenile justice in Indonesia.

According to Apong Herlina, children in conflict with the law can also be said to be children who are forced to come into conflict with the criminal justice system because (Herlina & dkk., 2014):

- a. Suspected, charged, or found guilty of violating the law; or
- b. Has become a victim as a result of a violation of the law committed by a person/group of people/institution/State against him/her; or
- c. Has seen, heard, felt or known an event of violation of the law.

Therefore, according to Apong Herlina, when viewed from the scope of children dealing with the law can be divided into (Herlina & dkk., 2014, p. 43):

1. The perpetrator or suspect of a criminal offense
2. Victim of a criminal offense
3. Witness of a criminal offense.

Children as perpetrators or children in conflict with the law are children who are suspected, charged, or found guilty of violating the law and need protection. The word conflict itself means showing the existence of an event that is not in harmony or contrary to an event, so that it can be said to be a problem. Therefore, the definition of children in conflict with the law is children who have problems because of an act that is contrary to the law. Child delinquency is often referred to as juvenile delinquency, which is defined as a socially disabled child. As is known, there are various opinions about juvenile delinquency.

According to (Atmasasmita & dkk., 1977): *"Delinquency is an act or deed committed by a child that is considered contrary to the provisions of the law in force in a country and by the community itself is felt and interpreted as a reprehensible act"*.

According to Wagiyati Soetodjo and Melani: "This child delinquency is taken from the term juvenile delinquency but this child delinquency is not delinquency as referred to in Article 489 of the Criminal Code Juvenile means Young, children, young people, characteristic features in youth typical traits in the adolescent period while delinquency means doing wrong, neglect / neglect, which is then expanded to mean evil, a-social, criminal, rule breaker, troublemaker, troublemaker, penteror, incorrigible, dursjana, dursila, and others."

According to (Karto, 1992, p. 7): "Delinquency has always had connotations of assaults, offenses, crimes, and violence committed by young people under the age of 22 (twenty-two)."

The principles underlying the policy of overcoming juvenile delinquency are different from adults, modification of penal and non-penal measures in criminal politics for juvenile delinquency is a necessity for the integration of crime prevention policies with social politics and law enforcement politics. In the context of overcoming juvenile delinquency and juvenile delinquent behavior, it is necessary to modify the politics of public health and the politics of public protection in general..

3.2. Children in conflict with the law in drug crime investigations

In criminal law, narcotics crime is one of the specific illegal acts. The regulation of narcotics crime is outlined in Law Number 35 Year 2009 on Narcotics. The criminal sanctions used in the Narcotics Law are Main criminal sanctions in the form of death penalty, life imprisonment, imprisonment with a certain time limit, confinement, fines and other additional penalties; Action sanctions in the form of medical and social rehabilitation. Aggravation of criminal offenses based on the amount or narcotics, the consequences caused, carried out in an organized manner, carried out by a corporation, carried out by using children who are not yet of age, and if there is a recidivism within a period of 3 (three) years (Dirjosisworo, 1990).

Children are special legal subjects, whose rights are protected and regulated in special laws and regulations. Related to the case of children who commit narcotics crimes, the Law on Child Protection and the Law on the Child Criminal Justice System regulate the legal protection of children in conflict with the law. So in this case the sanctions for adults and children are different (Siswantoro, 2004).

A decision relating to children as perpetrators of narcotics crimes can be seen in a case in Gianyar, where a child was asked by his father to deliver narcotics or become a drug courier. This case has been decided by the District Court of Gianyar with Decision Number 2/PID.SUS-ANAK/2015/PN Gin, stating that a 14-year-old child was sentenced to 2 years 6 months imprisonment and 2 months of vocational training because he was legally and convincingly proven guilty of committing the crime of "without the right or against the law, attempting or conspiring to deliver Class I Narcotics in the form of non-plants" and the child was detained at the Karangasem Special Development Institute for Children (LPKA).

Based on the case, the decision given by the judge is to apply criminal sanctions in the form of imprisonment against children who commit narcotics crimes as drug couriers. The basis of the judge's consideration to apply criminal sanctions in the form of imprisonment against children is Article 114 paragraph (1) of the Narcotics Law along with considering the criminal provisions in the Child Criminal Justice System Law as a special foundation in juvenile criminal justice.

Based on Decision no. 2/PID SUS-ANAK/2015/PN Gin, it is known that the defendant, who was 14 years old at the time, was sentenced to 2 years 6 months imprisonment and 2 months of vocational training. This is in accordance with the provisions of Article 69 paragraph (1) of the Juvenile Criminal Justice System Law, which allows the imposition of criminal sanctions only on children who are 14 years old. In Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there are principles that need to be considered in terms of legal protection of children in conflict with the law, among others:

- a. Protection;
- b. Justice;

- c. Nondiscrimination;
- d. Best interest of the child;
- e. Respect for the child's opinion;
- f. Survival and development;
- g. Guidance and mentoring of children;
- h. Proportional;
- i. Deprivation of liberty and punishment as a last resort;
- j. Avoidance of retaliation.

The Law on Juvenile Justice System recognizes the term diversion, which is a transfer from the judicial settlement process to an out-of-court settlement process. Article 9 paragraph (2) of the Juvenile Criminal Justice System Law states that the implementation of diversion in juvenile criminal justice must always be pursued, considering that the article states that diversion can still be applied to crimes without victims, where narcotics crimes are crimes without victims, so children as perpetrators here are also victims. In this regard, diversion can only be carried out by investigators together with the perpetrator and / or his family, community guides, and can involve community leaders to jointly seek a fair solution by emphasizing recovery back to its original state and not retaliation or better known as the restorative justice approach. The diversion agreement listed in article 11 of the Law on the Juvenile Criminal Justice System can take the form of handing back to parents/guardians, medical and psychosocial rehabilitation, and attending education or training at educational institutions or Social Welfare Institutions for a maximum of 3 (three) months. Settlement outside the judicial process is expected to provide a sense of justice for children in conflict with the law and by prioritizing the best interests of the child (Prinst, 2003).

The imposition of sanctions against children should be considered, considering that children are very special legal subjects that are different from adult legal subjects in general who require special treatment as well. This means that if the application of sanctions on adults is considered ineffective as a means of crime prevention due to the various negative impacts it causes, then the application of sanctions against children will actually have a much wider negative impact.

As for the application of imprisonment against children has a negative influence on the development of children in society, among others Dehumanisasi and Stigmatisasi.

Legal protection efforts against children can be carried out in the form of protection of children's fundamental rights and freedoms of children (Arief, 1998). Children's rights under the Convention on the Rights of the Child (Farid & dkk., 2003), can be formulated as follows, namely: the right to survival; the right to develop; the right to protection; the right to participation. The legal protection of children's rights intends to protect various interests related to the welfare of children. One form of legal protection for children's human rights is the legal protection of children in the juvenile criminal justice system.

In 2016, with the increasing cases of violence, especially sexual violence against children, a Regulation in Lieu of Law (Perppu) on Child Protection was issued. The Perppu was subsequently enacted as a law through Law Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection, hereinafter the Child Protection Law.

In Indonesia's juvenile criminal justice system, based on Law No. 11/2012 on the Juvenile Criminal Justice System (hereinafter the Juvenile Criminal Justice System Law), every child who commits a criminal offense may be brought before the judicial process like any other criminal offender. Including children who abuse drugs, they can be dealt with in the formal criminal justice system.

The juvenile criminal justice system can be defined as all elements of the criminal justice system, which are involved in handling cases of juvenile delinquency. First, the police as the formal institution where delinquent children first come into contact with the justice system. Secondly, the prosecutor and the parole board who will determine whether the child will be released or processed to the juvenile court.

Third, the juvenile court, the stage when the child will be placed in options, ranging from release to incarceration. The fourth or last stage is the institution of punishment (Purnianti, Supatmi, & Tinduk, 2003).

The juvenile justice system encompasses all activities of examining and deciding cases concerning the interests of children. That is, all activities carried out by the police, prosecutors, judges and other officials, must be based on the principle that the welfare of the child and the interests of the child are in their best interests.

Thus, the juvenile criminal justice system includes all activities of examining and deciding children's cases, which are carried out since the investigation by the police, prosecution by the prosecutor, trial in court by the judge and punishment by the correctional institution, all of these activities are certainly carried out by considering the interests of the child.

As vulnerable parties, there are many adverse impacts on children (especially children who commit criminal offenses) when placed in the criminal justice process. These adverse impacts include acts of violence. Violence can be physical, psychological or sexual. Physical violence, including beatings, torture, having their hair cut, being slapped, lighting cigarettes, being placed in mixed detention with adult offenders, or other cruel and inhumane acts, are often encountered by children.

In practice, there are at least two articles that are often used in ensnaring child drug offenders. Namely Article 111 and Article 127 of the Narcotics Law. Article 111 stipulates that every person who without the right or against the law plants, maintains, possesses, stores, controls, or provides class I narcotics in the form of plants, is sentenced to a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years.

4. CONCLUSIONS

Efforts to overcome and combat narcotics crimes in the jurisdiction are carried out through non-penal policy and penal policy. Non-penal policies are carried out through preventive and repressive efforts that are implemented through counseling, narcotics safaris, distribution of pamphlets and billboards as well as approaches to traditional and religious leaders and guidance to the community. This approach is carried out by the Police in collaboration with the National Narcotics Board and experts through the perspectives of cultural anthropology, sociology, communication,

psychology, healthy living education (public health science). Non-penal policies are aimed at children (including school-age adolescents) and the general public. Countermeasures and eradication of narcotics crimes with penal policies.

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