

CRIMINAL ASPECTS OF CHILD VICTIMS OF NARCOTICS CRIME IN THE PERSPECTIVE OF RESTORATIVE JUSTICE*

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Abstract

Narcotics as a criminal act is often an essential concern in law enforcement cases by the government and society. The purpose of the establishment of the Narcotics Law, as in Article 4, is to prevent, protect and save the Indonesian nation from narcotics abuse and eradicate illicit narcotics trafficking. This research uses normative research methods by examining legislation. This normative research is intended to read legal regulations regarding how the validity of Restorative Justice in protecting children as victims of narcotics crimes. Because there are many cases of minors who are victims in the distribution of narcotics caused by an unstable economy. The regulation of the principle of restorative Justice for children has been accommodated in Indonesian legislation, even in the state constitution, namely the 1945 Constitution of the Republic of Indonesia; it also emphasizes the importance of the position and protection of children's rights, which must be further elaborated in everyday life in the nation and state. Handling children in drug abuse can use alternative efforts with restorative principles that position child punishment as "The Last Resort" with the theory of criminal law as Ultimum remedial, where it can improve itself according to the interests of the child when faced with the law.

Keywords: Restorative Justice; Children; Narcotics; Punishment.

INTRODUCTION

Narcotics as a criminal act are of particular and vital concern in law enforcement by the government and society. The government's response to narcotics has been outlined in the creation of legislation, namely Law Number 35 of 2009 concerning Narcotics, which is now referred to as the Narcotics Law. (wijayanti puspita dewi 2019). One of the aims of establishing the Narcotics Law, as stated in Article 4, is to prevent, protect and save the Indonesian nation from narcotics abuse and eradicate the illicit trafficking of narcotics and narcotics precursors. The problem that often occurs is abuse beyond the interests and medical needs of the victim. Its development is increasing along with traffic and modern transportation, which makes

narcotics spread more quickly(Putri et al., 2019).

I was quoting from (puslitdatin BNN 2022) that the Indonesia Drugs Report in 2022 states that there is an increase in the prevalence of narcotics abuse in Indonesia among those aged 15 to 24 years, namely 1.87 from 2019, which was 1.30. Furthermore, BNN also revealed that the ten regions with the most narcotics cases were detected, including North Sumatra with 6,077 instances, East Java with 5,931, and DKI Jakarta with 3,511 narcotics cases. For example, in the Bangkalan area, East Java, involving minors in illegal narcotics trafficking occurred some time ago in 2022 in Bangkalan, East Java. One of the couriers, still 17 years old, was lured by Rp. 2,000,000.00 as compensation for services as a courier. Based on these phenomena, there is a Child Protection Law which can



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prove whether the minor is indeed an abuser or just a victim.(Nugraha dan UUD 1945)

It was found that children who commit narcotics crimes are influenced by several aspects, namely, relationships, education, and so on. This action results from imitating other people in their environment(Mohammad et al. Z. Tanamas n.d.) Thus, it has a significant impact on the criminal justice process, which disrupts the growth and development of children as victims of narcotics crimes. So, there is a need for a solution to provide relief to children when handled through non-judicial channels (diversion). Where the use of criminal Justice (Judicial) as a means of handling crimes related to children burdens the child and challenges the child's rights to grow and develop as they should. So, there are implications for managing the process from judicial to non-judicial for children as a basis for preventing children from applying criminal law and punishment. (Ciptono 2019)

Based on the explanation above, in supporting the implications of the non-judicial process, there is restorative Justice or Restorative Justice as an approach to the conventional criminal justice system, which focuses on the direct participation of perpetrators, victims and the community in handling criminal cases. (Rr. Susana Andi Meyrina 2017). Restorative Justice has been regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (from now on referred to as the SPPA Law). It is in Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (UU PTPBKR). Article 5, paragraph (1) of the SPPA Law, requires the juvenile justice process to use a restorative justice approach. Furthermore, article 3 explains how to handle restorative Justice for drug crimes, namely that it is carried out

precisely, and the conditions are also regulated in articles 7 and 9 of the PTPBKR Law. The meaning of Restorative Justice is simple: the measure of Justice is no longer based on retaliation from the victim to the perpetrator (whether physical, psychological or punitive). However, the painful act is healed by supporting the victim and requiring the perpetrator to take responsibility. Family and community assistance are needed.

The existence of Restorative Justice to provide solutions in handling children's delinquency as a consideration whose approach involves all parties sitting together and deliberating to achieve the goal of recovering all losses from injuries caused by children's actions as well as improving children's morals and avoiding elements of imprisonment that can be detrimental to growth. Child flower.

In the concept of punishment, theoretically, the existence of a transfer from judicial to non-judicial processes for children who commit narcotics crimes is of relevance.(Prasetyo dan NPM 2017). Furthermore, article 127, paragraph (3) explains that narcotics abusers can be proven to be victims and must undergo medical and social rehabilitation. In other words, this article indicates elements of restorative Justice and avoids criminal punishment for children as victims of narcotics abuse. Handling children in narcotics abuse can use alternative efforts with beneficial principles that position child punishment as "The Last Resort". This principle is generally attached to criminal law, with the meaning of criminal law as the last means of solving problems or, in other terms, referred to as *Ultimum remedial*. Where you can improve yourself according to your child's interests when faced with the law. In this case, it is an exciting thing to study for the author to find

out the location and consequences of the law in the implications of restorative Justice in protecting children as victims of narcotics crimes. (Lubis 2021). In this research, we will conduct a research study on "Criminal aspects of child victims of narcotics crimes from a justice perspective restorative".

RESEARCH METHODS

Researchers use normative legal research methods by examining statutory regulations, expert opinions, and reputable journals related to restorative Justice. This normative research is aimed at reviewing legal rules regarding the validity of Restorative Justice in protecting children as victims of narcotics crimes. The approach method used in this research is the conceptual approach, which is a type of approach in legal research that provides an analytical perspective on solving problems in legal research seen from the aspect of the legal concepts behind it or can even be seen from the values contained, in norming a regulation about the concepts used. The statutory approach is research that prioritizes legal materials in the form of statutory regulations as primary reference material in conducting research; in this context, the statutory rules used are Law Number 35 of 2009 concerning Narcotics, Laws and Regulations. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The analytical approach is an approach that analyzes legal materials to find out the meaning conceptually contained in the terms used in statutory regulations.

RESULTS AND DISCUSSION

1. The Position of Restorative Justice in Protecting Children as Victims of Narcotics Crime

Protection for children who are perpetrators of narcotics crimes, whether as couriers or delivering goods to consumers or as scouts who become criminal accomplices or drivers, in the eyes of the law, remain in the same position as subjects who have the right to receive special protection when the child is arrested and processed in court. Children as individuals are very unique and have distinctive characteristics. Even though he can act based on his feelings, thoughts and desires, it turns out that the surrounding environment dramatically influences a child's behaviour. For this reason, guidance, coaching and protection from parents, teachers and other adults is needed by a child and is a child's responsibility.

Moreover, in fulfilling their rights, children cannot do it themselves because their abilities and knowledge are still limited (M.Nasir Djamil, 2013). In the Indonesian Constitution, the 1945 Constitution of the Republic of Indonesia as the highest legal norm has outlined that "every child has the right to survival, growth and development and is entitled to protection from violence and discrimination." The position and protection of children's rights are essential things that must be further explained and implemented in everyday reality.(Republik,Indonesia dan UUD 1945)

Efforts to protect children's rights in Indonesia have been accommodated in the 1945 Constitution of the Republic of Indonesia Article 28B paragraph (2) as mentioned above, as well as in Law Number 39 of 1999 concerning Human Rights, and Law Number 23 of 2002 concerning Child Protection. In the convention on children's rights, children's rights can generally be grouped into 4 (four) categories, including:

- a. The right to survival is the right to preserve and defend life and obtain the highest standard of health and the best possible care.
- b. The right to protection (Protection Rights), namely the rights in the convention on children's rights, which include the rights to safety and discrimination, acts of violence and neglect for children who do not have families for refugee children
- c. The right to growth and development (Development Rights), namely the rights of children in the Child Rights Convention which includes all forms of education (formal and non-formal) and the right to achieve a standard of living that is adequate for the child's physical, mental, spiritual, moral and social development. (the distance from the standard of living).
- d. d. The right to participate (Participation Rights), namely the rights of children, which include the right to express opinions in all matters affecting the child (the right of a child to express their views freely in all matters affecting the child). The right to participate is a child's right regarding the child's fundamental cultural identity, childhood and development of involvement in broader society (Mohammad et al. Z. Tanamas n.d.)

According to Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU N0 11 of 2012), restorative Justice is the resolution of criminal cases involving the perpetrator, victim, Family of the perpetrator/victim, and other related parties to together to seek a just solution by emphasizing restoration to its original state, and not retaliation. In principle, through Law Number 11 of 2012, we have

prioritized a restorative justice approach and the diversion process as an effort to resolve criminal acts committed by children so that the implementation of beneficial Justice will offer answers to essential issues in resolving criminal cases namely:

1. Criticism of the criminal justice system, which does not provide opportunities, especially for victims (a criminal justice system that disempowers individuals), eliminates conflict, especially between the perpetrator, the victim and the community (taking away the conflict from them)
2. The feelings of helplessness experienced due to criminal acts must be overcome to achieve repair (to achieve repair).(Barda Nawawi Arief n.d.)

In the mid-1970s, the principles of restorative Justice in all its pioneering forms, such as reconciliation between victims and perpetrators of crime, had been carried out by small groups of scattered activists, justice system personnel and some experts in North America and Europe in fact as a whole. It has yet to reveal itself as an organized reform movement. They do not think their efforts will ultimately influence pro, mote, and mobilize social reform in a widespread approach to Justice with international impact. (Muladi n.d.) The existence of the restorative justice movement has also been criticized, especially by those in the "status quo" who are oriented towards a retributive justice approach based on the following (Imran, 2020)

1. Restorative Justice places too much emphasis on rehabilitation
2. Restorative Justice condones violence, especially against female and child victims

3. Contrary to the principles of open public Justice and legal protection through the use of private forums and co-optation techniques against participants
4. Too soft on crime and dismissing the public's passion for retribution
5. Undermining traditional standards of legal reasoning through societal Justice and informal judgment
6. Contrary to legal aspirations based on equal treatment of the same cases and certainty and consistency of varying results through the restorative justice process.

For this reason, steps to carry out mitigation are also attempted as follows:

1. All parties must act voluntarily (Voluntarily)
2. Victims must be treated sensitively
3. Perpetrators of crimes must strive not to use the restorative justice system to protect themselves except to help solve the problems created by their crimes.
4. The facilitator must be trusted, unusual and well-trained
5. The facilitator must be flexible towards solutions proposed by participants in the restorative justice process.

Therefore, the above understanding will be a reinforcement in the sense of the application of Restorative Justice in resolving cases committed by children, as well as the need to encourage the application of Justice in the juvenile justice system in Indonesia, especially in the Bangkalan area, which has now become the basis of the spirit in the Draft Criminal Code which changes the paradigm. The aim of punishment is "resolving conflicts caused by criminal acts, restoring balance and bringing a sense of peace to society, a spirit of attention to crime victims, developing alternatives to the crime of independence,

special regulation of crimes and actions for children, apart from the Draft Criminal Code, also in Law No. 11 2012 concerning the Juvenile Justice System. Those who have put effort into diversion and restorative Justice can explain that they have been regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which prioritizes peace over formal legal processes. Essential changes include using a Restorative Justice approach through a diversion system. The SPPA Law regulates the obligations of law enforcers to seek diversion (the transfer of resolution of children's cases from the judicial process to a process outside of criminal Justice) at all stages of the legal process. Restorative Justice, as the implementation of diversion, the issuance of a PP, which is a derivative of the SPPA Law, the Supreme Court issued PERMA Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. The critical point of PERMA is that judges are obliged to resolve the problems of children in trouble with the law (ABH) using diversion and contain procedures for implementing diversion, which is the guidance of judges in resolving juvenile criminal cases.

Apart from that, attention to the restorative justice process among teenagers is essential because there are very significant matters to be the focus of regulation that require the active role of the community, perpetrators and victims of crime, including communities affected by the restorative justice process. A basic balancing approach must also be taken: first, imposing sanctions based on responsibility to recover victims' losses due to criminal acts; second, rehabilitation and reintegration of perpetrators and not strengthening the community safety and security system.

There is a spirit to correct the retributive or retributive approach or philosophy in the criminal justice system, which only emphasizes 3 (three) needs of the criminal justice system, namely, the need to provide sanctions for criminal acts, the need to help rehabilitate perpetrators, and the need to strengthen public security. In restorative Justice, a fourth need is to repair or restore losses to victims of criminal acts and society.

Then, in recognition of the limitations of criminal sanctions and actions against perpetrators that focus on the best interests of the perpetrator, there is less attention to the consequences of criminal acts within the framework of public security and crime victims. The disciplinary approach is often inaccurate and incomplete, especially towards children with criminal concepts and actions. This happens because the punitive approach is a one-dimensional ad hoc supervision that excludes or does not involve juvenile Justice, namely the losses to victims and society. This cannot be overcome with punishment and action against the perpetrator.

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The juvenile justice system must utilize a balance (The Balanced Approach) that can meet the needs of the community to:

- a) punishment based on accountability measures that seek to recover the victim's losses from criminal acts committed by the perpetrator as a consequence of the criminal act
- b) rehabilitation and reintegration of criminals
- c) strengthen the safety and security of a community.

This articulation step connects the interests of the 3 (three) prime customers (clients/customers) of the criminal justice system, namely victims, perpetrators of criminal acts and the community. This balanced approach also emphasizes the values related to each client, namely the value of accountability towards victims and society and the value of developing competence (competency development) for perpetrators (children) who, after going through the therapeutic process, are expected to become more able to integrate with society than before; and the value of community protection, because the restorative justice system is responsible for protecting society from criminal acts by children through peaceful means.

Based on several concepts of Restorative Justice that have been put forward in the previous chapter, it is clear

that Restorative Justice is another way of criminal Justice which prioritizes an integrated approach between perpetrators on the one hand and victims and society on the other hand as one unit to find solutions and return to patterns of good community relations. Thus, the substance of Restorative Justice is "Empowerment". Empowerment is at the heart of restorative Justice, and therefore, the success of Restorative Justice is determined by this Empowerment. Empowerment in the context of Restorative Justice is the process of meeting, in this case, between the perpetrator, the victim and the community to discuss and actively participate in resolving the criminal problem (resolution of the criminal matter). Atas dasar itu maka konsep Restorative Justice dapat dibilang mengintegrasikan prinsip musyawarah dalam penyelesaian perkara pidana(Satriya 2016).

So, strictly speaking, the position of Restorative Justice in protecting children as victims of narcotics crimes has been recognized by statutory regulations and has a central role in providing certainty of protection for children's rights. This can be seen from the explanation above, which explains the concepts of restorative Justice and diversion in detail. Apart from that, the existence of the position of Restorative Justice in protecting children has been known and applied in various criminal cases involving children in Indonesia.

2. Legal Consequences Implications of Restorative Justice for Children as Victims of Narcotics Crime.

The legal consequences of the implications of restorative Justice in handling narcotics crimes are based on a sense of Justice, which is always relative. Justice must maintain the orderliness of legal subjects. Equal Justice is one manifestation of the concept of the rule of

law. Gustav Radbruch believes that Justice, legal certainty and expediency are terms always discussed in academic and judicial circles, but their nature and meaning still need to be understood. In Gustav Radbruch's view, legal certainty is only sometimes a priority in fulfilling it in every positive legal system, as if it must exist first before Justice and benefit.(Made Nurmawati 2017) In this case, to resolve a problem, the principle of priority is needed, which is ordered from Justice, legal expediency, and legal certainty.

Justice in the implications of Restorative Justice can provide the same norms and does not look at status. The benefits of the law are in the impact of Restorative Justice, which provides benefits to perpetrators to realize their mistakes and not commit narcotics crimes in the future, as well as legal certainty, which provides certainty to perpetrators that the criminal acts they have committed are legally resolved through restorative Justice. In other words, the legal consequence of handling narcotics crimes through beneficial Justice is that the handling process is not continued against the perpetrator legally.

The Criminal Procedure Code has regulated and determined in a limited manner the reasons or things that cause the termination of an investigation into an alleged criminal act.(Burgerlijk wetboek voor indonesie 2014). Penghentian Pendidikan is the authority given by law to investigators to be used by investigators as a basis or reason for terminating an investigation. The regulation and determination of the reasons for stopping an investigation is based on the consideration that in using the authority to stop an investigation, the investigator tests the reasons that have been determined. M. Yahya Harahap(M.Yaya et al.) thinks that

there is a reason for terminating the investigation based on Article 109 Paragraph (2) of the Criminal Procedure Code:

1. They need to obtain sufficient evidence. If the investigator does not get enough evidence to prosecute the suspect or the evidence obtained by the investigator is insufficient to prove the suspect's guilt if brought before a court hearing, then based on these considerations, the investigator has the authority to terminate the investigation.
2. The alleged incident is not a criminal act. If the investigation and examination result, the investigator thinks what is alleged against the suspect is not an offence or crime. In this case, the investigator has the authority to stop the investigation.
3. Termination of the investigation by law. This termination is basically by the reasons for the elimination of the right to sue and the loss of the right to carry out a crime as regulated in Chapter VIII of the Criminal Code, as formulated in Article 76, Article 77 and Article 78 of the Criminal Code.

Looking at the legal arrangements for children as victims of narcotics crimes. Article 1 paragraph (3) Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, states: "Children in Conflict with the Law, from now on referred to as Children, are children who are 12 years old, but not yet 18 years old, who are suspected of committing a criminal act." However, Constitutional Law shows different things, such as election voting rights. For example, a person is considered capable of being responsible for the legal actions they commit if they have reached the age of 17. (M.nasir djamil 2013) . They are determining that the age limit for children who can be brought before the court about

criminal responsibility is 12 to 18 years per the Constitutional Court decision no. 1/PUUVIII/201/021 and as specified in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System. Article 69, paragraph (2) also confirms that "children who are not yet 14 (fourteen) years old can only be subject to action." (Herman, Bernadete Nurwati n.d.)

Law no. 11 of 2012 concerning the Juvenile Criminal Justice System provides legal protection efforts for children in conflict with the law through a restorative justice approach to achieve diversion efforts. Restorative Justice is the resolution of criminal cases involving the perpetrator, victim, Family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original condition and not retaliation. Restorative Justice offers the best solution in resolving crime cases, namely by prioritizing the core problem of a crime. The juvenile criminal justice system is obliged to prioritize a restorative justice approach to achieve diversion for children who conflict with the law, in this case, victims of narcotics abuse.

The juvenile criminal justice system must strive for diversion based on a restorative justice approach towards children in conflict with the law to protect children by investigators at the investigation level legally, prosecutors at the prosecution level and judges at examinations at the court level. As stipulated in Article 9 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that investigators, public prosecutors and judges in carrying out diversion must consider the category of crime, the age of the child, research results from the Correctional Center as well as support from the Family and community environment. This shows that in implementing diversion by law

enforcement officers, they must be based on the authority of law enforcement officials, which is called 'discretion' or 'discretion'.

With the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is mandatory for children's cases in every examination of children's cases from investigation and prosecution to examination at trial. Diversion is a form of protection for children who conflict with the law. The diversion model is intended to avoid and distance children from the formal justice process to avoid stigmatization of children who disagree with the law, and it is hoped that children can return to the social environment naturally.

The objectives of implementing diversion for children include:

1. To prevent children from being detained;
 2. To avoid branding/labelling children as criminals;
 3. To prevent the repetition of criminal acts committed by children so that children are responsible for their actions;
 4. To carry out necessary interventions for victims and children without having to go through a formal process, and to distance children from the negative influences and implications of the justice process and restorative Justice emphasizing restoration to their original condition, and not retaliation.
2. By applying restorative Justice to children as victims of narcotics crimes, children are given intensive protection and guidance to form a better personality.

CONCLUSION

From the description of the explanation above, the following conclusion can be drawn: The position of Restorative Justice in protecting children as victims of narcotics crimes has been recognized by statutory regulations and plays a vital role in providing certainty of protection for children's rights, where children's rights are clearly explained in detail. Moreover, even the 1945 Constitution of the Republic of Indonesia has outlined children's rights. Restorative Justice has been regulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (from now on referred to as the SPPA Law) and is in Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (UU PTPBKR). Article 5, paragraph (1) of the SPPA Law, requires the juvenile justice process to use a restorative justice approach. Furthermore, article 3 explains the handling of using beneficial Justice for drug crimes, namely that it is carried out precisely, the conditions of which are also regulated in articles seven and 9 9 of the PTPBKR Law.

The legal consequences of the implications of restorative Justice for children as victims of narcotics crimes are as follows:

1. The application of restorative Justice to children as victims of narcotics crimes means that children do not lose their rights. This means that children's rights are given in full by law.

The legal consequences of the implications of restorative Justice for children as victims of narcotics crimes can be seen with the concept of Restorative Justice to provide solutions in handling child delinquency as a consideration whose approach involves all parties sitting together and deliberating to achieve the goal of recovering all losses from injuries caused and resulting from the child's actions, as well as improving the child's morals and

avoiding elements of imprisonment that can be detrimental to the child's growth.

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