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DESCRIPTIVE OF QUANTITATIVE DATA | SUPPLEMENTARY

Legal Analysis of the Application of Restorative Justice in Narcotics Abuse Offenses Involving Minors

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Abstract: This research aims to determine and analyze restorative justice arrangements in criminal acts of narcotics abuse for children as well as obstacles and solutions in implementing restorative justice in criminal acts of narcotics abuse for children. The research method used in this research is normative juridical. The results of this research show that restorative justice in handling and resolving narcotics crimes committed by children and efforts to resolve problems related to the use of diversion tactics in juvenile narcotics crimes in general have not run optimally in accordance with the provisions of Law Number 11 of 2012 concerning the justice system. children and the formal criminal justice system. Research recommendations to law enforcement officials that it is best to implement Restorative Justice in handling criminal acts of narcotics abuse by children in Indonesia should take a comprehensive approach.

Keywords: Restorative Justice, Narcotics Crime, Children.

1. INTRODUCTION

Law represents the entirety of norms that exist, evolve, and are enforced within society, comprising commands and prohibitions that govern the order of a community. It is established with the objective of protecting certain interests and ensuring order, security, and comfort in social life. The law must be legislated by the state, and its regulations must be clear and precise to achieve legal certainty in its implementation. As the most powerful and supreme social organization, only the state holds the right to enforce criminal law, including the authority to prosecute those suspected of violating criminal statutes and to execute punishments on those found guilty.

The Indonesian Criminal Law System has entered a new phase in its development. One significant reform is the incorporation of restorative justice, a perspective that emphasizes repairing and restoring the situation following criminal incidents and judicial processes. This approach contrasts with retributive justice, which focuses on punishment, and restitutive justice, which emphasizes compensation. Children, as legal subjects and assets of the nation, play a crucial role as the next generation. In the context of Indonesia, children are seen as the future of the nation's aspirations. This strategic role has been recognized internationally, leading to the creation of conventions that emphasize the position of children as human beings entitled to protection of their rights.

Children, being part of the citizenry, must be protected as they are the future leaders of Indonesia. They are entitled to formal education, such as schooling, as well as moral education to grow into individuals who contribute positively to the nation. According to the Convention on the Rights of the Child, ratified by the Indonesian government through Presidential Decree No. 36 of 1990, and enshrined in Law No. 4 of 1979 on Child Welfare and Law No. 23 of 2002, as amended by Law No.



35 of 2014 on Child Protection, and Law No. 11 of 2012 on the Juvenile Justice System, there are general principles of child protection: non-discrimination, the best interests of the child, survival and development, and respect for the views of the child.

For adults who commit crimes, imprisonment is a common punishment, as prisons are designated for adults under the law. However, for children, imprisonment is not considered appropriate due to their developmental stage and potential future. Children are seen as individuals with a long future ahead, needing moral and physical guidance. In the justice system, the rights of children who commit crimes reflect a form of restorative justice, aimed at repairing and restoring relationships between the victim and the offender, thus fostering harmony in the child's life. The most suitable sanction for children involved in criminal activities is mandatory education.

This approach is particularly relevant in the Indonesian context, where children are sometimes exploited in criminal activities such as drug trafficking, where minors are used as couriers. Syndicates often employ various methods, including using minors to transport narcotics.

The Quran also addresses the issue, condemning the act of trading and consuming narcotics. In Surah Al-Ma'idah, verses 90-91, it is stated:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ
وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ ۖ فَهَلْ أَنْتُمْ مُنْتَهُونَ

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful” (90). “Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?” (91).

Narcotics are substances that can induce specific effects in users, initially intended for medical purposes. However, with the rapid development of the pharmaceutical industry, the categories of narcotic substances have expanded, as detailed in the appendix of Law No. 35 of 2009 on Narcotics. Despite advancements in science and technology enhancing narcotic processing methods, it has become evident that these substances have addictive properties, leading users to become dependent.

The harmful effects of narcotics are particularly concerning when it comes to children, who may access and consume these substances without proper supervision. Given this background, the paper addresses the "Legal Analysis of the Application of Restorative Justice in Narcotics Abuse Offenses Involving Minors." The central questions explored are: How is restorative justice regulated in cases of narcotics abuse involving minors, and what are the challenges and solutions in its implementation?

2. RESEARCH DESIGN AND METHOD

This research employs normative legal theory, utilizing primary, secondary, and tertiary legal materials. The legal materials are gathered through literature reviews and the analysis of factual case studies, particularly those available online, in books, and in legislative documents. This method involves a comprehensive examination of legal literature, case laws, and statutory provisions to understand and interpret the application of law in specific contexts, particularly focusing on the relevant laws and regulations.

3. RESULT AND DISCUSSION

3.1 Regulation of Restorative Justice in Narcotics Abuse Offenses Involving Minors



The regulation of restorative justice in narcotics abuse offenses involving minors establishes a primary legal framework that prioritizes rehabilitation and reconciliation over punitive measures. This primary law emphasizes several key principles for enforcing justice and rehabilitating minors involved in narcotics abuse. Firstly, the primary law asserts the right of the child to actively participate in the restorative justice process. Children are given the opportunity to express their views, raise concerns, and contribute to the formulation of recovery measures that they find necessary. Secondly, the primary law emphasizes the involvement of parents or guardians as crucial elements in the restorative justice process. To support the child's rehabilitation, this regulation ensures that parents or guardians play a significant role in guiding and supporting the child during and after the restorative justice process. The involvement of the family is a key factor in creating a sustainable recovery environment. Thirdly, the primary law prioritizes the child's welfare. Every decision or action taken within the restorative justice context is aimed at supporting the child's recovery and preventing the recurrence of harmful behavior. The principles of human rights, child protection, and positive development serve as the foundation for policy and legal actions. Fourthly, the primary law establishes a framework that integrates the community as a vital partner in implementing restorative justice. The community not only serves as a monitor but also as a source of support and guidance to help children reintegrate into their social environment. Cooperation among the legal system, family, and community is directed toward achieving holistic recovery that encompasses all aspects of the child's life. Lastly, the primary law embodies the concept of restorative justice, focusing on recovery and reconciliation rather than merely punitive enforcement. This principle encourages the formation of solutions that address the harm caused by the child's actions, benefiting the child, the victim, and the community. The sanctions imposed are more educational, fostering positive behavioral change in the child.

Secondary legal materials in the regulation of restorative justice for narcotics abuse offenses involving minors detail the steps and mechanisms for implementing the principles outlined in the primary law. Firstly, secondary legal materials specify concrete procedures to ensure the active participation of children in the restorative justice process. This includes establishing forums or special meetings where children can voice their opinions and communication procedures that facilitate their involvement. Secondly, these materials detail the roles and responsibilities of mediators or facilitators in guiding the reconciliation process. This includes the necessary qualifications, codes of conduct, and procedures to ensure fair and objective facilitation. Thirdly, protocols and procedures for holistically assessing the child's welfare are established, involving mental health experts, social workers, or child welfare advisors. These steps aim to understand and address risk factors that may affect the child's recovery. Fourthly, clear criteria are set for determining the sanctions or recovery steps to be taken. This process may involve risk assessment, consideration of the child's individual factors, and ensuring that the sanctions align with restorative justice principles. Fifthly, secondary legal materials detail how to involve families and communities in the restorative justice process, including specific roles in supporting and rehabilitating the child. This could involve family meetings, mentorship programs, or utilizing community resources. Lastly, they ensure the protection of the child's rights throughout the restorative justice process, including the right not to be unfairly punished, the right to privacy, and the right not to provide self-incriminating testimony.

Tertiary legal materials in the regulation of restorative justice for narcotics abuse offenses involving minors refer to more detailed rules or guidelines that aid in implementing secondary laws. Firstly, they establish guidelines on how educational approaches and understanding of narcotics abuse should be implemented. This involves developing educational programs that meet the children's needs, covering aspects such as information about narcotics, their effects, and prevention strategies. Secondly, they set procedures to assess risk related to safety, both for the child involved and other potentially affected parties. This includes steps to identify potential safety risks and take appropriate preventive measures. Thirdly, they outline concrete steps in the recovery and rehabilitation process,



including psychosocial support, counseling, or specialized rehabilitation programs to help the child address the challenges they face. These three types of legal materials serve as references for implementing various forms of restorative justice regulations in narcotics abuse offenses involving minors. These are reflected in the legal regulations on the application of Restorative Justice in narcotics abuse offenses involving minors, which can be found in several pieces of legislation. Some related laws include:

- a. Law No. 35 of 2014 on Child Protection: This law provides a legal basis for child protection, including the handling of children involved in criminal offenses. It supports a restorative and rehabilitative approach in handling children who commit criminal offenses, aligning with Restorative Justice principles emphasizing recovery and reintegration into society. The Child Protection Law guarantees children's rights, including the right to life, growth, development, and full participation in social life. Its application must ensure the protection of the rights of children involved in narcotics offenses. Article 23 emphasizes protection for children in conflict with the law, ensuring their basic rights, fair treatment, and empowerment during the judicial process. In cases involving children in narcotics offenses, Article 45 provides protection for children threatened or involved in narcotics offenses, focusing on their rights and promoting rehabilitation and prevention. Article 49 highlights the importance of recovery and rehabilitation services for children involved in criminal offenses, including narcotics abuse, involving various relevant parties and institutions.
- b. Law No. 11 of 2012 on the Juvenile Justice System: This law specifically governs the juvenile criminal justice system in Indonesia, establishing principles for handling children in conflict with the law, including prioritizing rehabilitation and guidance. The law mandates the use of rehabilitative and guidance-oriented approaches for children, considering factors such as the child's age and condition.
- c. Law No. 35 of 2009 on Narcotics: In the context of narcotics abuse, this law provides a legal foundation for enforcing the law against narcotics cases. While it tends to be repressive, its implementation can accommodate rehabilitative and restorative approaches, especially for minors.
- d. Government Regulation No. 11 of 2018 on the Prevention and Eradication of Narcotics Abuse and Illicit Trafficking: This regulation implements several provisions of the Narcotics Law and provides an operational framework for preventing and combating narcotics abuse. In its application, it can consider rehabilitative approaches for children.
- e. Joint Decree of the Chief Justice of the Supreme Court, the Attorney General, and the Chief of Police Nos. KEP-036/A/JA/02/2017, KEP-037/A/JA/02/2017, and KEP-038/A/JA/02/2017 on Guidelines for the Implementation of Conditional Release (Parole) and Conditional Release with Electronic Monitoring: This joint decree provides guidelines on implementing conditional release programs, which may include restorative and rehabilitative aspects.

From the perspective of the Convention on the Rights of the Child, children in conflict with the law are categorized as children in special situations. These children often lack their needs met, frequently experience violence, live outside family environments, and require protection and security. The role of parents is crucial in providing care and protection to children.

According to Article 26(1)(a) of Law No. 17 of 2016, amending Law No. 23 of 2002 on Child Protection, "Parents are obliged to nurture, maintain, and protect the child." The concept of Restorative Justice emerged over twenty years ago as an alternative resolution for criminal cases involving juvenile offenders. The United Nations Working Group on Juvenile Justice defines Restorative Justice as a process where all parties involved in a specific criminal offense come together to resolve issues and consider future consequences. Restorative Justice fundamentally serves as a philosophy for peace processes outside the judicial system, using mediation or deliberation to achieve

justice desired by the involved parties, including the criminal offender (and their family) and the victim (and their family), to find mutually agreed-upon solutions.

The enforcement of criminal law against minors is often discussed due to its significant and sensitive impact on the child's behavior and social life. However, with the enactment of Law No. 11 of 2012 on the juvenile justice system, Indonesian law enforcement institutions have adopted a justice system that offers more protection and guidance to children, reflecting the evolving judicial system's irrelevance with past frameworks, such as those outlined in the outdated Law No. 3 of 1997 on Juvenile Court. Narcotics crimes involving children as couriers are a direct legal issue that impacts the community, future generations, and particularly the users themselves. The enforcement of criminal law against children in Indonesia is often controversial and sensitive within society. In Indonesian culture, these issues are significant because a person committing a crime is often labeled negatively by society. However, under Law No. 11 of 2012 on the juvenile justice system, law enforcement agencies are obliged to protect and empower child victims.

According to Article 45 of the Indonesian Penal Code, in cases involving minors under 16 years old suspected or accused of committing a criminal offense, the responsibility may be returned to the parents or guardians to provide guidance and prevent further offenses. If the actions are categorized as violations or crimes under specific articles, and the child is legally declared guilty, further actions can be taken accordingly. The ideal application of Restorative Justice in handling cases involving minors as perpetrators of narcotics offenses is through diversion. Diversion aims to avoid the detrimental effects on the child's life and development that involvement in the criminal justice system can cause. The concept of diversion offers a solution to resolve cases involving juvenile offenders outside the formal judicial process. According to Article 7 of Law No. 11 of 2012 on the Juvenile Justice System, diversion can occur at every stage of the juvenile justice process: investigation, prosecution, and trial at the district court. This is integrated into the Juvenile Criminal Justice System (UU SPPA). Specifically, regarding criminal charges, the juvenile criminal process is regulated under specific chapters of the UU SPPA.

3.2 Challenges and Solutions in the Implementation of Restorative Justice for Narcotics Abuse Offenses Involving Minors

The implementation of Restorative Justice in cases of narcotics abuse involving minors faces several challenges, both legal, social, and practical. Some of these challenges include:

- a. **Awareness and Understanding:** There is a challenge in raising public awareness and understanding of the principles of Restorative Justice. The public often remains more accustomed to punitive approaches rather than rehabilitative ones.
- b. **Resource Limitations:** The lack of resources, both financial and human, can hinder the effective implementation of Restorative Justice programs. These programs require significant investments of time, funds, and personnel.
- c. **Legal Uncertainty:** In some jurisdictions, there may be insufficient or unclear legal frameworks to fully support the implementation of Restorative Justice. This can create legal uncertainty and pose challenges in applying this approach.
- d. **Stigma and Discrimination:** Children involved in narcotics abuse often face stigma and discrimination from society. Successful Restorative Justice requires community support, and overcoming this stigma can be a significant hurdle.
- e. **Difficulty in Reaching Consensus:** Mediation and discussions aimed at reaching a consensus in Restorative Justice require cooperation from all involved parties. It can be challenging to achieve a mutual agreement, especially if deep conflicts or strong disagreements exist.

- f. **Participation Levels of Victims and Offenders:** The success of Restorative Justice also depends on the participation levels of both victims and offenders. If either party is unwilling or unable to actively engage, the restorative process can be challenging to carry out.
- g. **Power Imbalances:** There is a potential for power imbalances between the offender, victim, and mediator, which need to be addressed to ensure that the restorative process allows fair participation from all parties.
- h. **Safety and Unsupportive Environments:** Poor safety conditions or unsupportive environments in certain areas can hinder the organization of safe and effective restorative meetings.

The implementation of Restorative Justice in the juvenile criminal justice system at the investigative level has generally proceeded as intended but still encounters frequent challenges. The primary goal of applying Restorative Justice to juvenile offenses is to prevent the punitive process, which often fails to reflect the values of justice in resolving criminal cases involving children as offenders. Traditionally, children who commit criminal acts are held criminally responsible, often through imprisonment, which can restrict many of the child's rights. Restorative Justice aims to protect children as offenders by emphasizing the genuine willingness of the offender to repair the harm caused as a form of responsibility. In practice, most cases involving minors in criminal justice reach the court, which can have negative psychological impacts on the child, often depriving them of the right to education and protection in their development.

The use of diversion in narcotics cases involving minors can make criminal case resolution more effective through a restorative justice approach. However, this remains challenging in narcotics offenses due to differing perspectives among law enforcement on how to view these crimes. A significant issue is that minors involved in narcotics offenses are often charged under trafficking articles such as Articles 111, 112, 114, or 115 of Law No. 35 of 2009 on Narcotics (Narcotics Law), which carry sentences of up to 20 years. Including these articles in the indictment can prevent courts from pursuing diversion for the defendant. However, if one of the charges includes Article 127, which covers narcotics abuse with a maximum sentence of four years, diversion might still be possible.

Prosecutors often prefer to use Articles 111 or 112 of the Narcotics Law when charging minors found with narcotics, rather than Article 127, which could be applied if the possession was solely for personal use and not for distribution. The reluctance to include Article 127 may be due to the absence of positive urine tests, even though possession for personal use without distribution could still warrant this charge. This issue remains a point of debate. Therefore, there is a need for a unified perspective among law enforcement regarding the application of the Narcotics Law concerning minors as defendants, aligning with the Juvenile Criminal Justice System (SPPA Law) that governs diversion mechanisms for juvenile cases. Such a unified perspective should support prioritizing diversion in narcotics cases involving minors as defendants.

Barriers to Implementing Restorative Justice for Juvenile Offenders:

- a. **Balancing Interests:** Difficulty in balancing the interests of various parties (offender, victim, community, and state).
- b. **Adherence to Principles:** Inadequate adherence to basic principles based on Human Development, Mutuality, Empathy, Responsibility, Respect, and Fairness.
- c. **Victim Pressure:** Victims may feel pressured, affecting their willingness to participate.
- d. **Judicial System Encroachment:** Attempts by the formal criminal justice system to subsume the restorative justice movement into traditional systems and bureaucracy.

Solutions to Challenges in Implementing Restorative Justice for Juvenile Narcotics Offenses:



- a. Raising Public Awareness: Conducting campaigns and education initiatives to enhance public understanding of Restorative Justice principles and their benefits, particularly in narcotics abuse cases involving minors.
- b. Developing Legal Frameworks: Drafting or updating regulations and laws to clearly and comprehensively support the application of Restorative Justice in handling narcotics abuse cases involving minors.
- c. Providing Adequate Resources: Ensuring the availability of financial and human resources to support the implementation of Restorative Justice, including training for mediators and facilitators.
- d. Strengthening the Juvenile Justice System: Optimizing the juvenile justice system to ensure that Restorative Justice principles are an integral part of the legal process and support rehabilitation and reintegration efforts.
- e. Anti-Stigma Campaigns: Conducting anti-stigma campaigns to reduce social stigma against children involved in narcotics abuse, fostering community support for their rehabilitation and reintegration.
- f. Interagency Collaboration: Encouraging close collaboration between agencies such as child protection organizations, judicial institutions, educational bodies, and rehabilitation centers to provide a coordinated approach.
- g. Community Involvement: Increasing community participation in the Restorative Justice process by involving family members, teachers, peers, and community leaders to support the child's rehabilitation and successful reintegration.
- h. Developing Educational and Rehabilitation Programs: Creating adequate educational and rehabilitation programs for minors involved in narcotics abuse, focusing on skill development, education, and psychosocial support.
- i. Ongoing Monitoring and Evaluation: Conducting continuous monitoring and evaluation of Restorative Justice programs to assess their effectiveness and identify areas for improvement.
- j. Enhancing International Cooperation: Improving international cooperation to share experiences, best practices, and support efforts to implement Restorative Justice in handling narcotics abuse cases involving minors.

The implementation of Restorative Justice in handling narcotics abuse offenses involving minors in Indonesia requires a comprehensive approach. Cultural and social transformation is essential in this discourse. Mass education efforts are needed to shift public perception, fostering an understanding that recovery and reintegration are more effective than mere punishment. Additionally, the legal framework must be aligned to support these principles, including updating laws to reinforce the concepts of Restorative Justice. Adequate funding and resources should be allocated for training professionals and providing rehabilitation services. Collaborative efforts between institutions, including juvenile courts, rehabilitation centers, and community organizations, can form the foundation for successful implementation.

4. CONCLUSIONS

Based on the research findings and discussions presented above, the following conclusions can be drawn: The implementation of restorative justice in cases of narcotics offenses committed by minors is guided by Law No. 35 of 2014 on Child Protection and Law No. 11 of 2012 on the Juvenile Criminal Justice System. These laws emphasize a rehabilitative and nurturing approach for children involved in criminal activities, including narcotics-related offenses. The government and relevant institutions should continue to strengthen the legal framework governing Restorative Justice in the



context of narcotics abuse offenses involving minors. This includes clarifying relevant legal norms and providing more detailed implementation guidelines.

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