



Application of Restorative Justice on Criminal Acts of Narcotics Abuse Performed By Children Through Diversion In Denpasar

Yunita Parisman¹, AAAN Tini Rusmini Gorda²
Faculty of Law, National Education University

ARTICLE INFO

Article history:

Received Nov 22, 2022
Revised Nov 29, 2022
Accepted Dec 20, 2022

Keywords:

Applications;
Restorative Justice;
children;
Narcotics;
Diversion;

ABSTRACT

Drug abuse is a crime and a violation that threatens safety. Narcotics abusers are currently not only carried out by adults, even children are involved in it. Children as perpetrators of narcotics crimes must be given protection by prioritizing the fulfillment of their rights and preventing children from the criminal justice process which will stigmatize or label children, including preventing children from being punished. imprisonment in Indonesia has Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which was issued with the aim of realizing a court that truly guarantees the best interests of children in conflict with the law. especially children in conflict with the law In the Juvenile Criminal Justice System Act, there is a principle of restorative justice which aims to keep children away from the judicial process and keep away criminal sanctions for children in conflict with the law. But in the application of the law it still has a negative impact on the future of children

ABSTRACT

Narcotics abuse is a crime and a violation that threatens safety. Narcotics abusers are currently not only carried out by adults, even children are involved in it. Children as perpetrators of narcotics crimes must be given protection by prioritizing the fulfillment of their rights and preventing children from the criminal justice process that will stigmatize or label children, including preventing children from being sentenced to imprisonment. Indonesia has Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which was issued with the aim of realizing a court that truly guarantees the best interests of children in conflict with the law, especially children in conflict with the law. In the Juvenile Criminal Justice System Act, there is a principle of restorative justice which aims to keep children away from the judicial process and keep away criminal sanctions for children in conflict with the law. However, the implementation of the law still has a negative impact on the future of children.

This is an open access article under the [CC BY-NC](#) license.



Corresponding Author:

Yunita Parisman ,
1Faculty of Law,
University of National Education
Email: yunitaparisman57@gmail.com

I. INTRODUCTION

The dangers of drug abuse in Indonesia are getting higher and point to the younger generation. It has even entered the level of schools and campuses. The young age group is very vulnerable to drug abuse and illicit circulation. All levels of society have been contaminated with drugs. In fact, drugs have targeted many children and adolescents. The average age at first abusing narcotics is at a very young age, namely the age of 12-15 years. Children are a mandate as well as a gift from God Almighty, which we must always take care of because they have inherent dignity, worth, and rights as human beings that must be upheld.

Children with all their meanings and definitions have different characteristics with adults, this is a starting point in viewing the rights and obligations of a child which will also affect his position before the law. In the consideration of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is also stated that children are a mandate and gift from God Almighty who has the dignity and worth as a whole human being. To maintain their dignity, children have the right to special protection, especially legal protection in the justice system. According to Retnowulan Sutianto, child protection is part of National Development. Protecting children is protecting people, and building people as whole as possible. In line with the rapid development of the times, several laws and regulations that regulate children have emerged.

For cases of criminal acts committed by children, the restorative justice system at least aims to repair/recover (to restore) criminal acts committed by children with actions that are beneficial to children, perpetrators/victims and their environment that involve them directly (reintegration). and rehabilitation) in solving problems, and in contrast to the way adults are handled, which will then lead to the purpose of the crime itself, which aims at punishment, starting with "public protection" and "protection/guidance of individual perpetrators of criminal acts. According to Article 1 point 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing reinstatement. in its original state, and not retaliation.

Several cases that have occurred, such as when children are in conflict with the law and have been processed in accordance with applicable laws and regulations, have even reached the stage of court decisions, based on Denpasar Court Decision Number: 4/Pid.Sus.Anak/2020/PNDps. In the verdict, he is proven guilty and sentenced to death, which should be seen in the child protection law, must prioritize the best interests of the child and think about the best future for the child, in this case it becomes a very serious problem to be reviewed so that Children get legal rights and certainty from the burden of punishment that will not recover mentally and label as children who are perpetrators of narcotics crimes. The issue of legal liability for children is still an interesting topic for discussion among legal practitioners.

Based on the background explanation of the problems that have been stated above, the authors are interested in researching and further reviewing the problems regarding the Narcotics crime in the form of a Proposed Thesis Research Proposal with the title: "Application of Restorative Justice Against Criminal Acts of Narcotics Abuse Perpetrated by Children Through Diversion in Denpasar ", that several problem formulations can be raised in this study, namely: How is the legal protection against criminal acts committed by children? How is the application of Restorative Justice in handling barcotoc crimes committed by children through the Diversion process?

II. RESEARCH METHODS

From the background and problem formulation described above, this type of research is included in the type of normative legal research. Normative Legal Research is also known as library research. or also called (Library research), the method used to collect data from various literatures. which means that in this paper the emphasis is on regulations based on positive legal aspects, in this case the regulations in question.

a. Primary Legal Materials.

Primary legal materials are primary legal materials that bind, Primary Legal Materials are legal materials that bind or make people obey the law such as laws and regulations, and judge decisions, namely:

- a) 1945 Constitution of the Republic of Indonesia.
- b) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
- c) Law Number 35 of 2014 concerning Child Protection, Convention on the Rights of the Child 1989 (UN Resolution Number 44/25 dated December 5, 1989).

- d) Law Number 39 of 1999 concerning Human Rights.
 - e) Draft Law on the 2013 Criminal Procedure Code.
 - f) Law Number 35 of 2009 concerning Narcotics.
 - g) Regulation of the State Police of the Republic of Indonesia Number 08 of 2021 concerning the Handling of Crimes based on Restorative Justice
 - h) Prosecutors' Regulation of the Republic of Indonesia Number 15 of 2020 concerning termination of prosecution, based on restorative justice.
 - i) Based on the Decree of the Director General of the General Judiciary Agency Number 1691/DJU/SK/12/2020 concerning Restorative Justice Guidelines in the General Court of Justice.
 - j) Court Decision Number : 4 / Pid.Sus. Child / 2020 /PN Dps
- b. Secondary Legal Material
Secondary legal material is defined as legal material that is not binding but explains primary legal material, which is used as a research source from the processed opinions or thoughts of experts or experts who study a particular field in particular which will provide clues as to where the researcher will lead. What is meant by secondary material here by the author is the doctrines in books, legal journals and the internet.
- c. Tertiary Law Material
Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials by providing an understanding and understanding of other legal materials. The legal materials used by the author are the Big Indonesian Dictionary and the Legal Dictionary.

III. RESULTS AND DISCUSSION

1. Legal Protection Against Crimes Committed by Children

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. . Child protection is an effort to protect children so that children can carry out their rights and obligations in a balanced and humane manner. The embodiment is in the form of coaching, mentoring, mentoring, inclusion, supervision, prevention, educational guarantee arrangements that educate constructive, integrative aspects of children's physical and social. Children are those who are immature and become adults because of certain rules (mentally, physically and socially immature).

In an effort to provide protection for children in the judicial process, so that the interests and welfare of children are still considered and can be realized, Sudarto said that: Legal protection is a form of protection for every legal subject itself. Legal protection can be said to be a concept or description of a legal function that is expected to be able to provide guarantees for order, justice, benefit, and peace and prosperity. Legal protection has 2 (two) properties, namely preventive legal protection which means prioritizing prevention and repressive legal protection, this protection is an enforcement effort in the form of final protection which can be in the form of sanctions such as fines, imprisonment, and additional penalties. Thus, the word protects from certain parties by using certain methods. According to Muchsin, legal protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with a sanction. Legal protection can be divided into two, namely:

- a. Preventive Legal Protection Protection provided by the government with the aim of preventing children before the occurrence of violations in this case narcotics abusers. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation. Preventive legal protection in terms of protecting child beggars (children as narcotics abusers) in this case does not help government programs in eradicating narcotics as regulated in Law no. 35 of 2009 concerning Narcotics, but specifically regarding

child protection is regulated in Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to Law Number 32 of 2002 concerning Child Protection

- b. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. Law Number 23 of 2002 concerning Child Protection in conjunction with Law Number 35 of 2014 concerning Amendments to Law Number 32 of 2002 concerning Child Protection (hereinafter referred to as Law 35/2014) in Article 17 states:

“Every child who is deprived of his liberty has the right to: receive humane treatment and their placement is separated from adults; obtain legal aid or other assistance effectively in every stage of the applicable legal remedies. defend themselves and obtain justice before an objective and impartial juvenile court in a trial closed to the public.

Legal protection for children in conflict with the law refers to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The substance regulated in Law Number 11 of 2012 concerning the juvenile criminal justice system, among others, is regarding the placement of children undergoing the diversion process. avoid and keep children away from the judicial process so as to avoid stigmatization of children who are in conflict with the law and it is hoped that children can return to the social environment naturally. Restorative Justice and Diversion are the most important differences between Law Number 11 of 2012 concerning the Criminal Justice System for Children, and Law Number 35 of 2014 concerning Child Protection.

Diversion itself is defined as the transfer of the settlement of a child's case from the criminal justice process to a process outside of criminal justice. Restorative justice is a diversion process, in which all parties involved in a particular crime work together to overcome problems and create an obligation to make things better by involving victims, children, and the community in finding solutions to repair, reconciliation and reassurance. a heart that is not based on retaliation. In accordance with the case of drug abuse against children, it is to provide protection for children, because the protection and welfare of children is the basic right of every child. Law Number 11 of 2012 regulates the existence of diversion. The Diversion Process is carried out through deliberation involving the Child and his/her parents/guardians, victims and/or their/her parents/guardians, Community Advisors, and Professional Social Workers based on a Restorative Justice approach. The Diversion Process must pay attention to:

- a. victim's interests
- b. Child welfare and responsibilities
- c. avoidance of negative stigma.
- d. avoidance of retaliation.
- e. community harmony.
- f. decency, decency, and public order.
- g. Achieving peace between victims and children.
- h. Resolving child cases outside the judicial process.
- i. Protecting children from deprivation of liberty.
- j. Encouraging communities to participate; and
- k. Instill a sense of responsibility in children.

Regarding legal protection for children in conflict with the law, according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it shows that there are various forms of protection for children in conflict with the law.

From the results of research on the decision of the Denpasar District Court Number 4 / Pid.Sus. Child / 2020 / PN Dps has decided guilty in the first decision stating that the Child Defendant above is legally and convincingly proven guilty of committing a criminal act of conducting an experiment or a malicious conspiracy to commit a narcotic crime or narcotics frequency, namely those who without rights or against the law offer for sale, selling, buying,

receiving, being an intermediary in buying and selling, exchanging or delivering Narcotics group 1 in the form of plants is the result of a crime in Article 114 paragraph (2) in conjunction with Article 132 paragraph (1) Law No. 35 of 2009 concerning Narcotics imposes imprisonment for 10 months for children.

Against the Denpasar district court decision, the author highlights the vague norms between Law Number 35 of 2009 concerning Narcotics and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, regarding the definition of a child and the place where children (hereinafter referred to as ABH) undergo sentencing. Meanwhile, Article 1 Number 3 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) states that children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

When viewed from the two articles above, there is a blurring of norms related to the definition of a child. In the decision above, it can be seen that the judge uses the principle of preference in dealing with the ambiguity of legal norms, namely *lex posteriori derogat legi priori* which states that the new regulation overrides the old one. In the decision, the judge only looked at narcotics abuse and ruled out child protection laws, and from the judicial process and court decisions, children who are in direct contact with the law are stigmatized and label children who should not be burdened with the judicial process. Criminal justice in handling children in conflict with the law will only cause stigma as a criminal that will befall a child and be the beginning of a failure and disaster in the future.

Settlement of criminal cases where the perpetrators are children can also be done by diversion. The word diversion comes from English diversion which means avoidance or diversion. Diversion is the granting of authority to law enforcement officers to take policy actions in dealing with or resolving the problem of child offenders by not taking formal steps, including stopping or not continuing/releasing from the criminal justice process or returning/handing over to the community and other forms of activity. other social services. Article 1 number 6 of the SPPA Law states that Restorative Justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by pressing for restoration to its original state, and not retaliation. Article 5 paragraph (1) states that the Juvenile Criminal Justice System must prioritize the Restorative Justice approach. Restorative Justice referred to in the SPPA Law is the obligation to carry out diversion. Diversion essentially has a goal to avoid the negative impact of punishment. Diversion also has the essence of ensuring that children grow and develop both physically and mentally. The implementation of the diversion process is carried out through deliberation. Diversion Deliberation is a deliberation between the parties that involves the child and his/her parents/guardians, victims and/or their guardians, community advisors, and professional social workers and may involve social welfare workers and/or the community .

2. Application of Restorative Justice in Handling Narcotics Crimes Perpetrated by Children Through the Diversion Process

The second problem, namely the Legal Purpose Theory, seeks to find the causal factors of the emergence of an effect by only looking at the factors that exist or exist after the act is done. In other words, events and their consequences actually occur in a concrete way (*post factum*). According to this theory, not all factors are causes. The theory of individualization gave birth to a humanitarian approach (humanistic) so that it always pays attention to intact and proper human beings to receive humane treatment. Children's criminal acts of narcotics abuse committed by children in Denpasar are mostly carried out by students who drop out of school and children who lack parental supervision. Children who commit crimes require special treatment, different from adults. Some of the factors that cause children to commit criminal acts of drug abuse, one of which is the lack of parental supervision, and also the environment. Article 1 point 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System 11 Article 1 Number (1) of PERMA No. 4 of 2004 concerning

Guidelines for Implementing Diversion in the Juvenile Criminal Justice System influencing children to commit criminal acts are: lack of attention from parents, social media, narcotics and alcohol.

In addition, there are other factors, namely the negative impact of development developments, the flow of globalization in the field of communication and information, advances in science and technology as well as changes in lifestyle and way of life of some parents have brought about fundamental social changes in people's lives which in turn greatly affects the children's values and behavior. Some children who commit criminal acts are subject to sanctions in accordance with the Criminal Code, some are subject to sanctions outside the Criminal Code, namely by diversion. Diversion itself has the meaning of granting authority to law enforcement officers to take policy actions in dealing with or resolving the problem of child offenders by not taking formal steps, including stopping or not continuing/releasing from the criminal justice process or returning/handing over to the community and other forms of diversion. other forms of social service activities.

The legal purpose of the application of restorative justice through the diversion process is to be carried out with the best aims for children in terms of crimes that will be carried out by prioritizing the child's future. the implementation of diversion in the Court is regulated in Perma Number 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System. Based on Perma Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, the first stage of diversion is carried out through diversion preparation, namely after receiving a decision from the head of the Court to handle cases that must be sought for diversion, the judge issues a determination of the day, date, time and place of the diversion deliberation and contains an order to the Public Prosecutor who delegates the case to present: Children and their parents/guardians or their companions, Victim and/or their parents/guardians, Community advisor, Professional social worker, Community representatives and Other related parties deemed necessary to be involved in restorative justice deliberations through the diversion process.

The forms of the results of the diversion agreement are: Peace with or without compensation, Handing back to parents/guardians, Participation in education or training in educational institutions, or LPKS for a maximum of 3 (three) months Diversion in essence also has the aim of avoiding children and the negative impact of criminal application. Diversion also has the essence of ensuring that children grow and develop both physically and mentally. Theoretically viewed from the concept of the purpose of punishment, the transfer of the judicial process and process to a non-judicial process for children who abuse narcotics will be seen as relevant as follows:

In general, the purpose of punishment essentially consists of efforts to protect the community on the one hand and protect the individual (perpetrator) on the other. The relevance of the transfer of judicial processes and processes to non-judicial processes in overcoming narcotics abuse by children towards the two main aspects of the purpose of punishment, namely aspects of community protection and aspects of individual protection can be explained as follows:

- a. With this transfer, the child will be spared and the application of criminal law which in many theories has been postulated as one of the criminogenic factors. The negative impact of the application of criminal law, including to children, will give birth to stigmatization and dehumanization which can actually be a criminogenic factor. Thus, avoiding children and the application of criminal law (depenalization) can actually avoid the existence of criminogenic factors, which also means avoiding children and the possibility of becoming evil again (recidivists), therefore it also means avoiding the community and the possibility of becoming victims of crime. This diversion will also provide two benefits at the same time for individual children.
- b. With this transfer, children will still be able to communicate with their environment, so that children no longer need to do social adaptation after the crime. Second, with this transfer,

children will also be protected from the possible negative impact of prisonization which is often a means of transferring crime.

- c. In its development, criminal law also needs to pay attention to victims of crime. The orientation of criminal law which only tends to the issue of the act (criminal) and the perpetrator (daad-dader strafrecht) has given birth to the construction of criminal law that does not respect the victim. Whereas in the context, the child as a person who abuses narcotics, he can not only be seen as a perpetrator, but he must also be seen as a victim who needs priority alleviation of his dependence on narcotics.
- d. The transfer of the process from the judicial process to the non-judicial process is also very relevant to the philosophy of punishment adopted in general, namely the philosophy of coaching (philosophy of treatment). Thus, the transfer of the process from judicial to non-judicial processes also has relevance to the conceptual transformation in the criminal and criminal system that occurs in the world in general and the conception of retribution towards the conception of reform.

Starting from the thought that the potential for negative impacts on children due to the criminal justice process is very large. The negative impacts of the criminal justice process such as prisonization, dehumanization and stigmatization will disrupt the mental growth of children. In such a context, efforts to divert the handling of children from the judicial path to the non-judicial path (diversion) become very urgent. With regard to handling children who abuse narcotics, the main problem arising from the juvenile criminal justice process or a criminal decision is the stigma attached to convicts of narcotics abuse after the criminal justice process is complete. The tendency to increase narcotics abuse by children or young perpetrators encourages efforts to tackle and handle it specifically in the field of juvenile criminal law, both formally and materially.

IV. CONCLUSION

The results of the study explain that legal protection for children as perpetrators of child narcotics abusers from the judicial process, so that the interests and welfare of children are still considered and can be realized for the sake of the future and the best for children, so that children who are in conflict with the law can still feel a good future, and still be able to socialize in the environment without any labeling or stigma of children dealing with the law. From the Court's Decision At the Denpasar Court, researchers can suggest that the government should not only issue a Circular regarding Restorative Justice, but can establish a binding law and provide legal certainty for children in order to get protection while in court handling in accordance with the Witness Protection Act and Victims, because actually children should not be burdened by the judicial process. Bookman Old Style 11, *justify*, Conclusion contains the essence of the study and at the same time is also an answer to the problems studied in the article. Therefore, the preparation of the concluding chapter must be adjusted to the order of the existing problems. In addition to containing the essence of the study, conclusions can also be used to test whether or not a research or study objective has been achieved.

Reference

Editor of Sinar Graphic, "Amendment to the Law on Child Protection (UU RI. No. 35 of 2014)" (Jakarta: Sinar Graphic, 2018). h 98

SH Angger Sigit Pramukti and SH Fuady Primaharsya, Juvenile Criminal Justice System (MediaPressindo, 2018). page 17

Dyah Okhtarina Susanti, Legal Research, Sinar Graphic, 2015, page 19

Amirudin and Zainal Asikin, Introduction to Legal Research Methods, (Jakarta: PT. Raja Grafindo Persada, 2004), page 133

- Soerjono Soekanto, introduction to legal research, publisher of the University of Indonesia, Jakarta, 1986 p. 52
- Soetandyo Wignjosoebroto, Law of Concepts and Methods, Equivalent Press, Malang, 2013, pp 67-703
- Arif Gosita, Child Protection Issues, Akademika Presindo, Jakarta, 1989, p. 2.
- Sudarto, Capita Selecta Criminal Law, Alumni, Bandung, 1981, p. 140.
- Tini Rusmini Gorda Syahrul Ramadhon, "Legal Protection of Women as Victims of Domestic Violence in Preventive and Repressive Ways," *Journal of Legal Analysis* 3, no. 2 (2020): 205–17.
- Big Indonesian Dictionary (KBBI), Second Edition, Cet. 1, (Jakarta: Balai Pustaka), p. 595.
- Sudikno Mertokusumo, 2002, *Knowing the Law (An Introduction)*, Third Printing, Liberty, Yogyakarta, p. 85
- Article 1 point 6 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System
- Article 1 Number (1) PERMA No. 4 of 2004 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System
- Jimly Asshiddiqie, *Renewal of Indonesian Criminal Law A Study of Criminal Forms in the Fiqh Tradition and Their Relevance for Renewal of the National Criminal Code*, Angkasa Publisher, Bandung, 1996, p. 167.