

Jurisprudence for Resolving Crimes of Narcotics Abuse by Children in Indonesia

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DOI: 10.23917/jurisprudence.v14i1.4289

Submission

Track: ABSTRACT

Received: February 7, 2024
Final Revision: May 22, 2024
Available online: June 27, 2024
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Objectives: This study aims to analyze the application of diversion in Indonesia in the process of resolving narcotics crime cases against children. It is expected that resolution through the diversion method based on the concept of restorative justice can be regulated in more detail in Act No. 35 of 2009 concerning Narcotics as a legal source in handling criminal cases in Indonesia.

Methodology: This normative legal research employed a jurisprudential approach (legal products formed from judges' decisions) and laws to analyze problems, which were discussed using legal regulations in the form of secondary data (primary, secondary, and tertiary legal materials). The analysis was carried out qualitatively, and the discussion of the problem formulation used literature studies and decision documents issued by the court.

Findings: Settlement of criminal cases based on the concept of restorative justice at the level of law enforcement in the police, prosecutor's office, and courts can reduce the backlog of cases and achieve legal justice as desired by the community. The court ruling of diversion in cases Number 20/Pid.Sus-Anak/2018/PN Trg, Number 2/Pid.Sus-Anak/2020/PN Trg, Number 3/Pid.Sus-Anak/2020/PN Trg, and Number 11/ Pid.Sus-Anak/2020/PN Trg at the Tenggarong District Court provided remedies to the parties in the cases based on Act No. 11 of 2012 concerning the Juvenile Criminal Justice System and Act No. 35 of 2009 concerning Narcotics. Based on the findings of the judge's judgment, it was found that the aim of implementing the Juvenile Criminal Justice System is to jointly seek a fair solution by emphasizing restoration to the original condition and not retaliation.

Benefits: The government needs to create a comprehensive legal basis to regulate the process of resolving cases of narcotics abuse in children

based on restorative justice simultaneously and integrated in the future reform of Narcotics Law in Indonesia.

Novelty: The latest legal basis for the process of resolving narcotics abuse cases based on restorative justice is linked to Act No. 11 of 2012 concerning the Juvenile Criminal Justice System and Act No. 35 of 2009 concerning Narcotics. Based on these provisions, further discussion regarding the process of resolving criminal cases based on the concept of restorative justice by providing diversion determinations to children is discussed.

Keywords: Abuse, Narcotics, Restorative Justice, and Children

ABSTRAK

Tujuan: Menganalisis penerapan diversifikasi di Indonesia dalam proses penyelesaian perkara tindak pidana narkoba terhadap anak. Penyelesaian melalui metode diversifikasi berbasis konsep keadilan restoratif diharapkan dapat diatur secara lebih rinci di dalam Undang-Undang No.35 Tahun 2009 tentang Narkoba sebagai sumber hukum dalam menangani perkara pidana di Indonesia.

Metodologi: Penelitian ini termasuk penelitian hukum normatif dengan menggunakan pendekatan jurisprudensi (produk hukum yang terbentuk dari keputusan hakim) dan undang-undang untuk menganalisis permasalahan yang akan dibahas menggunakan peraturan hukum berupa data sekunder (bahan hukum primer, sekunder dan tersier). Analisis dilakukan secara kualitatif dan pembahasan atas rumusan masalah menggunakan studi kepustakaan dan dokumen penetapan yang dikeluarkan oleh pengadilan.

Temuan: Penyelesaian perkara pidana berbasis konsep keadilan restoratif pada tingkat penegakan hukum di kepolisian, kejaksaan dan pengadilan dapat mengurangi penumpukan perkara dan mewujudkan keadilan hukum sebagaimana diinginkan lingkungan masyarakat. Penetapan diversifikasi, dalam perkara Nomor 20/Pid.Sus-Anak/2018/PN Trg, Nomor 2/Pid.Sus-Anak/2020/PN Trg, Nomor 3/Pid.Sus-Anak/2020/PN Trg dan Nomor 11/Pid.Sus-Anak/2020/PN Trg di Pengadilan Negeri Tenggarong. Memberikan pemulihan kepada para pihak yang berperkara ini berdasar pada Undang-Undang No.11 Tahun 2012 tentang Sistem Peradilan Pidana Anak dan Undang-Undang No.35 Tahun 2009 tentang Narkoba. Berdasarkan temuan dari putusan hakim didapati bahwa tujuan diterapkannya sistem peradilan pidana anak untuk bersama-sama mencari penyelesaian yang adil dengan menekankan pemulihan pada keadaan semula dan bukan pembalasan.

Kegunaan: Pemerintah perlu membuat landasan hukum yang komprehensif untuk mengatur proses penyelesaian perkara penyalahgunaan narkoba pada anak berbasis keadilan restoratif secara simultan dan terintegrasi dalam pembaharuan undang-undang narkoba di Indonesia masa mendatang.

Kebaruan: Dasar hukum terbaru dalam proses penyelesaian perkara penyalahgunaan narkoba berdasar keadilan restoratif yang dikaitkan Undang-Undang No.11 Tahun 2012 tentang Sistem Peradilan Pidana Anak dan Undang-Undang No.35 Tahun 2009 tentang Narkotika. Berdasarkan ketentuan tersebut akan dibahas lebih lanjut terkait proses penyelesaian perkara pidana berbasis konsep keadilan restoratif dengan memberikan penetapan diversi kepada anak.

Keywords: Penyalahgunaan, Narkotika, Keadilan Restoratif dan Anak

Introduction

Child delinquency behavior in Indonesia is a social phenomenon that raises concerns among parents in particular and society in general (Hasbi, 2013). Factors surrounding a child's life that parents may not be aware of also play a role in shaping children's character into deviant behavior (Rasdi, 2020).

Children, in fact, must be protected from the negative impacts of development progress, advances in science and technology, globalization of communication and information, and changes in adult lifestyles, which lead to various kinds of social changes to children (Risya, 2022). In the global scope, particularly in ASEAN, the danger of narcotics and dangerous drug abuse specifically first began to be realized in Southeast Asia in 1972 (Tumbur, 2018). Therefore, efforts to eradicate illicit narcotics trafficking cannot be carried out by one party alone; they must be conducted massively and consistently in Indonesia (Roni, 2019). As a legal state, Indonesia seeks to overcome the distribution, precursors, and abuse of narcotics. This becomes a very serious problem when narcotics clearly destroy the social life system, which contains a nation's ideals of the next generation.

Act Number 11 of 2012 on the Criminal Justice System for Children, written in Article 1 section (3), defines that "a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old, who is suspected of committing a criminal act."

Narcotics abuse in Indonesia has reached an alarming level, which poses a risk to the nation's security and sovereignty (Hakim, 2023). The Narcotics Law explains that "Abusers are people who use narcotics without rights or against the law. Children as drug abusers are

only victims." Hence, it is not appropriate for the state to give severe punishments and equate child drug abusers with real adult criminals (narcotics abusers) (Harefa, 2017).

Handling children in conflict with the law (*Anak Berhadapan dengan Hukum*, hereinafter abbreviated as ABH) regarding narcotics is like two sides of a coin. It has both beneficial yet detrimental effects on health. Having beneficial effects refers to several classes of drugs that have a calming effect and are used in the healing therapy process. In contrast, having detrimental effects refers to excessive use without supervision from an expert or doctor.

The effect of personal use of narcotics is to cause a decrease or change in consciousness, eliminate or reduce pain, and cause self-dependence. In comparison, the detrimental effects on society include causing accidents, crime, and other disturbances (Andri, 2015).

Furthermore, narcotics abuse affects the relationship of the family, community, and government, which results disruptions (Yuliana & Atik, 2019). The social impact carried out by children are not only because of its social consequences, i.e., giving rise to prolonged physical and mental suffering and destruction, but also because of the complexity in dealing with them, especially when the criminal law is used as a final choice (Kusno, 2009). In connection with the problem of narcotics abuse, criminal law policies are required to put narcotics abusers as victims, not as perpetrators (Edrisy, 2016). The criminal policy addresses this repressively in Article 127 in conjunction with Article 111 and/or Article 112 or even Article 114 of Act Number 35 of 2009, which prioritizes retributive justice. Undoubtedly, this will lead to logical consequences for the number of inmates in Correctional Institutions (LAPAS), in addition to users who are not dealers, who become double victimized (Hatarto, 2014).

Of course, children who abuse narcotics do not come suddenly but rather through a thorough process of dealers' planning to expand new markets for narcotics distribution. For children having fallen into narcotics, efforts can be made to obtain diversion rights as a form of punishment diversion that reflects restorative justice. The use of rehabilitation is also an option aimed at avoiding criminal sanctions, which are synonymous with mere punishment (Cahyaningtyas, 2018).

This strategic role has been recognized by the international community to give birth to a convention that essentially emphasizes the position of children as human beings who must receive protection for their rights (Candra, 2013). The UN's attention to child protection issues

was realized by accepting the Standard Minimum Rules for the Administration of Juvenile Justice at the VII Congress in Milan in 1985. In this case, Indonesia has concentrated on children's issues with the issuance of Presidential Decree No. 36 of 1990, where the Indonesian government has recognized the Convention on the Rights of the Child (KHA). The preamble to the KHA states, among other things, that children have the right to receive special care and assistance because their physical and mental immaturity requires special care and protection, including appropriate legal protection before and after birth.

The mandate of Act Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as Act Number 11 of 2012) must prioritize restorative justice as the fulfillment of justice and protection of children's rights. The position of children based on Act Number 11 of 2012 in Article 22 is that children can only be punished according to the provisions of the applicable law. Meanwhile, children aged 8-18 years can be sentenced using exclusive limits in accordance with Act Number 11 of 2012. Therefore, according to this, children aged 8-18 years should also be required to seek diversion so that restorative justice can be achieved for children who commit criminal acts, especially drug abuse (Novitasari, 2021). Imposing a prison sentence on children will have a long-lasting negative impact and will actually give rise to the counter-productive nature of a legal product (Wiharsa, 2017). What does it mean if narcotics abusers are imprisoned without treatment? Of course, when he gets out of prison, he will potentially remain a drug abuser or even become a narcotics addict (Dafit, 2018).

The aim of implementing the Juvenile Criminal Justice System in resolving narcotics abuse is to prioritize the interests of children through the diversion method in the concept of restorative justice, namely the resolution of criminal cases involving children, children's families, and other parties to jointly find a solution by prioritizing restoration of the situation and eliminate retaliation. Thus, by achieving diversion in children, it is reasonable to stop all further case investigation processes at the examination stage at law enforcement agencies and order that children undergo a period of medical and social rehabilitation as a means of the state's responsibility to restore the child's condition after the crime occurred.

For that reason, this research seeks to answer the main problems studied as follows: 1). What is the construction of law enforcement against narcotics abuse in children? 2). What is

the legal concept in resolving criminal acts of narcotics abuse in children? 3). What are the judge's considerations in granting a diversion ruling in number 2/Pid.Sus-Anak/2020/PN Trg?

Several previous studies have discussed the enforcement of legal regulations against perpetrators of criminal acts of narcotics abuse by children. For example, Utari Paramita Devi, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani researched "Juridical Analysis of Criminal Responsibility for Children as Perpetrators of Narcotics Abuse Crimes (A Study of Determination of Number. 22/PID.SUS ANAK/2016/PN.DPS)" (Devi, Dewi & Suryani, 2021). Their research discusses the effectiveness of considering children. In addition, referring to judges' policies in implementing law enforcement, Rida Kherin Oktavianty wrote: "Policy Formulating the Threat of Two Types of Criminal Sanctions Against Children Who Perpetrate Narcotics Abuse" (Oktavianty, 2021). The research highlights the ideal implementation and formulation for imposing two types of criminal sanctions on children who abuse narcotics in the Juvenile Criminal Justice System in Indonesia.

The next research differs from the two previous studies, which provided forgiveness for children using the diversion method. The research discusses legal protection in judges' decisions regarding children as perpetrators of narcotics abuse who are found guilty and sentenced to prison. Written by Gheanina Prisilia Kaban, Madiasa Ablisar, Suhaidi, and Rosmalinda, the research entitled "Legal Protection for Children as Perpetrators of Narcotics Abuse" (Kaban et al., 2023). The factor of narcotics abuse by children cannot be seen as a contemporary phenomenon, and law enforcement must be carried out to minimize cases of narcotics abuse. This discussion has also previously been researched and written by David Moore and is entitled "Contemporary Drug Problems" (Moore, 2020).

The aforementioned articles discuss the Juvenile Criminal Justice System universally. Based on this, the authors scrutinize the construction of law enforcement against perpetrators of criminal acts of narcotics abuse against children, hence a guide to legal certainty. In writing this article, the authors also examine the provisions, which include the formulation and use of regulations regarding criminal acts committed by children and other regulations as study material to answer the problems studied.

Method

This article was written using normative legal research methods, utilizing a statute approach that examined the issues discussed using legal regulations in the form of secondary

data in the form of primary, secondary, and tertiary legal materials (Sudek & Taufani, 2018). This normative legal research was carried out by examining library literature materials (Soekanto & Mamudji, 2014). Meanwhile, the approach (statute approach) was conducted by reviewing all laws and regulations related to the legal issue being handled (Marzuki, 2010).

This research employed secondary data obtained by researchers through a literature study. This secondary data included primary legal materials composed of statutory regulations and court decisions. Secondary legal materials covered books, journals, and state agency reports. Also, tertiary legal materials, which provided explanations of primary legal materials and secondary legal materials, comprised the internet and dictionaries.

The data collection method was performed using library research to obtain primary and secondary legal materials by studying various statutory regulations, judicial decisions, books, journals, and reports from state institutions carried out by researchers related to the research object.

Results and Discussion

A. Construction of Criminal Provisions for Narcotics Abuse in Children

Narcotics crime remains a trend or is still dominant among several crime cases and other violations, and even then, it is only limited to cases revealed in investigation data by law enforcement officials (dark number of crimes) (Hartanto, 2017). Narcotics abuse itself has very bad effects, which can result in addiction and dependence (Sholihah, 2015). Narcotic use is not only common among teenagers; it also affects adults and older people. Small towns and villages are now also affected by narcotics trafficking (Irianto, 2022). The definition of narcotics in Article 1 point 1 of Act Number 35 of 2009 concerning Narcotics is a substance or drug originating from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate the pain, and can cause dependence, which are divided into certain groups.

According to Soedjono D. in Moh Taufik Makaro et al., the term narcotics used here is not "narcotics" in pharmacology (pharmacy) but has the same meaning as "drug," which is a type of substance which, when used, will have certain effects and influences on the user's body (Moh Taufik, 2005), namely:

1. Consciousness
2. Encouragement that can influence human behavior
3. Other effects on the body:
 - a. Calming
 - b. Stimulant
 - c. Causing hallucinations

Law enforcement against children who are narcotics abusers must still pay attention to the provisions in Act Number 35 of 2009 concerning Narcotics. Related to this, law enforcement officers are also faced with Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. In facing and handling the justice process for children as perpetrators of criminal acts, the first thing that must not be forgotten is to look at their position as children with all their special qualities and characteristics; thus, the orientation departs from the concept of protecting children in the treatment process (Sinaga & Nurchraha, 2022). The criminal justice system process for children's cases, from arrest, detention, and trial, must be carried out by special officials who understand children's problems. Law enforcement, in this case, involves the police, public prosecutors, and judges in placing the position of narcotics abusers, who are included in the category of sick people who should be rehabilitated to restore their psychological and mental condition (Priantara & Sagung, 2023). Criminal law policy, in essence, is about how criminal law rules are formulated well and provide guidance to lawmakers (Hapsari, Soponyono & Sularto, 2016). Concretization of the formulation stage or criminalization stage is part of criminal policy with penal means (Priamsari, 2022).

Eradicating narcotics crimes has long been the homework of the Indonesian government, with Act Number 9 of 1976 concerning Narcotics and then Act Number 22 of 1997 concerning Narcotics. The last change was 12 years after the publication of Act Number 35 of 2009 concerning Narcotics due to the development of situations and conditions, which made the previous law no longer relevant for use. The updating of the law regarding narcotics crimes in Indonesia serves as a legal basis for making the eradication of drug abuse and illicit trafficking more effective. The National Narcotics Agency (BNN) is a state instrument that was formed from the start with the authority to carry out investigation steps and closely monitor all activities related to narcotics,

including outreach provided to the public to ward off the widespread distribution of narcotics from an early age. The Indonesian Child Protection Commission (KPAI) and the Directorate General of Corrections, Ministry of Law and Human Rights, sourced from the Police and National Narcotics Agency, collected the following data:

Table 1. Narcotics Abuse by Children in KPAI Complaints

No	Year	Children as Narcotics Abusers
1	2019	52
2	2020	6
3	2021	26
4	2022	11
5	2023	6

Source: Indonesian Child Protection Commission

The Indonesian Child Protection Commission (KPAI), with its limited reach, can only operate when it receives complaints from the public. In comparison, the National Narcotics Agency and the Republic of Indonesia Police not only receive complaints regarding narcotics crimes but also provide education to the public and carry out repressive action, such as coercive measures in the case of arrests on suspicion of criminal acts. Data obtained from two law enforcement agencies regarding narcotics abuse by children is as follows:

Table 2. Narcotics Abuse by Children at the National Police and BNN

No	Year	National Police	BNN
1	2019	3.088	38
2	2020	1.912	6
3	2021	3.250	31
4	2022	2.971	58
5	2023	-	-

Source: National Narcotics Agency

The increasing rate of narcotics abuse by children has the logical consequence that children will often encounter law enforcement officers (Ana, 2020). The table above reveals data on narcotics abuse committed by children from 2019 to 2022, which experienced ups and downs, ending with a trend of increasing rapidly at BNN and sloping at the National Police. The highest rate of narcotics abuse by children was recorded in 2022, with a figure reaching 2,971 children, which had increased one year earlier with a figure reaching 3,250 children. The average number of narcotics abusers in Indonesia is

definitely dominated by large provinces that have high population densities. With the high population in a province, a higher possibility of the number of people who are indicated to be contaminated by narcotics abuse. Article 1 point 15 of Act Number 35 of 2009 concerning Narcotics provides an understanding of the qualifications of every narcotics abuser, namely anyone (person) who uses narcotics without rights or against the law.

The construction of criminal provisions regarding the severity of narcotics abuse for every narcotics abuser takes into account the use of narcotics, where group I is sentenced to imprisonment for a maximum of 4 (four) years, group II is sentenced to prison for a maximum of 2 (two) years, and group III is sentenced to imprisonment for a maximum of 1 (one year). Judges in deciding narcotics abuse cases will always give their consideration by referring to Articles 54, 55, and 103 as the legal basis for resolving narcotics abuse problems, especially abuse involving children as users. The legal basis for resolving the problem of narcotics abuse involving children as users is through the diversion method mandated in Article 6 of Act Number 11 of 2012 concerning the Juvenile Criminal Justice System. Also, Article 54 provides an opportunity for narcotics addicts and victims of narcotics abuse to undergo medical rehabilitation and social rehabilitation. Medical rehabilitation is defined as an integrated process of treatment activities to free addicts from narcotics dependence. Meanwhile, social rehabilitation is a process of integrated recovery activities, both physical, mental, and social, so that former narcotics addicts can return to carrying out social functions in community life.

Article 55 states that parents or guardians of narcotics addicts who are underage are obliged to report them to public health centers, hospitals, and/or medical and social rehabilitation institutions appointed by the government to immediately receive treatment and/or care through medical and social rehabilitation. Meanwhile, the difference with narcotics addicts who are old enough is that they are required to report themselves or be reported by their families to public health centers, hospitals, and/or medical and social rehabilitation institutions. Provisions regarding the implementation of mandatory reporting are further regulated by government regulations.

Additionally, the judge examining the case of a narcotics addict can give a decision in the form of ordering him to undergo medication and/or treatment through rehabilitation if the narcotics addict is proven guilty of committing a narcotics crime and ordering the person concerned to undergo medication and/or treatment through rehabilitation if the

narcotics addict is not proven guilty of committing a narcotics crime and undergoes a period of medication and/or treatment which is counted as the period of serving a sentence.

B. Legal Concepts in Resolving Crimes of Narcotics Abuse in Children

Children who are faced with legal issues, better known as ABH, are children who are referred to as either perpetrators, victims, or witnesses. This aligns with the description in Act Number 11 of 2012 concerning the Juvenile Criminal Justice System, which introduces the concept of juvenile justice reform and contains many principles and ideas related to child protection. The concept of reform contained in Act Number 1 of 2012 cannot be separated from the mandate of the Convention on the Rights of the Child (KHA), which was ratified by the General Assembly of the United Nations (UN), which was then ratified by Indonesia in 1990 with the instrument for making Presidential Decree Number 36 of 1990.

The limitations of criminal law policy were conveyed by the UN (United Nations) at the 8th UN Congress that *"the formal processes of criminal justice-apprehension, prosecution, sentencing, punishment, and rehabilitation of offenders-have in recent years been shown to have only a limited effect in controlling crime. United Nations, Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Cooperation"* (Clark, 1990).

Law enforcement using non-penal means that have targets and objectives for internalization purposes needs to be prioritized (Sunarso, 2014). The change in view referred to here is that not all criminal acts will find a place in a prison cell; rather, they have shifted towards a humanist restorative approach to be applied to society, especially children who are suspected of being perpetrators of criminal acts. The resolution process for children who abuse narcotics in each law enforcement institution can be observed through a set of instruments below:

1. Regulation of the Attorney General of the Republic of Indonesia Number Per-029/A/JA/12/2015 concerning Technical Instructions for Handling Narcotics Addicts and Narcotics Abusers in Rehabilitation Institutions

The head of the district attorney's office and the head of the district attorney's branch at the prosecution stage place the defendant and/or child as a narcotics addict and victim of narcotics abuse in medical and/or social rehabilitation

institutions in accordance with the recommendations of the Integrated Assessment Team (TAT). In the case of children who are narcotics addicts and victims of narcotics abuse, the resolution of the case includes settlement outside criminal justice through diversion or settlement within criminal justice by following Act Number 11 of 2012 concerning the Juvenile Criminal Justice System, Attorney General's Regulations concerning Guidelines for Implementing Diversion at the Prosecution Level, and related laws and regulations. In the application of the articles alleged in the indictment, in the event that the defendant and/or child is qualified as a narcotics addict and victim of narcotics abuse, as proven by the minutes of examination of laboratory results and assessment results from the Integrated Assessment Team, who are arrested or caught red-handed with a certain amount of evidence or without evidence, Article 127 of Act Number 35 of 2009 concerning Narcotics must be applied. For defendants and/or children, apart from being qualified as narcotics addicts and victims of narcotics abusers as proven by the minutes of examination of laboratory results and assessment results from the Integrated Assessment Team, the public prosecutor in criminal prosecutions is obliged to prosecute the defendants and/or children of narcotics addicts and victims of narcotics abusers in medical rehabilitation and/or social rehabilitation institutions, if:

- a. Positive for using narcotics based on laboratory results based on the recommendations of the Integrated Assessment Team.
- b. Not as a manufacturer, distributor, courier, or dealer.
- c. Not a *recidive* act.
- d. When caught by law enforcement officers

2. Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as Implementation of the *Dominus Litis* Principle

Based on Article 127 section (1) of the Narcotics Law, rehabilitation can be carried out through the legal process. Suspects who are suspected of violating Article 127 section (1) of the Narcotics Law are qualified as drug abusers, consisting of narcotics abusers (see Article 1 point 13 of the Narcotics Law),

victims of narcotics abuse (see the elucidation of Article 52 of the Narcotics Law), or narcotics addicts (see Article 1 point 12 of the Narcotics Law). Requirements for rehabilitation through a legal process for abusers are as follows:

- a. Laboratory examination results show positive use of narcotics.
- b. Based on the results of investigations using the know your suspect method, the narcotics distribution network and the final user (and user) are not involved.
- c. Arrested or caught red-handed without evidence exceeding 1 (one) day's use
- d. Based on the results of the integrated assessment, one is qualified as a narcotics addict, victim of narcotics abuse, or narcotics abuser.
- e. Have never undergone rehabilitation or have undergone rehabilitation no more than twice, supported by a certificate issued by an authorized official or institution
- f. The guarantee letter stating that he is undergoing rehabilitation through a legal process from the family/guardian

The public prosecutor then prepares and submits a memorandum of opinion in stages to the head of the state prosecutor's office or the head of the state prosecutor's branch so that the suspect can be rehabilitated through the legal process by attaching:

- a. Integrated assessment results
- b. Forensic laboratory examination results
- c. Certificate of having/never undergone rehabilitation
- d. A statement of willingness to undergo rehabilitation through the legal process
- e. Guarantee letter stating that he is undergoing rehabilitation through a legal process from the family/guardian

If all the conditions have been met, rehabilitation can be determined through a new legal process. Then, the head of the district attorney's office or head of the district attorney's office branch issues a rehabilitation determination through a legal process within three days of receipt of the memorandum of opinion and attachments. In the case of an application for rehabilitation through a legal process,

exposure is carried out with the leadership of the head of the district attorney's office or the head of the district attorney's branch by issuing a determination of rehabilitation through a legal process starting 14 days from receipt of the memorandum of opinion and attachments. The determination of rehabilitation through a legal process includes:

- a. Determine whether the suspect should undergo rehabilitation through a legal process
- b. Determine the place and duration of rehabilitation through a legal process
- c. Determine the status of evidence, including narcotics evidence, which is left for the prosecution and examination before the court, which remains under the responsibility of the public prosecutor until the rehabilitation implementation is completed through the legal process
- d. Order the release of the suspect if detained.

3. Supreme Court Circular Letter Number 4 of 2010 concerning Placement of Abusers, Abuse Victims, and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions

The right to rehabilitation, as intended by Article 103, points a and b of Act Number 35 of 2009, can only be granted to the category of defendants who, when arrested by law enforcement officers, both National Police investigators and BNN investigators, are caught red-handed. Also, they must have as much evidence as is confiscated below with a duration of use of one day: Methamphetamine 1 gram, MDMA 2.4 grams (8 pills), Heroin 1.8 grams, Cocaine 1.8 grams, Marijuana 5 grams, Leaves Coca 5 grams, Mescaline 5 grams, Psilocybin 3 grams, LSD (d-lysergic acid diethylamide) 2 grams, PCP (phencyclidine) 3 grams, Fentanyl 1 gram, Methadone 0.5 grams, Morphine 1.8 grams, Pethidine 0.96 grams, Kedein 72 grams, and Buprenorphine 32 grams.

The conditions for finding evidence are a positive laboratory result for narcotics use and a certificate from a government psychiatrist is also required to provide an accurate basis for testing someone as a narcotics user based on the investigator's request. Also, there is no evidence that the abuser in question is involved in narcotics distribution. In determining the length of rehabilitation, the judge is

determined to seriously consider the level of addiction of each defendant so that the judge is obliged to listen to various expert statements and standardize the therapy and rehabilitation process at the rehabilitation center as follows:

- a. Detoxification and stability: 1 (one) month
- b. Primary: 6 (six) months
- c. Re-Entry: 6 (six) months

C. Judge's Considerations in Providing Determination Number 2/Pid.Sus-Anak/2020/PN Trg

The child with the initials A was caught using 1 (one) bag of narcotics weighing 0.42 grams (zero point four two) grams of shabu-type narcotics with a wrapper of 0.33 grams (zero point three) grams, and the net weight of the shabu-shabu was 0.09 grams (zero point zero nine) grams. In a deliberation on the diversion agreement, which was attended by the child, parents, community counselors, legal advisors, public prosecutors, and facilitators, the diversion was agreed upon with the result of stopping the examination of the child and ordering the child to carry out the results of the diversion agreement that had been drafted and promising not to repeat the action, and carrying out medical and social rehabilitation at BNN Tanah Merah, Samarinda, East Kalimantan Province.

Regarding the judge's considerations in making a determination, the aim of implementing the Juvenile Criminal Justice System is to prioritize restorative justice, i.e., the resolution of criminal cases involving children, the child's family, and other related parties to jointly seek a fair solution, emphasizing restoration to the original state rather than retaliation. Achieving diversion in child case Number 2/Pid.Sus-Anak/2020/PN Trg, there was sufficient reason for the judge to stop the process of examining the case in court and determine that the child undergoes medical rehabilitation and social rehabilitation as a means of healing facilities. Therefore, the main aim of punishment in this determination is to make the child admit and realize that his or her action was a wrong act and promise not to repeat it in the future. However, in the judge's far-sighted view, the judge must still consider the sociological conditions of society regarding children. If he uses a criminal justice system that has formal characteristics, children will immediately receive a bad stigma (labeling).

Labeling is giving nicknames or labels, which are generally negative to someone who has committed deviations (Amry, 2021). Labeling tends to be given to people who engage in deviant behavior and do not comply with the norms set by community groups. A person who is given a label will face a change in role and will tend to behave in accordance with the label given (Erianjoni, 2015).

The judge, with his wisdom, is obliged to consider the values of justice, which prioritize the future of the child, apart from simply admitting and realizing that the act he has committed is wrong. Thus, according to the authors, one of the judge's discoveries in modern law today is not only what is written in positive law, which is then stated, but also human dignity.

In this case, justice is a virtue related to relationships between humans so that they are comparable or appropriate. The concept of dignified justice in Indonesia has its characteristics, which are reflected in the Pancasila philosophy (Kristiani, 2022). The theory of dignified justice originates from the concept of Western thought, namely, working to achieve goals. Dignified justice gives the Indonesian legal system its identity amidst the very strong influence of world legal systems (Prasetyo & Barkatullah, 2015). The issue of justice is the same as discussing the law itself. The upholding of law and justice and respect for the nobility of human values are prerequisites for upholding the dignity and integrity of the state (Pakendek, 2017). Thus, the theory of dignified justice helps judges search for and build laws through a philosophy that the Indonesian people explore.

For this reason, legal considerations for judges are essential in determining whether a narcotics abuser can be rehabilitated; narcotics abusers also need rehabilitation measures so that the defendant recovers physically (Rahayu & Monita, 2020). The basis for carrying out rehabilitation measures is so that abusers are free from the trap of narcotics (Putra, Sepud & Sujana, 2020). The ultimate goal is to prevent children from entering the formal criminal case resolution process (Endriyanti, Aprilianda & Madjid, 2019). Here, the judge is the core actor who functionally exercises judicial power in adjudicating the case at hand (Dewi, 2019). Act Number 48 of 2009 concerning Judicial Power Article 8, point (2), states that judges and constitutional justices are obliged to explore, follow, and understand the legal values and sense of justice that exist in society. When linked to Act Number 35 of

2009 concerning Narcotics, this law will expand the scope of narcotics abusers to get the opportunity to undergo a treatment process through both medical and social rehabilitation.

Self-abuse of narcotics is specifically regulated in Article 127 section (1) of the Narcotics Law, and Article 127 section (1) of Act Number 35 of 2009 concerning Narcotics does require imprisonment for perpetrators of self-abuse of narcotics. However, when examining cases of narcotics abuse, judges are obliged to pay attention to the provisions as formulated in Articles 54, 55, and 103 of the Narcotics Law, which are regulated in Article 127 section (2).

Article 54 states that narcotics abusers and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. At the same time, Article 55 regulates provisions regarding parents or guardians of underage narcotics addicts, who are required to report to public health centers, hospitals, and/or a social rehabilitation institution appointed by the government to receive treatment through rehabilitation. In comparison, the provisions of Article 103 regulate that the judge examining the case of a narcotics abuser can decide to order the person concerned to undergo treatment through rehabilitation.

In particular, there is a struggle with norms in Article 127, section (1), which states that judges have the authority to punish narcotics abusers, while sections (2) and (3) state that judges are obliged to help addicts and victims of narcotics abuse. Because of this, the Supreme Court created Supreme Court Circular Letter Number 4 of 2010 concerning the Placement of Abuse, Victims of Abuse, and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions, which functions as a benchmark for judges in giving the type of punishment to narcotics abusers as intended in Articles 127, 54, and 103 of the Narcotics Law. Judges, in providing the application of the law through court decisions according to their content, must not only be in accordance with the relevant legal regulations but must also contain a "formal legality," which takes into account the hierarchy of legislation.

Children who abuse narcotics without producing, distributing, or intermediary as couriers will certainly receive lighter sentences. The criminal acts of narcotics abusers are different from those of producers, dealers/sellers, or intermediaries; abusers are likened to sick people and need special treatment to get rid of their narcotics use as soon as possible.

Children who abuse narcotics are very likely to receive diversion as a means of healing compared to punishment in the form of imprisonment (retributive).

Narcotics abusers cannot be separated from criminal law in Indonesia because Indonesian criminal law originates from neo-classical criminal law, which gave birth to criminal law that is *daad–dader strafrecht*, namely criminal law that is action and perpetrator-oriented (Zaidan, 2022). Punishment is an absolute consequence that requires retaliation against the person who committed the crime. Thus, the basis for justifying a crime lies in the existence or occurrence of the crime itself (Muladi & Barda, 2010). This theory can be interpreted that the punishment is imposed as a concrete form of retaliation against the perpetrator for committing a crime that caused misery to other people or members of society. Here, it can be seen that retributive justice is the guardian and guarantor of the implementation of the principles of legal certainty. In this way, human dignity and the order of living together will continue to be maintained in the future. Imposing a crime on a child that has a retributive nature will actually cause new wounds because this theory imposes a crime simply because the person has committed a crime (*quia peccatum est*).

Act Number 11 of 2012 introduces the proportion of restorative justice, which is applied through the diversion method. In point 6, restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing restoration to the original condition and not retaliation. As in number 7, diversion is the transfer of resolution of children's cases from the judicial process to a process outside of criminal justice.

Furthermore, Article 7, point (1), states that diversion must be carried out on children by each law enforcement agency/criminal justice sub-system (police, prosecutors, and courts). However, in section (2), diversion also has conditions that require it to be carried out, including:

1. Threatened with imprisonment for less than 7 (seven) years
2. Not a repetition of a criminal act

Based on Act No. 11 of 2012 (Articles 12, 29, 42, and 52), the results of the diversion agreement must be submitted by the investigator/public prosecutor/judge to the chairman of the District Court to obtain a "determination." After receiving the determination, the

investigator/public prosecutor must then issue a determination to terminate the investigation or a determination of termination of prosecution.

Nevertheless, facts found in the field revealed that recovery efforts for narcotics abuse are still not running optimally (Anton, 2022). Restorative justice provides benefits for victims in the form of empowerment by fulfilling victims' needs and rights by involving victims' active participation in the case resolution process (Pelikan, 2020). Restorative justice emphasizes restoration to the original state of the losses suffered by the victim rather than retaliation, which will only lead to revenge, which is one of the legal remedies that is deemed proportional (Wulandari, 2021). This principle of restorative justice creates peace between the perpetrator, victim, and society based on the consequences of a criminal act (Wulandari, 2018). Thus, restorative justice focuses on restoring justice for victims who are considered to be both perpetrators and its implementation as legitimacy and validation in the criminal justice system (Sukardi & Hadi, 2022).

Conclusion

The construction of law enforcement against every narcotics abuser pays attention to narcotics use in terms of weight and class of narcotics used. In the laboratory examination process carried out by the Integrated Assessment Team (TAT), they are only narcotics abusers. The legal basis for resolving the problem of narcotics abuse involving children as users can be achieved through the diversion method by giving children the opportunity to undergo medical rehabilitation and social rehabilitation.

For this reason, judges are obliged to explore, follow, and understand the legal values and sense of justice that exist in society. Values and fairness in providing legal considerations are important factors for judges in determining whether a narcotics abuser can be rehabilitated. Several decisions made by the judge always prioritize the interests of the child, namely that the main aim of carrying out medical rehabilitation and social rehabilitation is to prioritize restoration to its original condition and eliminate retaliation for the child.

Furthermore, diversion can be achieved if children are only identified as drug abusers, not producers, distributors, or intermediaries of narcotics. On the other hand, children must also fulfill other requirements, namely that the sentence is less than 7 (seven) years and not a repeat crime (*recidive*). Implementation of diversion involves the role of the child, the child's family, and other outside parties as supporters and facilitators of deliberations. Then, after joint

diversion deliberations, an agreement is reached. The results of the diversion agreement are submitted to the judge as sole judge and forwarded to the chairman of the District Court to obtain a "determination." After receiving the determination, the public prosecutor is obliged to remove the child from detention, stop examining the child, and order the child to carry out the results of the diversion agreement by promising not to repeat the action and to carry out medical rehabilitation and social rehabilitation.

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