

## A LEGAL ANALYSIS OF RESTORATIVE JUSTICE IN IMPLEMENTING CRIMINAL DECISIONS AGAINST CHILDREN WHO ABUSE DRUGS

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### ABSTRACT

Drug abuse is currently a concern for many people and is continuously discussed and published. The form of punishment for children who commit narcotics crimes is to provide guidance to children who abuse narcotics by implementing forms of social rehabilitation such as sports activities. Health care, self-care, counseling, religious guidance, personality ethics, and skills guidance. The guidance is carried out in order to shape the child's mentality to be accepted back into the family and community environment. The implementation of restorative justice as legal protection for children who commit narcotics crimes is applied in order to create justice and legal certainty needed by children. The purpose of law enforcement is not to apply the law, but to achieve order, peace, tranquility, in a harmonious and just society.

### 1. Introduction

Initially, narcotics were discovered for human use, particularly in the medical field. With the rapid development of the pharmaceutical industry today, the categories of narcotics have expanded, as outlined in the appendix to Law Number 35 of 2009 concerning Narcotics. With the rapid advancement of science and technology, the processing methods for narcotics have also evolved. However, it was later discovered that these narcotics are addictive, leading to continued dependence on them.

Initially intended for medicinal purposes, with advances in science and technology, narcotics can be processed in numerous ways, and their functions can be misused beyond the medical field. This poses a threat to the continued existence of a nation's future generations.

All forms of narcotic abuse, whether illegal use or distribution, are unlawful and constitute a criminal offense. Drug abuse is no longer carried out clandestinely, but rather openly, by certain individuals operating these dangerous goods.

With the worsening economic situation and the resulting low level of education, children are no longer solely responsible for playing and studying; many are now performing demanding jobs, earning a living, and becoming the family breadwinner. A child's growth and development should be the responsibility and supervision of their parents.

The large number of children engaging in adult activities and roles, unhealthy social interactions, and poor family relationships can lead to frustration and psychological distress, which are the primary sources of juvenile delinquency.

Children are unable to control their emotions effectively and act without thinking, always seeking shortcuts or solutions to problems. Children's immaturity, coupled with their often hasty thinking and decision-making, pose a particular threat to their well-being, leading them to fall into the trap of drugs. Restorative justice is considered a new way of thinking/paradigm for viewing crimes committed by individuals. Therefore, law enforcement officials, especially the police, should be the initiators and facilitators in handling children in conflict with the law. This involves encouraging all parties, including the perpetrator, victim, their parents, the local community, or the school, to sit together in a meeting to discuss the resolution process using a restorative justice approach.

Restorative justice is a fair resolution that involves the perpetrator, victim, their family, and other parties involved in a crime, working together to find a solution to the crime and its implications, emphasizing restoration rather than retaliation.

## 2. Research Method

This paper employs a normative juridical legal research approach. This research is descriptive and analytical, revealing laws and regulations related to the legal theories that are the subject of the study. This paper outlines issues related to restorative justice in sentencing children who abuse drugs.

This research utilizes literature research. Secondary data was collected from literature research, including primary, secondary, and tertiary legal materials. In normative research, the data required is secondary data. This secondary data has a very broad scope, encompassing personal letters, diaries, and official documents issued by the government.

Data collection focused on the underlying problem, ensuring that the research avoids any deviations or ambiguities in its discussion. Data collection in this study utilized both primary and secondary data.

To obtain objective results that can be proven to be true and whose results can be accounted for, the data in this study was obtained using data collection tools that were carried out using a method, namely library research, namely research

carried out by collecting data by reviewing library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials.

### 3. Results And Discussion

#### Results

The formulation of criminal sanctions and disciplinary measures demonstrates that Law Number 11 of 2012 concerning the Juvenile Criminal Justice System adopts what is known as the Double Track System. In other words, this law explicitly regulates both criminal sanctions and disciplinary measures. According to Marlina, the best punishment for children in criminal justice is not imprisonment, but rather compensation according to the seriousness of the crime. Children who commit crimes can be prosecuted and appropriately addressed. One solution is through a Juvenile Court, a child protection effort designed to educate children without neglecting the upholding of justice.

This demonstrates that upholding justice for children who have committed crimes is a primary duty of the judicial body mandated by law. It not only prioritizes criminal penalties as the primary element, but also prioritizes protecting the child's future as the goal of the Juvenile Court.

Indonesia already has a specific law on juvenile courts, namely Law No. 11 of 2012. Such a written and codified legal instrument serves as a guarantee for the operation of the Juvenile Court, as it concerns legal certainty and legal comparability.

Compared to the provisions of Article 10 of the Criminal Code, which stipulates the following principal penalties: the death penalty, imprisonment, detention, fines, and detention, the Juvenile Criminal Justice System Law specifically prohibits the threat and sentence of capital punishment to children who have committed delinquency. As is well known, the investigation of Children in Conflict with the Law is based on the philosophy that it is solely in the interests of the child.

This means that children, as the nation's future generation, are not intended to be subject to the death penalty, as they desperately need guidance and protection to ensure growth that supports their physical, mental, and social development. Therefore, if the death penalty is imposed, guidance and protection efforts will never be provided, given the long life ahead of a child. Similarly, the threat of life imprisonment means that the punishment will be carried out throughout the child's life in a correctional institution. This is not intended by Law No. 11 of 2012.



In this regard, Law No. 11 of 2012 stipulates that for Children in Conflict with the Law who have committed a crime punishable by death or life imprisonment, the maximum prison sentence that can be imposed is 10 (ten) years.

Of the five principal penalties for Children in Conflict with the Law, supervision is a new type of punishment. Supervision is a punishment specifically imposed on children, involving supervision by the Public Prosecutor of the child's daily behavior at home, and guidance provided by a Community Guidance Officer. Therefore, supervision is not a prison sentence or detention carried out at the child's home, but rather supervision of the convict for a specified period determined by the court's decision.

Regarding additional penalties in the form of revocation of certain rights, this should not be applied to children. Children whose rights are prioritized over their obligations will be at odds with the rights they deserve as children. For example, their right to education. If this right is revoked, the child, as the nation's next generation, will automatically become ignorant, something that is not desired by all.

#### 4. Discussion

In principle, education, guidance, and job training are provided by the government in Juvenile Correctional Institutions or the Department of Social Affairs. However, if the child's best interests require it, a judge may order the child to be handed over to a social organization, such as an Islamic boarding school (pesantren), a social welfare institution, or other social institution, taking into account the child's religious affiliation.

The establishment and existence of sound and adhered to laws and regulations is crucial for developing countries like ours today, including the development of a new legal system that aligns with the needs and developments of society.

With the enactment of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, cases involving children or minors who commit crimes are handled based on the provisions of Law No. 11 of 2012. The legal status of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which has reached its legal stage, further enhances the principles of criminal procedure. The formulation of the provisions of Law No. 11 years is the objective of the principles of the juvenile justice process in Indonesia.

Criminal investigations conducted by police, prosecutors, judges, and other officials must prioritize the interests of the child or consider the criteria that best serve the child's welfare without compromising the interests of society.

Meanwhile, from a criminal justice perspective, sentencing delinquent children to punishment tends to be detrimental to their future mental development.

This detrimental tendency stems from the stigmatizing effect of punishment, particularly imprisonment. Imprisonment can create a stigma that persists even after the offender has committed no further crimes. This stigmatizing effect on children makes it difficult for them to return to being "good" children.

Imprisonment is a relatively ineffective form of punishment. Based on comparative studies of the effectiveness of punishment, the average reconviction rate for first-time offenders is inversely proportional to the offender's age. Specifically regarding the issue of punishment, a fundamental issue in criminal law, a crucial issue is the concept of the purpose of punishment, which seeks to justify punishment in an effort to make it more functional.

Various national regulations provide several terms for children in conflict with the law. The Juvenile Court Law calls them "delinquent children," while the Child Protection Law uses two terms: children in conflict with the law and children in conflict with the law. Regardless of the term, the most important thing is that everything related to children must be done with the best interests of the child in mind, both as victims and perpetrators. Law enforcement must consider the best interests of children in the law enforcement process.

One way to do this is by using alternative punishments other than formal punishment, for example, returning them to their parents or placing them in correctional centers. Therefore, children caught committing crimes are not immediately arrested, detained, and brought to court, but must undergo certain processes, such as mentoring and counseling, to determine what is in their best interests.

To prevent similar problems in the future, law enforcement must consider several factors in considering the best interests of children in conflict with the law. First, the age of criminal responsibility. This is useful so that not just any child can be brought to justice, but rather based on a predetermined age. Indonesia stipulates that a child can be brought to justice starting at the age of eight. This age is actually very low.

In many countries, the age of criminal responsibility is between 12 and 17 years. This age is often problematic because many children lack birth certificates, making it difficult to assume an unknown child's age. This situation results in children being treated as adults when confronted with the law.

Both the legal process and the juvenile justice administration system, from the investigation stage, to trial, and imprisonment, are often where children's rights are violated. Early in the investigation process, the child's parents should be informed of the child's condition. If parents are not available, a guardian must be

appointed. Furthermore, the child must receive support, including counseling by a psychologist and legal counsel, at the expense of the state.

Legal representation is crucial in the legal process for children. Children are minors and lack the legal capacity to engage in legal action. Therefore, children in conflict with the law must involve their parents/guardians and legal counsel, particularly legal counsel, as they have the consent to assert their human rights in the legal process.

The examination process must also be conducted in a child-friendly manner, such as by a child-centered expert with the child's consent, in a language the child understands, and if the child cannot understand the language, an interpreter must be provided. Children must be given the opportunity to rest, have their privacy guaranteed, and, of course, be free from violence. Furthermore, during the trial process, judges and prosecutors must not wear gowns, as this can cause fear and other psychological impacts on children.

Based on these considerations, the importance of providing legal instruments and institutions specifically for children who come into contact with the law has been formulated. This is done with the full awareness that children, although they may commit unlawful acts similar to those committed by adults, need not be treated the same way as adults who commit crimes.

The root of the problem of children in conflict with the law in Indonesia is very clear: regulatory instruments do not yet support the handling of children in conflict with the law from a child-centered perspective. Therefore, establishing an adequate juvenile justice system is crucial to ensure the political will of the state/government to protect children by guaranteeing their survival, growth, and development, as well as their right to protection from violence and discrimination. Punishment for those convicted of crimes serves to re-educate and reform the offender's attitudes and behavior so that they can abandon their previous bad behavior. The principle of promoting the interests of the offender, which is pursued through guidance, education, rehabilitation, and resocialization, serves as the basis for sentencing.

Punishment is an effort to bring perpetrators to their sense of remorse and rehabilitate them as good citizens, obeying the law, and upholding moral, social, and religious values, thus achieving a safe, orderly, and peaceful society.

Given the unique characteristics of children's behavior and actions, it is essential that punishment, particularly imprisonment, be a last resort when other measures have failed. The judge's imposition of punishment on a child who commits a crime is crucial, as the function of punishment for children is to provide protection.

When sentencing a child, the judge has the discretion to determine the severity of the sentence. However, this freedom is not absolute, unlimited freedom; it must take into account the nature and seriousness of the crime committed and the circumstances surrounding the actions expected of them.

Every child requires guidance and protection to ensure complete, harmonious, and balanced physical, mental, and social growth and development. This guidance and protection of children does not exclude child perpetrators of criminal acts. Children who commit crimes, as defined in Article 1 (number 1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, are children in conflict with the law, namely children in conflict with the law, children who are victims of crimes, and children who are witnesses to crimes.

Criminal investigations conducted by police, prosecutors, judges, and other officials must prioritize the interests of the child or consider the criteria that best serve the child's well-being without compromising the interests of society.

Meanwhile, from a criminal justice perspective, sentencing delinquent children to punishment tends to be detrimental to their future mental development. This detrimental tendency stems from the stigmatizing effect of punishment, particularly imprisonment. Imprisonment can create a stigma that persists even after the offender has committed no further crimes. This stigmatizing effect on children makes it difficult for them to return to being "good" children.

Imprisonment is a relatively ineffective form of punishment. Based on comparative studies of the effectiveness of punishment, the average reconviction rate for first-time offenders is inversely proportional to the age of the offender.

Specifically, regarding the issue of punishment, as a fundamental issue in criminal law, a crucial issue is the concept of the purpose of punishment, which seeks to justify punishment as an effort to make it more functional.

## 5. Conclusion

The form of punishment for child drug offenders is to provide guidance to children who abuse drugs through social rehabilitation, such as sports activities. Health care, self-care, counseling, religious guidance, personal ethics, and skills training are provided. This guidance is provided to shape the child's mentality so that they can be accepted back into their family and community.

The implementation of restorative justice as legal protection for child drug offenders is implemented to create the justice and legal certainty that children need. The restorative justice approach is implemented because, in addition to being a means to regulate community life, it also serves as a means to change the mindset and behavior of citizens and protect the interests of every member of



society. This approach is implemented to provide legal protection for every citizen. Through a restorative justice approach, it is hoped that a justice process will be achieved that fully aligns with the needs of society and is aimed at preventing re-offending.

An obstacle to the implementation of restorative justice for child drug offenders is the highly formalistic nature of law enforcement, who assert that the legal process will continue even after a reconciliation, and that the unlawful nature of the offender will not be erased by reconciliation. The aim of law enforcement is not to implement the law, but to achieve order, peace and tranquility in a harmonious and just society.

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