

# Implementation of Restorative Justice in the Handling and Settlement of Narcotic Criminal Actions Permitted by Children

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## Abstract

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that children are a mandate and gift from God Almighty. This research then aims to see how restorative justice is applied in handling and resolving narcotics crimes by children. This research will be carried out using a descriptive qualitative approach. The data used in this research comes from the results of previous research or studies that still have relevance to this research. The results of this study found that, in general, the restorative justice approach used to handle and resolve narcotics crimes by children is still not in accordance and optimal with the provisions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

**Keywords:** *Narcotics, Implementation, Restorative Justice, Children.*



## A. INTRODUCTION

Children, with all their meanings and definitions, have distinct features than adults; this is the starting point for examining the rights and responsibilities of a kid, which will affect his legal standing. Regarding Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System, it is also stated that children are a mandate and a gift from God Almighty, who has dignity and worth as a whole human being. Children have the right to specific protection in order to preserve their dignity, including legal protection in the court system (Heggeness, 2020).

Child protection is a component of National Development, according to Retnowulan Sutianto. Protecting children is the same as protecting humans and developing them to their fullest potential. This is mirrored in the essence of national development, which is the development of a whole, virtuous Indonesian individual (Hafizh et al., 2021). Ignoring issues of child protection would not enhance national progress. The absence of child protection will result in a variety of societal issues that can impede law enforcement, order, and national growth (Dettlaff et al., 2020).

Bagir Manan, in his writings, describes the substance of “restorative justice”, which contains principles. These principles are “Building joint participation between perpetrators, victims and community groups in resolving an incident or criminal act. Placing perpetrators, victims, and the community as “stakeholders” who work together and immediately try to find a solution that is seen as fair for all parties (win-win solutions)” (Harmanto et al., 2022). In cases of crimes committed by children, the restorative justice system at least aims to repair/restore criminal acts committed by

children with actions that are beneficial to children, victims, and their environment by involving them directly (reintegration and rehabilitation) in problem-solving, and different from the way adults are handled, which will then lead to the purpose of the crime, upon which, according to Barda Nawawi Arief, punishment is based (Jobe, 2022).

Article 1 Number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that "Restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizes restoration to the original state, and not retaliation" (Hafrida, 2019).

In theory, Law No. 11 of 2012 has proposed a restorative justice approach and the diversion process as a means of resolving crimes committed by minors, so that the application of restorative justice will provide solutions to fundamental questions pertaining to the resolution of criminal cases. This first approach, namely criticism of a criminal justice system that does not give possibilities for victims in particular, is flawed (criminal justice system that disempowers individuals). The second strategy is eradicating conflicts, particularly between criminals and victims and society (taking away the conflict from them). The third approach is the necessity of overcoming the feeling of helplessness resulting from a criminal act in order to attain improvement (Sarwadi & Bawono, 2021).

The use of opioids by minors involves more than just law enforcement. The issue is intricate and multifaceted. Therefore, the issue of drug abuse should not be viewed merely as a legal matter. On the basis of the available evidence, it is necessary to study and prioritize numerous factors, including the health and social aspects of drug users. In the case of children who use narcotics, the state must also consider the children's best interests, their vulnerabilities, and presumptions about their cognitive immaturity when formulating narcotics legislation (Shanton Sr et al., 2022).

Since Law Number 35 of 2009 concerning Narcotics still criminalizes narcotics in the criminal context, children who use narcotics are entitled to equal treatment under the law. Children who use drugs should not be discriminated against on the basis of their drug usage status in the eyes of the law (Trestiwawan et al., 2021). Therefore, the state must ensure access to an honest and fair juvenile justice system, without discriminating the treatment or procedure for narcotics-abusing youth. However, this does not preclude the use of affirmative action in law enforcement (Fessinger et al., 2020).

To ensure the fulfillment of children's rights, affirmative action may be taken against vulnerable child populations. This is especially pertinent in situations when children who use opioids come into contact with the law, such as diversion for children who use narcotics or the provision of medical rehabilitation services in prison for children who commit crimes (Singh, 2022). The best interests of the child is one of the Convention on the Rights of the Child's four guiding principles. The state must

prioritize the best interests of children when determining policies, regulations, judicial rulings, and other government acts pertaining to children (Noori & Torabi, 2019).

The concept of the best interests of the kid. Children who take drugs may not have the same best interests as children with disabilities. Thus, the concept of a child's best interests must be fluid and adaptive in specific circumstances (Palacios et al., 2019). This idea must be modified and defined in light of the child's unique requirements. Even though the state does not have specific procedures for implementing the best interests of narcotics-abusing children, the general standards contained in the Convention on the Rights of the Child and other international legal instruments can be utilized to implement the best interests of children. In the meanwhile, children who use drugs must act in their best interests when they receive health care and are obliged to face the law (Simanjuntak et al., 2022).

Due to the likelihood that children who use drugs will develop an addiction to specific substances, an initial health assessment is required to determine the extent to which this addiction affects the child's health. Children who use opioids should be directed quickly to health providers, such as hospitals or rehabilitation centers, if the severity of their addiction necessitates additional treatment. In order to avoid incarceration and imprisonment. Approaches to preventing the use of opioids on children must also take the best interests of the kid into account (Price et al., 2018).

Control and eradication of crime, particularly narcotics-related offenses committed by police children, have a significant role in determining whether to go to the court process or to take other informal actions. The authority to determine whether a kid will be resolved through a formal or informal procedure, in this case, has been vested in the police apparatus, which is armed with a legal instrument known as diversion for dealing with children who have committed criminal crimes (Sandoval & Lageson, 2022).

Diversion efforts are efforts that must be carried out at the level of investigation, prosecution and examination of child cases in district courts. This is also regulated in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which reads:

1. At the level of investigation, prosecution and examination of cases of children in district courts, efforts must be made to diversion.
2. Diversion, as referred to in paragraph (1), is carried out in terms of the crime committed, threatened with imprisonment under 7 (seven) years and not a repetition of a crime (Reynold et al., 2020).

Armed with this diversion authority, law enforcement officials, particularly the police, should become the initiators and facilitators in dealing with children in conflict with the law by appealing to all parties to involve perpetrators, victims, their parents, the local community, or the school in a restorative justice-based settlement meeting. However, there has been a rise in the usage of drugs by children in recent years (Gray et al., 2022).

This would be an impetus for the author to find out the application of diversion in narcotics crimes by children associated with victim protection based on the principles of restorative justice.

## **B. METHOD**

This research was conducted using a qualitative descriptive approach. The data used in this research comes from the results of previous research or studies that still have relevance to this research. Research data that has been successfully collected will be processed by researchers so that later the results of this research can be found.

## **C. RESULT AND DISCUSSION**

### **1. Principles of Applying Restorative Justice to Completion of Narcotics Crimes Committed by Children**

In the mid-1970s, the principles of restorative justice in all its pioneering forms, such as reconciliation between victims and perpetrators of crimes, were carried out by a small group of activists in a scattered manner. Judicial system personnel and some experts in North America and Europe, which, as a whole, have not yet emerged as an organized reform movement. They do not think that their efforts will ultimately influence, promote, and drive social reform in a widespread approach to justice with a global impact.

There are developments in various countries where the approach through the restorative justice process is increasing in acceptance, even for violent crimes such as murder, including in Texas, which is very strict in enforcing laws against perpetrators of violent crimes. The existence of the restorative justice movement is also criticized, especially by those who are in the "status quo", which is oriented towards a retributive justice approach based on the following matters:

- a. Restorative justice focuses excessively on rehabilitation;
- b. Restorative justice absolves perpetrators of violence, particularly against women and children;
- c. Contrary to the concepts of open public justice and legal protection by using secret forums and coercive techniques on participants;
- d. Being excessively lenient with criminals and ignoring the public's need for retribution;
- e. Social fairness and informal judgments undermine traditional standards of legal discourse;
- f. Contrary to legal ambitions based on equal treatment of the same case and the predictability and consistency of diverse outcomes through the process of restorative justice.

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

- a. Everyone must act voluntarily;
- b. Victims must be addressed with compassion;

- c. The perpetrators of crimes must be discouraged from using the restorative justice system to protect themselves, unless it is to assist in the resolution of problems caused by their actions;
- d. The facilitator must be credible, impartial, and well-trained;
- e. Regarding the solutions given by participants in the restorative justice process, the facilitator must be adaptable.

The aforementioned comprehension will reinforce the significance of implementing restorative justice for resolving cases involving children, as well as the need to encourage the application of justice in the juvenile justice system in Indonesia, which is now the basis of the spirit of the Draft Criminal Code, which, among other things, changes the paradigm: The purpose of punishment is "resolving conflicts caused by criminal acts", restoring balance and bringing about a sense of peace in society; the spirit of concern for victims of crime; developing alternatives to criminal liberty (alternative to imprisonment); special provisions for crimes and actions for children. In addition to the Criminal Code Bill, it is also in Law Number 11 of 2012 concerning the Juvenile Justice System, which has placed diversion and justice restoration efforts.

In addition, there is an urgent need for special attention to be paid to the restorative justice process among adolescents because there are significant issues that require the active participation of the community, perpetrators and victims of crime, as well as those affected by the process of restorative justice (Kazemi & Parsa, 2022). A fundamental approach to striking a balance must also be taken, namely the implementation of sanctions based on the responsibility to recoup the losses incurred by criminal acts' victims. The second step is the perpetrators' rehabilitation and reintegration into society. The third objective is enhancing the public safety and security system.

The transition to a "juvenile justice system" that is punitive and retributive and emphasizes the purpose of coaching only perpetrators who fail towards a balanced approach between perpetrators, victims, and society is quite sensible given that all three are justice system clients. Isolating the perpetrators of illegal actions will eventually impair the "community bond," resulting in an increase in criminal activity. Adolescence necessitates a need to belong and be cared for, as opposed to being isolated. Adolescents are tied to a specific environment, such as school, employment, religious life, and recreational locations, with respect to lifestyle, attire, music, and so on.

Isolating adolescent criminals from their environment out of suspicion, concern, or fear, combined by a punitive approach to punishing and enforcing activities, will result in additional criminal behavior and violence. Therefore, a new "juvenile justice" is required with a mission based on new principles, aims, policies, and programs (paradigm shift), which is expected to be more productive, responsive, and effective in fulfilling three interests (actors, victims, and society) (Long, 2022).

"Mutual responsibility" between the three will strengthen community development and end youth's isolation and disconnection from society.

There is a desire to correct a retributive or retaliatory approach or philosophy in the criminal justice system, which only emphasizes the three needs of the criminal justice system: the need to sanction criminal acts, the need to assist in the rehabilitation of perpetrators, and the need to strengthen public security. The fourth requirement of restorative justice is to repair or restore the losses of crime victims and society as much as feasible.

Then, acknowledgement of the limitations of criminal punishments and actions against perpetrators that place a greater emphasis on the perpetrators' best interests while paying less regard to the repercussions of illegal acts within the context of community safety and victims of crime (Greife & Maume, 2020). The disciplinary approach is often imprecise and incomplete, especially towards children with criminal concepts and actions. This happens because the retributive approach is one-dimensional ad hoc insight and has excluded or does not involve juvenile justice "clients" or "customers", namely the loss of victims and society. Criminal acts and actions against the perpetrators cannot overcome this.

The juvenile justice system must utilize the Balanced Approach which can meet the needs of society to:

- a. Punishment based on accountability actions that seek to recover victims' losses from criminal acts committed by perpetrators as a consequence of criminal acts;
- b. Rehabilitation and reintegration of criminal offenders;
- c. Strengthen public safety and security.

Clearly, this is an articulation step connecting the interests of the three primary clients of the criminal justice system: victims, offenders, and society. Each client's values are emphasized in turn, with equal weight given to the accountability to victims and society, the competency development of actors (children), who are then expected to be better able to integrate into society than before the restorative process, and the value of community protection, as it is the responsibility of the restorative justice system to safeguard society from the criminal acts of children.

In addition to the participation of victims, affected communities, and offenders in the process of restorative justice, it is necessary to emphasize the significance of the participation of professionals with training and expertise in adolescent behavior. Its responsibilities include facilitating mediation, organizing volunteers, soliciting input from victims to determine the nature of the loss suffered in order to determine restitution, determining certain places of value to the community if the perpetrator must perform community service, developing an empathy group and victim panel, and organizing community panels, institutions, or committees that discuss with perpetrators for the benefit of victims, society, and perpetrators.

Based on some of the concepts of Restorative Justice that have been put forward, it is clear that Restorative Justice is another way of criminal justice that puts forward an integrated approach to actors on the one hand and victims and society on

the other as a unit to find solutions and return to the pattern of good community relations. Thus, the substance of Restorative Justice is "Empowerment". Empowerment is fundamental to restorative justice, and as such, it determines the success of restorative justice. In the context of Restorative Justice, empowerment is the process of perpetrators, victims, and the community meeting to discuss and actively engage in the resolution of criminal issues. On this premise, it can be claimed that Restorative Justice incorporates the notion of discussion into the resolution of criminal cases.

## **2. Implementation of Restorative Justice for Completion of Narcotics Crimes Committed by Children**

With the implementation of Law No. 11 of 2012 regulating the Juvenile Criminal Justice System, all examinations of children's cases, from investigation and prosecution to trial examination, must be diverse. Based on numerous sentencing ideas discussed in advance in the preceding chapter, it can be concluded that diversion is generally relevant to the purposes of juvenile punishment, as evidenced by the following:

- a. Diversion, or the redirection of a case from the court system to an alternative resolution mechanism, is intended to save children the trauma of dealing with the criminal justice system, which can result in long-lasting stigmatization and dehumanization for those involved (Darmika, 2018).
- b. Deprivation of freedom for children, both in the form of incarceration and in other types of deprivation through criminal justice procedures, gives children terrible experiences that disrupt their mental development and maturation. A child's terrible encounter with the world of justice will cast a gloomy shadow on his or her life that is difficult to forget (Bevan, 2022).
- c. With this diversion, children are stopped from applying criminal law, which has been proposed as one of the criminogenic causes in numerous theories; it also stops youngsters from becoming wicked again (recidivism), so protecting society from being the victims of crime (Williams & Schaefer, 2021).
- d. Individual youngsters will simultaneously receive two benefits from a distraction. Children can still communicate with their environment, thus they do not need to socially adapt after a crime has occurred. Second, children are shielded from the bad effects of incarceration, which is frequently used to transmit criminality (Kaushik & Guleria, 2020).

Diversion is a method of protection for children in dispute with the law. The purpose of the diversion model is to avoid and separate children from the formal justice system in order to prevent the stigmatization of children in dispute with the law. It is intended that children can return to society in a reasonable manner. Therefore, the participation of all parties is required for this to occur. The process must attempt to achieve restorative justice for both the offender and the victim. In restorative justice, diversion is a process by which all parties engaged in a particular

crime overcome obstacles and establish a responsibility to make things better by involving victims, children, and society in finding ways to repair, reconciliation, and a non-vengeful heart.

The implementation of diversion is driven by the goal to avoid detrimental impacts, particularly on the soul and development of children, that may result from completing the criminal procedure through the criminal justice system. The application of the provisions on diversion is essential because, with diversion, children's human rights can be made more secure and children in conflict with the law cannot be stigmatized as mischievous because crimes in which a child is suspected of being the offender can be dealt with outside of the court system.

According to Levine, diversion began with the establishment of juvenile justice in the 19th century, which aimed to remove children from the adult justice process so that children were no longer treated the same as adults. The basic idea of adopting diversion is persuasion or a non-punitive strategy that permits the correction of errors. With this strategy, it is intended that children will no longer be subjected to torture, coercion, or acts of violence. This is the primary purpose of diversion implementation. Through diversion, the law can be upheld without the use of violence and pain, as offenders are given the opportunity to remedy their errors without facing criminal sanctions from the state, which has complete jurisdiction.

Juvenile justice utilizing diversion in restorative justice stems from the premise that remedies or reactions to child delinquent behavior are ineffectual without the collaboration and participation of victims, offenders, and society. Justice is best served when all parties receive fair and balanced attention, are actively participating in the judicial process, and receive adequate benefits from their encounters with the juvenile justice system.

Diversion is implemented to provide additional educational punishments, not as retaliation, in order to develop specialized prevention. The objective is to discourage, enhance, and prevent the perpetrator from committing the offense. The implementation of diversion is driven by the goal to avoid bad consequences on the soul and development of children as a result of their involvement with the criminal justice system, which focuses primarily on retributive justice and compensating justice (restitutive justice).

When a child must be incorporated in the criminal justice system, he runs a very high danger of having his human rights infringed. Therefore, it would be preferable to use diversion to address the concerns of children in dispute with the law. In reality, criminal justice against children and criminals through the criminal justice system results in more harm than good for children. Because the court will stigmatize youngsters for their acts, it is preferable to keep them inside the criminal justice system.

The purpose of implementing diversion for children includes:

- a. To prevent the detention of children;
- b. To prevent classifying kids as criminals;

- c. To prevent the repetition of criminal activities committed by children in order for youngsters to accept responsibility for their actions;
- d. To carry out necessary interventions for victims and children without requiring formal procedures and to shield children from the negative influences and repercussions of the legal system.

Restorative justice, meanwhile, is the settlement of criminal cases including perpetrators, victims, families of perpetrators/victims, and other associated parties to collaboratively seek a fair solution by prioritizing restoration to its original state rather than retaliation. Based on Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System, the concept of diversion as an instrument in restorative justice is the transfer of settlement of cases involving children in conflict with the law from the criminal justice process to processes outside the court by involving the perpetrator, the victim, and the victim's family as well as other related parties to jointly seek a fair solution by emphasizing restoration to its original state amidst a safe and healthy community.

One of the main purposes of diversion is to protect young people from the destructive influences of criminal activity. The cornerstone of diversion is making sure kids mature and expand their minds. Therefore, it is fair to say that diversion serves a useful function in the context of child discipline. Punishment, in general, serves two ends: protecting society and protecting the perpetrator.

The goal of using diversion as a means of resolving criminal activity is to help offenders understand that their actions cannot be rationalized and that they have caused harm to others. Therefore, if the child (perpetrator) and the parties involved agree upon diversion at the level of investigation (Polda), he will immediately receive his rights back.

All available law enforcement personnel are required for a successful diversion operation. The entire criminal justice system uses diversion strategies. The initial reporting agency or institution, or the victim themselves if he is thinking about diversion, submits the application. While the perspective of the officer making the judgment can affect how the situation is viewed, the core idea of diversion is to redirect youngsters away from the formal justice system and toward less severe alternatives. An admission of wrongdoing and the offender's willingness to cooperate with diversion attempts are two prerequisites for successful implementation of diversion.

The advantages of implementing diversion for children are:

- a. It's unnecessary to lock up the kid (keep the kid out of jail);
- b. Trying not to be labeled as criminals;
- c. Possibilities for kids to acquire useful talents;
- d. Possibilities for kids to learn responsibility;
- e. Do not repeat criminal acts;
- f. Advocating for victims' and offenders' access to required interventions outside of a formal process;

- g. Keeping kids away from the potentially damaging experiences and lessons that can be learned through the legal system.

The application of criminal punishment on children frequently raises difficult legal, social, and philosophical questions. To be clear, this has nothing to do with illegal activity. Under the law, a minor who regularly takes illegal substances is considered a dangerous criminal. To be more precise, the victim (crime) is the perpetrator in the instance of narcotics abuse because, theoretically speaking, narcotics misuse is a crime without a victim.

It is important to protect children in accordance with the law, as outlined by the Child Protection Act. Articles 59 and 64 of Law No. 23 of 2002 on the Protection of Children outline the special protections that must be provided to minors who are in violation of the law.

Therefore, if the judge is able to ensure that the child's best interests will be served by his decision, and that the sanctions imposed will be more beneficial to the child than criminal sanctions in the form of imprisonment, then the judge should be able to render a decision regarding a narcotics-abusing juvenile by ordering rehabilitation or returning the accused or suspect to the parent or guardian of the child because of losses suffered by the applicant. It is intended that the harmful effects of incarceration on children can be mitigated through the imposition of a choice on a child who abuses narcotics, either in the form of rehabilitation or the return of the accused or suspect to the parent or guardian of the child.

#### D. CONCLUSION

Following the provisions of Law Number 11 of 2012 pertaining to the Juvenile Criminal Justice System, the use of restorative justice in the administration and settlement of narcotics offences in general has not functioned optimally. Victims, children, Bapas, and the community all work together to identify non-retaliatory ways to improve, reconcile, and reassure the heart as part of the diversion process. The police have the discretionary right to make decisions or pick various methods in resolving problems of law violations or criminal cases they handle, which is related to the legal force established between the parties in a traffic offense by minors. Efforts to address juvenile drug diversion are linked with victim protection grounded in restorative justice, specifically legal protection accordant with Law Number 35 of 2014 pertaining to child protection. What is meant by "child protection" is anything done to ensure that children are safe from harm and can live, grow, develop, and contribute to their full potential in a way that honors their inherent worth as human beings while also safeguarding them from discrimination and violence.

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