

The Role of Imposing Rehabilitation as a Measure for Child Drug Offenses

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Abstract

Introduction to the Problem: The importance of rehabilitation in treating addiction among narcotics addicts is crucial to reduce the number of child addicts. However, in practice, there is still an increase in narcotics addiction among children and teenagers. The efficacy of rehabilitation in treating those afflicted by narcotics is crucial, given the inherent challenge faced by victims or users of narcotics in overcoming their dependence on these substances independently.

Purpose/Study Objectives: The objective of this research is to understand the fulfillment of children's rights to be protected as offenders of drug misuse, namely their right to avoid detention unless absolutely necessary, which has not been achieved. The purpose of diversion efforts is to protect adolescents involved in drug misuse by preventing their transition from the formal criminal justice system to the informal criminal justice system.

Approach research: This research uses a qualitative approach, enabling the researcher to gain an in-depth understanding of how children's rights are fulfilled in the context of narcotics rehabilitation and how the diversion system is applied. This method also allows the researcher to understand the perspectives of stakeholders, such as law enforcement officials, social workers, and the families of children or teenagers involved in drug misuse.

Findings: Additional safeguards encompass the oversight, preemptive measures, therapeutic interventions, and reintegration efforts for youngsters engaged in substance misuse. The process of determining rehabilitation as a sanction for perpetrators of narcotics abuse follows the guidelines for granting a determination by a judge to a suspect or accused of narcotics abuse. This determination is made based on a request from **National Narcotics Board** and investigators, who recommend that victims of narcotics abuse undergo rehabilitation.

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Introduction

Indonesia is a nation of laws, meaning it is a state with numerous compulsory legal aspects and violations of these aspects will be subject to penalties (Alala et al. 2023), including children. A child who commits a criminal act, as defined by the Indonesian criminal law, must be held accountable for their actions. Child offenders, due to their minor status, must undergo a specific law enforcement and penal process that takes into account their status as a minor (Prisdawati and Zuhdy 2021).

Rehabilitation efforts for drug addicts demonstrate a criminal justice policy aimed at preventing further substance abuse by drug users and addicts. Rehabilitation is an alternative form of punishment suitable for individuals addicted to opioids. This approach should be supported by enacting laws that include the rights of drug users and addicts (Wahyuni 2022). Article 67 of Law Number 35 of 2014 on Child Protection mandates special measures for children who have been victims of the abuse of narcotics, alcoholic beverages, psychotropic substances, and other addictive substances, as stated in Article 59 paragraph (2) letter e. These measures encompass monitoring, prevention, treatment, and rehabilitation efforts, including those for children involved in the production and distribution of these substances (Harefa 2017) The consumption of narcotics by minors is a violation of the law.

According to Article 1 paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, a child aged between 12 and 18 years who is accused of committing a criminal act is considered to have acted against the law (Risya and Nur 2022). Restorative justice, as defined in Article 1, paragraph 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is a process of resolving criminal cases by bringing together the perpetrator, the victim, the victim's family, and other relevant parties to jointly seek a just solution. This approach prioritizes the restoration of the affected parties to their original state rather than retribution. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System applies a dual-track system, which means that the justice system follows two different tracks. In addition to regulating criminal sanctions, it also regulates acts. The implementation of this system will enhance the reflection of justice, benefiting the perpetrator, the victim, and society (Pratasik 2020). Rehabilitation is crucial in addressing drug addiction, especially considering the increasing prevalence of drug use among children and adolescents. The success of rehabilitation in curing drug victims is essential given the difficulty of overcoming drug dependence independently. Although drug users or addicts can be considered both perpetrators and victims, it is important to acknowledge their dual role in this situation. Every individual who abuses drugs is subject to the criminal provisions stipulated in Article 127 of Law

Number 35 of 2009 concerning Narcotics. Article 127 stipulates that persons who abuse narcotics shall be subject to imprisonment, while drug addicts and victims of drug abuse shall be placed in medical and social rehabilitation facilities (Dina Novitasari 2017). Crime prevention efforts must address the root causes of crime and employ effective tactics to prevent it.

Rehabilitation programs for individuals addicted to narcotics are crucial in curbing the consumption of drugs. Given the rising trend, it is evident that the number of children falling victim to drug use is increasing. Although children are generally considered victims in such scenarios, the law still classifies it as a criminal act. Protecting children involves not only shielding them from crimes committed by others but also addressing crimes committed by children themselves, such as social deviance, particularly drug abuse (Thika Shalsabillah 2023).

A child who commits a criminal act according to the criminal law applicable in Indonesia must be held accountable for his/her actions. Because child offenders are still minors, the law enforcement process and the imposition of punishment are adjusted to their age and fall into the category of children in conflict with the law. In accordance with Article 1 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion refers to the diversion of child cases from the criminal justice system to a non-criminal process. According to Article 1 paragraph (6) of the Juvenile Criminal Justice System Law, restorative justice is a process of settling criminal cases by bringing together the perpetrator, the victim, their families, and other relevant parties to jointly seek a just solution. By prioritizing restoration of the original condition over revenge.

Children are also affected by drug abuse, and rehabilitation activities serve as a distraction to achieve restorative justice. This alternative punishment is implemented in an effort to maintain the well-being of children who are victims of drug use. Rehabilitation efforts for drug addicts demonstrate a criminal justice policy aimed at preventing further drug abuse by drug users and addicts. Rehabilitation is a suitable form of alternative punishment for individuals addicted to drugs, and this should be supported by creating legislation that includes the rights of drug users.

Methodology

This research employs a **normative legal research method** to answer specific research questions and problems. The objective is to produce valuable and practical findings. The normative legal research approach involves conducting a literature review by analyzing legal materials or secondary data. The purpose of this research is to obtain information that encompasses legal theories, concepts, principles, and rules related to the main issue (Muhaimin, 2023). As previously mentioned, normative legal research involves examining research problems by applying legal principles and referring to existing Indonesian laws and regulations. This type of research primarily relies on data obtained from legal materials (Purwati, 2020)

Results and Discussion

The Implementation of Law Number 35 of 2014 Concerning Child Protection in Relation to Child Drug Abuse Offenses

In 2018, the National Narcotics Agency (BNN) conducted a study revealing that at least 2.2 million adolescents from 13 provinces in Indonesia were involved in drug use. According to the 2018 World Drug Report released by the United Nations Office on Drugs and Crime (UNODC), approximately 275 million people, or 5.6% of the global population aged 15-64, had used drugs. Meanwhile, in Indonesia, the National Narcotics Agency (BNN) serves as the central authority for the prevention and eradication of drug abuse and trafficking. In 2017, the BNN reported 3,376,115 individuals aged 10 to 59 who were involved in drug abuse. Meanwhile, the number of students involved in drug addiction in 2018, as reported from 13 provincial capitals in Indonesia, reached 2.29 million. The 15-35 age group, commonly referred to as millennials, is the most vulnerable group to drug exposure. (Tambun, 2021).

Every criminal offense committed by a minor will be resolved through a judicial process conducted in the District Court, which uses a different mechanism than ordinary courts. In this scenario, the juvenile trial procedure differs from adult trials. The judge presides over the trial in a different location and follows a unique set of procedures, deviating from the general court process. The aim is to provide children with a sense of comfort while avoiding undue stress or burden.

Child protection aims to establish the necessary conditions and circumstances to effectively uphold the rights and responsibilities of children fairly and equitably in society. Therefore, it is crucial to prioritize child protection in various government, community, and family spheres, with a focus on upholding legal principles, maintaining order and security, and promoting national progress.

The purpose of Child Protection is to establish the necessary conditions and circumstances to effectively uphold the rights and responsibilities of children fairly and equitably in society. Therefore, it is crucial to prioritize child protection in various government, community, and family spheres, with a focus on upholding legal principles, maintaining order and security, and promoting national progress (salam, 2020)

Legal measures can be implemented to protect the basic rights and freedoms of children. The rights of the child as enshrined in the Convention on the Rights of the Child can be summarized as follows: the right to life; the right to develop physically and mentally; the right to protection; and the right to participate in decisions affecting them. Legal protection of children's rights aims to safeguard various interests related to children's well-being. One type of legal protection for children's rights is the legal protection provided to children involved in the juvenile justice system.

The enactment of Law Number 23 of 2002 on Child Protection in Indonesia aims to optimize the protection of children, especially in terms of legal protection. Along with its development, the Child Protection Law was then amended by Law Number 35 of 2014, which is related to the revision of Law Number 23 of 2002 on Child Protection.

Challenges in Upholding Human Rights within the Framework of Narcotics Law. Indonesia's Narcotics Law encompasses various principles aimed at safeguarding the human rights of Indonesian citizens, within certain limits.

1. The Narcotics Law is also utilized to highlight and reinforce fundamental societal norms in the Unitary State of the Republic of Indonesia, deeply rooted in the Pancasila state philosophy.
2. The Narcotics Law is the only law that truly protects individuals involved in narcotics offenses.
3. When utilizing alternative legal products, it is crucial to take significant steps to minimize the potential for violations of individual rights and obligations while upholding the interests of a democratic and contemporary society.

The enactment of the Child Protection Law demonstrates the State's significant commitment to addressing child protection issues in Indonesia. It is crucial to give significant consideration to safeguarding and upholding the rights of children, especially those involved in drug use. The Child Protection Law mandates special protection for children who are victims of abuse, including opioids, alcohol, psychiatric chemicals, and other addictive substances. The government and other state institutions have the duty and responsibility to provide special protection for children, including those who are victims of opioid abuse, alcohol, psychiatric chemicals, and other addictive substances (drugs).

In addition, Indonesia has Law Number 35 of 2009, known as the Narcotics Law, which mandates that the government provide guidance for all activities related to narcotics, including efforts to prevent minors from being involved in drug abuse and trafficking. Implementing narcotics education in elementary and secondary schools is crucial to prevent the younger generation and school-aged children from engaging in drug abuse. According to the Child Protection Law (UU SPPA) in Indonesia, any child who commits a crime can be treated in the legal process as if they were an ordinary criminal. Even underage children involved in drug abuse can be held accountable within the formal framework of the criminal justice system. The juvenile justice system encompasses all components of the criminal justice system responsible for handling juvenile delinquency. Initially, the police serve as the official institution that encounters delinquent children when they first interact with the legal system. Subsequently, the decision regarding the release or referral of the child to the juvenile court will be made by the prosecutor and the parole board. Thirdly, the juvenile court is a phase where adolescents face numerous choices, ranging from release to placement in correctional institutions. The fourth and final institution is the imposition of a sentence

Law Number 35 of 2009 categorizes criminal threats against parents or guardians of underage drug addicts under criminal law. Undoubtedly, the role of parents is crucial in breaking the cycle of drug abuse, as they are responsible for supervising their underage children. This responsibility is explicitly regulated in Law Number 35 of 2009, which stipulates the role of parents

Conclusion

Legal protection for child drug users in Indonesia is regulated by three laws: Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 35 of 2009 on Narcotics, and Law Number 17 of 2016 on the Establishment of a Government Regulation in Lieu of Law on Narcotics. Law Number 1 of 2016 is an amendment to Law Number 23 of 2002 on Child Protection, along with several other technical rules and regulations related to underage children involved in drug abuse. The purpose of diversion efforts is to protect adolescents involved in drug abuse by preventing their transition from the formal criminal justice system to the informal criminal justice system. Additional measures include supervision, prevention, therapeutic intervention, and reintegration efforts for young people involved in drug abuse. The process of determining rehabilitation as a sanction for drug offenders involves following the rules for the imposition of a ruling by a judge to a suspect or defendant of drug abuse. This determination is made based on a request from the BNN (National Narcotics Agency) and the investigator who recommends that the victim of drug abuse undergo rehabilitation. The rehabilitation procedure involves two categories of offenders: offenders arrested by the police while committing a crime, and offenders who voluntarily surrender themselves to the National Narcotics Agency.

References:

- Alala, Muhammad Ali, Beni Suswanto, Universitas Sembilanbelas, and November Kolaka. 2023. "Victim Precipitation Pada Tindak Pidanaa Penghinaan Dan Pencemaran Nama Baik Di Media Sosial (Studi Kasus Putusan No . 176 / Pid . Sus / 2021 / PN / Kka)." *Jurnal Hukum & Bisnis* 12(3):161–67.
- Dina Novitasari. 2017. "Rehabilitasi Terhadap Terhadap Anak Korban Penyalahgunaan Narkoba." *Jurnal Hukum Khaira Ummah* 12(4):917–26.
- Erni Agustina, Subakdi, Beniharmoni Harefa 2018."Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Prosiding Seminar Hasil Pengabdian Kepada Masyarakat*, 1 (1), 1-8
- Farid Iskandar.2021. "Pelaksanaan Pertanggungjawaban Pidana Pengedar terhadap Korban Penyalahgunaan Narkotika." *Jurnal Penegakan Hukum Dan Keadilan*, 2 (2), 96-11
- Harefa, Beniharmoni. 2017. "Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Perspektif* 22(3):212. doi: 10.30742/perspektif.v22i3.647.
- Ibrahim Fikma Edrisy. 2016. "Implementasi Rehabilitasi Terhadap Anak Penyalah Guna Narkotika (Studi di Wilayah Kepolisian Daerah Lampung)." *Fiat Justisia: Jurnal Ilmu Hukum*, 10 (2), 317-340.

- Novi Novitasari, Nur Rochaeti.. 2021. "Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak." *Jurnal Pembangunan Hukum Indonesia*, 3 (1), 96-108
- Pratasik, Stanley Oldy. 2020. "Pemidanaan Dan Perlindungan Hukum Terhadap Anak Yang Menjadi Kurir Narkotika Berdasarkan Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak." *Lex et Societatis* III(3):1-23.
- Nur Aisyah. 2019. "Penerapan Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak dalam kaitannya Tindak Pidana Penyalahgunaan Narkotika Oleh Anak di Bawah Umur." *Jurnal Al-Dustur*, 2 (1), 90-117
- Prisdawati, Renna, and Mukhtar Zuhdy. 2021. "Penerapan Sanksi Pidana Terhadap Anak Pelaku Tindak Pidana Pencabulan." *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 1(3):170-76. doi: 10.18196/ijcl.v1i3.9609.
- Risya, Hadiansyah, and Rochaeti Nur. 2022. "Penerapan Rehabilitasi Terhadap Anak Penyalahguna Narkotika." *Jurnal Pembangunan Hukum Indonesia* 4(1):1-13.
- Thika Shalsabillah. 2023. "Pemberian Sanksi Rehabilitasi Bagi Penyalahguna Narkotika Berdasarkan Pasal 127 Dikaitkan Dengan Pasal 103 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Title." *JOM Fakultas Hukum Universitas Riau* 10:1-15.
- Wahyuni, Willa. 2022. "Syarat Penyalahguna Narkotika Boleh Direhabilitasi." *Hukum Online.Com*.

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