

Legal Reconstruction of Underaged Drug Abuser Rehabilitation Based on Justice Value

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Abstract

The purpose of this research is to analyze and find the weakness in the regulation of rehabilitation for underaged narcotics abusers and how to reconstruct the law based on Justice Value. This study uses a constructivism paradigm with a sociological juridical approach to solve research problems by examining secondary data and primary data by finding the legal reality experienced in the field as well as qualitative descriptive methods, namely where the data obtained are then arranged systematically so that a comprehensive picture will be obtained, where later the data will be presented descriptively. Based on the research it can be seen that the ideal Legal protection for children as narcotics abusers has not been achieved yet because there are still found cases where children who abuse narcotics are punished with imprisonment because of the law on child protection and the law on narcotics does not see in eye-to-eye regarding child narcotics abusers as the law on narcotics still treat Underaged Drug Abusers the same as adult. Therefore, it is necessary to carry out legal reconstruction in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics concerning General Provisions of Article 1, Article 103 where the provisions become, the addition of paragraphs in Chapter I on General Provisions in Article 1 so that Article 1 consists of 23 reconstruction paragraphs included in Article 1 paragraph (16), namely Children who are Victims of Narcotics Abuse, are children who are persuaded, deceived, cheated, forced, and/or threatened to use narcotics, alcohol, psychotropic substances, and other addictive substances. Article 103 becomes (1) Judges who examine cases of Narcotics Addicts are obliged to: a. decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or b. stipulates to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime; c. In the event that a child commits an act of planting, maintaining, possessing, storing, controlling, or providing Narcotics Category I, II, II, he/she is obliged to obtain a rehabilitation decision; d. The rehabilitation of children who abuse narcotics is carried out in accordance with applicable laws and regulations.

Keywords: Legal Reconstruction, Underage, Drug Abuse, Justice Value.

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INTRODUCTION

Children are part of the younger generation as one of the human resources who are the potential, and successors of the ideals of the nation, which have a strategic role and special characteristics that require guidance and protection in order to ensure their physical, mental, social growth, and overall development can be whole, harmonious, harmonious, and balanced. As the next generation of the nation, in fact at this time not a few children of the nation fall into things that do not encourage them to grow up as quality children of the nation, one of which is an obstacle to child development, namely the abuse of narcotics among children. The existence of children needs to get

attention, in their development towards adulthood, sometimes they do actions that are out of control such as committing acts against the law so that they can harm others or harm themselves (Siregar, 1998).

Such behavior is caused because in the period of growth the attitude and mentality of children are not yet stable, and also cannot be separated from their social environment. There have been many examples because out of control, child delinquency has become a crime therefore some argue that the act cannot be tolerated as children who commit crimes still must deal with law enforcement officers to account for their actions.

Children who commit criminal acts in the criminal law applicable in Indonesia must be held accountable for their actions. However, Child perpetrators are still minors, so the law enforcement and sentencing process that is applied to children is carried out specifically, considering that their age is included in the underage category.

According to Article 1 Paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that in regard to juvenile crime, a diversion can be used. Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system (Prasetyo, 2015). This is as stated in Article 1 Paragraph (6) of the Juvenile Criminal Justice System Act which states that restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, and not retaliation.

Criminal law reform is seen from the point of view of a policy approach as part of social policy, meaning that it is part of efforts to overcome social problems (including humanitarian problems) in order to achieve/support national goals, namely community welfare, in addition to being part of criminal policy, meaning part of the criminal justice system from community protection efforts (especially crime prevention efforts), especially crimes or criminal acts committed by minors.

Although rehabilitation is clearly regulated by Law Number 35 of 2009 concerning Narcotics, the practice is far from the actual implementation of children who abuse Narcotics should be rehabilitated because considering that children in conflict with the law must have guidance because they have a future, Underage children are even brought into the justice system, where the child should be at the police stage, and diversion should be carried out in a restorative justice manner to prevent the child from committing the same act in the future and improve the child's mental state.

Appropriate crime prevention efforts should not only focus on various matters relating to the causes of crime but on what methods are effectively used in crime prevention. Providing rehabilitation for narcotics abusers is considered necessary to suppress the use of narcotics and illegal drugs.

In relation to narcotics crime, the Supreme Court on April 7, 2010 has issued a Circular Letter of the Supreme Court (SEMA) Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse, and Victims of Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. The issuance of the SEMA makes it possible for the

court to decide on narcotics crime cases in the form of a rehabilitation sentence, in which the places where the rehabilitation is intended have also been determined. However, in order for a defendant to be sentenced to this law, he must fulfill several requirements contained in SEMA (Supreme Court Circular) Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse, and Victims of Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. So the word "can" in Article 103 must meet the requirements which illustrate that the judge only has the authority to give a rehabilitation decision. Therefore, Based on the above background, the authors are interested in conducting research titled "Legal Reconstruction of Underaged Drug Abuser Rehabilitation Based on Justice Value" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses of the law on Underaged Drug Abuser Rehabilitation in Indonesia currently?
2. How is the Legal Reconstruction of Underaged Drug Abuser Rehabilitation Based on Justice Value?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Law on Underaged Drug Abuser Rehabilitation in Indonesia Currently

Children as narcotics abusers under the Narcotics Law may be subject to criminal sanctions, as regulated in Article 127 of the Narcotics Law. After all, they are still considered victims of narcotics abuse, because according to the Child Protection Law, every child who abuses narcotics are considered a "victim", whether he has reached the level of an addict or a narcotics dealer. The problem is what is meant by victims of narcotics abuse in the Child Protection Act the same as what is meant by victims of narcotics abuse in the Narcotics Law? Because the Narcotics Law does not explain what a victim of narcotics abuse is. As a result of this difference in perspective, in the Narcotics Law, it is possible that children as narcotics abusers (or addicts) and children as dealers are not victims of abuse until they can be proven as victims of narcotics abuse (Rusydi, 2022). So the treatment given can be different as he is a "victim" and as a "perpetrator". We know that the "victim" cannot be criminalized because he is not a criminal. Victims should not be given actions that are retributive justice; restorative justice is still being sought. So here it should be because this is about "children", the Child Protection Act must still be fought for. So the child must continue to be pursued for "rehabilitation" whether he is an abuser (or addict), or even a dealer as Prison is only justified if its purpose is to heal. The orientation should not be what crime he committed or what the punishment is, but how long he is imprisoned to be able to heal or restore the child as a victim of the narcotics abuser so that he can return to his original state (Septianita, 2018).

As previously stated, children as abusers discussed in the writing of this law are children who provide, store or use narcotics without rights and are against the law. If it is against their needs, then the Narcotics Law may affirm that they are not subject to criminal sanctions. This is stated in Article 128 paragraph (2) of the Narcotics Law. There is confusion in the context of the child as a narcotics abuser because on the one hand he cannot be convicted and on the one hand, he can be convicted. There is something ambiguous there. If we use the perspective of the Child Protection Law, whether he is just an abuser or has become a dependent abuser, he is still considered a "victim" and he should not be given criminal sanctions.

There are different rules in each of the laws and regulations governing the abuse of narcotics by children. This possibility is one of the causes of the

difficulty of fighting for rehabilitation for children as narcotics abusers, whether they are addicted to narcotics or not. But basically still, whether he is an addict or an abuser, he still has the right to get rehabilitation.

Regarding rehabilitation, Article 54 of Law Number 35 of 2009 explains that narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Narcotics addicts who are not old enough have the obligation to report to a public health center, hospital, or medical and social rehabilitation institution that has been appointed by the government, as stipulated in Article 55 paragraph (1) of Law 35 of 2009. Even Article 128 Paragraph (1) explains that parents or guardians of addicts who are not old enough, who intentionally do not report, are sentenced to a maximum imprisonment of 6 (six) months or a maximum fine of Rp. 1,000,000 (one million rupiah).

The absence of rules that explain the technical implementation of child rehabilitation has caused every institution to combine underage victims of drug abuse with adults. The institutions that try to carry out child rehabilitation programs separately only use the results of the interpretation of the agency's internal team as a result of the absence of technical rules that support the existing laws.

The absence of clear rules is one of the inhibiting factors for the implementation of rehabilitation for children. In Article 54 of Law Number 35 of 2009 concerning Narcotics, it is only stated that addicts and narcotics abusers are required to undergo medical rehabilitation and social rehabilitation. Article 55 paragraph (1) states that parents or guardians of narcotic addicts who are not old enough are required to report to the community health center, hospital, and/or medical rehabilitation and social rehabilitation institution appointed by the Government to receive treatment and/or treatment through medical rehabilitation and social rehabilitation. None of these two articles explicitly regulates special rehabilitation for children or the separation between child residents and adult residents.

This condition is further exacerbated in terms of the legal structure where the paradigm of addicts being sick and needing rehabilitation is still not fully agreed upon by law enforcement officers on the part of police investigators, prosecutors, and judges and the current legal culture, namely Individual Children, Families, and Public. There is a desire to be free from children and the fear of the negative stigma that children get about the condition of the Rehabilitation Center makes families reluctant to take their children to undergo the Rehabilitation program. Meanwhile, society's negative stigma about victims of narcotics abuse has not changed. Those who have completed the rehabilitation program at the Rehabilitation Center are

still seen as negative figures that are dangerous if they are still in the midst of society.

2. Legal Reconstruction of Underaged Drug Abuser Rehabilitation Based on Justice Value

Law enforcement for narcotics crimes in Indonesia is still using a practical legal order. Especially during the trial, the role of the Public Prosecutor in implementing charges against narcotics cases that have the "command" doctrine is carried out by the Head of the District Attorney's Office as the leader. Of course, such a thing could potentially lead to intervention, resulting in a public prosecutor being unable to carry out a prosecution with his own conscience. This is also justified, by Judge Bismar Siregar, before becoming a judge according to him the profession of a prosecutor is not in accordance with a soul that always puts his conscience first because in the prosecutor's office from top to bottom there must be one command, one principle. Subordinates must not oppose the wisdom of their superiors; they must obey without reservation to their leaders, without having to see right or wrong. This is a reflection of the legal flow of positivism which is still being used in Indonesia. The flow of positivism departs from the way it teaches that the law is regulatory, applies as a whole, and is determined by the authority of the state authorities. In it, there is a separation of the gap between norms or policies with moral ethics between justice and legality. This is what causes everything to be regulated in laws and regulations as a form of real constitution. Legal positivism is also known as legalism which juxtaposes law with the constitution, there is no law outside the constitution, and the only source of law is the constitution.

From this description, then at least the role of the Panel of Judges as God's representative must play a major role in determining a fair decision, of course, fair does not only dwell on the sound of the article juxtaposed with legal facts but also needs to explore deeper meaning. In relation to this, Satjipto Rahardjo said the damage and decline in reform through modern law was caused by a game of procedure that raised the question of whether the court is the place to seek justice or victory. At least the role of the Panel of Judges by having a progressive nature is expected to be able to accommodate forms of law enforcement, below it, such as at the stages in the police and the prosecutor's office to boost the image of better law enforcement.

In the future concept, to overcome the problems that the authors have described previously, the first step to print law enforcers with a progressive typology is First, regarding the human resources of law enforcement officers at the Judiciary Institution, the Supreme Court, in this case, actually has important authority, because to raise the image of the judiciary, which has the power to give birth to a typical progressive judge.

Basically, the purpose of the law is to protect the human rights of all Indonesians and to guarantee the implementation of a just law through the democratization of the Indonesian state (Widodo, 2018). This is then realized through legal politics related to the rehabilitation of children in conflict with drug abuse laws.

Children as narcotics abusers and drug dealers must continue to be pursued and given rehabilitation. Because based on the Child Protection Law, every child who abuses narcotics and distributes narcotics is still considered a "victim". As previously stated, we also cannot provide action in the form of retributive justice, or in other words, we cannot give criminal sanctions against them. The appropriate action to be given is restorative justice or any action that seeks to restore the child's condition. Prison is the last resort that can be done by law enforcement (Widodo, 2019). Law enforcers must make every effort to rehabilitate children as much as possible and not end up in the process of being given criminal sanctions.

The bad impact of the imprisonment of children has a negative impact and losses from imprisonment, especially on the children, namely (Koesno, 2014):

- a. The child will be separated from his family so that it will have an impact on disruption of family relationship disorders such as being too short in providing education, direction, and positive guidance from parents to child convicts.
- b. Children become more experts about crime; this is due to the influence obtained from other convicts there which opened the possibility for these underaged convicts to study the criminal behavior of other convicts so that they will become more experts about crime.
- c. The child is labeled by the community, this can be related to the labeling theory proposed by Matza which views criminals, not as evil people but they are individuals who previously had evil status as a gift from the criminal justice system and the wider community.
- d. The community rejects the presence of former child convicts, related to the stigma given by the community where a child who has served a prison sentence is still referred to as a naughty child and has a bad attitude so the community rejects his presence because the community is worried that the child will repeat the same crime and will give lessons that are not good for other children, even though that is not necessarily the case.
- e. Children's future becomes bleaker because of their status as an ex-convict.

In fact, children who have been sentenced to imprisonment are not getting better than before but will actually commit crimes again, so from this, it can be said that it turns out that the imposition of

imprisonment is not effective in an effort to overcome the crimes that occur but instead has detrimental impacts from the community to the child.

After knowing the impact of imprisonment and considering the physical and mental condition of the child, we come to know how important it is for us to put forward the Child Protection Act. In this case, we must be able to treat children as narcotics abusers and drug dealers as victims, not perpetrators. Because the Child Protection Law considers children who commit narcotics crimes as "victims".

Keeping in mind the Indonesian regulations that regulate children as victims of abuse, rehabilitation must be sought, so we must try to prevent the child from being examined which brings him to prison, and strive for the child to be rehabilitated.

From the analysis of the juvenile criminal law policy that contains weaknesses, it is agreed with Satjipto Rahardjo's opinion in Tantra (2020) that the law needs to be replaced with a new law that better meets the needs of the community called progressive law. Or in Sudarto's language, there is a need for criminal law politics that meets the requirements of justice and usability. Based on existing weaknesses, new legal policies or criminal law politics or progressive laws can be developed on the basis that the Child Protection Law and the Narcotics Law do not regulate the same thing regarding child narcotics abusers. This affects the provision of rehabilitation efforts for children and in addition to children as narcotics abusers, children as narcotics dealers must also be considered as victims under the Child Protection Act. Therefore, he must be given rehabilitation efforts and no criminal sanctions should be given. However, the Narcotics Law does not regulate this matter so the legal reconstruction as formulated by the author is in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics regarding General Provisions and Article 1, Article 103 where the provisions become, the addition of paragraphs in Chapter I of General Provisions in Article 1 so that Article 1 consists of 23 reconstructed paragraphs. in Article 1 paragraph (16) namely Children who are Victims of Narcotics Abuse, are Children who are persuaded, deceived, cheated, forced, and/or threatened to use narcotics, alcohol, psychotropics, and other addictive substances. Article 103 becomes Article 103 (1) Judges who examine cases of Narcotics Addicts are obliged to: a. decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime, or, b. stipulates to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime; c. In the event that a child commits an act of planting, maintaining, possessing, storing, controlling, or

providing Narcotics Category I, II, II, he/she is to obtain a rehabilitation decision; d. The implementation of rehabilitation for children who abuse narcotics is carried out in accordance with applicable laws and regulations.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Factors that hinder the implementation of rehabilitation for children as victims of narcotics abuse can be seen from three sides, first, the legal substance factor, where there are no rules that clearly regulate the form and type of rehabilitation given to victims of child abuse of narcotics. Second, the legal structure factor, namely the paradigm that addicts are sick people and need to get rehabilitation, is still not fully agreed upon by law enforcement officers, both on the part of police investigators, prosecutors, and judges. Third, the legal culture factor is the individual child, family, and society. There is a desire to be free from children and the fear of the negative stigma that children get about the condition of the Rehabilitation Center makes families reluctant to take their children to undergo the Rehabilitation program. Meanwhile, society's negative stigma about victims of narcotics abuse has not changed. Those who have completed the rehabilitation program at the Rehabilitation Center are still seen as negative figures that are dangerous if they are still in the midst of society.
2. It is necessary to carry out legal reconstruction in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics regarding General Provisions and Article 1, Article 103 where the provisions become, the addition of paragraphs in Chapter I of General Provisions in Article 1 so that Article 1 consists of 23 reconstructed paragraphs. in Article 1 paragraph (16) namely Children who are Victims of Narcotics Abuse, are Children who are persuaded, deceived, cheated, forced, and/or threatened to use narcotics, alcohol, psychotropics, and other addictive substances. Article 103 becomes Article 103 (1) Judges who examine cases of Narcotics Addicts are obliged to: a. decide to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime, or, b. stipulates to order the person concerned to undergo treatment and/or treatment through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime; c. In the event that a child commits an act of planting, maintaining, possessing, storing, controlling, or providing Narcotics Category I, II, II, he/she is obliged to obtain a rehabilitation decision; d. The implementation of rehabilitation for children who abuse narcotics is carried out in accordance with applicable laws and regulations.

REFERENCES

- Bismar, S. (1998). *Hukum dan Hak-Hak Anak*, Rajawali, Jakarta, p.198.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Koesno, A. (2014). *Diversi Tindak Pidana Narkotika Anak*, Setara Press, Semarang, p.61.
- Prasetyo, T. (2015). Penerapan Diversi Terhadap Tindak Pidana Anak Dalam Sistem Peradilan Pidana Anak. *Refleksi Hukum: Jurnal Ilmu Hukum*, 9(1), 1-14. 10.24246/jrh.2015.v9.i1.p1-14.
- Pratama, T. G. W. (2020). The urgency for implementing crytomnesia on Indonesian copyright law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001
- Rusydi, Y. (2022). *Pemberian Diskresi Rehabilitas Medik Terhadap Anak Pelaku Tindak Pidana Penyalahgunaan Narkoba*. *Jurnal Kepastian Hukum dan Keadilan*, 4. 10.32502/khdk.v4i1.4613.
- Septianita, H. (2018). Keadilan restoratif dalam putusan pidana anak. *Jurnal Yudisial*, 11(2), 193-208. 10.29123/jy.v11i2.290.
- Tantra, I. W. G., Widiantera, M. M., & Suryani, L. P. (2020). Pertanggungjawaban Pidana Anak Sebagai Kurir dalam Tindak Pidana Narkotika. *Jurnal Analogi Hukum*, 2(2), 215-220. 10.22225/ah.2.2.1895.215-220.
- Widodo, W., & Galang, T. (2019, October). Poverty, Evictions and Development: Efforts to Build Social Welfare Through the Concept of Welfare State in Indonesia. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (pp. 260-263). Atlantis Press. Dx.Doi.Org/10.2991/Icglow-19.2019.65
- Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*, 13(8), 1307-1311.