Restorative Justice Concept in Narcotics Cases Involving Children

Lidya Rahmadani Hasibuan,
Beby Sendy
Vita Cita Emia Tarigan

Department of Law
Faculty of Social Sciences
Universitas Pembangunan Panca Budi
Medan, North Sumatera
Indonesia
Email: lidya.hsb@gmail.com

Abstract

The issue of narcotics (including narcotics, psychotropic substances, and other addictive substances) is one of the specific crimes that have national and international implications due to their negative impact on society, the nation, and the state. The role of the law in this matter is to combat crime through criminal law policies and enforcement efforts. The research aims to explore the juridical overview of the implementation of rehabilitation institutions in the prosecutorial stage by prosecutors in cases of narcotics abuse. It seeks to examine the application of rehabilitation institutions in the prosecutorial stage by the Prosecutor's Office regarding narcotics abuse, based on the guidelines of the Attorney General No. 18 of 2021.

Imprisonment, as a punishment for victims of narcotics abuse, especially minors, involves the deprivation of liberty and carries negative aspects that hinder the maximum realization of the objectives of criminal justice. On the other hand, rehabilitation aims to free individuals categorized as addicts from their dependence. Resolving narcotics abuse cases through rehabilitation emphasizes restorative justice and cost-effectiveness, while considering principles such as speedy and simplified justice, low costs, the principle of criminal law as a last resort (ultimum remedium), cost and benefit analysis, and offender rehabilitation..

***Keywords**: Restorative Justice, Narcotics, Juvenile Offenders*

Introduction

An act that violates the law and harms society may not necessarily constitute a criminal offense if it is not explicitly prohibited by the law, and the perpetrator is not subject to criminal sanctions. For instance, prostitution is considered a behavior that harms society but is not criminalized. This approach aims to establish an appropriate framework for understanding prostitution and to view it as a profession or a lifestyle choice. Determining which acts are considered criminal offenses, as stated in Article 1, paragraph (1) of the Criminal Code, follows the principle of "Legality" or the adage "Nullum delictum nulla poena lege previa poenali," which means that every criminal act must be determined beforehand by the law.

In our daily lives, we often come across the term "crime." However, the use of this term indicates behavior that goes against societal norms, but not all actions that violate these norms are classified as crimes. For example, throwing old newspapers into a neighbor's backyard instead of giving them to a garbage collector or placing them in a trash bin may be seen as impolite and disruptive to the neighbor (a violation of social norms), but it is not considered a crime. Instead, it can be categorized as a mischievous act, as outlined in Article 489 of the Criminal Code.

a. Mischievous behavior towards individuals or property that can cause harm, loss, or damage is punishable by a maximum fine of fifteen thousand Indonesian rupiahs.
b. If the offense is committed within one year from the final conviction for the same offense, the fine may be substituted with a maximum imprisonment of three days.

The term "contrary to law" can mean being in conflict with the law or not conforming to the prohibitions or legal obligations, or attacking interests protected by the law. Regarding the nature of being contrary to law in relation to the formulation of offenses (criminal acts), there are two schools of thought or followers:

a. The formal contrary to law proponents assert that in every violation of an offense, there is inherently a contrary to law element. This means that if the nature of being contrary to law is not explicitly formulated in an offense, there is no need to further investigate it, as the entire action is already considered contrary to law by virtue of its inclusion in the formulation of the offense. Therefore, the nature of being contrary to law must be investigated based on the provisions of the law.
b. The substantive contrary to law proponents state that every offense is presumed to have an element of being contrary to law, which needs to be proven. This school of thought is based not only on the provisions of the law but also emphasizes the awareness of society.

Based on the aforementioned discussion, it is apparent that the interpretation and formulation of the term "Strafbaarfeit" (criminal offense) can vary among scholars, resulting in different understandings. However, it can be observed that the scholars mentioned above all use the term "act" in their formulations. Nevertheless, according to Satochid Kartanegara, considering "act" solely as "handeling" (action) might be somewhat imprecise. This is because "Strafbaarfeit" not only encompasses prohibited and punishable acts but also includes instances of neglect or omission ("het nalaten"). Thus, "Strafbaarfeit" can be comprehended as encompassing both acts and omissions.

For instance, some acts that are deemed criminal offenses and subject to legal punishment include:

1. Article 338 of the Indonesian Criminal Code, which pertains to murder committed through stabbing, piercing, and other means.
2. Article 362 of the Indonesian Criminal Code, which concerns theft involving the unlawful taking of someone's property.

These examples demonstrate that "Strafbaarfeit" encompasses both acts and omissions, indicating its broader scope beyond acts alone. In the context of neglecting and offenses that carry penalties, two examples can be highlighted:

1. Article 164 of the Indonesian Criminal Code deals with the act of neglecting the duty to report.
2. Article 522 of the Indonesian Criminal Code addresses the act of neglecting the duty to act as a witness.

Restorative justice aims to integrate criminal justice into a social framework rather than isolating it within a closed system. Tony F. Marshall's definition of restorative justice is highly valuable for its discussion, although it raises several specific questions. These questions include identifying the stakeholders and parties involved in the offense, exploring methods for achieving a collective resolution, understanding the implications of addressing the consequences of the offense, and considering the future implications that need to be taken into account.

To comprehensively explain the concept of restorative justice, it is crucial to delve into its historical background. Restorative justice has developed from practical implementations of punishment in different countries and is rooted in the cultural practices of communities in addressing criminal issues, predating the establishment of traditional criminal justice systems.

The concept of restorative justice has undergone development over time, as discussed by scholars who have extensively studied criminal justice systems in general and focused specifically on restorative justice. Prominent scholars in this field include Braitwaite (Australia), Elmar G. M. Weitekamp (Belgium), Howard Zehr (USA), Kathleen Daly (Australia), Mark S. Umbreit (USA), and Robert Coales (USA).

The history of the modern application of restorative justice traces back to the introduction of a non-traditional dispute resolution program called victim-offender mediation in Canada during the 1970s. Initially implemented as an alternative approach for dealing with juvenile offenders, this program allowed the offender and victim to engage in dialogue and collaboratively develop a proposed resolution, which the judge would consider alongside other factors prior to sentencing. The program operated on the belief that both the offender and the victim would derive benefits from this process. Its objectives were to reduce recidivism among juvenile offenders and increase the number of responsible offenders providing restitution to victims. Compared to the traditional court process, the program yielded higher levels of satisfaction for both victims and offenders.

The implementation of this program marked the inception of restorative justice as a distinctive approach within the broader realm of criminal justice. Since then, it has expanded and gained international recognition for its emphasis on repairing harm, fostering accountability, and encouraging meaningful involvement of all stakeholders in the justice process.

Research Method

Soerjono Soekanto emphasizes the crucial role of research in the development of knowledge and technology. Research aims to systematically and methodologically uncover the truth, providing a foundation for data analysis and construction.

Research serves as a scientific tool for advancing knowledge and technology, requiring alignment with the relevant discipline's methodologies. The research methodology is a scientific endeavor to address and resolve a problem using specific methods.

In this study, a normative juridical approach is employed, complemented by a correlational approach. The correlational approach aims to investigate the relationship or correlation between multiple variables. Drawing upon theories, expert opinions, and the researcher's experiential understanding, the research formulates problems to be verified through primary data collected in the field. A quantitative research design is utilized to examine the implementation of criminal law policies concerning non-criminal resolution of narcotics through rehabilitation during the prosecution stage.

Primary data is acquired through interviews with staff and prosecutors at the Tebingtinggi District Prosecutor's Office. Secondary data encompasses official documents, books, and research reports.

Typically, secondary data is readily available and can be immediately utilized. Secondary data can be categorized as follows:

Personal secondary data encompasses documents of a personal nature, such as letters, diaries, and similar materials. It also includes personal data that is stored in institutions where the individual has been or is currently employed. On the other hand, public secondary data comprises archival data that is accessible for scientific purposes and can be utilized by researchers. It also consists of official data obtained from government agencies, which may pose challenges in terms of accessibility due to confidentiality concerns. Additionally, public secondary data encompasses other published data sources, including Supreme Court jurisprudence and similar materials. Tertiary legal sources are supporting materials that provide guidance and explanations regarding primary and secondary legal sources. These include general dictionaries, legal dictionaries, magazines, scholarly journals, newspapers, magazines, and the internet, which also serve as additional resources for conducting this research.

Discussion

Article 54 of Law Number 35 of 2009 concerning Narcotics mandates that both narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. Article 103 of the same law empowers judges to order addicts and victims of narcotics abuse, who are defendants in legal proceedings, to undergo rehabilitation as part of their sentence if their guilt in narcotics abuse is proven.

To implement Article 103, the Supreme Court issued Judicial Circular Number 4 of 2010, in conjunction with Judicial Circular Number 3 of 2011, which specifically addresses the placement of narcotics abusers, victims of narcotics abuse, and narcotics addicts in medical and social rehabilitation institutions. According to Judicial Circular Number 4 of 2010, specific criteria must be met for rehabilitation measures to be imposed, including being apprehended in the act by either the Indonesian National Police or the National Narcotics Agency, the confiscation of evidence indicating one day of narcotics use, positive laboratory test results for narcotics based on investigator's request, a certificate from a government-appointed psychiatrist, and the absence of evidence linking the individual to narcotics trafficking.

The definition of prosecution according to the Indonesian Code of Criminal Procedure is similar to the definition proposed by Wirjono Prodjodikoro. It states that prosecuting a defendant in front of a criminal judge means submitting the case of a defendant, along with the case file, to the judge with a request for examination and subsequent decision on the criminal case against the defendant.

The authority of the public prosecutor in the Indonesian Code of Criminal Procedure is regulated in Article 19, which includes the following:

1. Receiving and examining the case file from the investigator or assistant investigator.
2. Conducting pre-prosecution proceedings if there are deficiencies in the investigation, in accordance with the provisions of Article 110, paragraphs (3) and (4), by providing instructions to improve the investigation by the investigator; granting extensions of detention, conducting detention or extended detention, and/or changing the detainee's status after the case has been transferred by the investigator.
3. Drafting the indictment.
4. Referring the case to the court.
5. Notifying the defendant of the scheduled date and time of the trial, accompanied by summonses for both the defendant and witnesses to appear at the designated hearing.
6. Conducting the prosecution.
7. Closing the case in the interest of the law.
8. Undertaking other actions within the scope of duties and responsibilities as a public prosecutor under the

provisions of this law.

9. Implementing the judge's decision.

The role of the public prosecutor in the prosecution process begins when the prosecutor's office receives a Letter of Notification of Commencement of Investigation. The Head of the District Prosecutor's Office then issues a P-16, which is an Order Letter Appointing a Public Prosecutor to monitor the progress of the criminal investigation conducted by the police. The prosecutor appointed by the Head of the District Prosecutor's Office has the authority to oversee the investigation process until the Examination Report is submitted to the District Prosecutor's Office.

Ensuring the thoroughness of the investigation is of utmost importance. This is in line with the procedural system adopted by the Indonesian Code of Criminal Procedure, which establishes functional differentiation among law enforcement agencies. If there are deficiencies in the investigation, the public prosecutor, who acts as an ongoing investigator and coordinates the investigative actions, can make necessary improvements. Therefore, if the public prosecutor believes that the investigation is not yet complete and cannot be brought to trial, the case file is returned to the investigator for further investigation and completion in accordance with the instructions provided by the public prosecutor.

When the Examination Report) is submitted, the Head of the District Prosecutor's Office issues a P-16A, which is an Order Letter Appointing a Public Prosecutor for the resolution of the criminal case. At this stage, the prosecutor becomes the actual public prosecutor and has the authority to conduct pre-prosecution proceedings and prosecution. During the pre-prosecution stage, the Public Prosecutor examines the received Examination Report and is required to be diligent and meticulous. The Examination Report must meet the requirements for whether or not it can be referred to the court, as outlined in Article 139 of the Indonesian Code of Criminal Procedure.

If deficiencies are found during the examination of the Examination Report, the public prosecutor issues a P-18, which is a letter stating that the investigation is incomplete and returning the case file for further completion, accompanied by detailed instructions. If the Examination Report is complete, the public prosecutor issues a P-21, which is a Notice of Completion of Investigation. It is important to note that the pre-prosecution stage is crucial for the success of the public prosecutor in their role.

The success of the public prosecutor in the pre-prosecution stage will greatly influence the drafting of the indictment and the success of the evidence presentation during the trial. After the Examination Report is declared complete and the suspect and evidence have been handed over, the first step taken by the public prosecutor is to draft the indictment (P-29).

The public prosecutor must be vigilant and meticulous in formulating the criminal offense and the corresponding legal provisions that can be imposed on the defendant. Mistakes in drafting the indictment, both in formulating the criminal offense and the legal provisions, can result in the case being null and void and potentially lead to the defendant's acquittal. After the public prosecutor drafts the indictment, the next step is to create a P-31, which is a Letter of Case Referral for a regular trial addressed to the District Court. In the trial, the task of the public prosecutor is to prove the charges with supporting evidence in the prosecution of the case. The public prosecutor must be active, corrective, and professional in the process of presenting evidence. This ensures that the material truth and elements of the criminal offense in the applicable legal provisions against the defendant can be proven.

One of the tasks of the prosecutor as a public prosecutor is to present a criminal demand for a criminal offense and formulate it in a letter of criminal demand. The preparation of a criminal demand is a crucial part of the prosecution process. It determines the type of punishment and its severity that will be imposed on the defendant, aiming to provide a fair and just outcome for the defendant, the victim, and the wider community.

In presenting a criminal demand, the public prosecutor must rely on the facts presented in the trial, including the statements of the defendant, witnesses, and other pieces of evidence, which are then interconnected to establish convincing facts that the criminal offense indeed occurred and that the defendant committed the said offense. It is important to note that the imposition of punishment is not solely for retribution but also to educate the perpetrator of the criminal offense, guiding them towards becoming a good individual who is beneficial to the nation, the state, and society at large.

The termination of prosecution refers to a situation where a case has been referred to the district court but is subsequently discontinued and withdrawn due to certain reasons.

Conclusion & Suggestion

The following are the conclusions and recommendations:

Drug rehabilitation should be available to all individuals addicted to drugs. However, those who have committed criminal offenses related to drug abuse should still face appropriate legal consequences. Imprisonment of drug users and addicts has drawbacks that can hinder their rehabilitation and fail to address the root causes of addiction. Therefore, prioritizing rehabilitation over imprisonment is recommended.

The Prosecutor General's Guidelines No. 18 of 2021 on the Resolution of Narcotics Abuse Cases through Rehabilitation with a Restorative Justice Approach, aligning with the Dominus Litis Principle, provide prosecutors with a framework for handling narcotics abuse cases. These guidelines aim to promote alternative sentencing options, such as rehabilitation, to alleviate overcrowding in correctional facilities. Implementation of these guidelines can help achieve a more balanced and effective approach to addressing drug-related offenses.

The Criminal Law Policy on Narcotics Offenses is highly commendable, but there are still challenges in the rehabilitation process, particularly in terms of cost and accessibility to adequate rehabilitation services for narcotics victims. It is necessary for the government or relevant stakeholders to provide financial support and sufficient facilities to drug rehabilitation centers.

The Prosecutor General's Guideline No. 18 of 2021 introduces leniency in sentencing for drug addicts, aiming to ensure fairness during the Prosecution stage by incorporating the recommended rehabilitation process, including expedited court hearings. Vigilant oversight of this accelerated prosecution process is crucial to uphold the rights of defendants in narcotics cases.

References

Abdurahman, Muslan, *Sosiologi dan Metode Penelitian Hukum*, UMM Press, Malang, 2009

Bakir, R. Sutoyo, *Kamus Lengkap Bahasa Indonesia*, Karisma Publishing Group, Tangerang, 2009

Dirdjosisworo, Soedjono, *Pathologi Sosial*, Alumni, Bandung, 1982.

Lisa, Juliana, *Narkoba, Psikotropika dan Gangguan Jiwa*, Nuha Medika, Yogyakarta, 2013.

Makarao, Moh. Taufik, dkk, *Tindak Pidana Narkotika*, Ghalia Indonesia, Bogor, 2005.

Mardani, *Penyalahgunaan Narkoba dalam Perspektif Hukum Islam dan Hukum Pidana* Nasional, Raja Grafindo, Jakarta, 2007.

Mardani, *Bunga Rampai Hukum Aktual*, Ghalia Indonesia, Jakarta, 2008.

M. Arief dan Elisatris Gultom, Dikdik, *Urgensi Perlindungan Korban Kejahatan*, PT. Raja Grafindo Persada, Jakarta, 2007.

M. Hikmat, Mahi, *Awas Narkoba Para Remaja Waspadalah*, PT. Grafiti, Bandung, 2007.

M. Sianipar, Togar, *Perkembangan Kejahatan Narkoba*, Makalah dalam seminar Narkoba di Departemen Kehakiman dan HAM tanggal 22 Juli 2003.

M. Yahya Harahap, 2012, "*Pembahasan Permasalahan dan Penerapan KUHAP Penyidikan dan Penuntutan"*, Jakarta, Sinar Grafika.

Sudikno Mertokusumo," *Mengenal Hukum Suatu Pengantar",* Liberty, Yogyakarta, 2008

Martiman Prodjohamidjojo,*" Memahami Dasar-Dasar Hukum Pidana Indonesia",* Pradnya Paramita, Jakarta, 2007.

EY Kanter dan SR Sianturi,*" Asas-Asas Hukum Pidana di Indinesia",*Storia Grafika, Jakarta. 2008

Rachmat Setiawan,*" Tinjauan Elementer Perbuatan Melawan Hukum",*Alumni Bandung, 2008