

## Implementation Of Diversion As A Restorative Justice Approach To Child Performers In Narcotics

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### Abstract

*The research problem is how to solve children who commit narcotics crimes in the conception of legal certainty and how to implement diversion against children who commit narcotics crimes in the Tangerang City area in the construction of the legal system. The research method uses sociological juridical. The type of research used is a research that combines Normative Legal Research and Empirical Legal Research. The data sources for this research are primary data and secondary data. This research is classified as research with qualitative data types, namely by processing the results of a literature study.*

*The results of this study indicate that children who abuse narcotics are children who are victims of their own actions so that children who abuse narcotics are considered victims, not perpetrators of crime. And there are many provisions regarding restorative justice, whether issued by the Supreme Court, the Attorney General's Office, the police, or from other institutions. So as a restorative justice approach as an effort to resolve cases, namely seeking the application of diversion against narcotics abuse for children, it is carried out with deliberation procedures in accordance with the Law on the Juvenile Criminal Justice System and the appropriate action for child offenders is rehabilitation. With this restorative justice approach as a settlement effort at the investigation level without going through a judicial process involving all parties. This research is also expected to be a reference material for law enforcement officers in realizing legal certainty efforts.*

*Keywords: Diversion; Restorative Justice, Children, Narcotics.*

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### 1. Introduction

Narcotics problems in general can be divided into 3 (three) interrelated parts, namely illicit drug production, illicit drug trafficking and drug abuse.<sup>1</sup> Narcotics crimes are classified as extraordinary crimes because of the effects and dangers caused by narcotics abuse, damaging the human nervous system so that it can cause dependence and can even be a source of disease which then ends in death.<sup>2</sup>

According to Parasian Simanungkalit, drug abuse is an extraordinary crime (extraordinary crime) and a transnational crime (transnational crime) because the effects of drug abuse are not only self-destructive for drug users but can also damage the structure of society, nation and state.<sup>3</sup>

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<sup>1</sup>Arif Hidayat, Sri Endah Wahyuningsih, "Role Of Prosecutor General Prosecution Of Actors In The Implementation Of Abuse Of Narcotics Crime (Case Study in Magelang District Attorney)", *Jurnal Daulat Hukum Volume 1. No. 2 June 2018* : 445 - 452 p. 446  
url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/3290/2423>

<sup>2</sup>Ali Murtadho, "The Investigation Process Prevention And Eradication Of Narcotics Investigator To The Criminal Abuses By Police", *Jurnal Daulat Hukum Volume 1. No. 2 June 2018* : 433 - 43 p. 433,  
<http://jurnal.unissula.ac.id/index.php/RH/article/view/3286/2421>

<sup>3</sup>Yuke Sinayangsih and Umar Ma'ruf, "Effectiveness of Death Penalty Against Crime of Abuse of Narcotics Agents or Statutory RI Number 35 of 2009 Concerning Narcotics Law as Viewed From The

The presence of children's contribution in the form of narcotics crime, as a courier for illicit goods, of course causes a sense of sadness and sadness towards the activities carried out by children. In its circulation to deceive the authorities, it is not uncommon for narcotics dealers to use minors to be used as couriers to deliver drugs from one place to another. The existence of factors such as, promising sizable rewards and a lack of knowledge about narcotics which makes minors the targets of narcotics dealers in distributing narcotics widely and covertly. This is a very serious problem, and makes children fall into the crime of drug abuse. With the involvement of children as couriers in narcotics circulation, the position of children is already in conflict with the law and has been a criminal act. This is inseparable from the evil conspiracy made by the narcotics syndicate in order to smooth the process of circulating these illicit goods.

Deviations in behavior or unlawful acts committed by children are caused by various factors, including weak religious education in the family environment, decline in mental and morals, negative impacts from rapid development developments, globalization in the field of communication and information, advances in science and technology. technology, unstable social, political and economic conditions as well as changes in the style and way of life of some parents, have brought about fundamental social changes in people's lives that greatly affect the values and behavior of children.<sup>4</sup>

Restorative justice is a concept that can be applied in the real form of the judicial process. In general, the approach used in the application of restorative justice can be classified into three main forms, namely; victim offender mediation/ mediation between perpetrator and victim, conferencing and circles. This approach is very appropriate to be used to resolve cases of child perpetrators of criminal acts to teach children to be responsible so that they are able to prevent children from committing crimes again in the future. This restorative justice approach has been applied in several developed countries with effective results.

By paying attention to all aspects related to criminal acts committed by child perpetrators, among others, in terms of the application of punishment as stated by Barda Nawawi Arief, "The pattern of punishment" is intended as a guide or guide for making or compiling a criminal (legal) system. It is distinguished from "criminal guidelines" which are more of a guideline for judges to impose or apply a sentence, while "punishment patterns" are more of a reference or guideline for legislators in making or drafting legislation containing criminal sanctions. Thus, it can be said that the "penalty pattern" is a guideline for making/compiling a crime, while the "criminal guideline" is a guideline for imposing/implementing a criminal.<sup>5</sup>

The concept of diversion is expected to be able to protect the best interests of children while at the same time realizing restorative justice in the settlement of

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Principles of Justice And Humanity" Jurnal Daulat Hukum Volume 1 Issue. 3 September 2018 : 651 – 656, p. 651 URLs : <http://jurnal.unissula.ac.id/index.php/RH/article/view/3350/2478>

<sup>4</sup> Oscar Stefanus Setjo and Umar Ma'ruf, "Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction" Jurnal Daulat Hukum Volume 3 Issue 2, June 2020: 283 – 290 p. 284 <http://jurnal.unissula.ac.id/index.php/RH/article/view/9851/4156>

<sup>5</sup> Muhaimin, "Restoratif Justice Dalam Penyelesaian Tindak Pidana Ringan", *Jurnal Penelitian Hukum De Jure*, Vol. 19 No. 2, Juni 2019: 185-206, url: <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/648/pdf>

children's cases. In addition, it is also expected to be able to handle and prevent juvenile delinquency. In practice the concept has been implemented as the data obtained by the authors in the research "Implementation of Diversion as a Step of Restorative Justice Approach to Child Perpetrators at the Narcotics Criminal Level (Case Study in the Tangerang Region)".

With the ratification of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it has the aim of providing and realizing a justice system that truly provides legal protection and justice for children in conflict with the law. The previous law, the Juvenile Court Law, was deemed unable to provide comprehensive protection to children in conflict with the current law. Children also have other legal instruments that provide legal protection when related to criminal acts, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.<sup>6</sup>

Restorative Justice is one of the main approaches, which currently, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is required to apply diversion in cases of children in conflict with the law. This approach focuses more on the conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves. Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators.<sup>7</sup>

Based on the description above, this study aims to identify and analyze efforts to resolve children who commit narcotics crimes in the conception of legal certainty.

## 2. Methods

The research method uses sociological juridical. The type of research used is a research that combines Normative Legal Research and Empirical Legal Research. The data sources for this research are primary data and secondary data. This research is classified as research with qualitative data types, namely by processing the results of a literature study.

## 3. Results And Discussion

In this new era, called the millennial era, legal certainty has become a necessity that is continuously pursued by the entire community, especially for those who are dealing with the law. So that the government has made every effort to be able to meet the needs of the people who are not visible but the impact is felt on daily life, namely, among others, creating various laws and regulations in the fields of politics, economy, socio-culture, law to ensure the life of the state and society. society can run well.

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<sup>6</sup> I Wayan Govinda Tantra, I Made Minggu Widyantara dan Luh Putu Suryani, *Pertanggungjawaban Pidana Anak Sebagai Kurir dalam Tindak Pidana Narkotika*, Jurnal Analogi Hukum, Fakultas Hukum, Universitas Warmadewa, Denpasar-Bali, Volume 2, Nomor 2, 2020, p. 216.

<sup>7</sup> Sosiawan, Ulang Mangun, *Perspektif Restorative Justice sebagai Wujud Perlindungan Anak yang Bermasalah dengan Hukum*, Jurnal penelitian Hukum De Jure, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Volume 16, Nomor 4, Desember 2016, P. 425.

The definition of a child according to Law no. 35 of 2014 concerning amendments to Law No. 23 of the Year concerning child protection as stated in Article 1 number 1, a child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb.<sup>8</sup>As the author has stated in the background of the previous writing regarding the data on child perpetrators who are in conflict with the law for the Tangerang City area, it can be categorized as still worrying because children here are not only victims but many have been perpetrators of various crimes or criminal acts. for the Tangerang City area, the residents of Child Prisons, both boys and girls specifically in Tangerang City, are as of November 2018 is ±146 children, 2019 is ±118 and 2020 is ± 53 children.<sup>9</sup>and from these data the crime committed by the child is one of them is a narcotics crime. Narcotics and other addictive substances are now the biggest threat in Indonesia, therefore the government is very aggressive in fighting narcotics or psychotropic crimes.

Children who commit crimes/minor violations as far as possible are diverted. Some crimes are classified as minor such as theft, minor assault. Some crimes committed by children that can be applied for diversion, for example; shoplifting, possession of underage alcohol, possession of marijuana, trespassing and destruction of property, petty consumption/possession of alcohol; simple attack; commit a violation; interruptions in skipping school; possession of tobacco, marijuana or drug paraphernalia.

There are several classifications of characteristics when viewed from the use of narcotics as regulated in the regulations on Narcotics which categorize people who consume narcotics for their own use as abusers, including in a crime. The definition of abuser as referred to in Law no. 35 of 2009 concerning Narcotics in Article 1 number 15 which states are:<sup>10</sup>

"people who use Narcotics without rights or against the law". That in the article it can be understood that anyone without exception if consuming narcotics that is not in accordance with the rules is referred to as an abuser. Furthermore, to be classified only as a user or involved as a dealer is through the amount of evidence found. To determine someone as a user or dealer, the basis for consideration can be seen in the Circular Letter of the Supreme Court Number 4 of 2010 dated April 7, 2010. Therefore, if the provisions stipulated in the regulation are fulfilled, then Article 127 can be imposed .

There are several criteria that can be threatened by Article 127 of Law no. 35 of 2009 concerning Narcotics, namely narcotics addicts as stated in Article 1 number 13 of Law no. 35 of 2009 concerning Narcotics regarding the definition of narcotics addicts are:<sup>11</sup>

"Narcotics addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically"

And according to the explanation of Article 54 in Law no. 35 of 2009 concerning Narcotics, victims of narcotics abuse are every person at first there is no

<sup>8</sup>Law No. 35 of 2014 concerning amendments to Law No. 23 of the Year on child protection.

<sup>9</sup> Ibid Hal. Directorate General of PAS – Public SDP, Latest Data on Number of Occupants of Per-UPT Kanwil, accessed from [Http://202.62.9.35/](http://202.62.9.35/), October 28, 2021, 14.30 WIT.

<sup>10</sup> Ibid, p.4

<sup>11</sup>Ibid, p. 4

desire to use, but there is persuasion, coercion, lies or there is or is no threat to use it.

The rules that regulate if someone uses narcotics that are not in accordance with the applicable rules can be threatened with the provisions of Article 127 paragraph 1 in Law no. 35 of 2009 concerning Narcotics which reads:<sup>12</sup>

- 1) Any Abusers:
  - a. Narcotics Category I for oneself shall be sentenced to a maximum imprisonment of 4 (four) years;
  - b. Narcotics Category II for oneself shall be sentenced to a maximum imprisonment of 2 (two) years; and
  - c. Narcotics Category III for oneself shall be sentenced to a maximum imprisonment of 1 (one) year.
- 2) In deciding the case as referred to in paragraph (1), the judge is obliged to pay attention to the provisions as referred to in Article 54, Article 55, and Article 103.
- 3) In the event that the abuser as referred to in paragraph (1) can be proven or proven as a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation.

In connection with the application of sanctions given by the judge, the judge must first be able to prove whether the perpetrator is a user or not. If the judge has sufficient evidence to prove that he is an abuser, he is obliged to undergo medical rehabilitation and social rehabilitation. Judging from these regulations, there is an obligation for judges to consider the formulations of Article 54, Article 55 and Article 103. which means that the abuser in addition to the threat of imprisonment can also be subject to rehabilitation. So that the application of sanctions is a gap for law enforcement officers and justice enforcers to carry out efforts to implement diversion as a part of restorative justice for the sake of legal certainty without prejudice to the eyes that promote suspicion.

The current narcotics crime is not only done by adults but we have seen a lot in the mass media or in electronic media and even children who are in conflict with the law. In accordance with the Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 point 2 which explains the definition of children in conflict with the law, children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses to criminal acts.<sup>13</sup> Furthermore, Article 1 point 3 explains that a child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime.<sup>14</sup> Then Article 1 point 4 explains that children who are victims of criminal acts, hereinafter referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical, mental, and/or economic losses caused by criminal acts.<sup>15</sup>

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<sup>12</sup>Ibid, p. 48.

<sup>13</sup>Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, p. 2.

<sup>14</sup>Ibid. p. 3.

<sup>15</sup>Ibid. p.3.



The definition of a child according to Law Number 23 of 2002 concerning Child Protection in Article 1 point 1 states that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.<sup>16</sup>

According to Sellin and Wolfgang, a person who consumes only for his own consumption, is a victim of narcotics abuser or is called "mutual victimization", which means that there is no other victim besides himself. As with other crimes, namely, adultery, and prostitution, which means that the perpetrator is also a victim.<sup>17</sup>The explanation of what is meant by victims can be seen in a regulation, namely Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. What is meant by victim is "everyone who gets an unpleasant act in the form of physical, psychological, mental suffering and/or economic loss caused by a criminal act".<sup>18</sup>Based on the explanation of the victim in the Act, a person can become a victim if there are other people's actions that are not criminal. Meanwhile, in the case of an abuser who consumes to be used for his own benefit, he does not cause a victim to others so that he becomes the victim himself. This means that in this case there are no victims other than himself, so that narcotics abusers cannot be categorized as criminals. Therefore, a change in the rules of criminal law is needed that positions narcotics addicts as victims, not perpetrators of crime.<sup>19</sup>

Thus, it can be said that narcotics abusers for their own use, especially children, are victims who need special treatment in the form of medical rehabilitation and social rehabilitation. Furthermore, the regulation that regulates the obligation to rehabilitate narcotics abusers is SEMA No. 4 of 1990 concerning Placement of victims of abusers in rehabilitation institutions. The position of narcotics abusers in the narcotics law is not only as perpetrators but also as victims. Based on the typology of the victims identified based on the condition and status of the victims, they are divided into 6 (six), namely:

- Unrelated victims, is the absence of a relationship at all between the victim and the perpetrator.
- Provocative victims are someone who becomes a victim, because there are provocateurs from other people who push them.
- Participating victims, is their behavior to encourage others to do an act against him.
- Biologically weak victims, is the weakness of the physical condition, the cause of the victim.
- Socially weak victims, is a weak social position in society that causes victims.
- Self-victimizing victims, means that he/she becomes a victim as a result of the actions he/she has committed himself.<sup>20</sup>

By referring to the opinion of several legal experts, that narcotics abusers are self-victimizing victims, namely someone who becomes a victim as a result of the

<sup>16</sup> Law Number 23 of 2002 concerning Child Protection.

<sup>17</sup>Sellin, Thorsten., Marvin E, Wolfgang. 1990. A Psychosocial Scaling Of The Seriousness Of Crime. University of Pennsylvania. Philadelphia

<sup>18</sup> Law Number 13 of 2006 concerning the Protection of Witnesses and Victims

<sup>19</sup> Afni Zahra, RB Sularto, Penerapan Asas Ultimum Remedium Dalam Rangka Perlindungan Anak Pecandu narkoba, Jurnal Law Reform, Volume 13 Tahun 2017

<sup>20</sup> Moh Taufik Makarao, Suhasril, dan Moh Zakky A.S., 2013, *Tindak Pidana Narkotika*, Galia Indonesia, Jakarta, p.49

actions they have committed themselves. However, there are also those who classify it as victimless crime or crimes without causing victims because usually every crime has a target to become a victim.<sup>21</sup>

In addition, narcotics abuse can be classified as a crime without causing casualties or harm to others. The explanation of a crime without causing victims means that no one else is a victim of this crime, but the victim is the perpetrator himself. Whereas in the category of crime in criminal law, an act that is considered evil must result in the emergence of a victim and the victim is someone else, which means that if only oneself is the victim, then the act is not categorized as a crime. Therefore, the judge who decided the case, should not apply imprisonment to children as abusers, but implement rehabilitation. This is clarified in Article 3 paragraph (1) of the Regulation of the Head of the National Narcotics Agency Number 11 of 2014, which stipulates that addicts and victims of narcotics abuse are given protection in the form of treatment, care and recovery in rehabilitation institutions. Further strengthened by Circular No. 7 of 2009, which was stated by the Chief Justice of the Supreme Court, "Most of the narcotics prisoners and convicts in the Correctional Institution are in the category of users and victims". Therefore, the implementation of rehabilitation is the right step. And it should be noted that children who are involved in narcotics crimes are not only perpetrators but also victims because a child cannot move alone without the participation of adults. which stipulates that addicts and victims of narcotics abuse are given protection in the form of treatment, care and recovery in rehabilitation institutions. Further strengthened by Circular No. 7 of 2009, which was stated by the Chief Justice of the Supreme Court, "Most of the narcotics prisoners and convicts in the Correctional Institution are in the category of users and victims". Therefore, the implementation of rehabilitation is the right step. And it should be noted that children who are involved in narcotics crimes are not only perpetrators but also victims because a child cannot move alone without the participation of adults. which stipulates that addicts and victims of narcotics abuse are given protection in the form of treatment, care and recovery in rehabilitation institutions. Further strengthened by Circular No. 7 of 2009, which was stated by the Chief Justice of the Supreme Court, "Most of the narcotics prisoners and convicts in the Correctional Institution are in the category of users and victims". Therefore, the implementation of rehabilitation is the right step. And it should be noted that children who are involved in narcotics crimes are not only perpetrators but also victims because a child cannot move alone without the participation of adults. which was stated by the Chief Justice of the Supreme Court "Detainees and narcotics prisoners who are in the Correctional Institution are mostly classified as users and victims". Therefore, the implementation of rehabilitation is the right step. And it should be noted that children who are involved in narcotics crimes are not only perpetrators but also victims because a child cannot move alone without the participation of adults. which was stated by the Chief Justice of the Supreme Court "Detainees and narcotics prisoners who are in the Correctional Institution are mostly classified as users and victims". Therefore, the implementation of rehabilitation is the right step. And it should be noted that children who are involved in narcotics crimes are not only

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<sup>21</sup> Dikdik M.Arief Mansur dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan*, PT.Raja Grafindo Persada, Jakarta, p. 49

perpetrators but also victims because a child cannot move alone without the participation of adults.

Based on several research results, it shows that rehabilitation of children is considered capable of freeing victims of narcotics users from dependence. Therefore, rehabilitation of children as victims of narcotics abusers is a powerful treatment process to free and save children from narcotics dependence and is a form of concern for their lives, so that children can integrate themselves in social order and are free from narcotics dependence. Child victims of narcotics abusers have the right to obtain the right to be rehabilitated, with several considerations, namely:

- That children as victims should not be prevented from getting their rights.
- That Rehabilitation is one of the rights of children who can provide recovery to children, so that rights must be given to children as victims.
- Whereas rehabilitation is the recovery of victims from dependence on narcotics use, the term is used by both local and foreign law. Whereas the implementation of rehabilitation is a recovery from dependence on narcotics use, and in the implementation of the rehabilitation there is no evidence of any weakening of the rights of the victims.

But in reality, children are victims of narcotics abusers, based on the results of several studies, children are considered as perpetrators of crimes not as victims, so judges are more likely to impose imprisonment than sanctions for action or rehabilitation. According to Asrorun as the Chair of the Indonesian Child Protection Commission (KPAI), he is of the opinion that the children involved should be put in a rehabilitation center, not in prison for rehabilitation, because they are positioned as victims. However, in reality, there are many children who should have been rehabilitated, but instead ended up in prison.<sup>22</sup>

Various kinds of factors children can be involved in the world of narcotics and other additives which according to the author are related to each other and can lead to other new factors, namely:

- Parental and family factors, namely their parents separated badly, parents who are too indifferent to their children are ignorant of what the child does everyday.
- Technological factors, namely the use of communication tools and electronic devices that are not wise and without being supervised by parents or other adults.
- Environmental factors are very important because they include children's associations in the sense of social interactions between children and the surrounding community if they do not support the child, they will become victims in the world of crime, especially in narcotics crimes, either as addicts, abusers or being used by irresponsible persons as couriers in circulation. narcotics.
- Economic factors are also one of the important factors for a child to be involved in drugs, usually starting with an experiment in using it, then it must be used as

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<sup>22</sup> Risman, The Number of Minors Who Become Drug Dealers Increases, <http://nasional.harianterbit.com/nasional/2015/04/27/26608/25/25/Jumlah-Anak-di-Bawah-Umur-yang-Jadi-Drug-Dealers-Increasing>, downloaded on Monday, November 15, 2021, at 10.39 WIT.



a source of income for the child to earn money which is used to buy things such as food, drinks, goods and so on. other.

One of the government's efforts to resolve children who commit narcotics crimes is restorative justice / restorative justice (Deliberation-Based Justice) is one of the main approaches, which currently, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, must be carried out. in the case of children in conflict with the law. This approach focuses more on the conditions for creating justice and balance for the perpetrators of criminal acts and the victims themselves. Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement on a more just and balanced settlement of criminal cases for the victims and perpetrators. With regard to narcotics crimes involving children as narcotics abusers, directly and indirectly, children are not only perpetrators but also victims. However, in reality what happened as expected, most of them were treatment, settlement of cases of children involved in narcotics crimes had not used settlement outside the trial (diversion) as a form of restorative justice for the sake of legal certainty.

The definition of diversion according to Government Regulation no. 65 of 2015 concerning guidelines for the implementation of diversion and handling of children who are not yet 12 (twelve) years old is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.<sup>23</sup>The diversion process is carried out between the perpetrators of the crime and the victims facilitated by the family or community, the child's social advisor, the police, prosecutors, and judges. The purpose of the diversion is the implementation of restorative justice which seeks to restore recovery to a problem, not a retaliation that has been known in criminal law.

According to Government Regulation No. 65 of 2015 concerning guidelines for implementing diversion and handling children who are not yet 12 (twelve) years old, Article 2 states that diversion aims to:<sup>24</sup>

- Achieving peace between victims and children
- Resolve child cases outside the judicial process.
- Protecting children from deprivation of liberty
- Encouraging communities to participate; and
- Instill a sense of responsibility in children.

The implementation of diversion is motivated by the desire to avoid the negative effects on the soul and development of children by being involved with the criminal justice system. This policy of transfer or diversion is the best solution that can be used as a formula in resolving several cases involving children as perpetrators of criminal acts, especially in handling children who abuse narcotics.

Another form of settlement efforts against children who commit narcotics crimes for the sake of legal certainty lies in law enforcement officers (APH) and justice enforcement officers (APK), namely judges who must be honest, transparent and have integrity to cooperate with each other for the realization of legal certainty.

<sup>23</sup>Government Regulation No. 65 of 2015 concerning guidelines for the implementation of diversion and handling of children who are not yet 12 (twelve) years old Article 1 point 6, page 1.

<sup>24</sup>Government Regulation No. 65 of 2015 concerning guidelines for implementing diversion and handling children who are not yet 12 (twelve) years old, page 4.

Further efforts as a form of embodiment in implementing restorative justice / restorative justice related parties have equated perceptions in a communication forum for the national level in discussing the problem of restorative justice / restorative justice including:

- Joint Decree of the Chief Justice of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, and the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia in 2009 concerning the Handling of Children in Conflict with the Law.
- Joint Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General and the Chief of the Indonesian National Police regarding the implementation of the adjustment of the limits for minor crimes and the amount of fines, the quick examination and the implementation of restorative justice in 2012
- Joint Regulation of the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police, the Head of the Indonesian National Narcotics Agency in 2014 concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation.

Although in the collective agreement there is not yet clear regulation regarding restorative justice / restorative justice specifically for children in narcotics crimes and it is not clear whether diversion can be carried out for children involved in narcotics crimes, so that it seems still vague that other effects will affect investigators police/PPNS, prosecutors and judges and professionals in the government and outside the government to carry out diversion as a form of restorative justice in Indonesia, especially in the Tangerang area because, like the prosecutor's office, which states that restorative justice does not apply to narcotics crimes, the police and courts also prioritize restorative justice / restorative justice as legal certainty, especially for children involved in narcotics crimes.

That there must be differences in the treatment of children or adults regarding diversion efforts. In Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, in Article 7 in general it is stated that at the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought; and diversion is given under the threat of imprisonment for under seven years and is not a repetition of a crime.<sup>25</sup>

Even though there is a memorandum of understanding together, it is because it is felt that the legal goals that are aspired to have not been realized because each institution involved in the memorandum of understanding is still running independently and there are obstacles in the implementation process, it seems that it is still running in place, especially for narcotics crime. So that in order to achieve legal certainty in dealing with children's problems, the Supreme Court, the Indonesian Attorney General's Office and the Indonesian National Police Institute have implemented more specific regulations, which are as follows:

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<sup>25</sup> Oksimana Darmawan, Kebijakan Pemerintah Mengenai Penanganan Anak Pelaku Tindak Pidana Narkoba, Jurnal Hukum Mimbar Justitia, Vol. 3 No. 2 – Desember 2017, p. 180.

- The Supreme Court through the Decree of the Director General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Restorative Justice Implementation Guidelines. And the attachment to the Decree of the Director General of the General Judiciary Agency Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts.
- The Attorney General's Office of the Republic of Indonesia which has issued regulations regarding restorative justice, namely through the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, then the Attorney General's Guidelines No. 18 of 2021 concerning the Settlement of the Handling of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice approach as the implementation of the Dominus Litis Attorney principle.

And the principle of Dominus Litis the prosecutor lies in the Criminal Procedure Code Article 1 point 7 which reads:<sup>26</sup> "Prosecution is the action of the public prosecutor to delegate a criminal case to the competent district court in and according to the method regulated in this law with a request that it be examined and decided by a judge in court."

And in Article 14 of the Criminal Procedure Code which reads:<sup>27</sup>

The public prosecutor has the authority to:

- Receive and examine investigation case files from investigators or assistant investigators;
- Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of completing the investigation from the investigator;
- Provide an extension of detention, carry out further detention or detention and or change the status of the detainee after the case has been delegated by the investigator;
- Make an indictment;
- Delegating the case to court;
- Delivering notification to the defendant regarding the stipulation of the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined;
- Carry out prosecutions;
- Closing the case for the sake of law;
- Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
- Carry out the judge's determination.

The most recent provision issued by the Prosecutor's Office is the Attorney General's Guideline No. 18 of 2021 concerning the Settlement of the Handling of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice

<sup>26</sup> Translation Team of Legal Entities for National Legal Development Directorate of Legal Counseling, Basic Material for Legal Counseling on Criminal Procedure Law Number 8 of 1981, Ministry of Justice of the Republic of Indonesia, 1996-1997, pp.9.

<sup>27</sup>Ibid, p. 14.

approach as the implementation of the Dominus Litis Prosecutor principle. Although it is also not clearly regulated regarding children who are involved in narcotics crimes.

- The Indonesian National Police Agency also participates in implementing restorative justice, namely through the Chief of Police Circular Number: SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases.

According to Radbruch provide a fairly basic opinion regarding legal certainty. There are 4 (four) things related to the meaning of legal certainty. First, that the law is positive, meaning that the positive law is a statutory regulation. Second, that the law is based on facts or that the stipulated law is certain, meaning that it is based on reality and the judge does not use his own judgment, such as through the general clauses of "politeness" and "good will". Third, that the facts (facts) must be formulated in a clear way so as to avoid mistakes in meaning, in addition to being easy to implement. Fourth, positive law should not be easily changed.

The meaning and nature mentioned above is that a criminal law reform can be seen from the point of view of a policy approach, where as part of social policy, criminal law reform is essentially part of an effort to overcome social problems (including humanitarian problems) in order to achieve or support goals. national (public welfare and so on). As part of criminal policy, criminal law reform is essentially a part of community protection efforts (especially crime prevention efforts). As part of law enforcement policies, criminal law reform is essentially part of efforts to reform legal substance in order to make law enforcement more effective for legal certainty.

#### 4. Closing

Based on the description that has been described in previous chapters, it can be concluded Children who abuse narcotics, including self-victimizing victims, are children who become victims as a result of their own actions. In the sense of crime without causing victims (crime without victims). This means that there is an act that is categorized as a crime, but does not cause victims to other people, then the act is not included in the category of a crime, so that children who abuse narcotics are considered victims and not perpetrators of crime, then the right action is rehabilitation.

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