

The Role of Police Investigators in Implementing Restorative Justice for Children Involved in Narcotics Crimes

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Abstract: The handling of children involved in narcotics crimes requires a restorative approach focused on rehabilitation rather than punishment. This study aims to examine the role of police investigators in applying restorative justice to child offenders in narcotics cases and to identify the obstacles encountered in its implementation. This research employs a normative legal research method with statutory and conceptual approaches. Primary legal materials include Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 35 of 2009 on Narcotics, and Chief of Police Regulation Number 8 of 2021. The findings show that investigators play a strategic role in facilitating diversion, including conducting initial assessments, facilitating diversion deliberations, and coordinating with supporting institutions such as the Correctional Center (Bapas), National Narcotics Agency (BNN), and Social Services. However, implementation remains suboptimal due to internal constraints, including inadequate training and understanding among investigators, limited facilities such as child-friendly rooms and mediation spaces, regulatory disharmony between the Juvenile Criminal Justice System Law and the Narcotics Law, weak inter-agency coordination, and lack of support from families and communities. Post-diversion monitoring is also ineffective. This study concludes that strengthening investigator capacity through specialized training, improving legal frameworks through regulatory harmonization, and enhancing inter-agency collaboration are essential to ensure restorative justice truly serves the best interests of children.

Keywords: Child Protection; Diversion; Narcotics; Police Investigators; Restorative Justice

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1. Introduction

The phenomenon of narcotics abuse in Indonesia has evolved into a complex social and legal problem. It not only affects adults but also involves children as perpetrators, both directly and indirectly. In this context, children who should receive special protection are instead entangled in criminal acts that have long-term impacts on their future. According to data from the National Narcotics Agency (BNN), there has been an increase in the number of children involved in narcotics cases, both as users and couriers. This condition raises concerns because children's involvement in the narcotics world not only disturbs their psychological and social development but also has the potential to perpetuate cycles of criminality from an early age (BNN, 2022).

Normatively, children in conflict with the law have a different legal position from adults. This is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which emphasizes the principle of protection and a restorative justice

approach in handling criminal cases involving children. This approach not only emphasizes punishment but also the restoration of relationships between perpetrators, victims, and society. Article 7 of the UU SPPA even mandates the resolution of children's cases outside the formal justice system through diversion mechanisms that must be pursued from the investigation stage (Mulyadi, 2019).

However, the implementation of a restorative justice approach for children involved in narcotics crimes still faces various challenges. One of them is the stigma against narcotics, which is considered an extraordinary crime, so its handling tends to be more repressive. In practice, many police investigators still prioritize a retributive legal approach in handling narcotics cases, including those involving children. This makes efforts at diversion or case termination based on the principle of restorative justice difficult to implement (Isharawana, 2022).

On the other hand, the role of investigators in determining the direction of case resolution is very central. As the first actor in the criminal law enforcement process, investigators have strategic authority to determine whether a case can be diverted to a restorative justice path or continued to the judicial process. Therefore, the understanding, sensitivity, and integrity of investigators in applying the principles of restorative justice become determining factors for the success of this approach. Unfortunately, there is still a gap between legal norms and practice in the field, especially in the context of narcotics cases involving children (Siburian, 2023).

Based on the above description, it becomes important to examine in depth the role of police investigators in the application of restorative justice for children involved in narcotics crimes. This research is expected to provide a comprehensive picture of the implementation of the restorative justice approach at the investigation level and identify the obstacles faced in practice. Thus, the results of this research are expected to become constructive input for the reform of juvenile criminal law enforcement policies in Indonesia. The research questions addressed are: (1) What is the role of police investigators in implementing restorative justice principles for children involved in narcotics crimes? (2) What are the problems faced by investigators in implementing restorative justice for child perpetrators of narcotics crimes?

2. Literature Review

Legal Protection Theory

Legal protection theory is one of the fundamental theories in legal studies, particularly related to efforts to protect human rights and the interests of individuals and groups in their interaction with the state and society. Legal protection can be interpreted as protection given by law to legal subjects in the form of devices, both preventive and repressive in nature, whether written or unwritten, in enforcing legal regulations. According to Philipus M. Hadjon, legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on applicable legal provisions. This protection includes efforts to prevent violations (preventive protection) and impose sanctions for those who violate (repressive protection) (Gosita, 2004).

Restorative Justice Concept

Restorative justice is an alternative approach to resolving criminal cases that focuses on restoring conditions rather than retaliation or punishment alone. This approach emphasizes efforts to repair relationships between perpetrators, victims, and communities that are damaged due to criminal acts, and encourages perpetrators to take responsibility for the impact of their actions. The main goal of restorative justice is to create justice that is more humane, participatory, and solution-oriented for all parties involved. In contrast to the retributive system, which emphasizes punishment as a form of retaliation for wrongdoing, restorative justice opens space for dialogue and deliberation between perpetrators, victims, and society (Bakhri, 2018).

In the context of juvenile criminal law, this approach becomes very relevant and important. Children in conflict with the law (ABH) are seen not merely as criminal perpetrators but as individuals still in the process of growth and development with potential to change for the better. Therefore, repressive punishment can actually cause prolonged negative impacts, such as psychological trauma, stigmatization, and difficulties in the social reintegration process. This approach is in line with the spirit of Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA), which explicitly states that the resolution of children's cases must be prioritized through restorative justice and diversion efforts (Latifah & Widodo, 2021).

Juvenile Criminal Justice System

The juvenile criminal justice system is a mechanism for handling criminal cases involving children as perpetrators, which is specifically designed to prioritize the protection and best interests of children. In Indonesia, this system is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), which replaced Law Number 3 of 1997 concerning Juvenile Courts. The birth of UU SPPA is a form of the state's commitment to implementing international standards in child protection, especially as stipulated in the Convention on the Rights of the Child (CRC), the Beijing Rules (UN Standard Minimum Rules for the Administration of Juvenile Justice), and the Riyadh Guidelines (Sulistiyowati, 2018).

The Role of Investigators in the Criminal Justice System

Police investigators play a strategic role in the initial stages of handling cases of children in conflict with the law. Through their authority as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), investigators can initiate the diversion process as a form of applying the principle of restorative justice. This role includes conducting initial assessments of the child's condition, facilitating diversion deliberations, establishing communication with victims and families, and coordinating with supporting institutions such as Bapas and Social Services. In practice, however, the implementation of this role has not been optimal due to various structural, cultural, technical, and institutional obstacles (Setiawan, 2022; Mahmud, 2022).

3. Research Methods

This research uses a normative legal research type (normative research), where the main purpose of normative research is to examine or analyze primary and secondary legal materials by understanding law as a set of regulations or positive norms in the legislation system that regulates human life (Zakaria et al., 2023). This research uses a statutory approach and a

conceptual approach. The statutory approach is carried out by examining various legal regulations governing the juvenile criminal justice system, restorative justice, and narcotics crimes.

Primary legal materials include Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Criminal Procedure Code (KUHAP), Law Number 35 of 2009 concerning Narcotics, Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and Attorney General Circular Letter No. SE-001/J.A/2021. Secondary legal materials include literature in the form of books, scientific journals, legal articles, and expert opinions relevant to the discussion of legal protection and restorative justice. Analysis of legal materials in this research was conducted qualitatively, aimed at describing, interpreting, and examining collected legal materials in depth and systematically.

4. Results and Discussion

The Role of Police Investigators in Implementing Restorative Justice Principles

The application of restorative justice principles for children in conflict with the law, including in narcotics criminal cases, has a strong legal foundation in the Indonesian legal system. This principle does not appear spontaneously but is the result of the evolution of criminal law paradigms, especially juvenile criminal law, which now emphasizes protection and recovery approaches rather than retaliation. In the context of investigation, the role of investigators as the spearhead of the juvenile criminal justice process is also regulated in various legally binding regulations.

The main legal basis for applying restorative justice in children's cases is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law firmly stipulates that every handling of children's cases must seek diversion. Article 6 of the UU SPPA states that the juvenile criminal justice system is implemented based on the principles of protection, justice, non-discrimination, the best interests of the child, respect for children's opinions, and so on. Meanwhile, Article 7 paragraph (1) of UU SPPA states that at the level of investigation, prosecution, and examination of children's cases in district courts, diversion must be sought (Deskananda, 2019).

Furthermore, Article 8 paragraph (1) of UU SPPA explains that in implementing diversion, investigators must consider the category of criminal act, age of the child, results of social research from Bapas, and support from family and community environment. This shows that investigators are not only tasked with conducting investigations procedurally but are also responsible for ensuring that child protection principles are implemented in practice. In addition to UU SPPA, Supreme Court Regulation (PERMA) Number 4 of 2014 concerning Guidelines for Implementation of Diversion in the Juvenile Criminal Justice System becomes an important guideline in implementing diversion, including in the investigation process (Nefri & Faniyah, 2021).

In the police environment itself, Circular Letter of the Chief of Indonesian National Police (SE Kapolri) Number SE/8/VII/2018 concerning the Application of Restorative Justice in Handling Criminal Acts provides direction for investigators to prioritize restorative

approaches in handling certain cases, including those involving children. This circular letter is further strengthened by Chief of Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which provides a more systematic legal framework for investigators in implementing this approach (Wahyuningsih, 2020).

The investigator's concrete role in implementing restorative justice in children's narcotics cases includes several stages. First, conducting an initial assessment of the child's condition, including family background, education, and psychological condition. Second, determining whether the case meets diversion requirements, namely, criminal acts with a maximum threat of 7 years and not recidivism. Third, facilitating diversion deliberations involving children, parents/guardians, victims (if any), community counselors from Bapas, and other related parties. Fourth, coordinating with BNN for assessment of the level of addiction and rehabilitation needs. Fifth, preparing diversion agreement reports if deliberations are successful, or continuing to the prosecution process if diversion fails (Irianto, 2020).

Problems Faced by Investigators in Implementing Restorative Justice

The implementation of restorative justice in the context of children involved in narcotics crimes is not an easy task. Although there is a strong legal basis, its implementation in the field still faces complex and multidimensional challenges. The obstacles faced by investigators in carrying out their role in the restorative justice system can emerge from various aspects, starting from internal constraints within the police institution itself to external constraints such as a lack of inter-agency coordination, inadequate infrastructure, and social pressure from society that is still punishment-oriented (Yuliani, 2021).

First, internal police constraints. Many investigators have not received adequate training on the basic principles of restorative justice, especially in the context of juvenile law. This causes some investigators to still apply the old paradigm that emphasizes repressive enforcement and formal legal processes, without considering more humane and educational alternative approaches. Lack of knowledge about diversion procedures, involvement of parties in the mediation process, to preparation of agreement reports makes many investigators hesitant to initiate restorative justice. Even though, according to Article 7 of UU SPPA, investigators at the initial stage of investigation are required to seek diversion if the child commits a criminal act with a threat of punishment below 7 years and is not a recidivist (Azhari, 2020).

Second, a high workload and limited time. Investigators in detective units, especially at the Polsek or Polres level, often have to handle various cases at the same time. The limited number of personnel compared to the volume of incoming cases causes the investigation process to be rushed and not in-depth. In such conditions, the application of restorative justice, which requires time, dialogue, assessment, and an interdisciplinary approach, becomes less prioritized. The mediation process in diversion requires the involvement of many parties and sufficient time. When the workload of investigators is high, and case completion targets must be fast, investigators tend to choose the formal path, which is simpler in procedure, even though it is not in accordance with the best interests of the child (Fadli, 2023).

Third, technical and infrastructure constraints. The application of restorative justice principles cannot be effective without adequate facilities and infrastructure. One of the main

obstacles is the absence of special child examination rooms in many police offices, especially at the Polsek or Polres level in the regions. When children are examined in the same room as adult perpetrators, or in scary rooms, there is a high possibility that children will experience mental pressure or trauma, which actually contradicts the principle of child protection in UU SPPA. In addition to examination rooms, the restorative justice process, such as diversion, also requires conducive mediation or deliberation rooms, as well as facilities for counseling implementation (Santosa, 2021).

Fourth, regulatory and policy constraints. Although normatively the application of restorative justice has gained legal legitimacy through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) and various derivative regulations, in practice, there are still several regulatory and policy problems that hinder the optimal implementation of restorative justice principles, especially in cases of children involved in narcotics crimes. UU SPPA does provide room for investigators to implement a diversion and restorative justice approach, but not all other legal provisions are aligned with this spirit, especially in terms of narcotics crimes. Law Number 35 of 2009 concerning Narcotics expressly mentions fairly severe criminal sanctions for perpetrators, in some articles, it does not explicitly distinguish between adult and child perpetrators (Deskananda, 2019).

Fifth, weak inter-agency coordination. Restorative justice cannot be implemented only by investigators. Close cooperation with the Correctional Center (Bapas), National Narcotics Agency (BNN), Social Services, schools, families, and communities is required. However, in practice, coordination between these institutions is often hampered due to the absence of standard mechanisms, a lack of communication, or limited human resources from each agency. This causes assessment, mediation, or rehabilitation processes to be slow or even fail to be implemented. Investigators often work alone in all-limited situations, making the restorative justice process difficult to run optimally (Santosa, 2021).

Sixth, social constraints and stigma against child narcotics perpetrators. Children involved in narcotics cases are often immediately labeled negatively by society as "deviants" or "delinquents," without considering the causal factors or social context behind them. This stigma makes society, or even officials, reluctant to give children a second chance through rehabilitation or diversion processes. Investigators are often under social pressure to continue processing children legally formally to trial. Seventh, the absence of post-diversion monitoring regulations. Existing regulations focus more on the implementation of diversion at the initial stage, but have not clearly regulated post-diversion monitoring mechanisms, especially in cases of child narcotics users who require ongoing rehabilitation. Without firm rules on monitoring and evaluation of diversion agreement implementation, children are at risk of becoming involved again in narcotics use or unconducive environments (Yuliani, 2021).

5. Conclusion

Police investigators have a very strategic role in the initial stages of handling cases of children in conflict with the law, including in narcotics cases. Through their authority as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), investigators can initiate the diversion process as a form of applying the principle of restorative justice. This role includes conducting initial assessments of the child's condition, facilitating diversion deliberations, establishing communication with victims and families, and

coordinating with supporting institutions such as Bapas and Social Services. However, in practice, the implementation of this role has not been optimal due to various structural, cultural, technical, and institutional obstacles.

The problems faced by investigators in implementing restorative justice for child perpetrators of narcotics crimes include internal, technical, regulatory, coordination, socio-cultural, family psychosocial constraints, and weak post-diversion monitoring. Investigators face various obstacles, ranging from a lack of training and specialization, limited infrastructure such as child-friendly rooms and mediation facilities, to inconsistencies between the UU SPPA and the Narcotics Law. Coordination with other institutions, such as Bapas, BNN, and Social Services, has also not been built in an integrated manner. On the other hand, community stigma, low understanding of restorative justice, and dysfunctional family backgrounds also hinder the implementation of diversion. In addition, the absence of a post-diversion monitoring system causes rehabilitation and reintegration efforts for children to not run optimally.

Based on the findings, recommendations are proposed for the Police institution to provide ongoing training for investigators regarding restorative justice approaches and handling children in conflict with the law, especially in the context of narcotics. The government needs to harmonize legislation between UU SPPA and the Narcotics Law so as not to cause ambiguity in applying diversion for children's cases. Supporting institutions, including Bapas, Social Services, BNN, and Child Protection Institutions, need to build an integrated coordination system with the police so that the diversion process can be carried out collaboratively and sustainably.

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