

Restorative Justice Framework for Underage Drug Abusers to Face Long-Term and Societal Challenges

Abdurrakhman Alhakim¹, Shelvi Rusdiana², Rufinus Hotmaulana Hutauruk³

^{1,2,3} Faculty of Law, Universitas Internasional Batam, Batam, Indonesia

✉ Corresponding Author: alhakimabdurrakhman@gmail.com

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Abstract

Youth development has always been an important aspect in the fight against drug abuse, which includes the effort in dealing with underage drug abusers to help them reflect and get back to society. Using normative legal research method, this research dives deep into the challenges facing underage drug abusers on their way back to society and how these challenges impact their future involvement with drugs and their ability to function normally. Through statutory approach, this research finds the possible normative construction to provide a concrete framework of restorative justice. With the restorative justice approach, societal challenges facing underage drug abusers such as discriminations, prejudice, and labelling can be met with solutions that provide implementation during the process of rehabilitation and after it.

A. INTRODUCTION

Indonesia as a developing country relies a lot on the development of youth. With big economic and even geopolitical ambitions for the future, Indonesian youth has a lot on their plate and in need of serious need of support and nurture. Problems regarding the development of the youth are of utmost importance, especially when it comes to crime. Securing the development of the youth and taking them away from crime is a necessary means for a country to

take on the future. With accelerated science and technological developments, the future is ever so reliant on young inventors with brilliant ideas to solve domestic and even global problems. This is why developed countries are putting their youth into a position where they can start early in participating to the growth of the society, by being a partner to many sectors of life. It's

even more important as we realize that they are the future leaders of Indonesia.¹

Youth can also bring about social change and social improvement. Indonesia needs to start the development through many action plans that require the active participation of youth.² Youth is necessary regardless of the field in which we want to advance, be it technical or sports. Therefore, the government needs to make sure that youth development is in line with its development plan, especially in the legal sphere. Even more important is the youth whose age are under the minimum age of legal responsibility. To be able to reach and leverage from these potentials, people in the underage age group (minors) need to be protected from the criminal world. This is to secure the much needed physical and mental development that are going to be needed in the future for them to take on the world and become important agents of positive changes. Any exposure to the

criminal world, including the consequences of involving in a criminal act, can bring about any fatal consequence to a minor, be it physical or psychological.³ It can also influence other minors and in the end, creating a terrible culture around youth and creating a huge challenge in the education sector.

One of the most dangerous things that could happen to minors is the involvement with drug abuse.⁴ Many studies have outlined the dangers of drug abuse and how it can have long-lasting consequences. A study showed that drug abuse can alter the growth of brain and can be fatal for the development of minors overall.⁵ The findings are supported by another study that also highlighted the fact that drugs can literally change the chemical balance of the brain and even change a personality, turning someone into a completely different person, especially with scientific evidence showing even more dangerous impacts on

¹ Marthsian Yeksi Anakotta, Hari Sutra Disemadi, and Kholis Roisah, "From Youth for 74 Years of Independence of the Republic of Indonesia (Masohi Militancy: Youth Efforts to Eradicate Radicalism And Terrorism)," *Jurnal Hukum Prasada* 7, No. 1 (2020): 53–60, <https://doi.org/10.22225/jhp.7.1.2020.53-60>, p. 54.

² Dindin Supratman, "Revalensi Usia Pemuda Dan Ketahanan Nasional (Narkotika Dan Ancaman Lost Generation)," *Jurnal Litbang Sukowati: Media Penelitian Dan Pengembangan* 1, No. 2 (May 2018): 118–127, <https://doi.org/10.32630/sukowati.v1i2.29>, p. 119.

³ Adil Kasim et al., "School Drug Education and Leadership Agility: Narcotics Crime Study in Children," *Asian Journal of University Education* 17, No. 4 (2021): 388–398, <https://doi.org/10.24191/ajue.v17i4.16204>, p. 390.

⁴ Wawan Edi Prastiyo, "The Reconstruction of Rehabilitation for Addictives and Drug Abuses in Human Rights Perspective," *International Journal of Research in Business and Social Science (2147- 4478)* 11, No. 1 (March 2022): 379–389, <https://doi.org/10.20525/ijrbs.v11i1.1683>, p. 380.

⁵ Lindsay M Squeglia and Kevin M Gray, "Alcohol and Drug Use and the Developing Brain," *Current Psychiatry Reports* 18, No. 5 (2016): 1–10, <https://doi.org/10.1007/s11920-016-0689-y>, p. 3.

adolescent brains.⁶ This creates a serious urgency in preventing drugs from becoming a widespread societal issue in Indonesia as it can create further demoralization and increase risks of other crimes.⁷ From the social standpoint, drug abusers also suffer from discrimination in many social spheres and circles, forcing them into isolation and depression which in turn could cause an even greater damage and concern.⁸

In creating a social control and public order, it's important to instill rule of law that is strong and respected enough by the people to prevent criminal acts.⁹ Through the civil law system, Indonesia focuses on the codification of laws and regulations to prevent criminals from making chaos and disorders and society. Therefore, it is of utmost importance for a law have a clear purpose, clear pathways of

implementations, and a sufficient normative construction to make sure that the rule of law can create a good legal culture. The urgency and dangers of drug abuse have also brought forth the discourse to push for punitive approach on drug abuses, even on minors.¹⁰ This agenda can be attributed to the failure of a legal system in delivering its promises, where the government couldn't seem to get a hold on this issue, resulting in rising popularity of Jokowi whose regime has been especially tough on narcotics crime.¹¹ The legal system is especially important in protecting the interests of children so they can grow to fulfill their potentials and contribute to society for a better future. Punitive approach, while can certainly push down the number of crimes, might have hidden consequences, especially for youth

⁶ Leslie Y. Kwan et al., "This Is Your Teen Brain on Drugs: In Search of Biological Factors Unique to Dependence Toxicity in Adolescence," *Neurotoxicology and Teratology* 81 (September 2020): 1–13, <https://doi.org/10.1016/j.ntt.2020.106916>, p. 4.

⁷ Wahyullah A Yusuf, "Drugs Abuse, Law, and Society: The Role of Penitentiary Institution," *Semarang State University Undergraduate Law and Society Review* 1, No. 2 (July 2021): 113–124, <https://doi.org/10.15294/lsr.v1i2.50550>, p. 118.

⁸ Pollyanna Santos da Silveira et al., "The Stigmatization of Drug Use as Mechanism of Legitimation of Exclusion," in *Drugs and Social Context: Social Perspectives on the Use of Alcohol and Other Drugs*, 15–25, https://doi.org/10.1007/978-3-319-72446-1_2, p. 20.

⁹ Mikhel Timmerman, *Legality in Europe: On the Principle 'nullum Crimen, Nulla Poena Sine Lege' in EU Law and under the ECHR*, PhD Thesis at European University Institute, (Florence: EUI, 2018), p. 45.

¹⁰ Christopher A Mallett, "The School-to-Prison Pipeline: A Critical Review of the Punitive Paradigm Shift," *Child and Adolescent Social Work Journal* 33, no. 1 (2016): 15–24, <https://doi.org/10.1007/s10560-015-0397-1>, p. 17.

¹¹ Gideon Lasco, "Drugs and Drug Wars as Populist Tropes in Asia: Illustrative Examples and Implications for Drug Policy," *International Journal of Drug Policy* 77 (2020): 1–7, <https://doi.org/10.1016/j.drugpo.2020.102668>, p. 5.

development, which requires its own unique discourse.

Indonesia through its legal system has two regimes that protect the interest of the people regarding this issue. The first one is Law No. 35 of 2009 on Narcotics, which was made to make sure that the fight against drug abuse can be facilitated through specialized normative construction, allowing for more aspects to be governed and to protect more common interests of the people. For protecting the interests of criminally involved children in the criminal justice system, Indonesia uses Law No. 11 of 2012 on Juvenile Criminal Justice System. Despite these legal developments, drug abuse among minors remains a gray area, where the criminalization effort doesn't fully match the rehabilitation effort which might needs even more attention that the government would warrant. There also exists a research gap in analyzing the role of the legal system in not only criminalizing, but also creating a support system to help nurture juvenile drug abusers back into society until they become fully-functioning. This research aims to fill this gap by also highlighting the societal issues that juvenile drug abusers might face and by mapping

the normative potentials and challenges to support them to go back to society as fully functioning persons.

The existing laws will be the highlight of this research to analyze what the Indonesian legal system can do to help minors who are drug abusers to help get their lives back and put them back in society so that they can thrive, in the face of long-term and societal challenges that can be overwhelming. This article will examine about conceptualization of restorative justice for drug abusers, protection of minors from collateral impacts of drug abuse, and finding restorative justice values from the implementation of Narcotics Laws.

B. RESEARCH METHODS

This research uses the normative legal research method¹² to find ways and/or problems within the Indonesian legal system to help drug abusers who are also minors to return to society in a good condition. This method is used because of the characteristics of the purpose of this study is to find values-or meta-juridical values-that underlie the issuance of laws and regulations of Narcotics Laws. To support the analysis regarding this issue,

¹² Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, No. 2 (November 2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>, p. 290.

this research uses the statutory approach, enabling a robust analysis on the laws and regulations that are related to the issue of drug abuse among minors and find space, if there's any, for future normative developments. The secondary data that will be used in this research are primary law sources, namely Law No. 35 of 2009 on Narcotics, Law No. 48 of 2009 on Judicial Power, and Law No. 11 of 2012 on Juvenile Criminal Justice System, along with a judicial decision on a relevant case.

C. RESULTS AND DISCUSSIONS

1. Conceptualization of Restorative Justice for Drug Abusers

Restorative Justice is a new concept of thinking that has developed from society as a pattern of thought in modern criminal law.¹³ This concept developed as a response to the existence of a retributive justice approach and a criminal justice system which was felt to be unsatisfactory to the community's sense of justice.¹⁴ The concept

of restorative justice has been accommodated but only supported by a small portion of Indonesia's legal system.¹⁵ The principle of expediency as one of the goals of law, was first brought up as one of the ultimate goals of law, which, if it can be argued simply, is "the greatest happiness for everyone in the community".¹⁶ The Indonesian legal system provides a definition on restorative justice through Law Number 11 of 2012 on Juvenile Criminal Justice System, which stipulates that what is meant by restorative justice is "the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizes restoration to the original state, and not retaliation."

The abuse of drugs has reached a highly alarming level in Indonesia, which has been attributed the inefficiency of criminal law

¹³ Muhammad Rijaldy Alwy, "The 'afw Principle and the Indonesian Restorative Justice System: A Restorative Justice Objective," *JURNAL HUKUM ISLAM* 19, No. 2 (November 2021): 313–328, <https://doi.org/10.28918/jhi.v19i2.5021>, p. 315.

¹⁴ Resty Shelya Pujiani, Mutia Azizah Aksan, and Maya Sinta, "Seeking Justice for Indonesian Children: The Juvenile Criminal Justice System in Indonesia in the Context of Criminal Justice Reform," *Indonesian Journal of Advocacy and Legal Services* 4, No. 2 (September 2022): 259–274, <https://doi.org/10.15294/ijals.v4i2.60033>, p. 260.

¹⁵ Sapto Budoyo and Ratna Kumala Sari, "Eksistensi Restorative Justice Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Anak Di Indonesia," *Jurnal Meta Yuridis* 2, No. 2 (September 2019): 79–90, <https://doi.org/10.26877/m-y.v2i2.4689>, p. 82.

¹⁶ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (USA: Encolib, 2018), p. 134.

implementation on drug abuse.¹⁷ This statement is supported as evidenced by the constant rise of drug-related offenses as reported by the *Badan Narkotika Nasional* (BNN), which has led to even more social problems.¹⁸ The news of drug usage has been met many times with crime reporting in the media, both print and electronic. The victim includes every segment of society, including teachers, students, artists, housewives, traders, bus drivers, street children, government employees, and others. This problem has affected so many families and has even ruined some, as it's not easy to come back from family related issues that are caused by drug abuse.¹⁹

Restorative justice can be considered as the implementation of the principle of justice that is fast, simple, and low cost.²⁰ Normatively, this is the principle of

delivering justice within the Indonesian legal system, as explained by Article 2 paragraph (4) of Law No. 48 of 2009 on Judicial Power.²¹ However, restorative justice is especially relevant in the effort to deliver this principle as it makes imprisonment, a comparably costly punitive justice where the government has to take care of the prisoners for years as the consequence, as an *ultimum remedium* or the final punishment.²² In the context of drug abuse, this is so that imprisonment can be carried out for self-abuse of narcotics. An important limitation needs to be highlighted here, which is the "self-abuse of narcotics" part. Using narcotics for self-abuse and selling narcotics to make profit, especially in this case—selling narcotics to minors—are two completely different things, although both are clearly illegal. One

¹⁷ Elpina Elpina and Mariah Sonanggok Purba, "The Narcotics Abuse Term Weaknesses In Criminal Law Enforcement Of Indonesia," *Jurnal Pembaharuan Hukum* 8, No. 1 (March 2021): 34–47, <https://doi.org/10.26532/jph.v8i1.14547>, p. 45.

¹⁸ Juanda Juanda et al., "Penyuluhan Pencegahan, Penyebaran Dan Penggunaan Narkoba Di Desa Meunasah Mesjid Punteut Kecamatan Blang Mangat Kota Lhokseumawe," *Jurnal Vokasi - Politeknik Negeri Lhokseumawe* 1, No. 2 (2018): 349–351, <https://doi.org/10.30811/vokasi.v1i2.686>, p. 350.

¹⁹ Sumarni Sumai et al., "Resilience in Children of Drug Abuse Families: A Case in Pattingalloang, Makassar City, Indonesia," *EAS Journal of Humanities and Cultural Studies* 2, No. 5 (2020): 8–14, <https://doi.org/10.36349/easjhcs.2020.v02i05.002>, p. 12.

²⁰ Lailatul Nur Hasanah and Sri Endah Wahyuningsih, "The Application of Justice Principles of Rapid Simple Fee in Criminal Justice System in The State Court (Case Study in State Court of Pati)," *Jurnal Daulat Hukum* 2, No. 4 (2020): 609–16, <https://doi.org/10.30659/jdh.v2i4.8353>, p. 610.

²¹ Yuhelson Yuhelson, "The Implementation of Simple, Fast, Low Cost Judicial Basis In the Judicial Practices," *Jurnal IDEAS: Jurnal Pendidikan, Sosial, Dan Budaya* 4, No. 1 (February 2018): 7–12, <https://jurnal.ideaspublishing.co.id/index.php/ideas/article/view/58>, p. 10-11.

²² Rina Melati Sitompul and Andi Maysarah, "Ultimum Remedium Principles In Criminal Decisions In Creating Restorative Justice," *JCH (Jurnal Cendekia Hukum)* 7, No. 1 (2021): 32–46, <https://doi.org/10.33760/jch.v7i1.324>, p. 36.

is a criminal act involving one person and the other is a criminal act that could cause widespread addiction and damage an entire community or even create a narcotics culture among the youth at general. It's also supported by many qualitative findings that youth who are selling drugs are more likely to be involved in other criminal activities than non-selling youth.²³

It is then fair to consider the act of selling narcotics, especially to minors, is far more detestable as it poses greater threat to the society in which we live in, compared to the criminal act of self-abuse using narcotics which in a lot of ways is a dark path to escape real life problems. Therefore, restorative justice has more space in the self-abuse narcotics criminal act than the sale or distribution of narcotics criminal act. Establishing lines to recognize the differences between these two criminal acts is very important since the nature of the Indonesian legal system relies heavily on normative constructions from the related laws and regulations. With a detailed normative construction that recognizes the

differences between the two crimes, mechanisms of restorative justice can be better supported so it can provide a better way for minors to understand the consequences of their actions while also still having a future.

The justification of drawing this line is much needed to prevent further narcotics circulation in society, especially among the youth. Unlike sale or distribution of narcotics, drug-abuse cases imply much deeper socio-economic problems, which is why collaboration between all segments of society is urgently needed to curb the rise in the number of cases each year.²⁴ Restorative justice plays an important role in helping any community to achieve this so that the youth can continue to thrive. Restorative justice can also be called a mechanism or pattern of handling criminal cases that prioritizes the recovery of victims, perpetrators, and society. The principal thing about restorative justice is the role of the perpetrator and the victim as well as members of the community as volunteers or facilitators of case settlement.²⁵

²³ Michael G. Vaughn *et al.*, "A Typology of Drug Selling among Young Adults in the United States," *Substance Use and Misuse* 50, No. 3 (2015): 403–413, <https://doi.org/10.3109/10826084.2014.984850>, p. 403-404.

²⁴ Rotimi Oguntayo *et al.*, "Age, Gender, Socio-Economic Status, Attitudes Towards Drug Abuse as Determinants of Deviant Behavior Among Undergraduate Students," *European Review Of Applied Sociology* 13, No. 21 (2020): 38–46, <https://doi.org/10.1515/eras-2020-0009>, p. 43.

²⁵ A Arifai, "Menalar Keadilan Restoratif Dalam Perkara Tindak Pidana Narkotika Dengan Terdakwa Anak," *Jurnal Yudisial* 13, No. 3 (2021): 373–390, <https://doi.org/10.29123/jy.v13i3.356>, p 384.

The implementation of restorative justice needs to be started not just from the external circles of the abusers, but also from the inner circles. The inner circles including family, relatives, and close friends need to take active participation to help drug abusers fight the addiction caused by drug abuses and psychological damage induced.²⁶ It's also important to note that the focal point of restorative justice is collaboration between all parties. It has been shown that while inner circles can help drug abusers to get back on their feet, dedicated efforts from external circle such as religious circle can bring more positive impact for drug abusers.²⁷ Therefore, implementation of restorative justice needs to be constructed and organized in a way that enables better collaboration and continued dedicated efforts to help drug abusers to get back to society.

This is even more relevant in the case of minors as they are more vulnerable to negative influences that lurk around in the

middle of society and also vulnerable to the impacts of drug abuse. In the context of youth development, it's necessary to include specific factors that could lead to drug abuse among minors, and how the parties involved in the cause leading to the drug abuse, be it through negligence or systemic problem. Such as the case of school violence, which is often overlooked in the drug prevention framework of mechanisms.²⁸

2. Protection of Minors from Collateral Impacts of Drug Abuse

Drug abuse, at the end of the day, is a criminal act. It's punishable by the law and is looked at as something bad by the society. For the purpose of public order, it's justifiable that such act should be seen as something bad. On the other hand, the exposure of alcohol and narcotics on social media has been said to have negative impact on people who are exposed to them.²⁹ This further justifies the negative views that the public have to prevent people from even

²⁶ Macpherson Uchenna Nnam *et al.*, "Towards Noncustodial Harm Reduction in Substance Abuse Amongst Youths: The Need to Incorporate Social Marketing Interventions into the Nigerian Legal Framework," *Scientific African* 12 (July 2021): 1–11, <https://doi.org/10.1016/j.sciaf.2021.e00799>, p. 7.

²⁷ Byron R Johnson, "How Religious Communities Become Proxy Families in Achieving Offender Rehabilitation and Restorative Justice," in *Relational Aspects of Parental Involvement to Support Educational Outcomes* (2022): 102–20, <https://doi.org/10.4324/9781003128434-7>, p. 115.

²⁸ Martha Frias-Armenta, "Restorative Justice: A Model of School Violence Prevention," *Science Journal of Education* 6, No. 1 (2018): 39-45, <https://doi.org/10.11648/j.sjedu.20180601.15>, p. 40.

²⁹ Stevie A Burke *et al.*, "Public Perspective on the Negative Impacts of Substance Use-Related Social Media Content on Adolescents: A Survey," *Open Journal of Psychology* 2, No. 2 (2022): 1–7, <https://doi.org/10.31586/ojp.2022.378>, p. 5.

getting curious and wanting to try out any illegal substances. However, it's important to realize that humans make mistakes and what matters more in the end is how a person can rise above his/her mistakes and be a better person. The most important part about this whole thing is the "human" part. A criminal should be treated as a criminal and should serve his/her criminal sentence, nothing less and nothing more. A line should be carefully drawn between analyzing determinants that could lead to drug abuses³⁰ and discriminating drug abusers using those same determinants.

Despite the fact that drug use and addiction are widely known to have come from so many factors, sensationalized media coverage of drug abusers and addicts can generate a discriminatory picture of drug abusers and addicts. The discriminatory prejudice on drug abusers and addicts tends to completely erase the "human" part of the criminal act, turning someone into something that they're not,

solely based the very limited amount of information that the public can obtain about the abuser's personal life. Drug addiction has also been shown to receive more negative views than mental illnesses, and people are more willing to accept discriminating views on drug addicts.³¹

Discrimination as a collateral impact of drug abuse can take many forms. From the stigmatizing language such as "junkie" or "druggie" to being labelled as a "hopeless case" (referring to how difficult it is to treat addiction), these forms of discrimination can have a fatal consequence to drug abusers who are genuinely trying to treat their addiction and be a better person.³² These ultimately lead drug abusers to retreat and hide in isolation out of frustration, especially when even people who are doing other forms of illegal activities also take part in these discriminating acts.³³

Minors are even more disadvantaged as they are more vulnerable to mental illnesses

³⁰ Rotimi Oguntayo *et al.*, "Age, Gender, Socio-Economic Status, Attitudes Towards Drug Abuse as Determinants of Deviant Behavior Among Undergraduate Students," *European Review of Applied Sociology* 13, No. 21 (2020): 38-46, <http://dx.doi.org/10.1515/eras-2020-0009>, p. 44.

³¹ Fannie Liu, Geoff Kaufman, and Laura Dabbish, "The Effect of Expressive Biosignals on Empathy and Closeness for a Stigmatized Group Member," *Proceedings of the ACM on Human-Computer Interaction* 3, No. CSCW (2019): 1-17, <https://doi.org/10.1145/3359303>, p. 5-6.

³² Mary K McCurry *et al.*, "Perceived Stigma, Barriers, and Facilitators Experienced by Members of the Opioid Use Disorder Community When Seeking Healthcare," *Journal of Nursing Scholarship* 55, No. 3 (2023): 701-10, <https://doi.org/10.1111/jnu.12837>, p. 703.

³³ Pollyanna Santos da Silveira *et al.*, *op.cit.*, p. 22.

that could be caused by discriminations. Minors are less equipped by maturity and mental resilience to many forms of discriminations and are more likely to develop serious mental illnesses from discrimination.³⁴ This is even more important in the case of minors who are also drug abusers. With the already overwhelming psychological and physical effects of using narcotics, minors need to be protected from any form of discrimination that could damage their development even more. The restorative justice approach plays an important role in developing the framework of mechanisms to prevent the discriminations against underage drug abusers. Going back to the conceptualization of the restorative justice approach, the mechanisms need to facilitate collaborations from all segments of society, such as the education system, where other forms of violence could also take place.³⁵

Children have a strategic role and the law expressly states that the state guarantees the right of every child to

survival, growth and development as well as protection from violence and discrimination. This is reflected on the Constitution of The Republic of Indonesia, *Undang-Undang Dasar* 1945 (UUD 1945), through Article 28B paragraph (2) which states that “every child has the right to survival, growth and development and to obtain protection from violence and discrimination, because children are assets and the next generation of the nation.” The Indonesian legal system, through Article 5 paragraph (1) Law No. 11 of 2012 on Juvenile Justice System (Juvenile Justice System Law) provides that “The Juvenile Criminal Justice System must prioritize Restorative Justice approach.” Providing legal help is one of the most important early steps to help underage drug abusers and guide them so that they can go back to society without facing collateral impacts of drug abuse that could also lead them go back to using narcotics.³⁶ The discrimination against underage drug abusers often happens because at the time of trial the child

³⁴ Jordan Bamford, Mark Fletcher, and Gerard Leavey, “Mental Health Outcomes of Unaccompanied Refugee Minors: A Rapid Review of Recent Research,” *Current Psychiatry Reports* 23, No. 8 (August 2021): 1–11, <https://doi.org/10.1007/s11920-021-01262-8>, p. 4-7.

³⁵ Deborah M. Ahrens, “Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform,” *Journal of Criminal Law and Criminology* 110, No. 3 (2020): 379–440, <https://scholarlycommons.law.northwestern.edu/jclc/vol110/iss3/1/>, p. 385.

³⁶ Mila Azizah, M Taofik Makarao, and Syarif Fadillah, “Perlindungan Hukum Hak-Hak Anak Pengguna Narkoba Dan Pertanggungjawaban Menurut Hukum Positif Di Indonesia,” *Jurnal Hukum Jurisdiction* 2, No. 2 (2020): 93–114, <https://doi.org/10.34005/jhj.v2i2.35>, p. 96.

offender was not accompanied by a legal aid provider. this is what is meant by "providing other legal assistance".³⁷ This is mentioned in the explanation of Article 18 of the Juvenile Justice System Law, which states "What is meant by 'other legal aid providers' are paralegals, lecturers, and law faculty students in accordance with the Law on Legal Aid. A family atmosphere, for example an atmosphere that makes children comfortable, child-friendly, and does not cause fear and pressure." Through a criminal indictment, minors can lose various rights, such as the right to freedom, the right to grow and develop, and the right to education, which are all important for the development of youth and have a significant impact on their future. The significance of the child's right to education must go back to the basic principles of fulfilling children's rights, namely non-discrimination, life, growth and development, the best interests of the minor and participation.³⁸

The discriminatory behavior experienced by minors involved in drug abuse in Indonesia includes two aspects;

First, aspects of handling that are not in accordance with the Law on the Juvenile Justice System; Second, aspects of the rehabilitation policy for children involved in drug abuse, where imprisonment is often the main option rather than rehabilitation.³⁹ Cooperation programs between the government and the community in efforts to prevent and break the chain of drug abuse among minors in Indonesia have in fact not been implemented properly, not just that, it has also been causing polemics and discrimination in determining the status of children as perpetrators or victims of the exploitation of drug distribution networks in Indonesia. Legal treatment and social treatment will certainly correlate with the high and low rates of drug abuse involving minors in Indonesia. Discriminatory treatment by society towards minors who use drugs comes in the form of a negative label, being ignored and not given a place to socialize because drug users are considered to have a mental illness that will increase the

³⁷ *Ibid.*, p. 100.

³⁸ *Ibid.*, p. 98.

³⁹ Yuliana Primawardani and Arief Rianto Kurniawan, "Pendekatan Humanis Dalam Penanganan Anak Pelaku Tindak Pidana Penyalahgunaan Narkoba Studi Kasus Di Provinsi Sulawesi Selatan," *Jurnal Penelitian Hukum De Jure* 17, No. 4 (2017): 411–427, <https://doi.org/10.30641/dejure.2017.v17.411-427>, p. 417.

chance of minors to relapse back to drug addiction.⁴⁰

Unfortunately, the Juvenile Justice System Law doesn't provide further normative arrangements to push many segments of society to help contribute to help the minors who commit crimes to go back to the right way through the restorative justice approach. The normative restriction regarding discrimination as a collateral impact of drug abuse, or any other crime committed by minors, is visible in the Juvenile Justice System Law, particularly on the explanation of Article 2 letter c which states "What is meant by "non-discrimination" is the absence of differential treatment based on clan, religion, race, class, gender, ethnicity, culture and language, legal status of the child, order of birth of the child, and physical and/or mental condition". The normative construction in this explanation barely touches on the societal consequences of committing a criminal act, or in this case a drug abuse criminal act, with only mentioning the "legal status of the child" which in itself has a vague meaning and has no further explanation. Although factors such as

ethnicity, race, religion, class, and etc. does have an impact of the kind of discrimination that minors could end up facing as a collateral impact of drug abuse, these factors cannot stand alone as a normative structure in the context of discrimination against underage drug abusers and requires direct correlation to the act of the crime itself along with the perceptions of society regarding it.

3. Finding Restorative Justice Values from the Implementation of Narcotics Laws

Drug abuse has been one of the biggest problems in Indonesian society. The problems have affected so many sectors of life, forcing the Indonesian government to take a harsher approach to curb the rising number of cases each year. The Indonesian government has even imposed the death penalty for criminal acts of selling narcotics, because drug dealers are thought of having a negative impact on a scale able to massively damage the character of generations of the nation's children to become drug addicts which can interfere with their physical and mental health. Even though law enforcement is intensive up to the death penalty carried out and it is hoped

⁴⁰ Ahmed Shoaib, Asma Mansoor, and Noshaba Saeed, "Stress, Anxiety and Depression as a Predictor in Relapse of Drug Dependence," *Annals of PIMS-Shaheed Zulfiqar Ali Bhutto Medical University* 14, No. 2 (2018): 123-126, <https://apims.net/index.php/apims/article/view/88>, p. 125.

that it will deter drug dealers, the fact is that drug trafficking and trafficking are increasing. Therefore, it's important for the Indonesian government to continue to look for other ways to fight the criminal acts related to narcotics. While the case of drug dealers is important to be analyzed, the fact that death penalty has not been able to help curb the number of cases each year, means the Indonesian government needs to broaden their views and see other possibilities of approaching this problem legally.

Instead of focusing mainly on drug dealers, it's also important to consider the position and perspectives on drug abusers, who can also be considered victims of circumstances.⁴¹ Without limiting and devaluing the criminal element behind drug abuse, it's important to note that the widespread of narcotics can only happen when there are distributors, sellers, and buyers. Without one of these factors, drug dealing and drug abuse simply won't happen. On the contrary, with these three factors thriving, narcotics will always find a way to reach even the most isolated person

in a society. Such is the case for online marketplace for narcotics in the dark web, which has caused so many problems despite the heavy policing from many countries in joint cooperation.⁴²

Understanding the viewpoint of a buyer/abuser and analyzing the factors that could lead to the purchase of narcotics, can help prevent cases in the future and importantly help the drug abusers to recover from their addiction and get ready to be productive go back into society. This can be achieved through the restorative justice approach. It's even more important when the abusers are minors whose futures are heavily reliant on the development during their youth. As already mentioned before, the Indonesian constitution puts a serious emphasis on protecting the youth as a national interest, to secure the future of the country.

Restorative justice as an approach to deal with drug abuse criminal cases isn't explicitly mentioned in Law No. 35 of 2009 on Narcotics (Narcotics Law). However, the law does provide a normative construction on the implementation of restorative justice

⁴¹ Cecep Mustafa, "The Challenges to Improving Public Services and Judicial Operations," in *Handbook of Research on Global Challenges for Improving Public Services and Government Operations*, (2021): 117–132, <https://doi.org/10.4018/978-1-7998-4978-0.ch007>, p. 118.

⁴² J. V. Pergolizzi *et al.*, "The 'Darknet': The New Street for Street Drugs," *Journal of Clinical Pharmacy and Therapeutics* 42, No. 6 (December 2017): 790–792, <https://doi.org/10.1111/jcpt.12628>, p. 790.

approach to deal with drug abuse cases in Indonesia, through rehabilitation process mentioned in the Law, such as rehabilitation and treatment. The Narcotics Law divides rehabilitation into two types: medical rehabilitation and social rehabilitation. Based on the Article 1 number 16, "medical rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence." The latter, social rehabilitation, is defined by Article 1 number 17, as "an integrated process of recovery activities, both physical, mental and social, so that former Narcotics addicts can return to carrying out social functions in people's lives".

Normative constructions regarding rehabilitation in Narcotics Law even provides a focus on age to differentiate the measures to rehabilitation to help drug abusers treat their addiction. Along with Article 54 which requires drug abusers to go through both types of rehabilitations, Article 55 paragraph (1) states that "Parents or guardians of Narcotics Addicts who are not old enough are required to report to public health centers, hospitals, and/or medical rehabilitation and social rehabilitation institutions appointed by the Government to receive treatment and/or care through medical rehabilitation and

social rehabilitation". The emphasis on rehabilitation as a requirement for drug abusers to be able to go back into society is a great thing because it can help reorganize the thoughts of drug abusers and find deeper issues that led to their demise in drug addiction. However, as previously mentioned about the importance of continued effort in rehabilitation through collaborations of many segments of the society, a normative construction is needed to make sure that this restorative justice approach can last until drug abusers are absolutely clean from drugs and can thrive in society again.

In the context of underage drug abusers, further normative construction is also needed so that parents and close relatives can play more roles in helping these minors to get back on the right track for the sake of their youth development. In the context of youth development, there's also the need for a concrete framework that specializes in drug abuse among minors so that continued dedication effort can accelerate the positive changes. These two contexts can be supported by a normative construction that allows parents, close relatives, and social organizations to also receive help and guidelines from rehabilitation centers to help track the

progress of rehabilitation, especially the ones that are conducted in the drug abusers' home, as mentioned in Article 56 paragraph (1) which states "Medical rehabilitation of Narcotics Addicts is carried out at a hospital appointed by the Minister".

Furthermore, to support this framework of continued dedicated efforts, post rehabilitation developments and reports should also be included to monitor how underage drug abusers get back on their feet. This is important to analyze the long term physical and psychological effects that could happen as consequences of the disrupted youth cognitive development. Going back to discriminations and other forms of societal consequences as collateral impacts of drug abuse, the framework also needs to make sure that underage drug abusers are protected from any form unnecessary challenge that is in itself a criminal act, such as bullying, systemic discrimination in the educational institutions, and places that pose high risk of harassment.

D. CONCLUSIONS

The failure of criminal punishments in curbing the rising number of drug abuse cases each year should be a wake-up call for the Indonesian government to try a new

approach in dealing with this issue. Through the restorative justice approach, it's been analyzed that the government can touch other issues that are often forgotten in the dynamics of narcotics problems in Indonesia, such as discrimination against drug abusers and post rehabilitation care. Even more important is when minors are involved in this issue, which puts them in a more vulnerable spot due to the nature of their environment and the risk of cognitive damage to their developing brains. While the drug offenses committed by minors should still be looked at as something negative, further discriminations and labelling will only create stigma in society which in turn could contribute to their relapse. The normative analysis done in this research shows that there are rooms for improvement and development to provide a concrete and complete framework of restorative justice approach for underage offenders whose rehabilitation processes are far more complicated and require more attentions from the government. The limitation of this research is the lack of qualitative data to further explain the societal perceptions that the public has, particularly on people who have been involved in the crimes of narcotics,

particularly minors. Understanding such complex social issue can help the cause of supporting the criminalized youth to go back into society better.

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