

RESTORATIVE JUSTICE CRIME OF NARCOTICS IN THE ELDERLY WITH NARCOTIC EVIDENCE

Bayu Sasongko¹, Megawati Barthos², Suparno³

^{1,2,3} Universitas Borobudur, Indonesia

Email: sasongkobayu06@gmail.com¹, megawati_barthos@borobudur.ac.id²,
suparno@borobudur.ac.id³

Corresponding Author: sasongkobayu06@gmail.com

ARTICLE INFO	ABSTRACT
<p>Submitted :02-04-2023</p> <p>Received :05-04-2023</p> <p>Approved :15-04-2023</p> <p>Keywords: <i>Elderly, Drug Abuse, Crime</i></p>	<p>Abstract. The fact that there is numerous abuse of narcotics and dangerous drugs in Indonesia today is inseparable from the many modes and justifications used by these abusers in carrying out their actions. The exploration is remembered for the regularizing juridical assessment, the strategy involved by the creator as the peculiarities concentrate on that happens connected with the utilization of helpful equity in drug cases has been performed at the examination site. The results are that the Crook Code Bill has thought about the age of the more established in the criminal system, by setting the age north of 75 years for guilty parties of criminal goes about very far they are not open to confinement. In the conversation of Article 72 of the Lawbreaker Code Bill, this age limit was deferred, between the time of "north of 70 years" or "more than 75 years" for culprits of criminal goes about quite far they were not expose to detainment. This arrangement was one of the issues forthcoming at the Detailing Group Meeting (Timus), yet at the accompanying Timus Meeting concurred that "mature more than 75 years" for culprits to try not to be condemned to jail quite far (become Article 76), considering the future that the higher it is. For the elderly who are caught in drug abuse cases, consider the interests of the perpetrators who act as victims by prioritizing rehabilitation efforts as the best way to return the perpetrators to the condition they were in before committing drug abuse.</p>

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



1. Introduction

As one of the transnational crimes, the abuse of narcotics and dangerous drugs (Drugs) is currently one of the crimes that have claimed the most victims. Not only workers, but also the abuser group ranges from teenagers, the elderly, children, and housewives to executives, officials, government officials, community leaders, police, politicians, the unemployed, lawyers, doctors, and religious leaders are not free from the trap of this crime. Narcotics were originally substances or drugs used in the field of health services and the development of science are now often misused for specific purposes to gain profits for a group of people. As a result, many aspects are affected from the personal side to the social side of the abusers.

As per the Law of the Republic of Indonesia Number 35 of 2009 concerning Opiates Article 1 letter a, Tranquilizers are substances or drugs got from plants or non-plants, both made and semi-planned, which can cause a diminishing or change in cognizance, loss of taste, decrease to dispose of feeling torment, and can incite reliance. Based on this definition, narcotics have negative and dangerous effects for their abusers, which until now has become a serious concern for the Government to suppress and even eradicate them.

The fact that there is a lot of abuse of narcotics and dangerous drugs in Indonesia today is inseparable from the many modes and justifications used by these abusers in carrying out their actions. The reason is that it's just a trial and error, wanting to run away from life's problems, environmental and family factors, to health problems, making this crime a scourge that is difficult to eradicate if it doesn't start from the abusers themselves. For this reason, the role of the people closest to the government in general must be united in carrying out all efforts to prevent and eradicate drug abuse. The crime of drug abuse is a serious crime in the country of Indonesia until the sanction given by the court against the perpetrator is a serious sanction, namely the death penalty.

Seeing the complexity of the laws and regulations governing drug abuse, the government continues to make revisions regarding the nature of the law in eradicating drug crime so that it is even more effective in handling it.

Several new provisions are stipulated in the Criminal Code Bill, one of which is regarding the stipulation that perpetrators over 75 years of age should not be subject to imprisonment as much as possible. Article 70 paragraph (1) states " while as yet considering the arrangements alluded to in Article 52 and Article 54, detainment quite far isn't forced on the off chance that conditions are found: (Kusumadewi & Rusdi, 2016)

- a. the blamed is a kid;
- b. the litigant is north of 75 (75) years of age;
- c. the litigant has quite recently perpetrated a wrongdoing interestingly;
- d. the misfortune and enduring of the Casualties are not excessively perfect;
- e. the litigant has paid remuneration to the person in question;
- f. the litigant didn't understand that the wrongdoing he carried out would cause an extraordinary misfortune;
- g. The wrongdoing happened in view of the extremely amazing actuation of someone else; The survivor of a wrongdoing empowers or drives the event of the wrongdoing;
- a. the criminal demonstration is the consequence of a circumstance that is probably not going to repeat;
- b. the character and conduct of the denounced guarantee that he won't perpetrate another wrongdoing;
- c. imprisonment will make extraordinary experiencing the denounced or his loved ones;
- d. coaching outside the prison is supposed to find success for the denounced;
- e. the burden of a lighter sentence won't diminish the serious idea of the wrongdoing perpetrated by the litigant;

- f. Crimes happen inside the family; as well as
- g. Crime happens because of carelessness.

Paragraph (2) states "The provisions referred to in paragraph (1) do not apply to crimes punishable by imprisonment of 5 (five) years or more, crimes punishable by a special minimum sentence, or certain crimes which are very dangerous or detrimental to society, or financial loss or the country's economy."

Based on this article, related to the age factor, prison sentences should not be imposed on child defendants and/or defendants over 75 (seventy-five) years. For kids, supportive equity endeavors have gone through a long cycle in the adolescent equity framework in Indonesia. Indonesia is one of the nations that has endorsed the Show on the Privileges of the Kid (KHA) through Official Announcement Number 36 of 1990, which then was expressed in Regulation Number 23 of 2002 concerning Youngster Security as changed by Regulation - Regulation Number 35 of 2014 concerning Revisions to Regulation Number 23 of 2002 concerning Kid Security; and Regulation Number 11 of 2012 concerning the Adolescent Law enforcement Framework. These regulations contain the essential standards of youngster assurance, explicitly non-isolation; the prosperity of the youngster; the right to life, perseverance, and progression; and respect for youths.

The SPPA Law regulates in detail the process of criminalizing children. In contrast to the sentencing process against ABH, the process of imposing a sentence on defendants aged over 75 (seventy-five) years is an update in sentencing in Indonesia. It seems that the rationale for limiting imprisonment for the elderly (elderly) is based on the conditions of protection for minority groups because their number is small compared to working age. In old age, a person will experience a decrease in physical, psychological, and social abilities and again requires dependence on others. Therefore, bringing the settlement of criminal cases committed by the elderly there is a concern that will create a burden on them (Pahlevi, 2019).

Aside from flogging for drug victimizers, one of the manners in which that can be taken is as managed in the Law of the Republic of Indonesia Number 35 of 2009 concerning Opiates, Article 54 states that Opiates junkies and casualties of opiates misuse should go through clinical and social restoration (Rachmawati, 2018). So it's not just imprisonment and fines. Every abuser can also be given punishment in the form of rehabilitation.

2. Materials and Methods

Research on "Restorative Justice for narcotics crimes in the elderly with narcotic evidence, Can Restorative Justice be Achieved?" is standardizing juridical examination, to be specific exploration on certain lawful standards and legitimate standards which were done by assessing the applicable lawful standards (legal guidelines) (S Soekanto, 1985). This method is used by the author as a form of study of the phenomena that occur related to the application of restorative justice in drug cases from research site. In view of the methodology technique utilized, this exploration utilizes a subjective methodology. The information utilized in this examination is optional information, which is acquired from the investigation of writing. The planned optional information incorporates essential lawful materials and auxiliary legitimate materials. The essential legitimate materials involved are regulations and guidelines connected with lawful security for the older, including the Crook Code, Criminal System Code, and other related regulations and guidelines, for example, Regulation no. 13 of 1998 concerning Old Government assistance and Unofficial law no. 43 of 2004 concerning Execution of Endeavors to Work on Old Social Government assistance (Presiden Republik Indonesia, 2004). In the mean time, auxiliary legitimate materials are acquired from surveys or remarks from specialists contained in books and diaries, including those that can be gotten to through the web. Besides, the gathered information were dissected utilizing subjective strategies.

3. Results and Discussions

Efforts to Realize Restorative Justice for Elderly Actors

For ABH as well as security for the older is likewise a basic freedom. UU no. 39 of 1999 concerning Basic freedoms safeguards the older, who are remembered for a weak gathering. Article 5 passage (3) of the Law states "Everyone who belongs to a vulnerable group of people has the right to receive more treatment and protection concerning their specificity." The elucidation of paragraph (3) states "What is meant by "vulnerable groups of people" include the elderly, children, the poor, pregnant women, and people with disabilities."

The law that controls the old is Rule no. 13 of 1998 concerning More pre-arranged Government help. The execution of public improvement which expects to make a fair and prosperous society considering Pancasila and the 1945 Constitution has accomplished a social condition that is improving and future is developing so how much older individuals is expanding. Despite the fact that large numbers of the older are as yet useful and ready to assume a functioning part in the existence of society, country, and state, they will confront numerous restrictions because of their age (Istiqomah, 2016) .

As per Regulation no. 13 of 1998, the meaning of older is somebody who has arrived at the age of 60 (sixty) years and over (Republik Indonesia, 2006).

As far as possible in Regulation no. 13 of 1998 is equivalent to the grouping of older (old) as indicated by WHO and youthful old as per BPS, specifically 60 years and over. Nonetheless, WHO actually arranges the old more than 74 years into advanced age (75-90 years) and extremely advanced age (north of 90 years). Similarly, BPS characterizes the old into youthful old, center old, and old. In light of these arrangements, the period of more than 75 years for old culprits in the Crook Code Bill is over the advanced age specified in Regulation no. 13 of 1998.

Because of the age factor, an individual will confront numerous restrictions, subsequently requiring help, albeit a significant number of the old are as yet useful and ready to assume a functioning part in the existence of society, country, and state. UU no. 13 of 1998 recognizes the older into Possible Old and Non-Expected Old. Potential old is old who are as yet equipped for taking care of business as well as exercises that can deliver products and additionally benefits. In the mean time, non-potential older is old who are frail to earn enough to pay the bills, so their lives rely upon the assistance of others.

Taking into account the law, the age of the old in the Miscreant Code should contemplate the age of the old as 60 years and have no potential for criminal arraignment. In any case, for likely older individuals, as far as possible for old individuals who are not condemned to jail however much as could reasonably be expected not entirely settled, in particular 70 years or more. This is considering the future in Indonesia as per BPS in 2018 arriving at a normal of 71.2 years, as well as the grouping of the older as per WHO and the order of the old by BPS.

In examination, from the consequences of exploration on old lawbreakers in the US and Europe, there is no understanding among specialists on what age ought to be utilized to order "old." Fattah and Sacco (1989) note that a few examinations incorporate more seasoned wrongdoers and survivors of more seasoned 50-year-olds; different scientists utilize 60 years and over as an endpoint, yet different specialists have utilized 65 and over as the age to characterize the old (Kratcoski & Edelbacher, 2016) .

The Convict Code Bill has pondered the age of the old in the criminal system, by laying out the specific moment of more than 75 years for transgressors of criminal shows so especially

that particularly far they are not open to control. In the conversation of Article 72 of the Hooligan Code Bill, this age limit was surrendered, between the long periods of "over 70 years" or "more than 75 years" for blameworthy gatherings of criminal displays so particularly that extremely far they were not open to imprisonment. This game-plan was one of the issues approaching in the Course of action Get-together Gathering (Timus), yet at the going with Timus Meeting, it was concurred that "completely mature north of 75 years" for blameworthy gatherings to stay away from restriction however much as could reasonably be expected (become Article 76), taking into account the future that the higher it is. The aftereffects of the Timus Meeting were as important embraced at the Working Chief Social affair on 28 May 2018.

The circumstances that should be met so the named authority can't drive a jail sentence are:

- a. the litigant perpetrates a wrongdoing which is just deserving of detainment;
- b. the judge was of the assessment that it was not important to force a jail sentence subsequent to thinking about it:
 - reason for condemning;
 - condemning rules;
 - rules for forcing jail sentences;
- c. the litigant has never been condemned to detainment for a wrongdoing perpetrated after the age of 18 years.

Regardless, this doesn't infer that more seasoned blameworthy gatherings will be vindicated from criminal discipline. Judges are given the choice of convincing fines as a substitute for constraint against respondents who do terrible ways of behaving that are basically justifying control, needed to beat the firm thought about the organizing of a particular sentence which appears to guess that judges ought to drive jail sentences. What's more, it is likewise planned to try not to force short jail sentences. Giving decisions to judges, considering the objectives and rules for condemning, is in accordance with the objectives of condemning embraced by the consolidated hypothesis, which needs to put together discipline with respect to reprisal and furthermore keep social control.

Be that as it may, the circumstances for judges not to force fines are exceptionally severe. As per Article 70 passage (2) of the Lawbreaker Code Bill, the arrangement for canceling detainment for older guilty parties doesn't have any significant bearing to violations deserving of detainment for 5 years or more, wrongdoings deserving of a unique least sentence, or certain wrongdoings that are extremely destructive or hurt the general population, or monetary misfortune or the nation's economy. There are numerous crook acts deserving of detainment under five years in the Lawbreaker Code Bill. A few instances of violations deserving of detainment for a limit of 4 years and underneath include: 1. Article 188: the wrongdoing of spreading or fostering the lessons of socialism Leninism out in the open. 2. Article 213: criminal demonstrations during wartime, without the point of aiding the foe or hurting the state to help the foe. 3. Article 221: the wrongdoing of carrying out conspiracy to give an up the area of a well disposed country, either in entire or to some degree from the force of the real government. 4. Article 246: the wrongdoing of prompting an individual who carries out a wrongdoing. 5. Article 262: the wrongdoing of broadcasting or scattering counterfeit news that can cause riots in the public arena. 6. Article 412: the lawbreaker demonstration of conventionality out in the open. 7. Article 417: infidelity. 8. Article 420: foul demonstrations. 9. Article 429: the wrongdoing of selling inebriating substances. 10. Article 439: slander. 11. Article 449: the wrongdoing of revealing insider facts that should be kept due to position, calling, or obligations. 12. Article 501: deceitful demonstration.

An enormous number of violations deserving of detainment for 4 years or underneath ought to be helpful for old wrongdoers since it permits judges not to force jail sentences.

Nonetheless, with the circumstances that should be met by judges not to force jail sentences for the older as recently referenced, the arrangement for abrogating jail sentences for the old turns out to be extremely particular.

In the mean time, wrongdoings that are deserving of an extraordinary least sentence are by and large remembered for unique violations, specifically the Wrongdoing of Dealing with People, Serious Wrongdoings against Common freedoms, Psychological warfare Violations, Debasement and Opiates Wrongdoing. In the mean time, certain lawbreaker acts that are extremely hurtful or unfavorable to society, or monetarily adverse or impeding to the country's economy are remembered for the measures for unique violations also. This specific wrongdoing likewise conveys a jail sentence of 5 years or more.

In the event that we focus on the instances of criminal demonstrations deserving of detainment under 5 (five) years which have been referenced already, a significant number of them are criminal demonstrations that outcome in casualties, like infidelity, foulness, criticism, and deceitful demonstrations. For this situation, it is one of the snags for the old not to be condemned to jail and supplant it with a fine, in the event that there are casualties.

With regards to policing these weak gatherings, governmental policy regarding minorities in society/strategy is required. Weak gatherings should be dealt with diversely for positive reasons. In specific circumstances, and conditions, this governmental policy regarding minorities in society permits the state to be more "oppressive" towards specific gatherings. It is the obligation and commitment of the state to give ensures and legitimate assurance that is simply.

On the off chance that the common liberties viewpoint is set as the philosophical premise and worldview of regulation in managing (minor) legitimate cases that be fall weak gatherings, then the worldview of state regulation should be created not exclusively to regulation by rules, legalistic-positivistic, however the law should likewise incorporate all the capability of oneself. Getting from Satjipto Raharjo's (2009) contemplations on moderate regulation, Moderate Regulation: Activity, not Text, expresses that dynamic regulation is an idea of a non-direct approach to deciding, because of the activity elements and human endeavors engaged with it; This human contribution causes the approach to judging isn't generally connected with illuminating the text, yet is brimming with inventiveness and decisions.

In view of this, changes to the Criminal Method Code should take on the treatment of cases including the older. Supportive equity in taking care of ABH cases can be a reference for administrators and policing in managing old wrongdoers. Assurance for older guilty parties should be done from the examination stage. The examination stage is the underlying phase of the law enforcement process so in the event that helpful equity has been accomplished at this stage it can decrease cases dealt with by ensuing cops.

With such an update, it unquestionably requires preparation in the law enforcement framework for the treatment of cases including the old. This implies that all factors that influence policing required, beginning from the law (legal guidelines), regulation implementers, culture, and society.

The Concept of Restorative Justice in Drug Cases

As a law enforcer, the Police carry out their duties by conducting investigations and investigations of criminal cases, including drug cases. The variety of actions that must be taken by the police in dealing with criminal acts makes it the duty of the police to resolve each case they handle so that they have legal certainty. Be it the certainty that was determined after going through the court, as well as settlements that stopped in the realm of *Polri* investigations which

could not proceed to the next stage, or stopped at the investigation stage for various reasons regulated in the law. Common reasons for terminating an investigation at the Police include cases being investigated for insufficient evidence, the case is not a crime, and stopping for the sake of law because *nebis in idem* (a person cannot be prosecuted for the second time based on the same act, and for his actions decided by the competent Court and has obtained permanent legal force), the suspect dies, and expires.

In responding to the development of an increasingly democratic society, legal settlements also adjust to the wishes and needs of the community for the need for law. The law was created as a protector and a tool to deter violators from the sanctions imposed, it is felt that it is necessary to restore it which includes the legal objectives to be achieved. The settlement of reestablished regulation takes into account the settlement of criminal cases outside the court (non-corrective) by focusing on supportive equity techniques.

The authority of the Police in determining which cases can be resolved using this concept is indeed a question that is quite risky to answer. Because in terms of cases that can and cannot, everything is handed over to the Police. This condition is full of fraud and abuse of authority that can be carried out based on the position held. For this reason, to avoid stigma and labeling like this, the police must always include every element that supports the settlement of cases by prioritizing this non-penal concept.

In obliging the High Court Roundabout Letter Number 04 of 2010 concerning the Arrangement of Misuse, Survivors of Misuse, and Opiates Junkies into the Clinical Restoration and Social Recovery Foundation dated April 7, 2010, the Police have additionally given inside guidelines as far as focusing on the execution of recovery for drug victimizers. Through Circular of the Head of the Criminal Investigation Agency Number: SE/01/II/2018/Bareskrim concerning Rehabilitation Instructions for Narcotics Addicts and Victims of Narcotics Abuse February 15, 2018.

Based on this Circular Letter, *Bareskrim Polri* wants to equalize the perception of all drug investigators in the region to be able to implement options for implementing rehabilitation for abusers proven by the Police. These provisions form the basis for investigators to be able to apply exceptions to the pursuit of corporal punishment for perpetrators of abuse by prioritizing the principle of expediency for these perpetrators to be able to improve themselves and escape drug addiction.

In terms of passing a decision on an elderly drug abuser, there are several things the judge considers. Regarding the Judge's consideration, the judge should prioritize the value of justice and the value of benefits compared to the value of legal certainty. However, in reality, so far, judges have prioritized the value of legal certainty compared to the value of justice and expediency, even though for sanctions against the elderly, what must be considered is whether the decision handed down creates goodness or benefits for the elderly. This is considering that children are treated specifically, full of affection from the people around them.

Gustav Radbruch stated about legal benefits, "something that can cause good or benefits". (Usman & Najemi, 2018) Concerning the settlement of cases of narcotics abuse committed by children and the elderly, it can be seen from the advantages and disadvantages, or the advantages and disadvantages of solving these cases. The benefits of resolving the case can be viewed from various aspects, of course with the consideration that it is indeed best for the elderly, meaning that the imposition of imprisonment on the elderly is viewed from the point of view of the benefits or goodness, the elderly as abusers when viewed in terms of benefits, do not get any benefit from the application of sanctions in the form of the prison sentence.

The application of sanctions in the form of imprisonment to the elderly will cause losses. Therefore, the judge should apply the decision to the elderly in the form of rehabilitation. Imposing prison sentences on the elderly means ignoring the interests of the elderly to be able

to enjoy their old age, which can interfere with their personality, and get a stigma as perpetrators of crimes. Therefore, imposing prison sentences and placing elderly narcotics abusers in Correctional Institutions is considered to provide less protection for the elderly, according to Amir Syarifudin "elderly who consume narcotics should not be subject to sanctions in the form of imprisonment, because this does not hurt psychology and personal health. Therefore, the best solution is to provide rehabilitation for them so that they become aware and can change.²⁹ This means that the imposition of imprisonment for children who abuse narcotics does not provide enough protection for the elderly (Najemi, Nawawi, & Purwastuti, 2020) .

4. Conclusion

The form of legal protection for children in conflict with the law has been regulated in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, by implementing diversion through a restorative justice approach. For elderly offenders, there are conditions given to judges to abolish prison sentences, which apply to crimes punishable by imprisonment under 5 (five) years and do not apply to crimes punishable by a special minimum sentence, or certain crimes that are very dangerous or detrimental to the community, or financially detrimental or detrimental to the country's economy. In addition, if the judge thinks that it is not necessary to impose a prison sentence after considering the objectives of sentencing and sentencing guidelines, the offender may be subject to a fine.

Based on these provisions, elderly offenders may be subject to fines as an alternative to imprisonment. However, the conditions for imposing fines for perpetrators with a threat of under 5 (five) years, as a substitute for abolishing imprisonment, are without victims; Victims don't mind; or not a repetition of a Criminal Act. Thus, restorative justice for elderly perpetrators who are caught in drug abuse cases with prison sentences can be abolished by promising not to repeat these mistakes.

5. References

- Indonesia, Presiden Republik. (2004). Peraturan Pemerintah Republik Indonesia Nomor 43 Tahun 2004 Tentang Pelaksanaan Upaya Peningkatan Kesejahteraan Sosial Lanjut Usia. Jakarta: Kementrian Sekretariat Negara Republik Indonesia.
- Indonesia, Republik. (2006). Undang-undang Republik Indonesia nomor 13 tahun 1998 tentang kesejahteraan lanjut usia. Departemen Sosial RI.
- Istiqomah, Lupyta. (2016). Implementasi Uu No. 13 Tahun 1998 Tentang Kesejahteraan Lanjut Usia Di Kota Yogyakarta Tahun 2014-2015 (Studi Pada Dinas Sosial Tenaga Kerja Dan Transmigrasi Kota I Yogyakarta). Universitas Muhammadiyah Yogyakarta.
- Kratcoski, Peter C., & Edelbacher, Maximilian. (2016). Trends in the criminality and victimization of the elderly. *Fed. Probation*, 80, 58.
- Kusumadewi, Etika Widya, & Rusdi, Farid. (2016). Analisis Framing Pemberitaan Kisruh Partai Golkar Pasca Keputusan Menkumham Dalam Program Dialog Primetime News Metrotv Dan Kabar Petang Tvone. *Jurnal Komunikasi*, 8(2), 187–204.
- Najemi, Andi, Nawawi, Kabib, & Purwastuti, Lilik. (2020). Rehabilitasi Sebagai Alternatif Pemidanaan Terhadap Anak Korban Penyalahgunaan Narkotika Dalam Upaya Perlindungan Terhadap Anak. *Jurnal Sains Sosio Humaniora*, 4(2), 440–454. <https://doi.org/10.22437/jssh.v4i2.10876>
- Pahlevi, Farida Sekti. (2019). Keadilan Hukum Dalam Peraturan Perlakuan Bagi Tahanan Dan Narapidana Lanjut Usia. *Al-Syakhsyiyah: Journal of Law & Family Studies*, 1(1).

<https://doi.org/10.21154/syakhsiyyah.v1i1.1824>

Rachmawati, Heny. (2018). Tinjauan hukum Islam terhadap penggunaan Narkotika untuk pelayanan kesehatan berdasarkan Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika. UIN Sunan Ampel Surabaya.

S Soekanto, S. Mamudji. (1985). Penelitian Hukum Normatif, Jakarta: P.

Usman, Usman, & Najemi, Andi. (2018). Mediasi Penal di Indonesia. Undang: Jurnal Hukum, 1(1), 65-83. <https://doi.org/10.22437/ujh.1.1.65-83>