



## THE IMPLEMENTATION OF RESTORATIVE JUSTICE FOR NARCOTICS ADDICTS BASED ON LEGAL BENEFITS

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### ABSTRACT

*Narcotics addicts are "self victimizing victims", because narcotics addicts suffer from dependence syndrome as a result of their own narcotics abuse. The purpose of writing this article is to analyze the current law enforcement against narcotics addicts and the implementation of restorative justice for benefit-based narcotics addicts. This type of legal research is normative juridical research. Crimes related to narcotics include special crimes, where the provisions used include special provisions of the law. Narcotics crimes are called special crimes, because narcotics crimes do not use the Criminal Code (KUHP) as the basis for regulation, but use Law No. 35 of 2009 concerning Narcotics. Narcotics addicts and victims of narcotics abuse are not solely seen as perpetrators of criminal acts, but also as victims, where the implementation of rehabilitation is part of an alternative punishment. The drug users as victims of narcotics crimes must be restored / cured and not to be imprisoned. Restorative justice for drug users can save their future. Even though their past and present have been lost as a result of the drug abuse.*

### A. INTRODUCTION

Indonesia is a state of law (*rechtstaat*), not based on power (*machtstaat*).<sup>1</sup> This is as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI) which states that the State of Indonesia is a state of law. Therefore, the entire system of life of the nation and state in Indonesia must be guided by legal norms.<sup>2</sup>

Drug abuse has become a very serious problem not only locally, nationally, but also at the international level. Drug dependence when analyzed medically is basically a brain disease, therefore the problem of drug addicts is not due to lack of motivation to recover but because of

1 C.S.T Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, Cet Ke-8, 1989), 346.

2 Ni Made Srinetri, Umar Ma'ruf and Munsyarif Abdul Chalim, "Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Reserse Of Central Java Regional Police (POLDA)," *Jurnal Daulat Hukum* 3, No. 1 (March 2020): 41

changes in the mechanisms in the brain which generally require a long time to adapt and recover to substance-free conditions.<sup>3</sup>

On the one hand, drug abusers or addicts are perpetrators of criminal acts, but on the other hand, they are victims. Drug abusers or addicts according to the Law, as perpetrators of narcotics crimes are the provisions of the Narcotics Law that regulate the imprisonment given to perpetrators of narcotics abuse. On the other hand, it can be said that according to the Narcotics Law, drug addicts are victims, as indicated by the provision that drug addicts can be sentenced to rehabilitation.<sup>4</sup>

Narcotics addicts are "self victimizing victims", because narcotics addicts suffer from dependency syndrome as a result of their own drug abuse. Article 54 of Law No. 35/2009 on Narcotics states that "Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation".

Narcotics crime in Indonesia is currently the most dominant type of criminal offense compared to other criminal offenses. Based on data from the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham), the number of residents of correctional institutions (Lapas) with special criminal offenses was 151,303 people as of August 2021. Of that number, 145,413 people or 96% were convicted of drug cases. A total of 116,930 prisoners in drug cases are categorized as dealers. Meanwhile, 28,483 other prisoners are drug users.<sup>5</sup>

The application of restorative justice legal policy is one of the solutions to solve the problem of overcrowding in correctional institutions (Lapas) and is an alternative to solving criminal cases that have been too formalistic and positivistic. While Restorative Justice can be applied if it meets the conditions, namely when caught red-handed by Police investigators and / or investigators of the National Narcotics Agency (BNN), evidence of one-day use is found and also has assessment results from the Integrated Assessment Team in each case file submission. It is hoped that this alternative to case settlement through Restorative Justice can realize the principles of fast, simple and low cost justice with balanced justice. So that in the future it is only a matter of waiting at the implementation level from the scope of law enforcement officials to better understand and be able to apply Restorative Justice efforts in the criminal justice system.<sup>6</sup>

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3 Dudu Wawan Setiawan and Bambang Tri Bawono, "Disparity of Judge's Decision on Children Of Narcotics Crime Actors Study on Denpasar State Court Decision No. 3 / Pid.Sus.Anak / 2014 / PN.Dps. by Denpasar State Court Decision No. 14 / Pid.Sus.Anak / 2015 /PN.Dps," *Jurnal Daulat Hukum 2*, No. 4 (December 2019): 65

4 Asep Suherdin and Maryanto, "Analysis of Law Enforcement to Drugs Criminal Act in Military Environment (Case Study in Jurisdiction of Military Court II/09 Bandung)," *Jurnal Daulat Hukum 2*, No. 4 (December 2019): 507-512

5 "Narapidana Kasus Narkoba Mendominasi di Lapas." Accessed 20 September 2023. <https://databoks.katadata.co.id/>.

6 Haposan Sahala Raja Sinaga, "Penerapan Restorative Justice Dalam Perkaranarkotika Di Indonesia (Implementation Of Restorative Justice In Indonesian Narcotics Cases)," *Jurnal Hukum Lex Generalis 2*, No. 7 (Juli 2021): 528-534

Trials of people who abuse drugs mostly result in sentences of imprisonment rather than rehabilitation as envisioned by the law.<sup>7</sup> After the Narcotics Law had been in effect for almost 12 years, in 2009 the Supreme Court issued a circular letter, namely SEMA RI No. 7 of 2009, which was addressed to District Courts and High Courts throughout Indonesia to place drug abusers in rehabilitation centers and most recently the issuance of Supreme Court Circular Letter No. 04 of 2010 concerning Placement of Narcotics Abusers, Victims of Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions which is a revision of Supreme Court Circular Letter No. 07 of 2009.<sup>8</sup> Surely this Supreme Court Circular Letter is a step forward in building a paradigm of stopping criminalization or decriminalization of drug addicts.

The Restorative Justice legal policy implemented by law enforcers is interesting to study, especially in the law enforcement of narcotics cases.<sup>9</sup> In the context of law enforcement, law enforcement officials must be careful in determining the legal status of a person involved in narcotics crimes, because often the perpetrators of narcotics crimes who are drug dealers and dealers confess and or in order to make alibis as addicts of narcotics abusers with the aim of light punishment or rehabilitation.

Drug abusers under Law No. 35/2009 on Narcotics are like people standing on two legs, one leg is in the health dimension, the other leg is in the legal dimension. In the health dimension, drug abusers are likened to chronic opiate sick people, who must be cured through rehabilitation, while in the legal dimension, drug abusers are criminals who must be punished for violating the applicable statutory provisions, namely Law No. 35 of 2009 concerning Narcotics. Therefore, for cases of abuse, the Narcotics Law provides a solution by integrating the two approaches through punishment or rehabilitation measures.<sup>10</sup>

Research conducted by Sutarto with the title Application of Medical Rehabilitation and Social Rehabilitation for Victims of Narcotics Abuse in Review of Relative Punishment Theory that Drug users or addicts on the one hand are perpetrators of criminal acts, but on the other hand are victims (crime without victims). Rehabilitation of drug addicts is a form of social protection that integrates drug addicts into social order so that they no longer use drugs. The results of this study are that medical rehabilitation

7 Lysa Angrayni, & Yusliati, "Efektivitas Rehabilitasi Pecandu Narkotika (Studi di Loka Rehabilitasi Badan Narkotika Nasional Batam)," *Jurnal Hukum Respublica* 18, No. 1 (2020): 78-96.

8 Siti Hidayatun, Yeni Widowaty, "Konsep Rehabilitasi Bagi Pengguna Narkotika yang Berkeadilan," *Jurnal Penegakan Hukum dan Keadilan* 1, No. 2, (September 2020): 166-182

9 Surya, D, Marzuki, M., & Miroharjo, D., "Penerapan Restoratif Justice Terhadap Anak Sebagai Pelaku Tindak Pidana Penyalahgunaan Narkotika Ditinjau Dari Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak," *Jurnal Ilmiah Metadata* 5, No. 1 (2023): 260-274.

10 "Mekanisme Asesmen Terpadu terhadap Penyalahguna Narkotika." Accessed 20 September 2023. <https://yogyakarta.bnn.go.id/>.

and social rehabilitation both partially and collectively have a positive effect on victims of narcotics abuse.<sup>11</sup>

Research also conducted by Salyo Kinasih Bumi with the title Legal Protection of Victims of Narcotics Abuse through restorative justice that there is uncertainty of the main elements in the phrase "every person" in Article 112 of Law No. 35 of 2009 concerning Narcotics is what the position of "every person" is and what kind of dependence on the addictive substance. In this case, there are a lot of Narcotics Addicts and Narcotics Abusers who lose their rights because of allegations or charges using Article 112 of Law No. 35 Year 2009 on Narcotics. On the other hand, Article 112 of Law No. 35/2009 on Narcotics contains Article 54 and Article 127, which basically explain the legal provisions related to the rights of drug addicts or victims of drug abuse (BNN, Law No. 35/2009 on Narcotics Article 112, 2009). Often, state officials who are appointed and authorized to handle and examine narcotics cases do not actively explore and examine the extent of the relationship between the drug addict or victim of abuse and the evidence and chronology of the arrest. Which means that officials often do not want to actively reveal how far the connection of drug addicts and abusers is by using the allegations of Article 112, which also has a broad interpretation.<sup>12</sup>

## **B. RESEARCH METHODS**

This type of legal research is normative juridical research. Normative juridical research is research that is focused on examining the application of rules or norms in positive law,<sup>13</sup> which in this case relates to restorative justice for drug addicts based on legal expediency. The specification in this research is descriptive analytical. According to Soerjono Soekanto, descriptive analysis is what is stated by respondents in writing or verbally and also their real behavior, which is studied and studied as a whole.<sup>14</sup> The analysis used in this research is qualitative analysis, which is a research procedure that produces analytical descriptive data, namely what is obtained from library research or stated by sources in writing or orally and also their real behavior, which is studied and studied as a whole.<sup>15</sup>

## **C. RESULTS AND DISCUSSION**

### **1. The current law enforcement against drug addicts**

Narcotics-related crimes are special crimes, in which the provisions used, including the procedural law, use special provisions. It

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11 Sutarto, S., "Penerapan Rehabilitasi Medis Dan Rehabilitasi Sosial Terhadap Korban Penyalahgunaan Narkotika Ditinjau Dari Teori Pidanaan Relatif," *Jurnal Penegakan Hukum Indonesia* 2, No. 1 (2021): 115-135.

12 Bumi, S. K., Supolo, S., & Nugroho, B, "Perlindungan Hukum Terhadap Korban Penyalahgunaan Narkotika," *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 4, No. 2 (2022): 351-364.

13 Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia Malang, 2011, Page. 295.

14 *Ibid.*

15 Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Rajawali Press, 1986), 42.

is called a special criminal offense, because narcotics crimes do not use the Criminal Code (KUHP) as the basis for regulation, but use Law No. 35/2009 concerning Narcotics. In general, the procedural law used refers to the procedures used by the Criminal Procedure Code (KUHP), but there are several exceptions as determined by Law No. 35 Year 2009 on Narcotics.<sup>16</sup>

The Supreme Court of Indonesia as the holder of the highest judicial power in Indonesia has paid special attention to law enforcement for drug abusers. Especially since the enactment of the Narcotics Law, judges as the last bastion of law enforcement have gained extra authority to be able to give rehabilitation verdicts for addicts and victims of drug abuse. The issuance of Supreme Court Circular Letter No. 4/2010 on the Placement of Narcotics Abusers, Victims of Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions (SEMA 4/2010) is a form of special attention to law enforcement, especially rehabilitation of narcotics abusers, victims of abuse and addicts. SEMA 4/2010 contains guidelines for law enforcers, especially judges, regarding the conditions of punishment as referred to in Article 103 of the Narcotics Law letters a and b referring to the extra authority for judges to decide on rehabilitation sentences.<sup>17</sup>

The implementation of rehabilitation in practice is not going smoothly, there is confusion from the definition in the Narcotics Law. Article 4 of the Narcotics Law states that "The Narcotics Law aims to ensure the regulation of medical and social rehabilitation efforts for drug abusers and addicts." However, Article 54 of the Narcotics Law states that "Narcotics addicts and victims of narcotics abuse must undergo medical rehabilitation and social rehabilitation." Looking at Article 54, this means that the right of abusers to receive rehabilitation is not recognized. Misusers who were initially guaranteed rehabilitation in Article 127 of the Narcotics Law, then also become subjects who can be convicted and lose their right to rehabilitation, unless they can be proven or proven as victims of narcotics.<sup>18</sup> There are also differences of opinion regarding the phrase "may" in Article 103 of the Narcotics Law. According to Anang Iskandar, the phrase "may" in Article 103 of the Narcotics Law is an obligation for judges to impose rehabilitation sentences because whether proven or not guilty, the sentence is still rehabilitation.<sup>19</sup> However, the majority of judges are of the opinion that the phrase "may" is not an obligation but is facultative based on considerations, witnesses, evidence and facts at trial.

16 Junaidi, "Penerapan Pasal 54, 103 Dan 127 Ayat (2) Dan (3) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dalam Penyelesaian Perkara Di Pengadilan Negeri Terhadap Penyalahgunaan Narkotika Bagi Diri Sendiri," *Binamulia Hukum* 8, No. 2 (Desember 2019): 191-213

17 Muhamad Zaky Albana, *Survei Persepsi Hakim Dalam Implementasi Hukuman Rehabilitasi*, (Jakarta: Kencana, 2021), Page 86

18 Donny Michael, "Implementasi Undang-Undang Narkotika Ditinjau Dari Perspektif Hak Asasi Manusia," *De Jure* 18, No 3, (September 2018): 420

19 Anang Iskandar, *Politik Hukum Narkotika*, (Jakarta: Elex Media Komputindo, 2020), 29

Article 103 of the Narcotics Law opens space for judges to decide or determine to order rehabilitation, but can also decide to serve imprisonment in accordance with the provisions of Article 134 of the Narcotics Law. Moreover, the period of undergoing rehabilitation is taken into account as a period of serving a sentence. This is what makes rehabilitation part of the punishment. We still adhere to the principle of the double track system, where there is criminal action and rehabilitation. Indeed, rehabilitation is a form of fulfillment of the right to health for drug abusers.

National legal policy still prioritizes punishment and imprisonment for all suspects in drug cases, including drug abusers. The overcrowded condition of correctional institutions has reached 186%. The number of prisoners is 252,384 people, while the available capacity is only for 135,704 people. More than 50% of the inmates are related to drug cases. RPJMN 2020-2024 improves the criminal law system through a restorative justice approach. This has prompted a re-orientation of law enforcement policy and the implementation of Law No. 35/2009 on narcotics.<sup>20</sup>

Law enforcement as a form of state protection of human rights must be carried out consistently and in line with legal developments and pay attention to a sense of justice and paradigm shifts in society. That the dangers of drug abuse show an increasing trend of victims, especially among children, adolescents and the younger generation, so that commitment and synergy are needed from all elements of law enforcement officials, related stakeholders, and the community, in addressing this paradigm shift. Drug addicts and victims of drug abuse are not solely seen as perpetrators of criminal acts, but also as victims, where the implementation of rehabilitation is part of an alternative punishment.

In addition, the handling of drug addicts is carried out with two methods, namely prevention without punishment through mandatory reporting of addicts and implementation of rehabilitation law enforcement with a restorative justice approach. Restorative Justice (restorative justice), is a model of approach to resolving criminal cases where all parties concerned in the case meet together to resolve fairly by emphasizing the return to the original state and not retaliation. The implementation of restorative justice is to find alternatives to punishment by not prioritizing imprisonment. Article 54 of Law No. 35 of 2009 states that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation.

## **2. Implementation of Restorative Justice for Drug Addicts Based on Legal Expediency**

Restorative Justice is a model of approach that has emerged in efforts to resolve criminal cases. Unlike the approach used in the

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20 "Rehabilitasi Bagi Penyalahguna Narkoba dalam Implementasi Restorative Justice." Accessed 15 November 2023. <https://yogyakarta.bnn.go.id/>.

conventional justice system which focuses more on the deterrent effect for the offender (woman offender), this approach focuses more on the direct participation of the offender, victim and also the community in the process of resolving criminal cases.

A prison sentence for drug users does not mean they immediately stop abusing drugs. This is because in general, the guidance system for drug addicts who are serving prison sentences is no different from the guidance system that applies to convicts in other cases. In fact, they do need special care and/or treatment that restores their health, and their health is destroyed by using drugs again. Imprisoning an addict is the wrong decision because the intention of the punishment is revenge. As for drug addicts, the punishment that should be applied is "treatment", taking into account their condition that requires treatment and/or care.<sup>21</sup>

Currently restorative justice is very much needed in the settlement of various kinds of criminal offenses, especially certain criminal offenses which if handled retributively do not provide meaningful benefits, but on the contrary actually cause a new loss both to the victim and to the state, including in this case, namely narcotics crimes, especially users who are not dealers.<sup>22</sup>

Restorative justice is one part of progressive law in the settlement of criminal cases in cases of narcotics abuse for oneself. In addition, restorative justice is also an answer to the ineffectiveness of imposing imprisonment on drug addicts.

The same treatment between drug addicts, drug abusers, and victims of drug abuse with drug dealers or dealers, creates injustice in the handling.<sup>23</sup> The treatment of drug addicts, drug abusers, and victims of drug abuse should focus on rehabilitation efforts through a comprehensive and accountable assessment mechanism.<sup>24</sup>

Drug users or drug addicts who are not involved in a network of traffickers or dealers are "self victimizing victims", namely victims of their own crimes. Therefore, the relevant sanctions applied to them are sanctions that reflect the value of restorative justice and not imprisonment sanctions that focus more on retributive justice which is oriented towards retaliation. because drug users for themselves are essentially victims of a crime who need to get treatment and / or treatment.

By using a rehabilitation approach rather than crime is a form of restorative justice, which is an approach to resolving criminal cases that

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21 Nainggolan, Ibrahim, "Lembaga Pemasarakatan Dalam Menjalankan Rehabilitasi Terhadap Narapidana Narkotika," *Jurnal Edu Tech* 5, No. 2 (2019): 140

22 Kaligis, O.C., *Antologi Tulisan Ilmu Hukum*, (Bandung, Alumni, Jilid 7, 2012), 25

23 Idy, Muhammad Yunus and Marif and Bakhtiar, Handar Subhandi, "Legal Policy in the Prevention of Narcotics in Indonesia (October 20, 2021)," *Indian Journal of Forensic Medicine & Toxicology* 15, No. 4 (October-December 2021), 176

24 Ike Nur Rohmah, Bambang Tri Bawono, Denny Suwondo, "The Effectiveness of Assessment for the Victims of Drug Abuse at the Majalengka Resort Police Force," *RLJ Ratio Legis Journal* 1, No. 3 (2022), 76

emphasizes restoring the victim's condition to its original state by involving various parties.

The concept of restorative justice emphasizes that the measure of justice is no longer based on retaliation from the victim to the perpetrator (either physically, psychologically, or punitively), but the painful act is healed by providing support to the victim and requiring the perpetrator to be responsible, with the help of family and community if needed. This policy to prioritize rehabilitation efforts is in line with efforts to reduce the overcapacity of correctional institutions.<sup>25</sup>

Sentencing for victims of drug addiction must consider justice and benefit for the victim. The reason the victim uses drugs will also consider the outcome of the judge's decision. Victims of drug abuse are not criminals, but someone who has a disease that must be treated, fostered, and cured of their illness.<sup>26</sup>

Real justice is that which has benefits, for drug addicts is to return them to their original state, to no longer consume drugs.<sup>27</sup> The application of restorative justice also pays attention to human conscience. According to him, humanitarian instincts as a law enforcer must exist in every person, because prosecutors are part of society and must be a solution for people who are victims of drug abuse.

In a simpler sense, drug users as victims of drug crimes should be restored/healed and not imprisoned. Restorative justice for drug users can save their future. Even though their past and present have been lost as a result of the drug abuse. Saving the future of drug users, whose victims are the nation's youth as the nation's successors, is part of saving the future of the Indonesian nation as well.<sup>28</sup>

Restorative justice is a new concept that has developed in case settlement as a pattern of modern legal thinking. Because it considers the concept of restorative justice to be able to resolve cases outside the court most effectively and efficiently, and with justice.

#### **D. CONCLUSION**

Law enforcement as a form of state protection of human rights must be carried out consistently and in line with legal developments and pay attention to a sense of justice and paradigm shifts in society. Restorative Justice, is a model of criminal case settlement approach where all parties concerned in the case meet together to resolve fairly by emphasizing the return to the original situation and not retaliation. Real justice is that which

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25 "Revisi UU Narkotika Yasonna Tegaskan Pentingnya Pencegahan dan Restorative Justice." accessed 20 November 2023. <https://lampung.kemenkumham.go.id/>.

26 Jennifer, "Kepastian Hukum Penjatuh Rehabilitasi Medis Dalam Tindak Pidana Narkotika (Studi Terhadap Putusan Mahkamah Agung Nomor 26/Pid.Sus/2019/Pn.Pti Dan Putusan Mahkamah Agung Nomor 378/PID.SUS/2017/PN.SMN)," *Jurnal Hukum Adigama* 4, No. 1 (Juni 2021), 759-779

27 "Pecandu Narkotika tak Sembarang Bisa Ajukan Keadilan Restoratif Berikut." Accessed 20 November 2023. <https://regional.kompas.com/>.

28 Hatarto Pakpahan, "Restorative Justice Terhadap Pengguna Narkotika Dan Obat Obatan Berbahaya," *Jurnal Cakrawala Hukum* 6, No. 2 (Desember 2015), 129-140



has benefits, for drug addicts is to return them to their original state, to no longer consume drugs. Restorative justice for drug users can save their future. Even if their past and present have been lost as a result of the drug abuse. The application of restorative justice also pays attention to human conscience. According to him, humanitarian instincts as a law enforcer must exist in every person, because prosecutors are part of society and must be a solution for people who are victims of drug abuse.

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