

Implementation of Restorative Justice for Addicts in Criminal Acts of Narcotics Abuse

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Abstract. *The purpose of the research in this study: 1). To study and analyze the implementation of restorative justice for addicts in drug abuse crimes; 2). To study and analyze the obstacles to the implementation of restorative justice for addicts in drug abuse crimes. This study uses a sociological legal approach, with a descriptive analytical research method. The research problems were analyzed using Lawrence Friedman's legal system theory and restorative justice theory. The results of the study concluded that: 1) The implementation of restorative justice for addicts in drug abuse crimes that the rationalization of Restorative Justice for Drug Addicts Based on Perja Policy No. 18 of 2021 can be in the form of termination of prosecution by the Prosecutor's Office against suspected drug addicts. As a step in the form of restorative justice with the terms and conditions that have been stated in Perja No. 18 of 2021, in the process of which an Integrated Assessment Team was formed consisting of 3 agencies, namely the Prosecutor's Office, Police, BNN; 2). Obstacles faced in the implementation of restorative justice for addicts in drug abuse crimes are: a. Internal factors that hinder investigators from carrying out restorative justice during investigations, namely: Financial constraints, Suboptimal police professionalism and expertise, and Weak law enforcement in Indonesia and less than optimal arrest times; b. External factors, namely the lack of public understanding of restorative justice carried out by the police, resulting in a lack of public participation in the police, making the police's work a little difficult. The solution to the obstacles experienced in restorative justice is to always conduct socialization in the community, especially young people, regarding the dangers and impacts of drug abuse, as well as an understanding of restorative justice in the community so that later they can work together in the process of taking action against drug abuse.*

Keywords: Criminal; Narcotics; Restorative.

1. Introduction

Law Number 35 of 2009 concerning Narcotics contains Article 54 which regulates rehabilitation. Article 54 states that "Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation". Medical rehabilitation is a process of integrated treatment activities to free addicts from drug dependence. Medical rehabilitation of drug addicts can be carried out in hospitals designated by the Minister of Health, namely hospitals organized by both the government and the community.

The increasing number of drug users certainly invites the operation of drug syndicate networks. The number of drug abusers in Central Java has reached more than 300,000 people from various levels of society. Based on data from the Central Java Provincial National Narcotics Agency (BNNP), currently drug abusers who are still students and college students have reached 27.32%, ranking second highest in Central Java.¹The data is certainly very concerning because the threat of losing a quality young generation is increasingly real. The law enforcement process through a restorative justice approach in resolving criminal cases carried out by the prosecutor's office refers to PERJA No. 15 of 2020, the definition of restorative justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state, and not retaliation.

This regulation is one of the innovations of Attorney General Burhanudin to provide legal certainty for ordinary people. This policy was echoed by Burhanudin at the international level. In an event themed "integrated approaches to challenges facing the criminal justice system" Burhanudin in his presentation said that the restorative justice method in Indonesian criminal justice is an integrated approach from investigation, inquiry, prosecution, to the imposition of court decisions. Burhanudin said that Restorative Justice can shorten the lengthy trial process and resolve the issue of overcapacity of prisoners in correctional institutions. Seeing these achievements, the pillars of reform in the Attorney General's Office have been re-established. However, community participation is needed to oversee the return of the dignity of the prosecutor's office. The regulation of restorative justice has so far been regulated by the Chief of Police Circular No. SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases; Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation; Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia No.1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

¹Gatra.com, 2019, Hundreds of Thousands of Central Javanese People Use Drugs, <https://www.gatra.com/detail/news/399489-Ratusan-Ribu-Orang-Jawa-Tengah-Pengguna-Narkoba>, accessed December 20, 2022.

The Attorney General of the Republic of Indonesia has issued Guideline Number 18 of 2021 concerning Settlement of Handling of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle, in Chapter II stating that: The Public Prosecutor resolves the handling of narcotics abuse criminal cases through rehabilitation with a restorative justice approach in order to implement the Prosecutor's dominus litis principle, as the case controller. Meanwhile, rehabilitation through the legal process consists of medical rehabilitation and social rehabilitation. Deputy Attorney General for General Crimes (Jampidum) of the Attorney General's Office (Kejagung) Fadil Zumhana encouraged drug users to be rehabilitated with a restorative justice approach". Fadil said the number of drug cases in Indonesia each year reaches 131,421 convicts out of 272,332 convicts throughout Indonesia. This is because the largest contributor to cases in correctional institutions is filled by perpetrators of drug abuse.

The case that occurred on Sunday, December 11, 2022, was the arrest of Munazam alias Koko bin Zuli Ilyas (deceased), born in Kendal on December 27, 1990, male. Address Purwokerto Village, Brangsong District, Kendal Regency and last educated junior high school. The evidence obtained from the arrest was 1 (one) clear plastic containing crystal powder suspected of being methamphetamine weighing \pm 0.15353 grams, wrapped in white tissue in a pack of Gudang Garam Signature cigarettes.

Based on the background description above, the author is interested in writing a dissertation entitled "Implementation of Restorative Justice for Addicts in Criminal Acts of Narcotics Abuse".

This study aims to examine and analyze the implementation of restorative justice for addicts in criminal acts of drug abuse, obstacles to the implementation of restorative justice for addicts in criminal acts of drug abuse.

2. Research Methods

This study uses a sociological juridical approach, with a descriptive analytical research method. The data used are primary and secondary data that will be analyzed qualitatively. The research problems are analyzed using Lawrence Friedman's legal system theory and restorative justice theory.

3. Results and Discussion

3.1. Implementation of Restorative Justice for Addicts in Criminal Acts of Narcotics Abuse

Restorative Justice in the General Court Environment, which explains that Restorative Justice is an alternative resolution of criminal cases in which the mechanism of criminal justice procedures focuses on punishment which is changed into a process of dialogue and mediation involving the perpetrator, victim, family, perpetrator/victim, and other related parties to jointly create an agreement on a fair and balanced resolution of criminal cases for both the victim and the perpetrator by prioritizing restoration to the original state, and restoring good

relations in society. The concept of restorative justice in Indonesia is still relatively new.²

According to Prof. Mahfud MD, restorative justice is an extension of the theory of justice with a different approach. In the concept of crime, it is seen as a social disease that must be cured, not just as an act of violating the rule of law. Criminal in this case is seen as *ultimum remidium*. In other words, children who are proven guilty of committing a crime are given priority to be given sanctions in the form of actions such as returning to their parents or attending education and training.³ Many law enforcement officers currently think in a way that focuses on the understanding that every criminal case must still be included in the realm of criminalization (litigation path), even though these cases are criminal acts with relatively small losses or minor crimes. This is valid in legal positivism, provided that the act is clearly in the law (the principle of legality is fulfilled) and in accordance with the principle of equality before the law.⁴ However, this process often causes disparities in criminalization and law enforcement, and injures the sense of justice in society. The basic principle of Restorative Justice is the restoration of victims who suffer from crimes by providing compensation to victims, peace, perpetrators doing social work or other agreements.⁵ Fair law in Restorative Justice is certainly not biased, impartial, not arbitrary, and only sides with the truth in accordance with applicable laws and regulations and considers equality of compensation rights and balance in every aspect of life. Based on this, the perpetrator has the opportunity to be involved in restoring the situation (restoration), society plays a role in preserving peace, and the court plays a role in maintaining public order.

The existence of Restorative Justice provides a good effort to carry out recovery related to the settlement of criminal cases in the special rights of Narcotics Addicts. The rampant promiscuity among young people allows for increasingly massive abuse/use of narcotics. This will certainly have a bad impact on the next generation of the nation if it continues to be allowed. Regarding Restorative Justice, it can be seen that one of the cases that can be carried out with this approach is narcotics cases, this can be seen in the Circular of the Supreme Court Number: 1691 / DJU / SK / PS.00 / 12/2020 Chapter II concerning the Contents of the Guidelines.⁴

Based on this, if drug addicts are only given punishment, then in the future they still have the potential to repeat the action. It is different if recovery is carried out

²Decree of the Director General of the General Courts concerning Guidelines for the Implementation of Restorative Justice in the General Courts.

³Achmad Nasrudin Yahya, Mahfud: Restorative tendencies sometimes only exist in books, <https://nasional.kompas.com/read/2021/11/04/17474871/mahfud-kecenderungan-restorative?justice-kadang-kala-hanya-ada-di-buku>, Accessed June 17, 2024

⁴Hawalia Meka, Implementation of Restorative Justice based on the Decree of the Directorate General of the General Court of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice in General Courts, *Judge: Law Journal*, 3(2), 2022, p. 1-8

for drug addicts, of course they are less likely to do the same thing again. That way we all don't need to worry about the next generation of the nation if the solution can be implemented properly, fairly and firmly without regard to conditions such as the economy or other things in accordance with the principle of All are equal before the law (Equality Before the Law).⁵

Drug use is often associated with crime, both drugs are considered to have a negative influence and cause users to commit crimes. Crime is basically a relative formulation. Mustafa said that what is called crime as a social phenomenon is not merely an act that is prohibited by law, an act that is a biological abnormality or a psychological abnormality, but these acts are detrimental and violate public sentiment. If we refer to the formulation of crime as explained by Mustafa, the point of emphasis in determining whether a behavior is considered a crime or not is not to use formal rules as a reference. As a drug crime that has long been an enemy of the nation, now narcotics are very worrying for our nation and all nations in the world today.

The production and distribution of narcotics are so massive in our society. The role of the narcotics mafia seems unstoppable. The narcotics mafia has poisoned law enforcers as users and dealers in the Indonesian nation and various parts of the world, even though the entire nation is fighting this crime. The public often hears statements about building commitments or fighting together to eradicate narcotics in our country and throughout the world. So many officials, artists and people abuse narcotics. All elements of the nation have used narcotics excessively. The Indonesian nation and nations in the world have made the distribution and abuse of narcotics a national emergency. The handling of abuse must be responded to immediately with the firmness of law enforcement officers, because if not, the next generation of the nation will be damaged morally and physically.

Types of Acts Prohibited in Law No. 35 of 2009 Concerning Narcotics The scope of criminal law includes three provisions, namely Criminal Acts, Responsibility, and Punishment. The criminal provisions contained in Law No. 35 of 2009 concerning Narcotics are formulated in Chapter XV Criminal Provisions Articles 111 to 148.

According to the concept of restorative justice in resolving a criminal case, the role and involvement of community members is very important in helping to correct errors and deviations that occur in the community concerned.

The settlement with the restorative justice system is expected so that all parties who feel disadvantaged will be restored and there will be appreciation and respect for the victims of a crime. Respect is given to the victim by requiring the perpetrator to recover from the impact of the crime he has committed.⁶

Based on the results of research conducted by Llewellyn and Howse in 1998 as

⁵Riono Sunardi, Legal Analysis of the Implementation of the Principles of Legality and Equality Before the Law in the Narcotics Law, *Jurnal Audito Comparatife Law*, 2(1), 2021, p. 29-42.

⁶Marlina, *Op.cit.*, p. 183-184

quoted by Marlina, said that sincerity, honesty in face-to-face meetings between victims and perpetrators are the main elements to achieve maximum goals "from the restorative justice process. Sincere means there must be a sincere confession from the perpetrator to realize the mistakes he has made to the victim and the victim must also sincerely understand and try to forgive the perpetrator who has committed a crime that has harmed the victim, both materially and morally. Furthermore, the values that must be prioritized besides sincerity are the values and characteristics of honesty where the value of honesty makes it easy for all parties to understand why a crime can occur by someone and the community can provide input and improvements. to solve and find the best solution for all parties, both victims, perpetrators, and the community".⁷ Comparison between retributive justice and restorative justice. The concept of retributive justice focuses on resistance to law and the state, while restorative justice focuses on the destruction or elimination of violence against humans and those associated with them. Retributive justice seeks to uphold the law by determining guilt and regulating punishment. While restorative justice seeks to uphold the victim by paying attention to their feelings of pain and by making the perpetrator accountable to the victim and the community that is harmed so that everyone gets their respective rights. Retributive justice involves the state and the perpetrator in a formal judicial process, while restorative justice involves the victim, perpetrator, and community in an atmosphere of dialogue to find a solution.⁸

According to Marlina, the concept of thought put forward by Howard Zehr in 1990 is "the concept of restorative justice. According to Howard Zehr as quoted by Marlina, restorative justice is an old thought that has just been developed in a new pattern of thought. This means, according to Howard Zehr as quoted by Marlina, in the concept of restorative justice we see how old problems are viewed from a new perspective. Problems that have occurred will be resolved with a new way of thinking. Society can respond to unlawful behavior by paying special attention to the rules that are violated or by first looking at the damage or loss it causes to people and society. How about looking at a crime case by starting with a response that sees it logically and correctly. The restorative justice resolution method prioritizes the side of repairing the losses and losses caused by the perpetrator of the crime".⁹

Rufinus Hutaurok stated that "Restorative Justice emphasizes the process of direct criminal accountability from the perpetrator to the victim and the community. If the perpetrator and the victim and the community whose rights have been violated feel that justice has been achieved through joint deliberation, then it is hoped that the implementation of criminal punishment can be avoided. This shows that the perpetrator is not the main object of the Restorative Justice approach, but

⁷Marlina, Op.cit., p. 186-187.

⁸Marlina, Op.cit., p. 188

⁹Marlina, Op.cit., p. 187

rather the sense of justice and the restoration of the conflict itself are the main objects".¹⁰

According to the paradigm of retributive justice, crime is part of the conflict between the state and the individual perpetrator of the crime because the perpetrator has violated the law set by the state to ensure order, peace, and security in the life of society¹⁵. The form of accountability of the perpetrator according to retributive justice must lead to the application of criminal sanctions. The loss or suffering of the victim is considered to have reached the break-even point, and the perpetrator pays or recovers it by undergoing and accepting the punishment process.

"Restorative Justice arrangements have been regulated in various regulations, including:

1. "Circular of the Chief of the Republic of Indonesia Police Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases;"
2. "Regulation of the Chief of the Republic of Indonesia Police Number 6 of 2019 concerning Criminal Investigation and Regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;"
3. "Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions;"
4. "Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice in the General Court on December 22, 2020."
5. "Joint Regulation of 2014 Concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.
6. Prosecutor's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice."
7. "Chief of Police Regulation Number 8 of 2021 Concerning Handling of Restorative Justice Crimes."

The implementation of restorative justice for addicts in drug abuse crimes that the rationalization of Restorative Justice for Drug Addicts Based on Policy Perja No. 18

¹⁰Rufinus Hutahuruk, *Combating Corporate Crime Through a Restorative Approach: A Legal Breakthrough*, Sinar Grafika Publisher, Jakarta, 2013, p. 106-107.

of 2021 can be in the form of termination of prosecution by the Prosecutor's Office against suspected drug addicts. As a step in the form of restorative justice with the terms and conditions stated in Perja No. 18 of 2021, in the process an Integrated Assessment Team was formed consisting of 3 agencies, namely the Prosecutor's Office, Police, BNN. The coordination carried out by the 3 agencies produced the results of the eligibility of drug addict suspects to obtain restorative justice, which was then issued by the Prosecutor's Office. Regarding the financing of the entire process, it is borne by the state budget (APBN), but for other additional costs needed for drug addicts in carrying out rehabilitation, it can be obtained by the family or others provided that it does not conflict with the law. The emergence of Perja No. 18 years 2021 seems to be a solution to the problem of undercapacity in prisons which will slowly decrease, because narcotics cases, especially addicts, are one of the largest inmates in prisons and the potential for the creation of drug dealers and drug lords in prisons due to the lack of rehabilitation for addicts will also decrease. The application of restorative justice to drug addicts will provide a deterrent effect for perpetrators because perpetrators will go through a process of self-improvement and regret the action they have taken during the rehabilitation period, both in terms of physical, psychological and spiritual health.

3.2. Obstacles Faced in the Implementation of Restorative Justice for Addicts in Drug Abuse Crimes, and Their Solutions

Drug crimes are serious crimes that are transnational in nature, organized crimes, which can threaten and befall every country and nation and can result in massive negative impacts. The Republic of Indonesia itself has determined drug crimes as extraordinary crimes with the maximum penalty for dealers being the death penalty. Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic that can cause decreased or altered consciousness, loss of pain and can cause dependency (Law No. 35 of 2009). Law No. 35 of 2009 concerning Narcotics in Article 54 requires addicts and victims of drug abuse to undergo rehabilitation, although Law No. 35 of 2009 prohibits personal use (Article 127).

Various indications show that drug crimes are extraordinary crimes. The meaning is as a multidimensional crime that has a major impact on social, cultural, economic and political and the negative impact caused by this crime is so devastating. For that extraordinary punishment seems to be relevant to accompany the model of crime with extraordinary characteristics that are currently increasingly spreading throughout the world as transnational crime. The circulation of narcotics in Indonesia when viewed from a legal aspect is legitimate, the Narcotics Law only prohibits the use of narcotics without permission from the law in question. The use of narcotics is often misused not for medical and scientific purposes when viewed from such a situation at the empirical level. Narcotics crimes are used as a promising and rapidly growing business opportunity, which activity has an impact on the mental damage both physically and psychologically of drug users, especially the younger generation.

Law enforcement against narcotics crimes has been widely carried out by law enforcement officers and has received many judges' decisions. Law enforcement should be expected to be a deterrent factor against the increasing illicit trade and distribution of narcotics, but in reality the more intensive law enforcement is carried out, the more the distribution and illicit trade of narcotics increases. Legislation governing narcotics issues has been drafted and enforced, however, crimes involving narcotics have not been able to be reduced.

In recent cases, many drug lords and dealers have been caught and given heavy sanctions, but other perpetrators seem to ignore it and even tend to expand their areas of operation. Law enforcement against crime in Indonesia, where the government as the organizer of state life needs to provide protection and public welfare through various policies that are scheduled in the national development program. This government policy is included in social policy. One part of this social policy is law enforcement policy, including legislative policy. While the crime prevention policy itself is part of law enforcement policy.

Restorative Justice or Restorative Justice Legal Settlement is currently being adopted and implemented by law enforcement agencies in Indonesia. According to Kevin I. Minor and JT Morrison in the book "A Theoretical Study and Critique of Restorative Justice, in Burt Galaway and Joe Hudson, eds., *Restorative Justice: International Perspectives*" (1996), restorative justice is a response to perpetrators of crimes to restore losses and facilitate peace between the parties.

Restorative justice is a method that is philosophically designed to be a resolution of the ongoing conflict by improving the situation or losses caused by the conflict. Meanwhile, according to the official website of the Supreme Court, the principle of restorative justice is one of the principles of law enforcement in resolving cases that can be used as an instrument of recovery and has been implemented by the Supreme Court (MA). The principle of restorative justice is an alternative to resolving criminal cases, in which the mechanism (procedure of criminal justice) the focus of the crime is changed to a process of dialogue and mediation. Dialogue and mediation in restorative justice involve several parties including the perpetrator, victim, family of the perpetrator or victim, and other related parties. In general, the purpose of this legal settlement is to create an agreement on the settlement of criminal cases. In addition, another purpose of restorative justice is to obtain a fair and balanced legal decision for both the victim and the perpetrator.

The main principle in restorative justice is law enforcement that always prioritizes restoration to the original state, and restores good relations in society. The application of restorative justice began with the implementation of an out-of-court settlement program carried out by the community, called victim offender mediation (VOM), in Canada in the 1970s. The Restorative Justice Program was initially implemented as an alternative measure in punishing child criminals, where before the punishment was carried out the perpetrator and victim were allowed

to meet to prepare a legal proposal which became one of the many considerations of the judge. According to criminal law experts

Mardjono Reksodiputro, written by Jurnal Perempuan (2019), restorative justice is an approach that aims to build a criminal justice system that is sensitive to victim issues.¹¹ Mardjono said that restorative justice is important to be associated with victims of crime, because this approach is a form of criticism of the current criminal justice system in Indonesia which tends to be retributive, namely emphasizing justice in retaliation, and ignoring the role of victims to participate in determining the process of their cases. Among Indonesian law enforcers or the Criminal Justice System (CJS) to apply the principle of Restorative Justice settlement to drug abusers, there are already legal instruments internally within the institution, for example the Supreme Court issued SEMA (Supreme Court Circular) Number 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abusers and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. Furthermore, the Attorney General's Office of the Republic of Indonesia has also issued regulations regarding restorative justice through the Attorney General's Regulation (PERJA) Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice.

Based on Article 2 of Perja Number 15 of 2020, considerations for implementing the concept of restorative justice are carried out based on the principles of justice, public interest, proportionality, criminal law as a last resort, and the principles of speed, simplicity, and low cost. The Public Prosecutor has the authority to close a case in the interests of the law, one of which is because there has been a settlement of the case outside the court/afdoening buiten process, this is regulated in Article 3 paragraph (2) letter e of Perja Number 15 of 2020. In the Attorney General's Regulation in Article 3 paragraph (3) there are provisions if you want to settle a case outside the court for certain crimes with a maximum fine paid voluntarily or there has been a restoration of the original condition through restorative justice.

The government policy of guaranteeing addicts and victims of drug abuse to undergo rehabilitation is considered a very effective formula at this time, where currently prisons are considered inappropriate and unsafe for drug addicts. This is because of the large number of illegal drug trafficking in correctional institutions, this shows that correctional institutions can no longer be used as a place as it should be, namely a place to keep victims of drug addicts away from these illicit goods and to be a safe place for drug addicts to undergo healing and not repeat their actions of abusing drugs.

In the sense that a drug abuser is a person who uses drugs without rights or against the law; a victim of drug abuse is someone who accidentally uses drugs because they are persuaded, tricked, deceived, forced, and/or threatened to use drugs; while a drug addict is a person who uses or abuses drugs and is in a state of

¹¹ Ibid.

dependence on drugs, both physically and psychologically based on SEMA 04 of 2010 it is explained that drug addicts and drug abuse are acts of using drugs for consumption with a limited amount of drug ownership or daily use.

The obligation of investigators and prosecutors to conduct scientific investigations and prosecutions as to whether the abuser is classified as an addict or an addict who is also a dealer.

The principles or several principles related to the concept of restorative justice contained in the draft Declaration of Basic Principles on the Use of Restorative Justice Programmers in Criminal Matters, include:

- 1) "Restorative justice programs mean several programs that use restorative processes or have the intention of achieving restorative outcomes."
- 2) Restorative outcome is an agreement reached as a result of the restorative justice process. Examples: restitution, community service and programs that aim to repair victims and communities and restore victims and/or perpetrators.
- 3) Restorative process in this case is a process where the victim, perpetrator, and community affected by the crime actively participate together in making a solution to the crime problem and are intervened by a third party. Example: restorative mediation, conferencing, and circles.
- 4) Parties in this case are victims, perpetrators, and other individuals or members of society who feel harmed by the crime involved in the restorative justice program.
- 5) The facilitator in this case is a third party who carries out the function of facilitating the participation of victims and perpetrators in meetings."

According to Van Ness as quoted by Marlina, the development of the concept of restorative justice needs to be done as follows:¹²

- 1) "Crime is basically a conflict between individuals that results in injury to the victim, society and the perpetrator himself, only in its subsequent effects it is a violation of the law.
- 2) The more important goal of the criminal justice system process must be to reconcile the parties with the aim of repairing the damage caused to the victim as a result of the crime that occurred.
- 3) The criminal justice system process must facilitate the active participation of victims, perpetrators and the community and not be dominated by the state by excluding people involved in the violation from the settlement process."

In every implementation of legal action, there are certainly obstacles that will be encountered, be it from the absence or lack of legal information related to matters related to legal actions that are spread, non-compliance of the community regarding existing laws, inaccessibility of several areas, no good cooperation with

¹²Marlina, Op.cit., p. 181

the community and still lack of information and understanding of the community regarding restorative justice. Likewise, regarding the implementation of restorative justice, are there any obstacles experienced in its implementation. However, matters related to obstacles or barriers in the implementation of legal actions certainly need to be continuously improved so that the implementation of legal actions can be known and obeyed by the entire community.

There are several factors that are obstacles to restorative justice, namely:

1. Internal factors that hinder investigators from carrying out restorative justice during investigations are: Financial constraints, less than optimal police professionalism and expertise, and weak law enforcement in Indonesia and less than optimal arrest times.
2. External factors, namely the lack of public understanding of restorative justice carried out by the police, makes the lack of public participation in the police make the police's work a little difficult. Like wis during the investigation, because the community has a role in providing information needed by the police. If the information held by the police is limited, the consideration of carrying out restorative justice will also take longer. The lack of cooperation from the community in reality often occurs in this case, there is no participation from the community, especially in terms of arrests, witness statements and others.¹³

The National Narcotics Agency is one of the agencies that plays a role in the rehabilitation program for drug users. Based on Article 70 letter d of Law Number 35 of 2009 concerning Narcotics, the National Narcotics Agency has the task of improving the capacity of medical rehabilitation institutions and social rehabilitation for drug and psychotropic addicts and other addictive substances, except for addictive substances such as alcohol and tobacco, both organized by the government and the community. This is done to support the quality and capacity of medical rehabilitation institutions and social rehabilitation organized by the government and the community so that their sustainability is maintained.¹⁴

Determining a person to be rehabilitated for drug abuse is regulated in Law Number 35 of 2009 concerning Narcotics. In order to achieve healing for victims of drug abuse from their addiction, the punishment that should be given to them is coaching and rehabilitation. This coaching and rehabilitation punishment has been regulated in Article 54 and Article 103 of Law Number 35 of 2009 concerning Narcotics, and is also regulated in SEMA Number 2010 concerning Placement of Drug Abusers, Victims of Drug Abuse and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. In a study conducted by Megawati Marcos, it was also explained that Law Number 35 of 2009 concerning narcotics has mandated that judges who examine cases of drug addicts and can decide that the person

¹³Karmana, S., Dewi, AASL, & Suryani, LP (2023). Implementation of Restorative Justice for Drug Abusers at the Bali Police Narcotics Research Directorate. *Journal of Legal Interpretation*, 4(1), 68-73.

¹⁴Law Number 35 of 2009 concerning Narcotics

concerned undergoes treatment and/or care. Drug addicts are considered not only as perpetrators of criminal acts but also as victims of their own crimes, which from a victimology perspective is called self-victimization or victimless crime.¹⁵ However, in granting rehabilitation rights, it is necessary to pay attention to several requirements that must be met by drug abusers in order to receive rehabilitation.

According to the provisions of SEMA No. 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions in Article 2 of the SEMA, it is explained that rehabilitation is given when: The defendant is caught red-handed by investigators from the Police and BNN; when caught red-handed, evidence of 1 day of use is found; there is a positive laboratory test for using narcotics based on the investigator's request; there is a certificate from a government psychiatrist appointed by the judge; there is no evidence that the person concerned is involved in the illicit trafficking of narcotics.¹⁶

From the description above regarding the limitations of providing rehabilitation recommendations, it can be concluded that rehabilitation is only limited to users and addicts, while dealers cannot be rehabilitated. In addition, handling the problem of drug abuse has its own criteria and uniqueness in the sentencing of decisions by the Judge where abusers can be placed as victims and not merely considered as perpetrators of crimes.

Drug abusers can be placed as someone who has a disease so that imprisonment is not a solution but can be given rehabilitation to cure the disease. Therefore, SEMA No. 4 of 2010 is a reflection of the Supreme Court's view of drug users with an approach that prioritizes public health interests. So it can be concluded that determining a person who abuses drugs has the right to receive rehabilitation is based on several requirements, namely: The perpetrator has the awareness to undergo rehabilitation by making a statement and filling out a form to undergo rehabilitation measures at the BNN of Tana Toraja Regency; The perpetrator is declared positive for using narcotics based on the results of a forensic laboratory test if negative, the determination is through an examination by the Integrated Assessment Team; The perpetrator is not a recidivist, the perpetrator is not a drug dealer and is not involved in a drug trafficking network; Arrested or caught red-handed without evidence of narcotics or with evidence of narcotics under 1 gram; Classified as a drug addict or victim of drug abuse based on the results of the Integrated Assessment Team examination

The legal procedures for implementing the resolution of a criminal case in Indonesia currently adhere to three important objectives of a law enforcement principle that must be considered, namely legal certainty, benefit and justice.¹⁷ As

¹⁵Law Number 35 of 2009 concerning Narcotics

¹⁶SEMA No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

¹⁷Adami Chazawi, *Criminal Law Lesson 1*, (Jakarta: PT Raja Grafindo, 2007)

the legal paradigm in the eyes of the public continues to develop, they now expect that law enforcement will not be fixated on rigid articles of legislation but rather pay more attention to the interpretation of legal conditions that prioritize social values and conscience but remain within the applicable legal corridor as projected by Satjipto Rahardjo regarding the theory of "Progressive Law" which states that law is created for humans and not vice versa.¹⁸In the concept of punishment, there are 2 law enforcement options that need to be considered, namely Retributive Justice and Restorative Justice. Retributive Justice is a concept for resolving criminal cases by punishing the perpetrators, either by imprisonment or confinement. This is different from

Restorative Justice which prioritizes the creation of justice on both sides for both victims and perpetrators of criminal acts in addition to alternative punishments or penalties in the form of social work, rehabilitation and so on. Restorative Justice can be applied to drug addicts, abusers, victims of drug abuse, drug dependence, and one-day narcotics use, in terms of meeting the requirements such as when caught red-handed by investigators from the Police and/or investigators from the BNN, evidence of one-day use is found and also has assessment results from the Integrated Assessment Team on each transfer of case files. The existence of alternative case resolution through restorative justice can realize the principles of fast, simple and low-cost justice, as well as restore and/or develop the physical, mental, and social of suspects, defendants, or prisoners in narcotics cases which are carried out with integrated and coordinated treatment, care and recovery programs.¹⁹

The legal process for drug abusers is carried out comprehensively in an examination conducted by the Integrated Assessment Team. The examination involves a team of doctors which includes a psychological examination by a psychologist and an examination by a team of doctors. Furthermore, an examination by the BNN legal team is also carried out to ensure that drug abusers are only addicts and not drug dealers. The Assessment Team's analysis of drug addicts and victims of drug abuse will produce three categories of dependency levels, namely heavy, medium and light classes where each level of addict requires different rehabilitation. This is very necessary in order to operationalize Article 54 of the Narcotics Law where drug addicts are required to undergo medical rehabilitation and social rehabilitation.

The provisions of the law governing the problem of narcotics have been drafted and enforced, but even so, crimes involving narcotics have not been able to be reduced. In recent cases, many drug lords and dealers have been caught and given heavy sanctions, but other perpetrators seem to ignore it and even tend to expand

¹⁸Gilang Fajar Shadiq. "Law Enforcement Against Criminal Acts of New Psychoactive Substances Based on Law Number 35 of 2009 Concerning Narcotics". *Juridika Insight* 1, no 1 (2017): 35-53

¹⁹Haposan Sahala Raja Sinaga. "Implementation of Restorative Justice in Narcotics Cases in Indonesia". *Lex Generalis Law Journal* 2, no 7 (2021): 528-541

their areas of operation.²⁰The solution to the obstacles experienced in restorative justice is to always conduct outreach in the community, especially young people, regarding the dangers and impacts of drug abuse, as well as an understanding of restorative justice in the community so that later they can work together in the process of taking action against drug abuse.

4. Conclusion

The implementation of restorative justice for addicts in drug abuse crimes that the rationalization of Restorative Justice for Drug Addicts Based on Perja Policy No. 18 of 2021 can be in the form of termination of prosecution by the Prosecutor's Office against suspected drug addicts. As a step in the form of restorative justice with the terms and conditions stated in Perja No. 18 of 2021, in the process an Integrated Assessment Team was formed consisting of 3 agencies, namely the Prosecutor's Office, Police, and BNN. The coordination carried out by the 3 agencies produced the results of the eligibility of drug addict suspects to obtain restorative justice, which was then issued by the Prosecutor's Office. The obstacles faced in the implementation of restorative justice for addicts in drug abuse crimes are: a). Internal factors that hinder investigators from carrying out restorative justice during investigations, namely: Financial Constraints, Suboptimal professionalism and expertise of the police, and Weak law enforcement in Indonesia and less than optimal arrest times; b). External factors, namely the lack of public understanding of restorative justice carried out by the police, have resulted in a lack of public participation in the police, making the police's work a little difficult. The solution to the obstacles experienced in restorative justice is to always conduct socialization in the community, especially young people, regarding the dangers and impacts of drug abuse, as well as an understanding of restorative justice in the community so that later they can work together in the process of taking action against drug abuse.

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²⁰OC Kaligis, *Drugs and the Judiciary in Indonesia, Criminal Law Reform Through Legislation and the Judiciary*, Alumni, Bandung, 2002, p.260.

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