

## **Legal Review of Termination of Prosecution of Drug Abuse Based on Restorative Justice (Case Study of The Bengkalis District Attorney's Office)**

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**Abstract.** *The practice of legal policy in Indonesia, as part of the national legal policy in resolving narcotics crime cases, still positions the actions committed by narcotics abusers as serious crimes that must be punished with criminal sanctions. The purpose of this research is to examine and analyze the implementation of prosecution termination by the Prosecutor's Office against narcotics addicts through a restorative justice approach, and to examine and analyze the obstacles in the implementation of such prosecution termination along with the proposed solutions. This legal research uses an empirical legal research method. Empirical juridical research is legal research that applies legal principles and doctrines to review, observe, and analyze legal issues, while also assessing the implementation of the law in practice. The implementation of prosecution termination by the Prosecutor's Office against narcotics addicts through a restorative justice approach is a progressive step that emphasizes rehabilitation and recovery rather than punishment. Its legal basis includes the Prosecutor's Regulation of the Republic of Indonesia Number 18 of 2021 and Article 127 of the Narcotics Law, which recognizes addicts as victims who deserve medical and social rehabilitation. This approach also aims to reduce prison overcrowding and break the chain of drug distribution through selective handling and inter-institutional collaboration. However, the approach faces challenges in terms of unsynchronized legal substance, weak structural coordination, and cultural resistance, including public stigma. Proposed solutions include regulatory harmonization, enhanced prosecutorial capacity, strengthened rehabilitation facilities, and public anti-stigma campaigns. As part of long-term legal reform, the decriminalization of narcotics users is also considered important to shift the legal approach from punitive to a more humane and health-oriented model.*

**Keywords:** *Narcotics; Restorative Justice; Termination of Prosecution.*

### **1. Introduction**

The Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, in Article 1 paragraph (3) has emphasized that Indonesia is a state of law. The

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Indonesian State of Law is a state of law based on the values of Pancasila which is the philosophy and foundation of the state. As the foundation of the state, Pancasila which is a reflection of the soul of the Indonesian nation, should be the source of law for all existing legal regulations.<sup>1</sup>

In order to realize a prosperous, just and prosperous Indonesian society that is evenly distributed materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the quality of Indonesia's human resources, including their health, must continue to be maintained and improved.<sup>2</sup> So, to improve the welfare of the Indonesian people, it is necessary to make improvements in the field of medical treatment and health services, including ensuring the availability of certain medicines that are urgently needed and preventing the misuse and illicit trafficking of narcotics and their precursors.

Drug abuse in Indonesia has been going on for a long time, victims of abuse are teenagers, adults using various types of drugs. Drug abuse becomes more dangerous when combined with stronger substances such as morphine and heroin. In Law Number 35 of 2009 concerning Narcotics, it states that the use of narcotics is only permitted for medical purposes and/or scientific purposes, by observing the conditions stipulated by law, if used outside of those explained above, then it is included in drug abuse.<sup>3</sup>

Current global data shows that drug abusers have reached 296 million people in 2024, an increase of 12 million people compared to the previous year. This figure represents 5.8% of the world's population aged 15-64 years. Meanwhile, the results of the national survey on the prevalence of drug abuse in 2023 showed that the prevalence rate was 1.73% or equivalent to 3.3 million Indonesians aged 15-64 years. This data also shows a significant increase in drug abuse among the 15-24 age group.<sup>4</sup>

When talking about narcotics cases, the common opinion found is that the criminal justice system is used as an instrument used to handle narcotics cases. It is necessary to distinguish between the criminal justice system and criminal procedure law. As stated by Andi Hamzah, on the one hand, criminal procedure law and the criminal justice system are very different. Criminal procedure law is only about the law, while the criminal justice system is broader, also covering non-law.<sup>5</sup>

This is related to the guidance provided by prisons for prisoners who are part of the criminal justice system as a form of implementation of Law Number 22 of 2022 concerning Corrections, especially related to the complex problems that exist in prisons which

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<sup>1</sup>A. Rosyid Al Atok, *The Legal State of Indonesia*, Technical Implementation Unit of the Pancasila Study Center, State University of Malang, 2016, p. 15

<sup>2</sup>Anggraini, Dina Meilina, Ratih Tantriasari, Rudianto Rudianto, Zacky Nur Oktavian, and Day Ramadhani Amir. "Implementation of Social Justice: In an Effort to Realize a Prosperous Indonesian Society." In *Proceedings of the National Seminar on Education FPMIPA*, Vol. 2, No. 1, 2024. pp. 572-585.

<sup>3</sup>Sinaga, Merry Natalia. "Basic Idea of Double Track System: Criminal Sanctions and Actions as a Punishment System for Narcotics Abuse Crime Perpetrators." *Journal of Social Humanities Education Research* 3, No. 1 (2018): pp. 337-345.

<sup>4</sup>BNN Public Relations, HANI 2024: Society Moves, Together Against Drugs to Realize a Shining Indonesia, <https://bnn.go.id/hani-2024-masyarakat-bergerak-bersama-melawan-narkoba-mewujudkan-indonesia-bersinar/>

<sup>5</sup>Andi Hamzah, *Indonesian Criminal Procedure Law*, (Jakarta: Sinar Grafika, 2019), p. 76

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ultimately provide obstacles in the guidance of inmates. One of them is excess capacity or overcrowding.

The consequences of overcrowding include the poor health conditions and psychological conditions of inmates and prisoners.<sup>6</sup>the ease of conflict between prison inmates, coaching is not optimal and does not run according to regulations and there is a budget increase due to increased consumption of water, electricity, and food. The peak, riots and cases of escape of inmates and prisoners due to less than optimal supervision due to the imbalance in the number of prison guards or correctional officers with prison inmates.<sup>7</sup>Another undeniable impact of prison overcrowding is that it makes it difficult for prison authorities to control the circulation of narcotics in prisons, the rampant narcotics transactions carried out by prisoners in prisons so that if the overcrowding situation is allowed to continue, the greater the opportunity for the circulation of narcotics in prisons.

Focusing on the law with its criminal system, that Indonesia cannot be separated from the process of resolving a criminal case which is generally resolved through formal means, namely the judicial institution (Litigation). The stages of the criminal case handling process are carried out in a series of systems consisting of the investigation process, prosecution, trial, implementation of the judge's decision, and supervision and observation of the court decision.

In the application of a regulation implemented in the form of legislation must be based on the purpose of the law itself. As stated by Gustav Radbruch that the purpose of the law is not only to realize legal certainty and legal benefits, but also to realize legal justice.<sup>8</sup>This implementation will also not be separated from the criminal justice system as the implementer of existing legal regulations. This system has the aim of controlling crime in society.<sup>9</sup>Not only that, this system must also protect everyone without exception in the scope of justice, both substantive justice and procedural justice framed in restorative justice.

The practice of Indonesian legal policy as part of the state legal policy in resolving narcotics crime cases still positions the actions carried out by perpetrators of narcotics abuse as a serious crime that must be punished by criminal law. In fact, if the suspect is an abuser, victim or addict, then based on Law Number 35 of 2009 concerning Narcotics (Narcotics Law), rehabilitation should be carried out instead of receiving criminal punishment (prison).

The resolution of legal problems through the criminal justice mechanism has so far only been oriented towards the interests of fulfilling the rights of the perpetrators of the crime, and not oriented towards the interests of the victims of the crime. The imposition of punishment is only oriented towards how to give revenge to the perpetrators of the crime

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<sup>6</sup>Sianturi, Letares LR, and Padmono Wibowo. "Implementation of Permenkumham Number 11 of 2017 Concerning the Grand Design for Handling Overcrowding in Class IIB Siborongborong Prison." *Undiksha Citizenship Education Journal* 10, No. 1 (2022): pp. 21-32.

<sup>7</sup>Directorate General of Corrections, Ministry of Law and Human Rights, *Hacking the Assimilation Policy for Prisoners*, accessed from <http://www.ditjenpas.go.id/meretaskebijakan-asimilation-bagi-narapidana>,

<sup>8</sup>O. Notohamidjojo, *Basic Questions of Legal Philosophy* (Salatiga: Griya Media, 2011), p. 33

<sup>9</sup>Nursyamsudin Nursyamsudin and Samud Samud, "Integrated Criminal Justice System According to the Criminal Procedure Code," *MK: Jurnal Kajian Hukum Islam* 7, no. 1 (June 1, 2022): p. 150

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while still giving their rights without making the interests of the victim a priority such as how the victim suffers, and the extent of the losses experienced by the victim.<sup>10</sup>

The Attorney General's Office of the Republic of Indonesia as a government institution in the structure of the power of law enforcement and justice agencies is authorized to exercise state power in the field of prosecution. In carrying out prosecution, the prosecutor acts for and on behalf of the state and is responsible according to the hierarchical channels. In carrying out prosecution, the prosecutor must have valid evidence, for the sake of justice and truth based on the Almighty God. As the executor of his role, in carrying out his duties and authorities, the prosecutor acts based on the law and respects religious and moral norms, and is obliged to explore the values of humanity, law, and justice that live in society. The Attorney General's Office as the authorized party in the prosecution stage, is expected to provide a deterrent effect on the perpetrator in making an indictment with the punishment charged by the Public Prosecutor while still fulfilling the perpetrator's rights.<sup>11</sup>

In Perja No. 15 of 2020, it contains the authority of the Prosecutor to stop prosecution based on restorative justice as a breakthrough in resolving criminal acts. Restorative justice is an approach to resolving criminal acts that is currently being widely voiced in various countries.<sup>12</sup> Through a restorative justice approach, it is hoped that victims and perpetrators of criminal acts can achieve peace by prioritizing a win-win solution, and emphasizing that the victim's losses are replaced and the victim forgives the perpetrator of the crime.

Another effort made is that the Attorney General of the Republic of Indonesia, Burhanuddin, has issued and stipulated Guideline Number 18 of 2021 concerning the Legal Review of Termination of Prosecution of Drug Abusers based on restorative justice as an Implementation of the Prosecutor's Dominus Litis Principle.

Guideline Number 18 of 2021 is the basis for handling cases included in Law Number 35 of 2009 concerning Narcotics, specifically on drug abuse in Article 124 paragraph (1) of the Narcotics Law. Handling of drug abuse cases was previously submitted with the law of imprisonment for one to four years. With the presence of Guideline Number 18 of 2021, imprisonment of the perpetrators is not necessary but by prioritizing the rehabilitation process to implement the principles of fast, simple, and low-cost justice, and the principle that criminal law is the last resort in punishment (*ultimum remedium*), cost and benefit analysis, recovery of the perpetrator.

Rehabilitation for drug addicts is a treatment process to free addicts from dependence, and the period of rehabilitation is counted as the period of serving the sentence.<sup>13</sup> Rehabilitation for drug addicts is also a form of social protection that integrates drug addicts into social order so that they no longer abuse drugs. Based on Law Number 35 of 2009 concerning Narcotics, there are at least 2 (two) types of rehabilitation, namely medical and social.

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<sup>10</sup>Rizki Prananda Tambunan, Legal Review of the Implementation of the Restorative Justice Concept in Traffic Accidents, Faculty of Law, University of North Sumatra, Medan, 2014. p. 14

<sup>11</sup>Ishaq, Basics of Legal Science, Sinar Grafika, Jakarta, 2009, p. 9

<sup>12</sup>Wulandari, C. Settlement of Criminal Cases Through Penal Mediation: Access to Justice at the Police Level, HUMANI Journal of Law and Civil Society, 8 (1), 94, 2018, p. 1.

<sup>13</sup>Dina Novitasari, Rehabilitation of Child Victims of Drug Abuse, Khaira Ummah Law Journal, Vol. 12 No. 4, 2017, p. 923.

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One example of a case with the suspect EO suspected of committing a narcotics crime as regulated in First Article 114 paragraph (1) Jo Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics or Second Article 112 paragraph (1) Jo Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics or Third Article 127 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) ke-1 of the Criminal Code received at the Prosecutor's Office on January 14, 2025 from the Bengkalis Police Investigator. Recommendation Number: R/016/XI/XI/KA/PB.XXXX/BNNK An. EO Bin Sanrahmat on November 7, 2024, the results of which were signed by AKBP KY, as the Head of the Pelalawan BNNK. Considering the issuance of the Integrated Assessment Letter from the Pelalawan Regency BNNK dated November 7, 2024, there needs to be a Legal Review of the Termination of Prosecution of Drug Abusers based on restorative justice at the Bengkalis District Attorney's Office.

Based on the background above, the author is interested in conducting research with the title "Legal Review of Termination of Prosecution of Drug Abusers Based on Restorative Justice (Case Study of Bengkalis District Attorney's Office)."

## 2. Research Methods

In reality, this research was conducted to analyze problems by combining legal materials with field conditions, where the results of this analysis can be used as a reference in implementation. law enforcement against criminal cases, of course also by looking at the applicable regulations. By using the statute approach and case approach, the answers to the problems raised in this study will be presented. *Statute approach* is an approach that refers to statutory regulations, while the case approach is an approach that is based on cases that have occurred.<sup>14</sup>

## 3. Results and Discussion

### 3.1. Implementation of Termination of Prosecution by the Prosecutor's Office Against Drug Addicts Using a Restorative Justice Approach

Law enforcement seeks to create a fair environment for all, ensuring equal treatment before the law regardless of social status. Justice involves equal rights and fair opportunities in the legal process. Legal certainty includes clear rules that are consistently enforced to understand the consequences of actions. Law enforcement aims to prevent crime, protect individual rights, promote peace, and support community welfare. Responsive to societal changes, involving police, prosecutors, and courts in real actions to implement the rules. Law enforcement creates a social order based on law. In the context of drug abuse, rehabilitative law enforcement refers to the Indonesian Attorney General's Regulation No. 18/2021. The prosecution stage includes medical and social rehabilitation. Medical

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<sup>14</sup>Ibid p. 39.

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rehabilitation focuses on detoxification, treatment, and therapy to overcome addiction. Social rehabilitation improves social relationships and supports reintegration into society.<sup>15</sup>

It is important to understand and comply with the legal requirements and processes set out in the regulation. The creation of this regulation is aimed at creating a clear, responsive, and community-oriented legal framework. The objectives include legal reform to improve the effectiveness, fairness, and utility of the law enforcement system related to drug abuse. Regulation of the Attorney General of the Republic of Indonesia No. 18 of 2021 provides a detailed legal basis for law enforcement related to drug abuse with a restorative justice approach. This regulation establishes procedures, criteria, and mechanisms for handling these cases. With clear regulations, it is hoped that law enforcement will be carried out fairly and proportionally, preventing legal uncertainty.

This regulation is responsive to the needs of the community, reflecting the aspiration for a holistic and restorative approach to dealing with drug abuse cases. With a focus on restorative justice, this regulation seeks to provide better solutions, reflecting attention to the recovery and social reintegration of perpetrators, as well as the community's aspirations to prevent drug abuse in the future. The implementation of the regulation involves law enforcement officers, such as the police and prosecutors. They are responsible for implementing the regulation in accordance with the provisions that have been set. Periodic evaluations are carried out to ensure the effectiveness of implementation. Criminal law enforcement ensures that the regulation is enforced consistently and effectively, with a focus on accountability, eradication of crime, and protection of human rights.

The importance of forensic laboratory examination results in drug abuse law enforcement is highlighted. These results are a strong basis for determining someone as a drug abuse suspect, ensuring scientific certainty and credibility in law enforcement. Forensic laboratory examinations show that law enforcement is carried out fairly, avoiding mistakes due to assumptions or prejudices. This involves a scientific process to ensure that mistakes only occur if there is objective evidence in drug abuse cases. In providing rehabilitation, prosecutors use the "know your suspect" method to understand the suspect's history in the drug network. This helps law enforcement more effectively handle drug abuse cases holistically.<sup>16</sup>

Arrests without sufficient or limited evidence can lead to a proactive rehabilitation approach by prosecutors, focusing on the health and social aspects of the offender. Prosecutors should carefully assess the suspect's qualifications as a drug addict based on medical and psychological assessments, encouraging a rehabilitation approach rather than criminal prosecution. Consideration of family involvement, previous rehabilitation limitations, and a letter of guarantee indicate an approach based on individual characteristics and social support. The rehabilitation application process involves steps such as a transfer of responsibility, a letter of willingness, and a letter of guarantee from the family, indicating a

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<sup>15</sup>Hastuti, Ari, Joko Sriwidodo, and Basuki Basuki. "Implementation of Prosecutor's Regulation Number 18 of 2021 Concerning Narcotics Rehabilitation Based on Restorative Justice." *SINERGI: Scientific Research Journal* 1, No. 3 (2024): pp. 124-132.

<sup>16</sup>Silitonga, Christoper. "Juridical Analysis of the Role of Forensic Evidence in Proving Criminal Acts of Narcotics Trafficking (Case Study of Decision Number 130/Pid. sus/2023/PT DKI) Juridical Analysis The Role of Forensic Evidence in Proving Criminal Acts of Narcotics Trafficking." PhD diss., NATIONAL UNIVERSITY, 2024.

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focus on rehabilitation rather than conventional prosecution. The steps of the rehabilitation application involve an assessment by the public prosecutor, a decision by the district attorney, and consideration of the suspect's eligibility and needs. This approach reflects a careful approach to providing rehabilitation through the legal process, ensuring that it is a last resort and is supported by careful consideration by legal authorities.

In principle, drug abusers are guaranteed medical rehabilitation and social rehabilitation as stipulated in Article 4 point (d), and also Article 54 which states that "Drug abusers and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation" but in criminal provisions criminal sanctions have also been regulated for people who use narcotics as stipulated in Article 127. However, because the Indonesian Criminal Justice System adheres to the principle of legality, in general practice, all narcotics cases including drug users for themselves who are not dealers are usually always processed legally in accordance with legal norms as stipulated in the Narcotics Law, namely with the threat of criminal sanctions in prison. So that drug abusers for themselves who are not dealers, where initially as victims who should be rehabilitated, must undergo imprisonment as stipulated in Article 127. Not only that, drug users who are not dealers when faced in court will be charged with other overlapping articles. Logically, users who obtain narcotics illegally, then of course there are also several actions carried out by the user as formulated in Article 111 and/or Article 112 or even Article 114 which have elements of buying, controlling, storing, or possessing which are ultimately used for their own use.<sup>17</sup>

The purpose of criminal punishment in narcotics user crimes as regulated in Article 127 of the Narcotics Law must be carried out selectively regarding whether the perpetrator is a user or a dealer. This selective action must also be applied in Article 127 of the Narcotics Law which imposes criminal sanctions for groups I to III as victims, so every abuser has the right to obtain medical and social rehabilitation rights. The application of medical and social rehabilitation as regulated in Article 127 paragraph (3) of the Narcotics Law aims to:

1. The purpose of punishment is for prevention
2. This prevention is not the final aim but is a means to achieve a higher goal, namely social welfare.
3. Only violations of the law can be blamed on the perpetrator of the crime in the form of intent or negligence as a condition for imposing a criminal penalty.

Law enforcement officers must see from the side of prevention and handling. These two things must complement each other and be related so that narcotics crimes can be suppressed and illicit drug trafficking can be prevented. This view is said to be forward looking and at the same time has a preventive nature (deterrence).

The drug abusers are victims as indicated by the provision that drug abusers can be sentenced to rehabilitation. This means that the Narcotics Law on the one hand still considers drug abusers as perpetrators of criminal acts, and on the other hand, they are victims of drug abuse, namely:

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<sup>17</sup>Hapsari, Indira, Eko Soponyono, and RB Sularto. "Criminal Law Policy in Efforts to Combat Narcotics Crimes by Child Offenders." *Diponegoro Law Journal* 5, No. 3 (2016): pp. 1-14.

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1. The limits of human rights protection in the Narcotics Law. Within the limits that are possible, protection of the human rights of Indonesian citizens, against several principles contained in the Narcotics Law.

2. Inhibiting factors in the implementation of rehabilitation for perpetrators of narcotics crimes The criminal punishment system for narcotics abuse cannot be separated from the criminal punishment system adopted in Indonesian law.

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 in the form of policy enforcement (Supreme Court Regulations and Supreme Court Circulars), but its implementation in the Indonesian criminal justice system is still not optimal. Restorative justice is an alternative to resolving criminal cases which in the criminal justice procedure mechanism focuses on punishment which is changed into a process of dialogue and mediation involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly create an agreement on a fair and balanced settlement of criminal cases for both the victim and the perpetrator by prioritizing restoration to the original state, and restoring good relations in society.<sup>18</sup>

The application of restorative justice in cases of drug addicts can help break the chain of drug trafficking.<sup>19</sup> Addicts often become part of the drug trafficking chain due to economic pressure or the influence of the dealer network. By providing proper recovery and assistance, addicts can escape the trap of the drug trafficking network, and in the long term can reduce the demand and distribution of narcotics. In accordance with the Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021 concerning the Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Principle.

The settlement of criminal cases through the mechanism of termination of prosecution based on restorative justice is proof that the state through its law enforcers is present to provide humanism in law enforcement in order to create a sense of justice in the midst of society, but it needs to be underlined that restorative justice does not mean providing room for forgiveness for criminals to repeat similar mistakes.<sup>20</sup>

The implementation of the termination of prosecution by the prosecutor's office against drug addicts with a restorative justice approach is a progressive step in the criminal justice system in Indonesia. This approach is a form of paradigm shift from a retributive system that emphasizes punishment, to a more rehabilitative and humanistic system. In the case of drug addicts, this approach no longer views them solely as criminals, but as individuals who need help and recovery.

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<sup>18</sup>Azizah, Ainul, I. Gede Widhianan Suarda, and Mardiyono Mardiyono. "The Principle of Restorative Justice in Termination of Criminal Case Prosecution Based on Attorney General Regulation Number 15 of 2020." *Journal of Law, Politics and Social Sciences* 2, No. 2 (2023): pp. 243-264.

<sup>19</sup>Andrianto, Sis Nanda Kus, Setiyono Setiyono, Nahdiya Sabrina, and Novita Listyaningrum. "Implementation of Restorative Justice in Handling Drug Abuse by the Directorate of Drug Investigation of the NTB Regional Police." *SEIKAT: Journal of Social, Political and Legal Sciences* 3, No. 4 (2024): pp. 321-326.

<sup>20</sup>Harefa, Arianus, and Hasaziduhu Möhö. "Criminal Case Resolution Mechanism Through the Implementation of Restorative Justice at the South Nias District Attorney's Office." *Journal of Education and Development* 12, No. 2 (2024): pp. 557-564.

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Legally, termination of prosecution based on restorative justice does not conflict with the principles of criminal law.<sup>21</sup> In fact, this approach reflects the principle of *ultimum remedium*, namely that criminal law should be the last resort in resolving a case. For drug addicts, this approach allows the state to act wisely and proportionally in providing a legal response.

Furthermore, the application of restorative justice in drug cases contributes to reducing the overcapacity of correctional institutions in Indonesia. Drug addicts who should undergo medical treatment, if sentenced to prison, are at risk of experiencing health degradation and increased dependency. By diverting to rehabilitation, the state not only saves individuals, but also saves law enforcement resources.

In its implementation, the Prosecutor's Office has a central role as the holder of the principle of *dominus litis*, namely the party that has full control over criminal cases from the investigation stage to prosecution. Therefore, the initiative to stop the prosecution of drug addicts must come from the Public Prosecutor based on the results of the assessment, humanitarian considerations, and public interest.<sup>22</sup>

To improve the effectiveness of the implementation of restorative justice for drug addicts, strengthening of regulations and integration between institutions is needed. The government needs to encourage strengthening of implementing regulations and strengthening the capacity of human resources, both in the prosecutor's office, rehabilitation institutions, and police officers involved in case investigations.

On the other hand, community participation is also an important element in the success of this approach. The community must be given an understanding that addicts are victims of substance abuse who need help, not criminals who must be ostracized. Social environmental support is very important in determining the success of rehabilitation and reintegration of addicts into society.

It should also be emphasized that restorative justice does not mean ignoring the law, but rather placing the law in a more humanistic framework. The main goal is recovery, both for the perpetrator, the victim (if any), and the community. Thus, this approach still maintains the principle of substantive justice.

Theoretically, the application of restorative justice to drug addicts is in line with modern criminal theory that emphasizes rehabilitation and social reintegration. This is different from the classical approach that emphasizes retaliation. In this case, criminal law becomes an instrument of protection and recovery, not just punishment.

From a practical perspective, this approach creates efficiency in handling cases and encourages cross-sector collaboration. The prosecutor's office no longer works alone, but involves other institutions in the legal process. This opens up space for improving the criminal justice system to be more inclusive and responsive to individual needs.

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<sup>21</sup>Dawansa, Rian, and Echwan Iriyanto. "Termination of Prosecution Based on Restorative Justice." *Journal of Law* 39, No. 1 (2023): pp. 12-30.

<sup>22</sup>Sihombing, Dedy Chandra, Alvi Syahrin, Madiasa Ablisar, and Mahmud Mulyadi. "Strengthening the Authority of the Prosecutor as *Dominus Litis* as an Effort to Optimize Criminal Law Enforcement Oriented to Restorative Justice." *Locus: Journal of Legal Science Concepts* 3, No. 2 (2023): pp. 63-75.

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The successful implementation of restorative justice for drug addicts can be the basis for expanding this approach to other types of minor crimes. This is important to create a justice system that is not merely repressive, but also transformative in responding to crime.<sup>23</sup>

This policy also supports the achievement of sustainable development goals (SDGs), especially in the aspects of health, welfare, and justice. Recovered and productive addicts make a positive contribution to society, while reducing the burden on the state in dealing with the social and economic impacts of drug abuse.

Thus, the implementation of the termination of prosecution by the prosecutor's office against drug addicts based on restorative justice is a legal policy that should be maintained and developed. For this reason, commitment from all stakeholders is needed to strengthen the legal basis, institutional support, and public trust in this approach as part of the reform of the national criminal justice system.

One example of a Narcotics Addict case whose prosecution was stopped at the Bengkalis District Attorney's Office is, based on the Order of the Head of the Bengkalis District Attorney's Office Number: PRINT XXX / L.4.13 / Enz.2 / 01 / 2025 dated January 14, 2025 to facilitate Peace based on Restorative Justice in a criminal case with the name of the suspect EY who is suspected of violating Article 114 paragraph (1) Jo Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics or Article 112 paragraph (1) Jo Article 132 paragraph (1) of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics or Article 127 paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics Jo Article 55 paragraph (1) ke-1 of the Criminal Code, we respectfully request approval for the criminal act to be stopped based on restorative justice.

The case position of the criminal case in question is as follows:

1. That on Thursday, September 12, 2024 at around 15.00 WIB, witnesses S, witnesses RA, witnesses DAS, witnesses AWK and witnesses HP arrested suspect EY when he had just finished consuming narcotics in the form of crystal methamphetamine together with witnesses FH and witnesses J.
2. That when the search was carried out, 1 (one) package of methamphetamine and a methamphetamine smoking device was found on the dining table in front of the defendant when he was arrested, 1 (one) pyrex glass containing used methamphetamine, 1 (one) stove, 2 (two) pipettes, 1 (one) lighter and 1 (one) silver Oppo brand Android cellphone.
3. That the suspect obtained the crystal methamphetamine narcotics by buying it together for Rp. 150,000 (one hundred and fifty thousand rupiah) from someone named R (DPO) and witness SI.

### **3.2. Obstacles in the Implementation of Termination of Prosecution of Drug Addicts Using a Restorative Justice Approach and Its Solutions**

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<sup>23</sup>Beremanda, Lukas Permadi Orlando, Hafrida Hafrida, and Elizabeth Siregar. "Principles of Restorative Justice in Termination of Prosecution Through Compensation and Restitution." PAMPAS: Journal of Criminal Law 4, No. 2 (2023): 277-287.

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Restorative Justice as a settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation. So that in the implementation of the Guidelines for Providing Narcotics Rehabilitation Based on Restorative Justice, the Prosecutor includes pre-prosecution, prosecution, supervision, training and financing of the settlement.<sup>24</sup> In the pre-prosecution stage, prosecutors conduct research on narcotics cases and the guidelines provide direction for prosecutors to consider providing rehabilitation as an option for resolving cases. In the prosecution process, prosecutors prepare indictments and the guidelines provide guidance on considerations for providing rehabilitation. After a court ruling, the guidelines provide direction regarding the prosecutor's responsibility in supervising the implementation of rehabilitation by rehabilitation institutions. Structural problems in providing rehabilitation related to the authority of agencies such as the Police, BNN, and the Prosecutor's Office can be obstacles, and the implementation of Prosecutor's Regulation Number 18 of 2021 needs to be reviewed. The dominus litis authority of the Indonesian Attorney General's Office in handling narcotics cases needs to be followed by ideal implementation in accordance with the Prosecutor's Regulation. Obstacles related to facilities and infrastructure at the Prosecutor's Office, such as limited rehabilitation facilities, need to be improved to increase the effectiveness of the rehabilitation program. Optimizing the program involves improving infrastructure, procuring facilities, and collaborating with external rehabilitation institutions, as well as increasing financial support and human resources.

In terms of drug abuse, rehabilitative law enforcement refers to the Indonesian Attorney General's Regulation No. 18/2021. The prosecution stage includes medical and social rehabilitation. Medical rehabilitation focuses on detoxification, treatment, and therapy to overcome addiction. Social rehabilitation improves social relationships and supports reintegration into society.

It is important to understand and comply with the legal requirements and processes set out in the regulation. The creation of this regulation is aimed at creating a legal framework that is clear, responsive, and in accordance with the needs of the community. The goals include legal reform to improve the effectiveness, fairness, and usefulness of the law enforcement system related to drug abuse.<sup>25</sup>

Indonesian Attorney General's Regulation No. 18 of 2021 provides a detailed legal basis for law enforcement related to drug abuse with a restorative justice approach. This regulation establishes procedures, criteria, and mechanisms for handling these cases. With clear regulations, it is hoped that law enforcement will be carried out fairly and proportionally, preventing legal uncertainty.<sup>26</sup>

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<sup>24</sup>Yulianto, Taufiq. "Restorative Justice as an Alternative to Settling Criminal Cases." *Orbith: Scientific Journal of Engineering and Social Development* 19, No. 2 (2023): pp. 154-159.

<sup>25</sup>Riwanto, A. *History of Law, Concepts, Theories, and Methods in the Development of Legal Science*. Karanganyar: Oase Pustaka, 2016, p. 72

<sup>26</sup>Hastuti, Ari, Joko Sriwidodo, and Basuki Basuki. "Implementation of Prosecutor's Regulation Number 18 of 2021 Concerning Narcotics Rehabilitation Based on Restorative Justice." *SINERGI: Scientific Research Journal* 1, No. 3 (2024): pp. 124-132.

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This regulation is responsive to the needs of the community, reflecting the aspiration for a holistic and restorative approach to dealing with drug abuse cases. With a focus on restorative justice, this regulation seeks to provide better solutions, reflecting attention to the recovery and social reintegration of the perpetrator, as well as the community's aspiration to prevent future drug abuse.

The implementation of the rules involves law enforcement officers, such as the police and prosecutors. They are responsible for implementing the rules in accordance with the provisions that have been set. Periodic evaluations are carried out to ensure the effectiveness of implementation. Criminal law enforcement ensures that the rules are enforced consistently and effectively, with a focus on accountability, crime prevention, and human rights protection.

According to the law, drug addicts on the one hand are perpetrators of drug abuse crimes, namely the provisions of the drug law that regulates the prison sentences given to drug abusers. Then, on the other hand, it can be said that drug addicts are victims, as indicated by the provisions that drug addicts can be sentenced to rehabilitation. This means that the law on the one hand still considers drug addicts as perpetrators of criminal acts, and on the other hand, they are victims of the drug abuse they commit.<sup>27</sup>

Law No. 35 of 2009 concerning Narcotics basically has 2 (two) sides, namely the humanist side towards drug addicts, and the tough and firm side towards drug dealers, meaning that Law No. 35 of 2009 concerning Narcotics guarantees punishment for drug addicts/victims of drug abuse in the form of rehabilitation, because basically they are victims, who must be cured, while for drug dealers in the form of imprisonment and some are even given the death penalty, because they are considered very evil and can damage the nation's generation.

In reality, there are always people who are addicted to narcotics, where the actions carried out by the perpetrators in Law No. 35 of 2009 concerning Narcotics are sentenced to prison. When the prosecutor charges and in his demands uses Article 127, the judge is dominant giving a prison sentence, as if not caring that the defendant is also a victim of the crime he committed, someone who must be helped to recover so that he is free from the clutches of narcotics that have addicted him, especially when the defendant plays a role not only as an abuser (addict) but also as a dealer (related to the illicit trafficking of narcotics).

Former drug addicts cannot always adjust to the environment when they return to society. One of the causes that influences the difficulty of adjusting former drug addicts to environment is the inability of stakeholders and the wider community to protect and supervise drug addicts. The stigma of society towards former drug addicts that has been built has resulted in social attributes that are built with the aim of discrediting an individual or group regarding drug abuse. This has apparently been built in society through the process of internalizing social norms that already exist in society regarding the determination of good and bad values of social behavior. Society is suspected of already believing that drugs and alcohol are the root of criminal acts, so that individuals involved in drug abuse or

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<sup>27</sup>Pandiangan, HJ, & Siringoringo, P. The Dangers of Drugs in the Perspective of Indonesian Criminal Law as a Development of Drug Abuse Prevention for the Young Generation of Indonesia. *Jurnal Comunitas Servizio*, 1(2), 2019, p. 162.

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alcohol are one of the deviant behaviors that will refer to stigma. The visible impact is that former drug addicts are alienated in the process of their social integration in society

The implementation of the termination of prosecution of drug addicts with a restorative justice approach is a legal innovation that has not been fully implemented effectively. This approach, although it has received normative legitimacy through laws and regulations such as Article 140A of the Prosecutor's Office Law and the Attorney General's Guidelines Number 18 of 2021, faces various obstacles originating from aspects of legal substance, legal structure, and legal culture as stated by Lawrence M Friedman in his theory of the Legal System.

In terms of legal substance, the problem arises from the lack of synchronization of laws and regulations governing restorative justice. Although the prosecutor's office has a legal basis to stop prosecution, Law Number 35 of 2009 concerning Narcotics still tends to be repressive and does not explicitly provide broad space for a restorative approach to addicts. This creates a dualism of norms that confuses law enforcement officers in implementing this policy consistently.<sup>28</sup>

Inconsistencies between applicable legal norms also create legal uncertainty. For example, not all provisions in the Narcotics Law recognize addicts as victims who are entitled to rehabilitation. Some officials still interpret abusers as criminals who deserve to be punished, not rehabilitated. This hampers the implementation of the restorative approach because the legal substance does not fully support the direction of the recovery policy.

In terms of legal structure, one of the main obstacles is the lack of understanding and capacity of prosecutors in implementing the restorative justice approach. Not all prosecutors in the regions fully understand the procedure for terminating prosecution based on restorative justice. Some are even still hesitant to implement it because they are worried that it will be considered a deviation from positive law or an abuse of authority.<sup>29</sup>

Coordination between institutions involved in the implementation of restorative justice is still weak. The implementation of the termination of prosecution of drug addicts involves various institutions, such as the National Narcotics Agency (BNN), hospitals, the Social Service, and rehabilitation institutions. The lack of integration in the implementation of tasks in the field often causes the process to be slow or even fail to be implemented.

Another obstacle is the lack of adequate rehabilitation facilities and infrastructure, especially in remote areas. Many areas do not have standardized drug rehabilitation centers, both in terms of medical and social services. As a result, prosecutors have difficulty referring addicts to the right place, which ultimately makes the process of terminating the prosecution unsustainable.

Limited human resources are also a serious structural problem. The number of experts such as addiction counselors, psychiatrists, or social workers who understand rehabilitation programs is still very minimal. The absence of these professionals worsens the quality of the rehabilitation process which is an absolute requirement in restorative justice for drug addicts.

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<sup>28</sup>Interview with the Head of the Bengkalis District Attorney's Office, Dr Sri Odit Megonondo, SH, MH

<sup>29</sup>Interview with the Head of the Bengkalis District Attorney's Office, Dr Sri Odit Megonondo, SH, MH

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In terms of legal culture, many law enforcement officers still have a conservative view of drug users. They tend to apply a retributive approach rather than a restorative one. The rigid bureaucratic culture and resistance to change have caused many prosecutors to be reluctant to apply new approaches even though the legal basis is available.

Stigmatization of addicts is also a very inhibiting cultural barrier. Society tends to view addicts as criminals who must be thrown in prison. This view makes social support for restorative justice programs very minimal. In fact, the success of addict recovery is very dependent on the support of the surrounding environment.

The legal culture of the community that has not been educated about restorative justice is an important factor that hinders the effectiveness of the implementation of this policy. Many still assume that not punishing addicts means that law enforcement officers are not firm or are allowing things to happen. In fact, the restorative approach aims for long-term recovery and protection.

The role of the media also influences public legal culture. The media tends to be more interested in highlighting cases of arrests and severe sentences for addicts rather than successful rehabilitation. This kind of reporting forms a false public opinion and reinforces the narrative that criminalization is the only way to overcome drug abuse.

To overcome obstacles in the substantive aspect, it is necessary to harmonize the laws and regulations between the Narcotics Law and the provisions in the Prosecutor's Law. It is necessary to revise the Narcotics Law to accommodate the principle of restorative justice more explicitly, especially in guaranteeing the rights of addicts to undergo rehabilitation without going through the criminal process.<sup>30</sup>

It is also necessary to issue implementing regulations that explain technically and operationally how restorative justice-based prosecution termination is implemented, including indicators of its success. These guidelines must be disseminated comprehensively to all district attorneys' offices in Indonesia.

Structural aspects, increasing the capacity of prosecutors through special education and training on restorative justice is very urgent. Prosecutors must be equipped with a rehabilitative perspective, restorative communication skills, and the ability to work together across sectors to carry out their roles optimally.

Establishment of a permanent and system-based inter-institutional coordination mechanism needs to be attempted. The Prosecutor's Office, BNN, hospitals, and the Social Service need to create a joint protocol so that the assessment process, rehabilitation referrals, and monitoring of addicts run in an integrated manner and do not overlap.

Local governments also need to be encouraged to provide adequate rehabilitation infrastructure, both in terms of physical, expert personnel, and budget. This must be included in the priority of regional health and social programs so that the sustainability of rehabilitation can be maintained.

To improve the legal culture, it is necessary to conduct continuous educational campaigns to the public about the concept of restorative justice and the importance of viewing addicts as victims who need to be restored, not as criminals who must be sentenced to prison.

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<sup>30</sup>Interview with the Head of the Bengkalis District Attorney's Office, Dr Sri Odit Megonondo, SH, MH

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Religious figures, community leaders, and civil society organizations need to be involved in addict recovery programs to create social networks that support social reintegration. This effort also helps break down the social stigma that has been a major barrier to successful rehabilitation.

The mass media must be invited to become strategic partners in spreading positive narratives about the success of restorative justice. Coverage of the stories of addicts who have successfully recovered and returned to society can build public trust in the effectiveness of this approach.

Internal evaluation and supervision within the prosecutor's office must be strengthened so that the implementation of restorative justice is not misused or used as a compromise gap in law enforcement. This supervision system is also an important part of the accountability of the prosecutor's institution in carrying out its role.

Twenty, overall, the implementation of the termination of prosecution of drug addicts based on restorative justice requires not only legal substance reform, but also a change in the mindset of law enforcers and the community. Synergy between normative changes, institutional strengthening, and improvement of legal culture are the main prerequisites for this approach to be able to run effectively and sustainably.

The imposition of prison sentences on drug users before the Narcotics Law was changed because there had been a legal breakthrough, so the imposition of criminal sanctions on drug users was not sentenced to prison but in the judge's verdict, they could be ordered to be placed in a rehabilitation center. The expected punishment model is that someone who is caught using drugs for themselves since being caught by the police or BNN is immediately put in a rehabilitation center. During the legal process until the verdict is passed by the panel of judges, they remain in the rehabilitation center to undergo treatment and recovery from drug addiction.

The long journey of drug regulation is shrouded in debates between the criminal approach and the health approach that trigger the tug of war of interests from the two different approaches. However, if examined more deeply, the formation of the Narcotics Law realizes that there must be a change in the approach to handling drug users, namely from a criminal approach to a public health approach.

For that reason, in law enforcement against drug addicts in Indonesia, it is important to implement a more progressive decriminalization, namely the decriminalization of drug users. Decriminalization is basically a term in the formation of laws, a counter form of criminalization. In the decriminalization model, drug users (usually also possession of drugs in certain amounts) are no longer objects of criminal law. In Indonesia itself, the practice of decriminalization is very common. As part of the process of forming laws, decriminalization is also widely known internationally. The world is starting to move to reduce the use of criminal law in many criminal acts, one of which is narcotics. Decriminalization of certain acts related to narcotics has begun to be carried out in several countries.

#### **4. Conclusion**

1. The implementation of the termination of prosecution by the Prosecutor's Office against drug addicts with a restorative justice approach is a legal breakthrough that focuses on

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recovery and rehabilitation rather than punishment, with a clear legal basis such as the Indonesian Prosecutor's Office Regulation Number 18 of 2021 and Article 127 of the Narcotics Law. This approach emphasizes that addicts are victims of substance abuse, not merely perpetrators of crimes, so they deserve to undergo medical and social rehabilitation. This process involves an assessment from the BNN and rehabilitation institutions, as well as family support, to ensure that addicts receive the right intervention. Law enforcement is carried out selectively and proportionally by paying attention to the results of the assessment, minimal evidence, and the "know your suspect" approach by the prosecutor as the holder of the dominus litis principle. This approach not only reduces the overcapacity of correctional institutions, but also breaks the chain of drug trafficking and increases the effectiveness of more humane and responsive law enforcement. Despite facing various challenges in terms of regulations, institutional structures, and still repressive legal culture, this approach has proven to create efficiency in the justice system, encourage cross-sector collaboration, and is in line with the goals of modern criminal justice that are oriented towards prevention, substantive justice, and social welfare. Community support and consistency of the apparatus in implementation are the keys to the success of this approach as a form of transformation of the criminal justice system to be fairer, more rehabilitative, and more civilized.

2. The implementation of the termination of prosecution of drug addicts based on restorative justice faces various obstacles in terms of substance, structure, and legal culture, as explained by Lawrence M. Friedman's legal system theory. In terms of substance, there is a lack of synchronization between Law No. 35 of 2009 concerning Narcotics which is still repressive and the Regulation of the Indonesian Attorney General No. 18 of 2021 which encourages a rehabilitative approach, thus creating legal uncertainty and ambiguity in the implementation of rehabilitation as an addict's right. In terms of structure, the obstacles lie in the limited understanding of prosecutors, weak coordination between agencies such as the BNN, the Social Service, and the Attorney General's Office, and the lack of facilities and human resources to support rehabilitation in various regions, especially remote areas. Meanwhile, culturally, the conservative views of law enforcement officers, bureaucratic resistance to new approaches, community stigma, and negative media narratives towards addicts also hamper the effectiveness of the implementation of restorative justice.

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