

Optimization of the Role of Prosecutors in Criminal Law Policy for Depenalization of Drug Addicts

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Abstract. *This study aims to determine and obtain data regarding legal protection for victims of fraudulent investment crimes using a restorative justice approach, then the obstacles faced by the police in handling this case and how to resolve this case using a restorative justice approach. The juridical-sociological research method is an approach in legal research that combines legal (juridical) and social (sociological) aspects to understand how law interacts with society and its impact on social order. This method involves collecting qualitative data, such as interviews, observations, and document analysis, to describe and explain how law affects society, how society responds to law, and how this interaction can shape better legal policies using the theory of restorative justice and the theory of law enforcement in an Islamic perspective. The results of the study show that First, legal protection based on restorative justice for victims of fraudulent investment crimes such as the fulfillment of victim rights, counseling, medical services or assistance, legal assistance, and providing information to victims related to the investigation and examination process of the crime experienced by the victim. Second, the obstacles faced in resolving the case are that the victim asks for the case to continue, there are parties who provoke, and want to provide a deterrent effect on the perpetrator. Third, the process of resolving criminal cases in Indonesia can usually be resolved through litigation or trials. However, the idea of resolving criminal cases using non-litigation methods or can also be called restorative justice emerged. Restorative justice or restorative justice contains the meaning of a restoration of relationships and atonement for mistakes that the perpetrator wants to make to the victim using methods outside the court with the aim that the problem can be resolved properly and an agreement is reached between the parties. By looking at it from the perspective of the perpetrator, victim and case.*

Keywords: *Fraud Crime; Legal Protection; Restorative Justice.*

1. Introduction

Negara Indonesia adalah negara hukum (Pasal 1 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945) maka setiap tindak pidana yang terjadi akan diberikan

sanksi sesuai dengan peraturan yang sudah ada, berkenaan dengan kasus penipuan berkedok investasi bodong melalui sistem online ini, diberlakukan peraturan perundang-undangan yang ada seperti pada Kitab Undang-Undang Hukum Pidana dalam Pasal 378 yang berisi bahwa barangsiapa dengan maksud untuk menguntungkan diri sendiri atau orang lain secara melawan hukum, dengan memakai nama palsu atau martabat palsu, dengan tipu muslihat, ataupun rangkaian kebohongan, menggerakkan orang lain untuk menyerahkan barang sesuatu kepadanya, atau supaya memberi hutang maupun menghapus piutang diancam karena penipuan dengan pidana penjara paling lama empat tahun.¹ Berdasarkan pasal tersebut di atas dapat dipahami bahwa Negara Indonesia sebagai negara hukum maka setiap tindak pidana apapun bentuknya dan bagaimanapun motivasinya akan ditindak lanjuti sesuai dengan ketentuan yang berlaku dan oleh aparat penegak hukum yang berwenang berkaitan dengan masalah tersebut.

Salah satu aparat hukum yang berwenang untuk menangani kasus tindak pidana penipuan adalah Kepolisian Negara Republik Indonesia yang selanjutnya disebut Polri adalah alat negara yang berperan dalam memelihara keamanan dan ketertiban masyarakat, menegakkan hukum, serta memberikan perlindungan, pengayoman dan pelayanan kepada masyarakat dalam rangka terpeliharanya keamanan dalam negeri.²

Hal ini sesuai dengan ketentuan yang ada dalam Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia Pasal 2 yang berisi yaitu fungsi kepolisian adalah salah satu fungsi pemerintahan negara di bidang pemeliharaan keamanan dan ketertiban masyarakat, penegakan hukum, perlindungan, pengayoman dan pelayanan kepada masyarakat. Menanggulangi tindak pidana penipuan berkedok investasi bodong, merupakan pelaksanaan dari fungsi polisi di atas.

Polisi yang berwenang dalam penanganan kasus penipuan berkedok investasi melalui sistem online di Wilayah Salatiga ini adalah Polres Salatiga. Sebagai aparat penegak hukum pengemban fungsi kepolisian sesuai dengan ketentuan Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia dalam Pasal 13, maka polisi mempunyai tugas pokok yaitu memelihara keamanan dan ketertiban masyarakat, menegakkan hukum, dan memberikan perlindungan, pengayoman, dan pelayanan kepada masyarakat. Pasal 13 Undang-Undang Nomor 2 Tahun 2002 tersebut di atas dapat dipahami bahwa tugas polisi tidak hanya sekedar menegakkan hukum juga memelihara keamanan dan ketertiban, serta memberikan perlindungan, pengayoman dan pelayanan kepada masyarakat.

Adanya tindak pidana penipuan berkedok investasi bodong merupakan fenomena sosial yang seperti gunung es dimana kasus yang dilaporkan kepada polisi lebih sedikit dibanding kejahatan yang ada, oleh karena itu sangatlah penting bagi polisi untuk segera melakukan upaya penanggulangan terhadap tindak pidana tersebut. Upaya menanggulangi tindak pidana berkedok investasi melalui sistem online secara tegas Undang Undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia dalam Pasal 14 ayat (1) huruf g, memberi wewenang untuk melakukan penyelidikan dan penyidikan terhadap semua tindak pidana dalam hal ini terhadap penipuan berkedok investasi melalui sistem online, sesuai dengan hukum acara pidana dan aturan perundang-undangan lainnya. Rangkaian tindakan

¹ Moeljatno, 2016, *Kitab Undang-Undang Hukum Pidana*, Bumi Aksara, Jakarta, hlm. 133.

² Pasal 1 Ayat (1) Peraturan Kepolisian Negara Republik Indonesia No.8 Tahun 2021, Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

yang dimulai dari penyelidikan, penindakan (penangkapan, penahanan, penggeledahan, dan penyitaan), pemeriksaan dan penyerahan penuntut umum untuk dihadapkan ke depan sidang pengadilan merupakan tindakan penanggulangan secara represif, sedangkan tindakan pencegahan agar tidak terjadi pelanggaran norma- norma yang berlaku yaitu dengan mengusahakan agar faktor niat dan kesempatan tidak bertemu sehingga situasi keamanan dan ketertiban masyarakat tetap terpelihara aman dan terkendali yang biasanya dilakukan dengan mengadakan penyuluhan-penyuluhan merupakan tindakan preventif.³

Investasi merupakan salah satu cara untuk meningkatkan nilai tambah dari suatu dana atau uang yang dimiliki seorang investor (penanam/pemilik uang) ke suatu bidang usaha atau bisnis yang dijalankan oleh penawar atau investasi (emiten) dengan menanamkan dana yang dimilikinya ke sebuah bidang usaha atau bisnis seorang investor berhak atas sejumlah laba yang telah ditentukan dalam suatu perjanjian, sedangkan dari sisi pelaku bisnis baik berupa perusahaan ataupun perorangan dana dari para investor sangat berguna sebagai sumber pembiayaan eksternal yang sangat bermanfaat untuk meningkatkan produksinya.⁴ Orang yang menginvestasikan uangnya berasal dari berbagai kalangan masyarakat. Demikian banyak orang yang menginvestasikan uangnya, beragam pula tujuan mereka berinvestasi. Tujuan utama dari investasi yaitu ingin meraih keuntungan atau paling tidak mempertahankan kekayaan mereka kepada pelaku bisnis, baik berupa perorangan maupun perusahaan, namun tidak semuanya dapat mencapai tujuan tersebut, banyak dari mereka yang tidak memperoleh keuntungan tetapi malah menjadi korban penipuan oleh pihak-pihak yang tidak bertanggung jawab.

Kasus penipuan berkedok investasi terus berulang bahkan sekarang ini yang terjadi adalah semakin lama semakin banyak terjadi kasus penipuan berkedok investasi dengan modus-modus yang semakin canggih yaitu dengan melalui sistem *online*. Karena semakin maju dan modern kehidupan bermasyarakat, maka semakin maju dan modern pula jenis dan modus kejahatan yang terjadi di masyarakat.⁵ Penipuan via online merupakan suatu bentuk kejahatan yang menggunakan fasilitas teknologi dalam setiap perbuatannya. Prinsip pada penipuan secara online sama dengan penipuan biasa atau konvensional, dimana setiap kasus penipuan pasti terdapat korban yang dirugikan dan pihak lainnya diuntungkan secara tidak sah. Perbedaan antara penipuan online dengan konvensional yaitu penggunaan sistem elektronik (perangkat telekomunikasi, internet, dan komputer). Secara hukum, baik penipuan secara online maupun konvensional dapat diperlakukan sama sebagai delik konvensional yang diatur dalam Kitab Undang-Undang Hukum Pidana (KUHP).⁶

Era globalisasi menyebabkan semakin canggihnya teknologi informasi sehingga telah membawa pengaruh terhadap munculnya berbagai bentuk kejahatan yang sifatnya modern

³ Nurdjana, 2009, *Sistem Hukum Pidana dan Bahaya Laten Korupsi Problematika Sistem Hukum Pidana dan Implikasinya pada Penegakan Hukum Tindak Pidana Korupsi*, Yogyakarta: Total Media, hlm. 29.

⁴ Irsan Nasarudin dan Indra Surya, 2004, *Aspek Hukum Pasar Modal di Indonesia*, Jakarta, Pranada Media, hlm. 9.

⁵ Abdul Wahid dan Mohammad Labib, 2005, *Kejahatan Mayantara (Cyber Crime)*, Bandung: PT Refika Aditama, hlm. 8.

⁶ Noor Rahmad, 2019, Kajian Hukum Terhadap Tindak Pidana Penipuan Secara Online, *Jurnal Hukum Ekonomi Syariah*, Vol.3, No.2, hlm. 105.

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dan berdampak lebih besar daripada kejahatan konvensional.⁷ Kejahatan disebabkan oleh beberapa faktor seperti ekonomi, pergaulan, kesempatan yang ada dan lain-lain. Faktor-faktor tersebut yang terjadi di Indonesia telah menunjukkan efek yang negatif. Banyaknya kalangan masyarakat yang melakukan perbuatan yang salah semata-mata bertujuan ingin memenuhi kebutuhan hidupnya.⁸

Seperti yang terjadi dalam kasus dibawah ini: VIVA – Kasus penipuan dengan modus lelang arisan online yang menyedot miliaran rupiah uang milik warga Kota Salatiga berhasil diungkap. Satuan Reskrim Polres Salatiga menangkap RA Alias Maryuni Kemplink yang menjadi bandar arisan tersebut. Dalam pers keterangan pers yang disampaikan, Jumat, 24 September 2021, Kapolres Salatiga AKBP Indra Mardiana mengungkapkan, penangkapan berawal dari laporan korban berinisial F (48). "Pelapor F sudah kenal dengan tersangka RA kemudian terjalin komunikasi. Sampai dengan ada perjanjian kesepakatan di tanggal 12 Agustus bahwa uang yang diberikan dari pelapor akan dilipat gandakan atau dilebihkan oleh tersangka," jelas Indra. Pelapor F dan RA, lanjutnya, juga melakukan perjanjian kesepakatan yang sama sebanyak 10 kali yaitu dengan cara men-transfer ke rekening RA hingga total Rp. 71.300.000 dengan iming-iming bahwa RA akan melebihi uang tersebut. Namun, saat pelapor mendatangi rumahnya, tersangka sudah tidak ada, rumah itu juga sudah didatangi oleh banyak orang yang turut menjadi korban lelang arisan. Atas kejadian tersebut F melaporkan kejadian tersebut ke Polres Salatiga untuk dilakukan pengusutan lebih lanjut. Delapan korban lainnya kemudian turut melapor ke Polres Salatiga. Total kerugian yang diderita para korban sebesar Rp.4.668.400.000. Untuk mempertanggungjawabkan perbuatannya RA dikenakan Pasal 378 KUHP. Laporan Teguh Joko Sutrisno.

Apabila dilihat dari berita di atas, yang menjadi korban penipuan oleh pihak-pihak yang tidak bertanggung jawab berasal dari kalangan menengah ke atas, padahal biasanya yang menjadi korbannya adalah kalangan menengah ke bawah karena pengetahuan mereka terhadap kecerdasan finansial sebagai bagian dari *skill of life* yang sangat minim. Karena menggunakan sistem *online*, korban penipuan berkedok investasi berasal dari berbagai daerah di Indonesia. Melihat banyaknya jumlah korban yang berhasil ditipu dan besarnya jumlah kerugian yang dilarikan maka tindak pidana penipuan berkedok investasi melalui sistem *online* memerlukan penanganan yang lebih serius dalam rangka menanggulangi tindak pidana penipuan berkedok investasi melalui sistem *online*.

Tindak pidana penipuan berkedok investasi melalui sistem online memang berbeda dengan modus penipuan berkedok investasi lainnya seperti sistem penjualan surat berharga atau dengan pola Multilevel Marketing (MLM) karena dalam penipuan berkedok investasi melalui sistem online transaksi antara investor dengan emiten tidak dilakukan secara langsung tetapi dengan cara investor mentransfer sejumlah uang tertentu pada rekening emiten, sehingga investor tidak mengenal serta tidak pernah bertemu dengan emiten dan tidak mengetahui dengan jelas keberadaan emiten. Hal ini membuat penyelidikan atau penyidikan tindak pidana penipuan berkedok investasi melalui sistem online memerlukan waktu yang lama untuk menemukan keberadaan pelaku yang telah melarikan diri ke luar daerah atau bahkan

⁷ Budi Suhariyanto, 2012, *Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi dan Pengaturan Cela Hukumnya*, Raja Grafindo Persada, Jakarta, hlm. 12.

⁸ Hardianto Djanggih dan Nurul Qamar, 2018, Penerapan Teori-Teori Kriminologi Dalam Penanggulangan Kejahatan Siber (Cyber Crime), *Pandecta Journal*, Vol. 13, No.1, hlm, 11.

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ke luar negeri, karena korban tindak pidana penipuan berkedok investasi tidak selalu langsung mengetahui mereka menjadi korban. Mereka mengetahui menjadi korban tindak pidana setelah beberapa waktu atau menimbulkan kerugian.

2. Research Methods

In the research conducted, the writing uses a Normative Juridical approach, namely research that uses an approach method to problems by looking at the norms or laws that apply as positive provisions, the following are theories that are relevant to this paper by linking its implementation to the facts in the field.

3. Results and Discussion

3.1. The Nature of National Legal Products in Handling Narcotics Addicts

Indonesia as a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia has a state goal of protecting all Indonesian people and all Indonesian blood, advancing public welfare, educating the nation's life, and participating in implementing world order based on freedom, eternal peace, and social justice. To achieve the state's goals, sustainable development is carried out which is a series of comprehensive, directed, and integrated developments. However, in the process of achieving the state's goals, Indonesia is faced with a major challenge, namely narcotics. Drug abuse is a crime that destroys a person's life, namely the crime of drug abuse (narcotics, psychotropic drugs and illegal drugs).

Narcotics are substances or drugs that have great benefits for treatment and health services, but can be misused and pose a danger to public health and even national defense and security. The complexity of the benefits and dangers of narcotics requires the state to regulate the distribution and use of narcotics appropriately and carefully.⁹

Literally, narcotics as expressed by Wilson Nadaek in his book "Victims of Marijuana and the Problem of Narcotics", formulates narcotics etymologically as coming from the English word narcose or narcois which means to put to sleep and anesthesia.¹⁰ The word narcotic comes from the Greek word narke, which means to be drugged so that you don't feel anything.¹¹ From the pharmacological terms used, the word drug is a type of substance which, when used, will have certain effects and influences on the user's body, such as affecting consciousness and providing calm, stimulating and causing hallucinations.¹² Terminologically, narcotics in the Big Indonesian Dictionary are drugs that can calm the nerves, relieve pain, cause drowsiness and stimulate.¹³ According to several scholars and legal experts, the definition of narcotics is as follows:

⁹Ministry of Law and Human Rights, Analysis and Evaluation of Law Number 35 of 2009 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropics and their Implementing Regulations, Final Report: National Legal Analysis and Evaluation Center, 2021, p. 1

¹⁰Wison Nadack, Op.Cit, 1983, p 122

¹¹Hari Sasangka, Op.Cit, 2003, p. 35.

¹²Soedjono, Op.Cit, 1977, p. 3.

¹³Anton M. Moelyono, Op.Cit, 1988, p. 609

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a. Soedjono D stated that what is meant by narcotics is a type of substance, which when used (inserted into the body) will have an effect on the user's body. The effect is in the form of calming, stimulating and causing delusions or hallucinations.¹⁴

b. Edy Karsono, narcotics are active substances/ingredients that work on the central nervous system (brain) which can cause a decrease to loss of consciousness and pain (pain) and can cause dependence (addiction).¹⁵

c. Elijah Adams defines narcotics as consisting of synthetic and semi-synthetic substances, the most famous of which is heroin, which is made from morphine, which is not used, but is often seen in illegal trade, and is also known by the term dihydromorphine.¹⁶

Indonesia is currently in a state of emergency regarding narcotics. Of course, this indicates that the situation in Indonesia is truly in a critical condition regarding cases of narcotics abuse, so that it requires attention and vigilance from various elements of society in order to be able to overcome and prevent the illegal circulation of narcotics from spreading. The rapid circulation of narcotics in Indonesia is partly due to the rapid progress and development of information and transportation technology. The development of this technology ultimately has another impact, namely, facilitating the entry of dangerous and prohibited goods into Indonesia, and this is a challenge for the authorities, especially law enforcement officers.¹⁷

The phenomenon of the spread of narcotics has now spread throughout all corners of the region and targeted all levels of society without looking at social status, as previously explained that narcotics have been able to reach various groups, if in previous times or decades drug abuse was dominated by certain groups such as celebrities and musicians or groups with high incomes, then currently drug abusers come from various groups ranging from the uneducated to the educated and also officials.¹⁸ This condition occurs because currently narcotics have many types and variants, starting from narcotics with expensive prices and which can only be purchased by certain elite groups or celebrities, to the cheapest narcotics which can be purchased by low-income economic groups.¹⁹

Therefore, the Indonesian government has established regulations governing the circulation of narcotics, the use of narcotics for medical treatment and scientific development, and the prohibition of unauthorized sale, storage, possession, carrying and misuse of narcotics. Indonesia has formulated regulations to regulate the circulation of narcotics, the use of narcotics for medical treatment and scientific development, the prohibition of illegal trade, storage, supervision, transportation and misuse of narcotics.

The ongoing process of social change in Indonesia also marks the development of cities with the complexity of their functions that no longer only have administrative and commercial functions, but also grow as social interaction nodes that influence the value system and

¹⁴Ibid

¹⁵Soedjono, Op.Cit, 1977, p. 5

¹⁶Wilson Nadaek, Op.Cit, 1983, p. 122.

¹⁷Teoli Bewamati Telaumbanua, The Role of the National Narcotics Agency in Efforts to Prevent and Combat Illicit Drug Trafficking in Gunungsitoli. Mahupiku Journal, Vol. 1 No. 2, 2018

¹⁸Gilza Azzahra Lukman, et al. Drug Cases in Indonesia and Prevention Efforts Among Adolescents, Journal of Research and Community Service (JPPM), Vol 2 No 3 December 2021, p. 408

¹⁹NCO Sura Priambada, Drug Abuse Among Teenagers. UNSA Seminar Proceedings, 2014.

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norms and behavior of citizens. Legislation is present where the law functions as a social control, forcing citizens to comply with applicable laws and regulations. The law governing narcotics as a law that must be obeyed, because it was formed through cooperation between representatives of the people and the government. This means that there has been an agreement between the people and the government regarding narcotics regulations, which must be obeyed by all. The goal is so that the law can be enforced smoothly in accordance with the expected goals.²⁰

In the making of legislation, legal policy is very important, namely as a reason why the formation of a legislation is needed and to determine what is to be translated into legal sentences and become the formulation of articles. This is important because the existence of legislation and the formulation of articles is a "bridge" between the legal policy that is determined and the implementation of the legal policy in the implementation stage of legislation considering that between the implementation of legislation there must be consistency and close correlation with what is determined as legal policy. The implementation of the Law is nothing other than the achievement of what is desired from the legal policy that has been determined.

According to Mahfud MD, legal policy is an official policy on the law that will be enforced, either by making new laws or replacing old laws. Legal policy aims to achieve state goals. Based on the understanding of legal policy, it can be concluded that legal policy is one of the government's efforts to create legislation. From legal policy, the government seeks to create regulations in order to create an orderly society in order to achieve state goals.²¹

Realizing the dangers that threaten the survival of the younger generation, the government has since early on addressed the dangers of drug abuse, namely by issuing Presidential Instruction No. 6 of 1971 (namely, overcoming the dangers of narcotics, juvenile delinquency, counterfeit money, smuggling and so on). After the issuance of Presidential Instruction No. 6 of 1971, Law No. 9 of 1976 was issued. Law No. 9 of 1979 concerning Narcotics contains the types of narcotics, namely:

- 1) Materials mentioned in numbers 2 to 13 of this law; Salts and derivatives of Morphine and Cocaine; Other substances, whether natural, synthetic or semi-synthetic, which have not been mentioned, can be used as a substitute for morphine or cocaine, which are designated by the Minister of Health as narcotics, if their misuse can cause detrimental effects of dependence such as morphine or cocaine.
- 2) Mixtures and preparations containing the substances referred to in letters a, b, and c.
- 3) Papaver plant is the *Papaver somniferum* L. plant including seeds, fruit and straw.
- 4) Raw opium is a self-congealed sap obtained from the fruit of the *Papaver somniferum* L. plant which has only undergone processing for packaging and transportation without paying attention to the morphine content.
- 5) Problem opium is: (a) Opium, which is the result obtained from raw opium through a series of processing, especially by dissolving, heating and fermenting with or without the

²⁰Bayu Puji Hariyanto, Prevention and Eradication of Drug Distribution in Indonesia, *Jurnal Daulat Hukum*, Vol. 1. No. 1 March 2018, p. 202

²¹Frenki, Legal Politics and Its Role in Legal Development in Post-Reformation Indonesia, *Asas: Journal of Islamic Economic Law*, Vol 3 No 2 2011, p. 2

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addition of other materials, with the intention of changing it into an extract suitable for solidification; (b) Kicing, which is the remains of opium after being smoked without regard to whether the opium is mixed with leaves or other materials; (c) Jicingko, which is the result obtained from the processing of jicing.

Before Law No. 9 of 1976 came into effect, Staatsblad 1937 No. 278 Jo. No. 536 was used and was called the Verdoovende Middelen Ordonantie which had been amended. The provisions in the legislation, in connection with the development of traffic and the existence of modern means of transportation and transportation which caused the rapid spread/input of narcotics into Indonesia, coupled with the progress achieved in the field of drug manufacturing, turned out to be inadequate to achieve the expected results. The legislation is no longer in accordance with the development of the times because what is regulated in it is only regarding the trade and use of narcotics, which in the regulation is known as Verdoovende Middelen or narcotics. Meanwhile, regarding the provision of health services for the effort to cure addicts is not regulated.

Narcotics are one of the drugs needed in the world of medicine, as well as in the field of research for educational purposes, scientific development and its application. It is not surprising that the development of types of narcotics is getting faster so that the laws that regulate them are felt to be no longer appropriate. This is precisely why the government finally issued Law No. 35 of 2009 concerning Narcotics which is currently in effect. Narcotics in Law No. 35 of 2009 in Article 1 paragraph (1) it is explained that "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce to eliminate pain, and can cause dependency, which are divided into groups as attached to this law or which are then determined by the decision of the Minister of Health".

In Law no. 35 of 2009 regulates various issues related to narcotics, including regulations regarding:

- 1) Provisions regarding the definition and types of narcotics;
- 2) Provisions regarding activities involving narcotics such as planting, mixing, production, trade, traffic, transportation and use of narcotics;
- 3) Provisions regarding mandatory reporting for people or those carrying out activities as referred to in number 2;
- 4) Provisions governing the investigation, prosecution and examination before the court of cases related to narcotics which, due to their specific nature and to speed up procedures and facilitate investigation, prosecution and examination before the court, require deviation from the applicable legal provisions.

Law No. 35 of 2009 concerning Narcotics also contains provisions regarding:

- 1) Provisions governing the provision of rewards (Premiums);
- 2) Provisions on the treatment and rehabilitation of drug addicts;
- 3) Other provisions relating to international cooperation in combating narcotics.

According to Law Number 35 of 2009 concerning Narcotics (Narcotics Law), there is a distinction between dealers, sellers and drug addicts, because addicts can be considered

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victims of dealers or sellers who abuse narcotics.²²Therefore, this narcotics law substantiates sanctions against addicts that are different from dealers, sellers and dealers. Anyone who can be called a perpetrator of a narcotics crime in Law Number 35 of 2009 concerning Narcotics. For perpetrators of narcotics abuse, they can be subject to Law No. 35 of 2009 concerning Narcotics, divided into three, including:

a. As a user

Subject to criminal provisions based on Article 116 of Law Number 35 of 2009 concerning Narcotics, with a maximum sentence of 15 years.

b. As a distributor

Subject to criminal provisions based on Article 81 and 82 of Law No. 35 of 2009 concerning narcotics, with a maximum sentence of 15 years plus a fine.

c. As a manufacturer

Subject to criminal provisions based on Article 113 of Law No. 35 of 2009, with a maximum sentence of 15 years/life/death plus a fine.

As divided above, then the crime of narcotics is a crime that abuses narcotics without customary rights or against the law other than those specified in the law. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Narcotics addicts and victims of narcotics abuse who are without rights and against the law as suspects and/or defendants in narcotics abuse who are undergoing the process of investigation, prosecution, and trial in court are given treatment, care and recovery in a rehabilitation institution. The Public Prosecutor for the benefit of prosecution and the Judge for the benefit of examination in court, can request assistance from the local Integrated Assessment Team to conduct an assessment of the defendant. The parties who are rehabilitated by narcotics are narcotics addicts and victims of narcotics abuse who are required to undergo medical rehabilitation and social rehabilitation. This is clarified in Article 3 paragraph (1) of the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants Who Are Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.²³

The government is tackling drug addicts by taking action in the form of rehabilitation in accordance with the mandate of Law Number 35 of 2009 concerning Narcotics in Article 54 of the Narcotics Law which clearly states that:

"Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation."

Article 1 number 13 of the Narcotics Law explains that Narcotics Addicts are people who use or abuse Narcotics and are in a state of dependence on Narcotics, both physically and psychologically. While in number 15 explains that Abusers are people who use Narcotics without rights or against the law. So it can be concluded that addicts and abusers of narcotics are different even though they have similarities in terms of abusing the narcotics.

²²Aditya Gamal Burmawi, Reformulation of Legal Policy on Criminal Law for Abusers of Class I Narcotics "Marijuana", *Hangoluan Law Review*, Vol 3 No 2 November 2024, p. 439

²³Bonar Yudhistira, et al. Legal Politics of Law No. 35 of 2009 Concerning Narcotics in Relation to Efforts to Rehabilitate Narcotics Addicts, *Indonesian Legal Media (MHI)*, Vol 2 No 4 December 2024, p. 1026

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BNN Regulation No. 11 of 2014, which stipulates that Narcotics Addicts and Victims of Narcotics Abuse who are unlawfully and without rights as Suspects and/or Defendants in Narcotics abuse who are undergoing the process of investigation, prosecution, and trial in court will be given treatment, care and recovery in a Rehabilitation Institution. The time of the rehabilitation decision. The judge's decision determines whether the person concerned (in this case the Narcotics Addict) undergoes rehabilitation or not based on whether or not the crime committed is proven. This means that there is an examination process in court before there is a judge's decision that determines whether or not someone is rehabilitated. This is as regulated in Article 103 of the Narcotics Law:

Judges who examine cases of drug addicts can:

- a. decide to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or
- b. determine to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is not proven guilty of committing a Narcotics crime.²⁴

The period of undergoing treatment and/or care for Narcotics Addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence. This provision confirms that the use of the word decided for Narcotics Addicts who are proven guilty of committing a Narcotics crime contains the understanding that the judge's decision is a verdict (punishment) for the Narcotics Addict concerned. However, even though it is still in the criminal justice process, be it investigation, prosecution, or trial examination in court; without waiting for the judge's decision first; investigators, public prosecutors, or judges may request an assessment of the suspect or defendant before being placed in a Rehabilitation Institution. The Narcotics Abuser is required to undergo medical rehabilitation and social rehabilitation. Types of narcotics rehabilitation include:

- a. Medical Rehabilitation is a process of integrated treatment activities to free addicts from drug dependence.
- b. Social Rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that former drug addicts can return to carrying out social functions in community life.²⁵

Drug addicts and victims of drug abuse who are unlawfully and illegally named as suspects and/or defendants in drug abuse who are undergoing the process of investigation, prosecution, and trial in court are given treatment, care and recovery in a rehabilitation institution. The determination of this rehabilitation recommendation is based on the results of the Integrated Assessment Team's recommendations. The Public Prosecutor or Judge is the one who requests assistance to first conduct an assessment of the defendant. This assessment assistance is carried out based on BNN Regulation No. 11 of 2014. and the results are submitted to the Public Prosecutor or Judge with a Minutes of Submission of the Assessment Result Recommendation. Therefore, although BNN Regulation No. 11 of 2014 is basically a technical guideline for investigators (investigation level) to request rehabilitation placement for suspects/defendants after an assessment has been carried out, at the

²⁴Article 103 of Law Number 35 of 2009 concerning Narcotics

²⁵Salsabila Putri Zahra Nasution and Boedi Prasetyo, Analysis of Narcotics Rehabilitation Programs and Their Impact on Improving Quality of Life, *Rewang Rencang: Lex Generalis Law Journal*. Vol.5 No.12 2024, p. 3

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prosecution or examination level in court, the Prosecutor or Judge can also request an assessment from the Integrated Assessment Team, the procedures for which are based on BNN Regulation No. 11 of 2014.

Handling addicts through the formation of legal products is indeed a special concern of the government because efforts to imprison addicts are less effective, therefore the government is making rehabilitation efforts. However, rehabilitation is not consistently given to addicts because there are specific criteria that must be met so that they can be said to be drug addicts. When someone is caught red-handed by the authorities abusing narcotics, the person is not necessarily immediately said to be an addict or rehabilitated.²⁶ One can be said to be an addict and in rehabilitation, namely by having a court decision that decides that the person is an addict and must undergo rehabilitation.

It can be seen in the Implementation of Article 103 of the Narcotics Law, the Supreme Court issued SEMA Number 4 of 2010 in conjunction with SEMA Number 3 of 2011 concerning the Placement of Drug Abusers, Victims of Drug Abuse, and Addicts in Medical Rehabilitation and Social Rehabilitation Institutions. In SEMA of the Supreme Court Number 4 of 2010, in order to be able to impose rehabilitation efforts, namely the defendant is caught red-handed by investigators from the Police and BNN, at the time of being caught red-handed there is evidence of 1 day of use, obtain a positive laboratory test certificate for using narcotics based on the investigator's request; there is a certificate from a government psychiatrist appointed by the judge; it is not proven that the person concerned is involved in the illicit trafficking of narcotics.

Many cases related to drug abuse where addicts or users of drugs are prosecuted and sentenced with different articles or penalties. Referring to Article 54 of the Narcotics Law, law enforcement officers must prioritize rehabilitation for addicts or users of drugs because it is "mandatory". Therefore, consistency is needed in enforcing the law against drug addicts so that it can create legal certainty.

Drug addicts are called victims because addicts are people who are said to have entered the realm of health who should be treated not to be imprisoned, because they mean self-victimizing victims or mutual victims which means victims of their own actions or perpetrators and victims. Until today, the handling of narcotics among law enforcement officers has not had a complete understanding. Among law enforcers regarding the position of victims of drug addicts (demand) and perpetrators or dealers (supply). Law enforcers often exclusively categorize the handling of addicts as dealers. Whereas in the Narcotics Law it is clearly stated that there are 2 (two) types of drug crimes. This means that the handling of drug addicts must be distinguished from the perpetrators of drug dealers.²⁷

The Narcotics Law, with its subjects being Addicts and Victims of Narcotics Abuse, can be observed in the Consideration of letter a which states:

"that 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

²⁶Irsal & Susi Delmiati, Implementation of Medical Rehabilitation and Social Rehabilitation for Drug Addicts and Victims of Drug Abuse, *Sakato Ekasakti Law Review Journal*, Volume 2 Issue 2, August 2023, p. 69

²⁷Intan Permata Sari, et al., Law Enforcement Against Drug Addicts, *Journal of Legal Analogies*, Vol. 1 2019, p. 106

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Republic of Indonesia, the quality of Indonesian human resources as one of the national development assets needs to be maintained and improved continuously, including their health level."

The conclusion of the explanation of the considerations is that the contents of the Pancasila Legal Paradigm are the basis for the view of the Indonesian people to make one of the national development capitals that need to be maintained and improved sustainably, including their health status. That this clearly shows a shift in the paradigm of punishment from the absolute flow²⁸, as stated in the Narcotics Law, towards the neoclassical school. The change and paradigm shift were then manifested in Article 54 of the Narcotics Law which states that "Drug addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation."

The state in this case represented by the government has made maximum efforts to implement the 1945 Constitution and also the purpose of the formation of the state, namely the state guarantees that every citizen is healthy and prosperous physically and mentally. So that it made changes or revisions to the narcotics law twice (2) times, namely in 1997 and 2009, resulting in a paradigm shift in the punishment of addicts and victims of drug abuse as explained above.

Criminal law reform, especially related to provisions on rehabilitation for drug abusers, is a form of national criminal law reform that shows the existence of a criminal law policy that aims to prevent drug users from abusing drugs. Legal reform by enacting Law Number 35 of 2009 concerning Narcotics, namely by decriminalizing drug abusers themselves. Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. The role of law in this case is to combat crime through criminal law policy and is one of the efforts in law enforcement. In relation to the problems of drug abuse, criminal law policy plays a role in positioning drug addicts as victims, not perpetrators of crime.

3.2. Problems of Implementing the Prosecutor's Legal Policy in Efforts to Depenalize Drug Addicts

The process of handling drug addicts, law enforcement officers must be oriented towards sanctions in the form of depenalization in the form of rehabilitation and other steps to save their future (addicts and abusers). In order to function the role of law enforcement officers in this case the prosecutor's office in deciding or determining actions, support from other law enforcement officers is very much needed. Of course this must be based on a shared understanding and agreement that drug addicts and abusers are a serious national problem and a common enemy for the future of the nation. So in this case the government, the prosecutor's office and related law enforcement officers must unite in aligning the vision and mission to overcome drug addicts and abusers in order to realize the noble ideals of the nation to create a healthy generation of the nation. The understanding and agreement of the government and law enforcement officers regarding the handling of drug addicts and drug abusers into steps for the process of treating and healing. Thus, drug addicts no longer end up with criminal sanctions in prison, they can also use social sanctions and with the aim of treatment and healing (rehabilitation).

²⁸Bambang Santoso, Legal Politics, Banten Unpam Press, 2021, p. 107

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The Prosecutor's Office must also be careful in implementing this policy so that legal clarity remains the core. Regarding this Prosecutor's regulation, it must not be harmed by the criminalization or decriminalization policies that occur along with the development of cases and laws. In addition, in the restorative policy, criminalized criminal acts must be considered during the law enforcement process. so that it is very important from the legal results of a case is that legal certainty and justice will be upheld. According to Gustav Rudbruch's theory of legal ideals, justice, certainty, and usefulness cannot all be fulfilled at the same time in the case.²⁹ Therefore, the Prosecutor's Office issued a Perja in its legal content in order to uphold justice. To ensure legal certainty, this Perja must comply with all provisions of the Criminal Code in order to do so.

In this case, the Prosecutor is a member of the state apparatus who is tasked with enforcing the law. The Prosecutor of the Republic of Indonesia, or the Prosecutor's Office is an entity that serves the duties and powers of the Prosecutor. Prosecuting criminal matters is the primary responsibility of the Prosecutor's Office. This is through the prosecutor's ability to determine whether or not a case should be continued to court.³⁰

Regarding the handling of narcotics cases, especially for addicts and drug abusers, there is no need to enter the judicial area. Both users who have reported themselves to the Mandatory Reporting Receiving Institution (IPWL) and users who are caught red-handed by law enforcement officers. Addicts and drug abusers are directed to the healing and treatment stage (rehabilitation) after an investigation and inquiry by law enforcement officers assisted by the Integrated Assessment Team. So that the implementation during the healing and treatment period can be counted as a period of serving the law as stated in Article 103 paragraph 2 of Law Number 35 of 2009.

Regarding Article 55 of Law Number 35 of 2009 concerning Narcotics, it can be said to be a form of step in the process of depenalization approach towards drug addicts and abusers, where when viewed in this process it does not always bring drug addicts and abusers closer to the area of penalization, but through the area of treatment and healing (rehabilitation) as a sanction in the form of action against drug addicts and abusers.

It is important to understand why the Prosecutor's policy has an important and strategic role in the law enforcement process as the master of the process or dominus litis in the criminal system, one of whose functions is to filter criminal cases that will be forwarded to the court and consider the objectives in the Law. Therefore, the implementation of depenalization must increase healing and harmony based on mutual respect between the parties involved.

The prosecutor's office has the authority to determine whether a case can be forwarded to the court or not, based on valid evidence according to the Criminal Procedure Code. Therefore, as a government institution whose task is to carry out tasks related to prosecution, the prosecution process carried out by the prosecutor's office needs to be directed to the purpose of following the re-orientation stage in the renewal of criminal law,

²⁹ Emy Herlin Setyorini, Sumiati, The Concept of Restorative Justice for Children in Conflict with the Law in the Juvenile Criminal Justice System, DIH: Journal of Legal Studies, Volume 16 Number 2 August 2020

³⁰ Andi Hamzah, Law Enforcement Against Minor Criminal Acts with Restorative Justice, Jakarta: Jala Permata Aksara, 2017, p. 19

by considering the level of blameworthiness, the perpetrator's mental attitude, protected legal interests, losses or consequences caused, and paying attention to the sense of justice of the community including justice including local wisdom. So that related to carrying out prosecution based on restorative justice, it has urgency, among others, first, the regulation through the Prosecutor's Regulation (Perja) can only have binding power internally. Second, the regulation through the Prosecutor's Regulation (Perja) does not have a high level in the hierarchy of laws and regulations in Indonesia. Third, the termination of prosecution based on restorative justice can be a solution to the problem of overcapacity in prisons in Indonesia. Fourth, the termination of prosecution based on restorative justice can reduce the number of cases and can also reduce the burden on the state budget in each case handling.

The ratification of the Republic of Indonesia Prosecutor's Office Law No. 11 of 2021 on December 31, 2021, in its explanation, it has been emphasized that in exercising state power in the field of prosecution, the prosecutor's authority to determine whether a case can or cannot be transferred to court has an important meaning in balancing the applicable rules (*rechtmatigheid*) and also interpretations based on the purpose or principle of benefit (*doelmatigheid*) in the criminal justice process. Regarding the prosecutor's authority to exercise prosecutorial discretion (*prosecutoria discretionary* or *opportuneit beginselen*) which can be carried out by considering the values of justice that live in society, it is very important in order to accommodate the development of law enforcement from merely realizing retributive justice (*retribution*) to restorative justice.

One form of depenalization is depicted in the implementation of restorative justice carried out through a mechanism that was initially in the form of a penal to a non-penal mediation process. Where non-penal mediation is part of a form of dispute resolution outside the court (*Alternative Dispute Resolution*) which is more popular in civil cases, but that does not mean it cannot be applied in the criminal law environment. In the context of resolving criminal cases through mediation with the aim of recovery for perpetrators of crimes and the community environment.³¹

Problems in implementing the prosecutor's authority to make efforts to demand depenalization against addicts and narcotics abuse crimes can be qualified based on legal and non-legal problems. In terms of legal problems, the unclear norms of the Narcotics Law Number 35 of 2009 are also an obstacle for the prosecutor's office in handling or ordering rehabilitation. The unclear Articles 112 and 127 of the Narcotics Law do not guarantee legal certainty. The articles are owned, maintained and controlled by editors, who still have multiple interpretations and double meanings to charge suspects based on Article 112 or 127. Therefore, investigators will also present suspects who are suspected of violating Article 112.³² This complicates the implementation of the provisions of the Attorney General's Office Number 18 of 2021 as the implementation of the principle of *dominus litis* by the prosecutor's office to handle drug addiction criminal cases through rehabilitation. As an alternative to Article 112, the article imposed by the police allows the prosecutor to guess whether the suspect is a drug abuser, addict, or victim of drugs. The Public Prosecutor

³¹Eva Achjani Zulfa, *Restorative Justice and Revitalization of Customary Institutions in Indonesia*, Indonesian Journal of Criminology, Vol. 6 No.II August 2010, p. 187.

³²Z. Ali, *Towards Criminal Law Reform*, Jakarta, Sinar Grafika, 2015

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thus relinquishes his authority to suspend the examination of the case, even though this authority is in accordance with the principle of *dominus litis*. This is because the prosecutor's office does not have a strong legal umbrella like a judge to decide on rehabilitation. Before the subject who acts becomes an addict, he must first become a perpetrator, because to become an addict, the subject who acts must relapse, because he repeatedly becomes a perpetrator until he becomes an addict. This, of course, creates a difference between deprivation of liberty and rehabilitative measures.

In terms of non-legal problems, it is undeniable that the high cost of rehabilitation is also a major problem for the rehabilitation of public prosecutors, because rehabilitation is only carried out at the request of the perpetrator's family, without a police arrest procedure that is carried out free of charge by the state, while legal rehabilitation remains expensive. The amount of rehabilitation costs depends on the level of addiction and the side effects experienced by the addict, because the method and duration of rehabilitation require different recovery costs. The amount of rehabilitation costs can range from 30 (thirty) to 50 (fifty) million rupiah per month.³³ Rehabilitation can be carried out at community health centers, hospitals, and/or local medical and social rehabilitation facilities designated by the government to obtain care and/or treatment through medical rehabilitation and social rehabilitation.

Efforts to overcome legal problems with the need for encouragement to reformulate the legal substance of the definition of drug abuse victims need to be carried out with the concept of depenalization. This concept is a criminal law policy by including drug abusers themselves as victims who are required to undergo medical and social rehabilitation, not criminal law. The concept of depenalization in the form of rehabilitation is applied in Articles 54, 103, and 127 of Law Number 35 of 2009 concerning Narcotics by eliminating criminal sanctions for addicts, abusers, and victims who accidentally use narcotics. Depenalization positions the three groups of drug users equally, because all three groups have the same right to receive rehabilitation rights. So with the existence of the Criminal Law Policy (Penal Policy), it is hoped that in the renewal of criminal law carried out by the state through authorized bodies to determine the desired regulations, namely the legislative body, it is required that the renewal of criminal law can describe what is contained in the ideals, culture and personality of the Indonesian people. Both in terms of updating the substance of the law, the structure of criminal law and updating the culture of criminal law.

Based on this, reformulation needs to be carried out on the definition of victims of drug abuse with the concept of depenalization, namely the future criminal law policy of *ius constituendum* including drug abusers themselves as victims who are required to undergo medical and social rehabilitation.³⁴ According to researchers, both abusers, addicts, and even dealers who use any type of narcotics must also have the right to rehabilitation, because this is a fairly effective way to raise the level of awareness of narcotics users so that they can free themselves from the world of narcotics that has ensnared them.

³³I Gusti Ngurah Budiayasa, et al. Handling of Narcotics Abuse Crimes through Rehabilitation with a Restorative Justice Approach as an Implementation of the *Dominus Litis* Principle at the Denpasar District Attorney's Office, *Jurnal Preferensi Hukum*, Vol 4 No 1 March 2022, p. 49

³⁴Adrienne Dwi Syahfiradella & Hafrida, Criminal Law Policy Regarding Depenalization of Drug Abusers Through Rehabilitation, *PAMPAS: Journal Of Criminal Law*, Volume 3 Number 3, 2022, p. 332

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The construction built in the current narcotics law is that addicts and victims of drug abuse are given rehabilitation while abusers themselves are given criminal sanctions. So it is assumed that this formulation must be evaluated by changing the paradigm by viewing that these users are basically victims. When the abuser is positioned as a victim, imprisonment is not a concrete solution because the law must be in accordance with his actions, and the abuser is not the real perpetrator of the crime.³⁵

This can certainly be realized by changing the construction and making efforts to depenalize drug abusers in the narcotics law. The depenalization referred to refers to the understanding issued by the European Union Central Government Agency or the European Monitoring Center for Drugs and Drug Addiction (EMCDDA) that depenalization means that drug use remains a violation, although imprisonment is no longer imposed for possession or use even when other criminal sanctions are still possible.³⁶

In the issue of narcotics law regulation, referring to Jerome Adda, there are 3 types of policies related to narcotics abuse:

- 1) Legalization means legalizing and freeing up the ownership and sale of narcotics with restrictions imposed by regulations or taxes;
- 2) Criminalization, namely prohibiting the possession and sale of narcotics with the threat of criminal penalties including imprisonment for violators;
- 3) Depenalization is a combined form of violations of possession and sale of narcotics, but the prohibition will only be subject to fines or other actions, not imprisonment.³⁷

So it can be interpreted that depenalization is an action that was initially threatened with criminal sanctions, then the criminal threat was removed and replaced with other sanctions besides criminal sanctions, in this case, rehabilitation was given to drug abusers. In relation to victims of drug abuse consisting of addicts and abusers for themselves, rehabilitation is an act to restore and make them abusers live physically and mentally healthy. With this depenalization, it provides relief and eliminates the burden on the state in the law enforcement system for eradicating narcotics because it will be focused on catching dealers. Although there are many alternatives in handling narcotics, for example in Portugal implementing decriminalization or some countries implementing legalization, all of these policies will be very casuistic and must be in accordance with the context of the community in that place itself. In the context of Indonesia, as explained previously, it would be more appropriate with the depenalization policy, namely replacing prison with rehabilitation.

Based on the explanation above, it is appropriate that there should be a reformulation of the narcotics law with the formulation that narcotics users including narcotics addicts for themselves and victims of abuse in this case are included in the term "Victims of Abuse" who must receive rehabilitation. Then the elimination of criminal elements for those who

³⁵Mohamad Ali Syaifudin, Implementation of The Rehabilitation Model on Victims of Drug Abuse in The Development of The Legal System in Indonesia, *Interdisciplinary Journal and Humanity (INJURITY)*, Vol 2 No. April 4, 2023, p 285

³⁶Gabriel G Nahas, Drug Decriminalization, *Columbia University, Science*, Vol 246 No 4934 December 1989, p 1103

³⁷Jérôme Adda, Brendon McConnell, and Imran Rasul, Crime and the Depenalization of Cannabis Possession: Evidence from a Policing Experiment, *Journal of Political Economy*, Vol 122 No. 5, October 2014, pp. 1130–1202

abuse in Articles 54, 55, 103, and Article 127 of the Narcotics Law by replacing them with sanctions, namely rehabilitation itself. This is also a bright spot for the Prosecutor in obtaining strong legal legitimacy facilities to participate in overcoming the overcapacity of Correctional Institutions filled with narcotics addicts through the Prosecutor's authorities to seek depenalization of narcotics addicts.

Theoretically, in the theory of utilitarianism, utility is placed as the main objective of the law, utility here is interpreted as happiness, which does not question whether a law is fair or not, but rather depends on the discussion of whether the law can provide happiness to humans or not.³⁸Adherents of Utilitarianism have the principle that humans will take actions to obtain the greatest happiness and reduce suffering.

4. Conclusion

1. Keadilan Restoratif adalah upaya penyelesaian perkara pidana yang berorientasi pada pemulihan hubungan antara korban dan pelaku dan keluarganya masing-masing serta masyarakat yang prosesnya dilaksanakan menurut peraturan perundang-undangan baik ditingkat penyelidikan atau penyidikan, tingkat penuntutan dan ditingkat peradilan umum. Institusi dan aparat penegakan hukum disetiap tingkatan proses penyelesaian perkara pidana memfasilitasi, memproses dan membuat berita acara untuk memastikan bahwa penyelesaian perkara pidana berdasarkan keadilan restoratif ini akan memberikan manfaat sesuai prinsip dan tujuan penerapan dalam memulihkan hubungan antara korban, pelaku dan masyarakat dimana dapat mengurangi beban negara dan yang terutama adalah upaya untuk memberikan perlindungan terhadap korban tindak pidana. 2. Kendala-kendala yang dihadapi penyidik dalam melakukan penyelesaian perkara tindak pidana penipuan di Polres Salatiga dengan menggunakan pendekatan keadilan restoratif adalah: Kepolisian sangat sulit untuk mendamaikan pelaku dan korban, karena pihak korban meminta perkaranya ditingkatkan ketahap proses yang lebih lanjut. Adanya faktor faktor dari pihak lain yang memprovokasi pelapor untuk kepentingan pribadi sehingga membuat upaya keadilan restoratif ini menjadi sangat sulit ditempuh serta korban ingin memberikan efek jera terhadap pelaku karena perbuatan yang telah dilakukan. 3. Proses penyelesaian perkara pidana di Indonesia biasanya dapat diselesaikan dengan cara litigasi atau peradilan. Akan tetapi, muncul gagasan penyelesaian perkara pidana menggunakan cara non-litigasi atau bisa juga disebut dengan keadilan restoratif (restorative justice). Keadilan restoratif atau restorative justice mengandung pengertian yaitu suatu pemulihan hubungan dan penebusan kesalahan yang ingin dilakukan oleh pelaku terhadap korban menggunakan cara diluar pengadilan dengan tujuan agar permasalahan tersebut dapat diselesaikan dengan baik dan tercapainya kesepakatan antara para pihak. Dengan cara dilihat dari sisi pelaku, korban maupun kasusnya.

³⁸Muh. Erwin. Op.Cit, 2011, p. 179

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