

## **Analysis of Termination of Prosecution of Drug Abusers for Themselves Based on Restorative Justice (Case Study: West Jakarta District Prosecutor's Office)**

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**Abstract.** *The restorative justice approach in resolving drug abuse cases for oneself is an alternative that emphasizes recovery and rehabilitation, not just punishment, as reflected in the implementation at the West Jakarta District Attorney's Office. The purpose of this study is to analyze the implementation of the termination of prosecution against drug abusers for themselves based on restorative justice at the West Jakarta District Attorney's Office, analyze the obstacles and solutions to the termination of prosecution against drug abusers for themselves based on restorative justice at the West Jakarta District Attorney's Office and analyze the efforts of the West Jakarta District Attorney's Office towards the termination of prosecution against drug abusers in the future. The approach method used in compiling the thesis is sociological legal research. Specifications in this study descriptive analysis. The theories used include restorative justice theory and legal system theory. The results of this study are (1) The implementation of the termination of prosecution against drug abusers for themselves based on restorative justice at the West Jakarta District Attorney's Office, shows the commitment of law enforcement institutions to prioritize a rehabilitative approach in handling drug cases. The suspect RBS, who was proven to be only a user, was not involved in a drug distribution network, and showed good faith, was positioned as an individual who deserves to be restored through rehabilitation, not imprisonment. (2) The implementation of restorative justice at the West Jakarta District Attorney's Office still faces weaknesses. In terms of legal substance, Attorney General Regulation Number 15 of 2020 provides a strong basis, but there are no clear regulations in the Criminal Procedure Code regarding the termination of prosecution based on restorative justice. The legal structure, the main challenge lies in the uneven understanding among law enforcement officers. In terms of legal culture, the community and law enforcement officers are still trapped in a retributive paradigm that prioritizes criminal penalties. For this reason, changes in the substance of the law are needed by revising Article 140 paragraph (2) of the Criminal Procedure Code, strengthening the institutional structure with training, and providing socialization about restorative justice to the community. (3) The efforts of the West Jakarta District Attorney's Office towards the termination of prosecution of drug abusers in the future by prioritizing a more humanistic legal approach through*

*the implementation of restorative justice based on Pancasila values. By making restorative justice the main policy, forming a special RJ team, and strengthening cross-sector coordination.*

**Keywords:** *Abuser; Narcotics; Termination of Prosecution.*

## 1. Introduction

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

Law works by providing guidance on behavior and therefore law is a norm. The function of law is basically as one of the social controls in society, so that there is no behavior that deviates from positive law or in other words the occurrence of criminal acts.<sup>2</sup>Criminal acts in human life are social phenomena that will always be faced by every human being, society, and even the state. The reality has proven that criminal acts can only be prevented and reduced but are difficult to eradicate completely. One of the crimes that is still rampant is narcotics crime.<sup>3</sup>

Narcotics are regulated in Law No. 35 of 2009. Narcotics on the one hand are drugs or substances that are useful for health and the development of pharmaceutical and medical science. However, on the other hand, they can also cause harmful dependencies if misused. Narcotics are preferred because they provide pleasure and pleasant feelings that are temporary. Narcotics will change the feelings and way of thinking of people who consume them to be calm, relaxed and free.<sup>4</sup>

The feeling of being stressed becomes relaxed, the stressful mind disappears and the imagination increases. However, such things are only temporary, if the pleasure as an effect of using narcotics is gone, then the user will feel addicted and addicted, causing dependence on the drugs. When it reaches the level of dependence, the user will do anything to be able to consume the drugs again. If they do not get it, then the effects of use will appear which will physically harm the user.<sup>5</sup>

According to Law Number 35 of 2009 concerning Narcotics, narcotics are substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduction to elimination of feeling,

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<sup>1</sup>CST Kansil, Introduction to Indonesian Law and Legal System, 8th Edition, Balai Pustaka, Jakarta, 1989, p. 346.

<sup>2</sup>Bambang Teguh Handoyo, A Study of Legal Sociology on Legal Compliance in Society, *Justicia Sains: Journal of Legal Science*, Vol. 6 No. 1, 2021, pp. 88-104

<sup>3</sup>Rovan Kaligis, The Function of Investigation in the Criminal Case Resolution Process, *Lex Crimen*, Vol. 2, No. 4, 2013, pp. 14-22

<sup>4</sup>Kurniasih Bahagiati, Philosophy of Punishment for Drug Abusers for Themselves in the Perspective of Positive Law and Islamic Criminal Law, *Scientific Journal of Legal Science*, Vol. 18, No. 1, 2020, pp. 111-137

<sup>5</sup>Robin Fernando Putra, Legal Philosophy on Drug Abuse in the Perspective of Islamic Criminal Law and Positive Law, *'Aainul Haq*, Vol. 4, No. 1, 2024, pp. 56-71

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pain, and dependence, and which are classified into groups as attached to the Narcotics Law.<sup>6</sup>

In Indonesia there are laws and regulations governing narcotics, including Law Number 35 of 2009 concerning Narcotics. The qualifications for narcotics abuse are regulated in Article 127 paragraph (1) which reads: "Every Abuser:

- a. "Category I narcotics for personal use are punishable by a maximum imprisonment of 4 (four) years;"
- b. Class II narcotics for oneself are punishable by a maximum imprisonment of 2 (two) years; and
- c. "Use of Class III narcotics for oneself is punishable by a maximum imprisonment of 1 (one) year."

Drug users can be classified in various ways, including as drug addicts and victims of drug addiction.<sup>7</sup> Drug abuse does not only affect the uneducated, but has spread to people from all walks of life, including those who have received formal education. The student class is represented by school children from the educated class, as well as businessmen and government officials of the country. In cases of drug abuse, law enforcement officers are often called in to help. According to current knowledge, drugs should provide enormous and positive benefits when used for medical or other purposes, however, drugs are being abused for various reasons by the current generation.<sup>8</sup>

Article 127 Paragraph (1) of the Narcotics Law stipulates that the punishment for drug abusers is imprisonment. The large number of drug abusers as per data from the 2022 Indonesia Drugs Reports, the imprisonment imposed on drug abusers can cause overcrowding of correctional institutions. This overcrowding can result in poor health conditions and psychological conditions for prison inmates, easy conflicts between prison inmates, suboptimal guidance and not running according to regulations, and budget inflation as a result of increased consumption of water, electricity, and food.<sup>9</sup>

In Indonesia, sentencing for criminal cases is resolved through the criminal justice system. Mardjono Reksodiputro argues that the criminal justice system is a system in a society to combat crime. which aims to:

1. Preventing people from becoming victims of crime
2. Resolve criminal cases that occur so that the public is satisfied that justice has been upheld and those guilty have been punished and
3. Ensure that those who have committed crimes do not repeat crimes again.<sup>10</sup>

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<sup>6</sup>Dina Novitasari. Rehabilitation of Child Victims of Drug Abuse. *Khaira Ummah Law Journal*, Vol. 12, No. 4, 2017, pp. 917–926

<sup>7</sup>Parasian Simanungkalit. The Ideal Punishment Model for Drug Users in Indonesia. *Yustisia Journal of Law*, Vol. 1, No. 3, 2012, pp. 34-45

<sup>8</sup>Mohamad Fajar, Implementation of Medical Rehabilitation and Social Rehabilitation for Drug Abuse for Oneself, *Journal of Social and Technology (SOSTECH)*, Vol. 2, No. 5, 2022, pp. 406-418

<sup>9</sup>Bambang Waluyo, *Indonesian Law Enforcement*, Sinar Grafika, Jakarta, 2022, p. 130

<sup>10</sup>Mardjono Reksodiputro, *Human Rights in the Criminal Justice System*, Third Book Collection, Center for Justice Services and Legal Services, Criminology Institute, University of Indonesia, Jakarta, 2007, p. 84

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Criminalization of drug abuse in Indonesia until now still tends to be oriented towards punishment, resulting in many inmates in Correctional Institutions coming from similar cases. In the 2020–2024 National Medium-Term Development Plan (RPJMN), the government has initiated efforts to improve the criminal law system through a restorative justice-based approach.<sup>11</sup>

Many law enforcement officers whose current mindset is centered on the understanding that every criminal case must remain in the realm of criminalization (litigation path), even though these cases are criminal acts with relatively small losses or minor crimes. This is valid in legal positivism, provided that the act is clearly in the law (the principle of legality is fulfilled) and in accordance with the principle of equality before the law. The basic principle of Restorative Justice is the restoration of victims who suffer from crimes by providing compensation to victims, peace, perpetrators doing social work or other agreements. Fair law in restorative justice is certainly not biased, impartial, not arbitrary, and only sides with the truth in accordance with applicable laws and regulations and considers equality of compensation rights and balance in every aspect of life. Restorative justice is a term often used for approaches in the criminal justice system that focus more on the parties including victims and society, and ignores the punishment of perpetrators of crimes.<sup>12</sup>

Rufinus Hutaeruk stated that Restorative justice emphasizes the process of direct criminal accountability from the perpetrator to the victim and the community. If the perpetrator and the victim and the community whose rights have been violated feel that justice has been achieved through joint deliberation, then it is hoped that the implementation of criminal punishment can be avoided. This shows that the perpetrator is not the main object of the Restorative justice approach, but rather the sense of justice and the restoration of the conflict itself are the main objects.<sup>13</sup>

This approach aims to improve the criminal justice system by emphasizing justice not only for victims, but also for perpetrators. For this approach to be effective, synergy and strong commitment are needed from law enforcement officers, the government, and support from the wider community. The implementation of restorative justice is strengthened through the issuance of the Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as well as the Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021 which regulates the resolution of drug abuse cases through rehabilitation.<sup>14</sup>

The Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021 are part of the reorientation of criminal policy as a strategic step in handling drug abuse cases. One important step in this reorientation is the renewal of the law enforcement policy on

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<sup>11</sup>Tony Yuri Rahmanto, Legal Certainty for Drug Abusers: Case Study in East Java Province, *DE JURE Legal Research Journal*, Vol. 17, No. 2, 2017, pp. 265-282

<sup>12</sup>Sayutis (et. al), Termination of Prosecution of Drug Abuse Cases as an Implementation of Restorative Justice at the Prosecution Stage (Case Study at the West Pasaman District Attorney's Office), *Unes Law Review*, Vol. 6, No. 4, 2024, pp. 11256-11267

<sup>13</sup>Rufinus Hutahuruk, *Combating Corporate Crime Through a Restorative Approach: A Legal Breakthrough*, Sinar Grafika Publisher, Jakarta, 2013, pp. 106-107

<sup>14</sup>Rosilia Eka Fitriana, Fadlan Fadlan, and Christiani Prasetyasari, Legal Review of Criminal Case Resolution Through Restorative Justice (Research Study at the Batam District Attorney's Office), *Innovative: Journal of Social Science Research*, Vol. 3, No. 5, 2023, pp. 9249–9265

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Law Number 35 of 2009 concerning Narcotics. With this policy, prosecutors, who adhere to the principle of dominus litis as case controllers, can choose to resolve drug abuse cases through rehabilitation at the prosecution stage. This process prioritizes the values of restorative justice, benefit (doelmatigheid), the principle of fast, simple, and low-cost justice, the principle of criminal law as ultimum remedium, cost-benefit analysis, and efforts to restore perpetrators.<sup>15</sup>

In reality, this restorative justice approach is a good breakthrough in the criminal law system, but it should also be remembered that in a breakthrough, there are certainly things that are still obstacles or shortcomings in the application of the restorative approach. The existence of this breakthrough raises the question of whether this approach is truly a breakthrough or whether there are still things that need to be evaluated. The Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021 only accommodate Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, so it is possible that suspects of drug abuse can be subject to imprisonment because the public prosecutor can still demand imprisonment. In Article 127 of Law Number 35 of 2009 concerning Narcotics, a drug abuser for himself can in reality be charged with the formulation of Article 111 and/or Article 112, because when someone fulfills the elements of Article 127, of course he also fulfills the subjective elements and objective elements which are alternative in nature, namely "possessing, storing, controlling". The provisions of such article norms are an example that can give rise to ambiguity in the application of the article.

Case study at the West Jakarta District Attorney's Office, the prosecutor's office has carried out 2 restorative justice cases against narcotics cases in the period 2024-2025, one of which was RBS. The suspect was charged with violating Article 111 paragraph (1) or Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. The case began with the order of 46 packages of Kingpin Hemp Wraps Blue branded paper containing marijuana, which was used for personal consumption. The arrest was made using the controlled delivery method.

Based on the background description, the author is interested in writing a research in the form of a thesis with the title "Analysis of Termination of Prosecution of Drug Abusers for Themselves Based on Restorative Justice (Case Study: West Jakarta District Attorney's Office)."

## 2. Research Methods

This research is a type of legal research with a focus on sociological legal research. Legally, it examines the laws and regulations related to the implementation of restorative justice in the crime of theft with violence. Sociologically, it is done by looking at the reality in the field related to the problems to be studied which are viewed from the perspective of legal application.<sup>16</sup>

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<sup>15</sup>I Gusti Ngurah Budiya, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma, 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, *Journal of Legal Preferences*, Vol. 4, No. 1, 2023, pp. 45-50.

<sup>16</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, p. 33.

### 3. Results and Discussion

#### 3.1. Implementation of Termination of Prosecution of Drug Abusers for Self-Determination Based on Restorative Justice at the West Jakarta District Attorney's Office

Law enforcement in the criminal justice system has the main objective of overcoming every form of crime that occurs in society. All forms of state action must be based on applicable legal provisions, because the law functions as a basis for regulating and resolving various problems of national, social, and state life. The Criminal Code (KUHP) provides legitimacy to the state through law enforcement officers such as the police, prosecutors, judges, and legal advisors to exercise authority and power in the law enforcement process.<sup>17</sup>

*Restorative justice* is an approach to resolving criminal cases that focuses on restoring relationships between perpetrators, victims, and communities affected by crime. This term comes from the words "restore" which means to restore, and "justice" which means justice. Unlike the conventional criminal justice system which emphasizes violations against the state, this approach views criminal acts as violations against individuals or communities. Therefore, the resolution is carried out outside the formal legal channels through a process of dialogue and deliberation involving all parties, in order to foster a sense of responsibility for the perpetrator, restore the victim's losses, and create justice.<sup>18</sup>

As mentioned, the involvement of victims and the community in handling conflicts and resolving problems in criminal cases will raise public awareness in general to prioritize resolving cases through deliberation and will raise public legal awareness.<sup>19</sup> The involvement of victims and the community in resolving criminal conflicts encourages the growth of collective awareness to prioritize resolution through deliberation. This also forms legal awareness in the community, which is an important factor in the effectiveness of implementing laws and regulations. The level of community compliance with the law, or what is called the degree of compliance, reflects the extent to which the law functions. The higher the community's legal awareness, the greater their compliance with applicable regulations. Conversely, low legal awareness will have an impact on low levels of compliance with existing regulations.<sup>20</sup>

The Attorney General's Office of the Republic of Indonesia as an institution that exercises state power in the field of prosecution has the responsibility to realize legal certainty and order, and to guarantee the upholding of justice and legal truth. In carrying out its duties, the prosecutor's office is required to continue to uphold religious norms, decency, and morality, and to explore the values of justice, law, and humanity that live and develop in

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<sup>17</sup>Zaenul Arifin, Sri Endah Wahyuningsih, and Sri Kusriyah, Law Enforcement Process against Perpetrators of Fraud and/or Embezzlement Under the Guise of Low-Cost Umrah Pilgrimage Service Bureau (Case Study on Investigators of the Semarang Police Criminal Investigation Unit), *Khaira Ummah Law Journal*, Vol. 12, No. 4, December 2017

<sup>18</sup>Marwan Efendy, *Criminal Justice System: A Review of Several Developments in Criminal Law*, References, Jakarta, 2012, p.20.

<sup>19</sup>Putri Meira Yustika, et al. Legal Review of Restorative Justice in the Crime of Receiving Money. *Yustisi*, Vol. 10, No. 1, 2023, pp. 57-70.

<sup>20</sup>Rahman Muhammad Yusuf, et al. Law Enforcement Against Illegal Parking in Tourist Areas. *Law Enforcement Against Illegal Parking in Tourist Areas*, Vol. 1. No. 1, 2020, pp. 86-94.

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society.<sup>21</sup>This is the basis for every law enforcement policy taken by the institution. As part of the legal reform efforts, the Attorney General's Office is given the authority to stop prosecution based on the principle of restorative justice. This step aims to increase the effectiveness of law enforcement through an approach that prioritizes simplicity, speed, and cost efficiency. The Attorney General's Office also plays a role in formulating policies for handling cases fairly and impartially, with legal considerations and the voice of conscience. In implementing restorative justice, the Attorney General's Office is required to ensure that all processes are carried out in accordance with applicable legal provisions.<sup>22</sup>

The relationship between the principle of legal certainty and the Restorative justice approach lies in the common goal of creating clarity in the application of positive law. Restorative justice is an important means of achieving this goal, because it is able to protect the public interest and act as the main driver in upholding social justice. In addition, this approach also strengthens public trust in the government and maintains the authority of state authority in the eyes of its citizens.

Normative legal certainty is when a statutory regulation is made and enacted with certainty because it regulates clearly and logically, it will not give rise to doubts due to multiple interpretations so that there is no conflict or cause conflict of norms. Laws containing general rules serve as guidelines for individuals and in their relationships with society. These rules serve as limitations for society in burdening or taking action against individuals so that the existence of these rules and the implementation of these rules create legal certainty.<sup>23</sup>

In Law Number 35 of 2009 concerning narcotics in the form of regulations regarding restorative justice which is intended to avoid and distance someone from the criminal justice process which is expected to avoid stigmatization of someone who is dealing with the law, especially the criminal justice process. So that the person can return to their social environment properly, and therefore support and roles from all parties are needed so that this can be realized. In addition to the perpetrator, the family is also one of the parties who are harmed. Secondly, there is a need for the perpetrator to prove capacity and quality in addition to overcoming guilt constructively. And finally, the punishment agreed upon for the perpetrator should consider aspects of welfare and equivalence.<sup>24</sup>

The concern that with restorative justice the perpetrator does not get a learning value, actually comes from the habit and understanding that punishment must be imprisonment. The basis of this restorative justice theory is the necessity to believe and strive that the perpetrator or his family can return to their original state as before the crime occurred.<sup>25</sup>

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<sup>21</sup>Ratna Sari Dewi Polontalo. Independence of Prosecutors as Public Prosecutors in Corruption Crimes According to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. *Lex Crimen*, Vol. 7. No. 6. 2018,

<sup>22</sup> Muhamad Bacharuddin Jusuf. Review of the implementation of restorative justice in the prosecution of minor crimes. *Das Sollen: Journal of Contemporary Law and Society Studies*, Vol. 1. No. 2. 2023,

<sup>23</sup>Siti Halilah, and Mhd Fakhurrahman Arif. Principles of Legal Certainty According to Experts. *Siyasah: Journal of Constitutional Law*, Vol. 4., no. 2, 2021.

<sup>24</sup>Nugraha, Winda, and Susilo Handoyo. "Implementation of Restorative Justice in Handling and Resolving Narcotics Crimes Committed by Children in Balikpapan City." *Journal de Facto* Vol. 6, No. 1, 2019.

<sup>25</sup>Herman, Herman, et al. Termination of Prosecution of Drug Abusers Based on Restorative Justice. *Halu Oleo Legal Research*, Vol. 4. No. 2, 2022, pp. 322-341.

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Restorative justice aims to gain clarity on an incident by encouraging perpetrators to take responsibility and play an active role in the conflict resolution process. This approach provides space for perpetrators to directly discuss and participate in determining the steps to resolve the violations they have committed, including receiving appropriate sanctions. In addition, perpetrators are given the opportunity to explain their actions, raise awareness of the impact of their actions, and take full responsibility. The perpetrator's family or party is also involved in determining sanctions and assisting in the post-mediation recovery process. The ultimate goal is to recreate social harmony by opening up space for reconciliation between the perpetrator and the community that was disrupted by the violation.<sup>26</sup>

Restorative justice is not only aimed at the perpetrator as the main point of the process, but rather to rehabilitate justice and law. This restoration theory assumes that criminal punishment does not provide "revenge" and "improvement" for the perpetrator of the crime, but it also does not deny that the perpetrator of the crime must receive sanctions. It's just that this theory focuses more on resolution than imprisonment. The issue of legal protection for perpetrators who are new users is one way to protect. Legal protection for perpetrators who are new users concerns all applicable legal regulations. Restorative justice is a concept of justice that prioritizes reconciliation and recovery based on the needs of victims, perpetrators and the environment affected by a crime. In practice, not all criminal cases end in prison. The concept of restorative justice in Indonesia is still relatively new.

Mahfud MD views restorative justice as a development of the theory of justice with a more humanistic approach. In this perspective, criminal acts are understood not merely as violations of the law, but as social symptoms or diseases in society that need to be cured. Therefore, criminal sanctions are not the main choice (*ultimum remedium*), especially for children who are proven to have violated the law. The preferred approach is to provide guidance measures such as returning to parents, education, rehabilitation, or training, in order to encourage behavioral changes and social recovery of the perpetrator.<sup>27</sup>

The Attorney General has issued Attorney General Regulation No. 18 of 2021, a guideline that regulates the Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle. Meanwhile, in court, it refers to the Decree of the Director General of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice on December 22, 2020. The policy signed by the Director General of the Supreme Court Badilum Prim Haryadi regulates the implementation of restorative justice only in the scope of minor criminal cases, child cases, cases of women in conflict with the law, and narcotics cases. "Ordering all district court judges to implement the guidelines for the implementation of restorative justice in an orderly and responsible manner. The Chief Justice of the High Court is obliged to supervise, monitor, and evaluate, and report on the implementation of restorative justice in the jurisdiction of the relevant High Court." In the appendix of this Decision, restorative justice is mentioned, in the settlement of cases can be used as an

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<sup>26</sup>Hanna Niken Julia Sihotang. "Implementation of Restorative Justice in Traffic Accidents." *Skylandsea Professional Journal of Economics, Business and Technology* Vol. 3. No. 2, 2023, pp. 17-28.

<sup>27</sup>Pardamean Harahap. Restorative justice Humanistic and Just Criminal Law Politics. *Journal of Modern Law Studies*, Vol. 6. No. 2. 2024,

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instrument of restoring justice and has been implemented by the Supreme Court in the form of policy implementation (Perma and SEMA). However, so far the implementation in the criminal justice system has not been optimal.<sup>28</sup>

Joint Decree of the Chief Justice, Attorney General, Chief of Police, Minister of Law and Human Rights, Minister of Social Affairs, and Minister of State for Women's Empowerment and Child Protection Number 166A/KMA/SKB/X11/2009, 148 A/A/JA/12/2009, B/45/X11/2009, M.HH-08 HM.03.02 of 2009, 10/PRS-s/KPTS/2009, 02/Men.PP and PA/XII/2009 Handling of Children in Conflict with the Law. Joint Memorandum of Understanding of the Chief Justice, Minister of Law and Human Rights, Attorney General, Chief of Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP06/E/EJP/10/2012, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of the Application of Adjustments to the Limits of Minor Crimes and the Amount of Fines, Fast Examination Procedures and the Application of Restorative Justice. Joint Regulation of the Chief Justice, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014 Number Per-005/A/JA/03/2014 Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Abusers and Victims of Narcotics Abuse into Rehabilitation Institutions. This decision defines justice.<sup>29</sup>

The Prosecutor's Office has the authority to determine whether a case is worthy of being referred to court or not, based on valid evidence in accordance with the provisions of the Criminal Procedure Code. As a state institution tasked with carrying out prosecution, the direction of prosecution policy by the Prosecutor's Office needs to be adjusted to the spirit of criminal law reform. This includes an assessment of the level of guilt of the perpetrator, his mental condition, the legal interests to be protected, and the impacts caused, while still considering the sense of justice of the community and living local values. In this context, termination of prosecution through a restorative justice approach is important for several reasons. First, because the Prosecutor's Regulation (PERJA) which regulates this is only binding internally and does not have a high position in the national legal hierarchy. Second, the application of restorative justice can help overcome the problem of overcapacity in detention centers and correctional institutions. Third, this approach also has the potential to reduce the number of cases that go to court and reduce the burden on the state budget used to handle criminal cases.<sup>30</sup>

The enactment of the Republic of Indonesia Attorney General's Law No. 11 of 2021 on December 31, 2021, which in its explanation has been emphasized that in exercising state power in the field of Prosecution, the authority of the Prosecutor's Office to determine whether a case can or cannot be transferred to the court has an important meaning in balancing the applicable rules (*rechtmatigheid*) and interpretations based on the purpose or

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<sup>28</sup>Lidya Rahmadani Hasibuan et. al., "The Concept of Restorative Justice in Drug Cases Committed by Children." *Innovative: Journal of Social Science Research* Vol. 3. No. 4, 2023, pp. 5616-5625.

<sup>29</sup>Alexander, Alexander. "Alternative Dispute Resolution in the Mediation of Customary Law Disputes in Papua." *Jurnal Syntax Transformation* Vol. 2. No. 9, 2021, pp. 1215-1224.

<sup>30</sup>Rudi Pradisetia Sudirdja, et al. Strengthening the Authority of Public Prosecutors Through Waiving Criminal Cases for Certain Reasons. *LITIGATION*, Vol. 20. No. 2. 2019,

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principle of benefit (*doelmatigheid*) in the criminal justice process. The authority of the Prosecutor in exercising Prosecutorial discretion (*prosecutorial discretionary* or *opportunititeit beginselen*) which is carried out by considering local wisdom and values of justice that live in society has an important meaning in accommodating the development of legal needs and a sense of justice in society that demands a change in the paradigm of law enforcement from merely realizing retributive justice (*retribution*) to restorative justice.

The paradigm shift from retributive justice to restorative justice is also part of the changes to the Attorney General's Law. According to Attorney General St. Burhanuddin, the spirit of the paradigm shift in criminal law can be seen in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the Law on the Eradication of Human Trafficking, and Attorney General Regulation (Perja) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. As well as Attorney General Regulation No. 18 of 2021 concerning Settlement of Handling of Narcotics Abuse Criminal Cases Through Rehabilitation.<sup>31</sup>

### **3.2. Obstacles and Solutions of the Prosecutor's Office in Terminating Prosecution of Drug Abusers for Themselves Based on Restorative Justice at the West Jakarta District Attorney's Office**

The basic principle of restorative justice is the restoration of victims who suffer from criminal acts by providing compensation to victims through a peace process, while the punishment for the perpetrator can be replaced, for example, by doing community service. According to Tony Marshall, restorative justice is a process that involves all parties concerned with a particular violation problem to then collectively resolve the consequences of the violation and its implications in the future.<sup>32</sup>

Law enforcers in Indonesia have implemented restorative justice in resolving criminal cases, including drug cases. Most of the criminal cases that occur in Indonesia involve drug cases, so that more than 60% (sixty percent) of the inmates of prisons and detention centers in Indonesia are related to drug cases. This situation is one of the causes of overcrowding in prisons. As a result of this overcrowding problem, the development of prisoners in prisons is not running optimally. Even with the complexity of the problems in prisons, it has resulted in worsening health conditions for prisoners and has an impact on the psychological atmosphere of inmates, making it easy for conflicts to occur.<sup>33</sup>

The cases that contribute to overcrowding in prisons and detention centers are narcotics cases, so in order to anticipate overcrowding, it can be done by differentiating the punishment for drug dealers, users and abusers. For drug abuse, it is better not to be sentenced to prison, but rather a health approach is sufficient by conducting medical and social rehabilitation for the person concerned. Meanwhile, for drug dealers who are forced to do it because of economic factors, the state is obliged to help and save them from the

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<sup>31</sup> Roger Hermanus, et. al., "Implementation of Restorative Justice in Settling Fraud Cases with a Business Background at the South Minahasa District Attorney's Office." *Innovative: Journal of Social Science Research*, Vol. 3. No. 5, 2023, pp. 8083-8091.

<sup>32</sup> Ibnu Affan and Gema Ramadani, Implementation of Restorative Justice in Drug Abuse Cases Based on Progressive Law, *Jurnal Hukum Kaidah*. Vol. 23, No. 1, pp. 65-75

<sup>33</sup> Francisco Lundu Hesekhel Pasaribu, et al. "Restorative Justice at the Investigation Level for Drug Addicts and Victims of Drug Abuse." *Court Review: Journal of Legal Research* Vol. 4. No. 3, 2024, pp. 11-23.

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economic pressure. So in principle, the imposition of punishment on such perpetrators is the last resort known as the principle of *ultimum remedium*.<sup>34</sup>

Rehabilitating drug abusers would be better than imprisoning them. If drug abusers are rehabilitated, then the possibility of recovery from addiction becomes greater and in the end they will not consume the illicit goods again. Therefore, the Indonesian legal system adopts a double track system of punishment, namely when drug abusers are sentenced to criminal penalties, then the punishment is carried out through rehabilitation outside of prison. Rehabilitation is one way to save victims of drug abuse from their addiction. In fact, the purpose of rehabilitation is to restore addicts and drug abusers from their dependence on narcotics and to be able to return to normal life in a healthy physical and spiritual state so that they can re-integrate into society.<sup>35</sup>

The current criminal justice system tends to be punitive, reflected in the number of inmates in correctional institutions that exceed capacity (overcrowding) and most of them are drug-related convicts. This overcrowding issue has become a serious concern for the community and the government as stated by the government in the 2020-2024 National Medium-Term Development Plan in order to improve the criminal law system through a restorative justice approach. Therefore, a strategic criminal policy is needed, especially in handling drug abuse cases, one of which is through reorientation of law enforcement policies in the implementation of Law Number 35 of 2009 concerning Narcotics.<sup>36</sup>

criminal cases by terminating prosecution by the Prosecutor's Office through rehabilitation is carried out by prioritizing restorative justice and benefit (*doelmatigheid*), as well as considering the principles of fast, simple, and low-cost justice, the principle of criminal law as a last resort (*ultimum remedium*), cost and benefit analysis, and rehabilitation of the perpetrator.<sup>37</sup>

The West Jakarta District Attorney's Office faces various obstacles that cannot be separated from the dynamics of the legal system itself. Referring to Lawrence M. Friedman's legal system theory, the legal system consists of three main interrelated elements, namely structure, substance, and legal culture.<sup>38</sup> These three elements are key in assessing the effectiveness of implementing legal policies, including in terms of terminating prosecution based on restorative justice. Here are the obstacles and their solutions:

#### 1. Legal Substance

Restorative justice is one form of the application of the *Dominus Litis* principle by the Prosecutor's Office, where the prosecutor has full authority to control the direction of the

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<sup>34</sup>Suprianto, Agus and Nur Handayati. "Implementation of Restorative Justice at the Investigation Stage of Narcotics Crime Perpetrators." *Multidisciplinary Scientific Research Journal* Vol. 8, No. 12 2024

<sup>35</sup>Fauzi Rizky. Implementation of Rehabilitation for Addicts, Abusers and Victims of Narcotics. *Riau Law Journal*, Vol. 1. No. 1, 2017, pp. 103-123.

<sup>36</sup>Abraham Marune and Brandon Hartanto. "Restorative Justice in the Settlement of Drug Abuse Cases Post Attorney General's Guidelines Number 18 of 2021: A Dignified Justice Theory Perspective." *The Prosecutor Law Review*, Vol. 1. No. 3, 2023.

<sup>37</sup>Rama Adoa, et. al., "Completion of Handling of Criminal Narcotics Abuse Cases." *Tatohi: Journal of Legal Studies* Vol. 4. No. 3, 2024, p. 216-227.

<sup>38</sup>Suyatno Suyatno. Weaknesses of the Legal System Theory According to Lawrence M. Friedman in Indonesian Law. *Ius Facti: Periodic Journal of the Faculty of Law, Bung Karno University*, Vol. 2. No. 1, 2023, pp. 197-205.

prosecution of criminal cases. Based on Attorney General Regulation Number 15 of 2020, restorative justice is defined as a mechanism for resolving criminal cases involving the perpetrator, victim, and family from both parties, together with other related parties, in order to achieve a fair resolution by emphasizing the restoration of conditions as before, not on retaliation. The process of terminating prosecution with this approach is carried out on the basis of the principles of justice, public interest, proportionality, the use of criminal law as a last resort, and prioritizing a fast, simple, and cost-efficient process.<sup>39</sup>

The restorative justice approach in resolving criminal cases, especially general crimes, is carried out by the Prosecutor's Office based on Attorney General Regulation Number 15 of 2020 concerning Prosecution Based on Restorative Justice. The law enforcement process through the restorative justice approach always pays attention to aspects of transparency and accountability.<sup>40</sup>

Settlement of criminal cases outside the court through a restorative justice approach is one mechanism that can be used to stop prosecution. This termination is carried out by the Public Prosecutor with full responsibility and based on the provisions of the Attorney General's Regulation Number 15 of 2020 as the legal basis. In implementing restorative justice, prosecutors must consider various important aspects, such as the identity of the perpetrator and victim, the type and threat of punishment faced, the background of the incident, the level of the perpetrator's guilt, the impact or loss caused, and considerations between the costs and benefits of handling the case. In addition, efforts to restore conditions to their original state and achieve peace between the perpetrator and victim are also determining factors in making the decision to stop prosecution.<sup>41</sup>

The provisions related to the requirements for a case to be closed by law or its prosecution to be stopped based on restorative justice are, first, the suspect has committed a crime for the first time. Second, the crime is only threatened with a fine or is threatened with imprisonment of no more than 5 years. Third, the crime is committed with the value of the evidence or the value of the loss caused by the crime not exceeding Rp. 2,500,000.00.<sup>42</sup>

Penal mediation as a logical consequence of the restorative justice approach has several models, namely, first, informal mediation that can be assisted by social workers or probation officers, by police officers, or by judges. Second, traditional village or tribal moot justice which is more for countries whose areas are still rural or urban villages. Third, mediation between perpetrators and victims (victim-offender mediation) applies to all perpetrators of criminal acts, namely some are specifically for children, for certain types of crimes, types of novice offenders, and types of recidivists. Fourth, a negotiation program to make improvements (reparation negotiation program) which prioritizes compensation or improvements that must be paid by the perpetrator to the victim/victim's family. Fifth,

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<sup>39</sup>Sufirman Rahman, et al. The Process of Resolving Criminal Cases Through Restorative Justice Within the Scope of the Majene District Attorney's Office. *Journal of Lex Philosophy (JLP)*, Vol. 5. No. 2, 2024, pp. 350-365.

<sup>40</sup>Mudrika, Mudrika, et. al., "Implementation of Restorative Justice for Small-Scale Corruption Crimes in the Criminal Justice System in Indonesia." *SENTRI: Scientific Research Journal* Vol. 2. No. 12, 2023, pp. 5261-5272.

<sup>41</sup>Edy Pane. The Role of the Labuhanbatu District Attorney's Office in Resolving Domestic Violence Crimes with a Restorative Justice Approach. *Indonesia Berdaya*, Vol. 4. No. 4, 2023, pp. 1419-1430.

<sup>42</sup>Tampubolon, Soritua Agung, et al. "Termination of Prosecution of Criminal Acts of Abuse Based on the Restorative Justice Approach." *Locus Journal of Academic Literature Review*, Vol. 2, Issue 3, 2023, pp. 193-202.

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community figures/courts (community panels or courts) which prioritize elements of mediation or negotiation. Sixth, family or community group conferences which involve the participation of the community and supporters of the victim.<sup>43</sup>

In addition to the Investigation Regulation, the Restorative Justice Regulation also regulates restorative justice. In July 2020, the Attorney General of the Republic of Indonesia issued the Restorative Justice Regulation. Basically, this is a further regulation of the Criminal Procedure Code regarding the Authority to Terminate Prosecution held by the Public Prosecutor. Article 140 paragraph (2) of the Criminal Procedure Code provides three reasons for the public prosecutor to terminate the prosecution, namely the act is not a criminal act, insufficient evidence, and closed by law. Closed "by law" then refers to the provisions of material law. According to Eddy OS Hiariej, the reasons for the prosecution to be dropped are based on the provisions in the Criminal Code and outside the Criminal Code. The provisions outside the Criminal Code are contained in Chapter VIII Book I of the Criminal Code concerning the Elimination of the Authority to Prosecute and the Authority to Execute Criminal Procedure. Closed by law based on the Criminal Code means if the case is *Ne Bis in Idem* (Article 76), the defendant dies (Article 77), and the case has expired (Article 78). Moreover, the Restorative Justice Regulation added the reason for stopping the prosecution, namely that "there has been a settlement of the case outside the court (*afdoening buiten process*)."<sup>44</sup>

### **3.3. West Jakarta District Attorney's Office's Efforts Towards Termination of Prosecution of Drug Abusers in the Future**

Indonesia is a country of law, as mandated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a country of law. Based on the mandate of the constitution, it is clear that the purpose of the Indonesian state of law is to provide justice for all levels of society in Indonesia. In reality, if we look again, the Indonesian state of law applies two applicable legal systems, namely the Continental European legal system (civil law) and the Anglo Saxon system (common law) so that many legal experts say that Indonesia applies a mixed legal system. However, the laws applicable in Indonesia must still be based on the ideology and constitution of the Indonesian state itself, so that the Pancasila state of law was born. The Pancasila state of law is a concept of a state of law that has philosophical values, guaranteeing the existence of Indonesian people, especially regarding basic rights, so that discrimination is not allowed in the judicial process, equal treatment before the law, and the principle of legality in the formal and material sense which is based on the philosophical values of the five fundamental values of Pancasila which complement each other and are interrelated with each other.<sup>45</sup>

The rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia has two concepts, namely the material concept and the formal legal concept. In the formulation of the material concept, the Pancasila rule of law is carried out with the

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<sup>43</sup>Wagiu et. al., *Restorative justice: In resolving banking crimes of state-owned enterprises*. Nas Media Pustaka, Makassar, 2023, p. 12

<sup>44</sup>Muhammad Fatahillah Akbar. "Restorative Justice in the Criminal Justice System as an Manifestation of Pancasila Values." *Justitia Et Pax* Vol. 37. No. 1, 2021, p. 25

<sup>45</sup>Khalisah Hayatuddin, et al. "Legal Implications of The Constitutional Court Decision on The Application of Restorative Justice Concept in Indonesia." *Journal of Law and Justice*, Vol. 11, No. 2, 2022, pp. 281-312.

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perspective (paradigm) of the Indonesian nation which is integralistic, a characteristic of the Indonesian state itself, namely with the principle of kinship which has the meaning that the Indonesian state has a large population/people so that human dignity must be respected and protected. The formal legal concept has a paradigm that the law has a protective function, namely upholding law and democracy based on the fundamental values of Pancasila.

Moh. Mahfud MD has his own view on the concept of a state based on law. He explained that the concept of an Indonesian state based on law has the characteristics and characteristics of the soul of the Indonesian nation (*volkgeist*) itself, namely the soul of the nation that has the values contained in Pancasila. Although he has identified and formulated the characteristics of an Indonesian state based on Pancasila, the concept of a Pancasila state based on law itself has not been fully implemented and institutionalized properly. Therefore, there needs to be a focused, measurable, and consistent effort to internalize the concept of a Pancasila state based on law into aspects of the lives of all Indonesian people, especially in terms of making laws that are used as written law in Indonesia. Therefore, the sources of national law are first, the Preamble and Articles in the 1945 Constitution of the Republic of Indonesia which contain the objectives, foundations of the state, legal ideals, and basic norms of the Indonesian state which must be the direction and basis of Indonesian legal policy. Second, the Preamble and Articles of the 1945 Constitution of the Republic of Indonesia contain unique values that originate from the views and culture of the nation inherited from the ancestors of the Indonesian nation. This means that the concept of the Pancasila legal state has certain characteristics that make it different from the legal systems applied in other countries in the world. The legal system applied in Indonesia, namely the Pancasila legal system, is a legal system that is explored and discovered from the philosophical values of the Indonesian nation itself. Thus, we as Indonesian people must be proud of the legal system that we have, which is not owned by other nations. The legal systems applied in other countries usually take from various legal systems that exist in the world. This means that the legal system is not purely taken from the philosophical values of their own nation. The legal system resulting from a combination of more than one legal system and social values is called a prismatic legal system, because it is carried out through prismatic choices.<sup>46</sup>

Law in Indonesia is the commander in resolving problems/disputes that occur in society, because the law is able to guarantee that everyone can exercise their rights, including the right to freedom, the right to justice, certainty, and benefits. To achieve the objectives of the law, a state based on law must have minimal characteristics as explained by Bagir Manan as follows: all actions must be based on law; the existence of provisions that guarantee basic rights and other rights; and the existence of an independent institution to assess the actions of the authorities towards society (a free/independent judicial body).<sup>47</sup>

Enforcing the law, determining guilt, and imposing punishment are the primary goals of the traditional criminal justice system. The term "crime" is used to describe certain acts in which the general public, rather than a specific individual, is the intended target of the

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<sup>46</sup>Moh. Mahfud MD, *Building Legal Politics to Uphold the Constitution*, LP3ES Library, Jakarta, 2006, p. 23

<sup>47</sup>Bagir Manan, *The Basics of the Indonesian Constitution According to the 1945 Constitution*, Padjajaran University, Bandung, 1994, p. 19

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wrongdoing. The criminal justice system acts as a collective voice in response because these crimes are viewed as societal violations rather than individual violations. In the sentencing process, the courts must balance between the traditional responses to crime in the justice system, which emphasize punishment, punishment, retribution, and public safety in the face of lawlessness.<sup>48</sup>

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This perspective is the basis of modern criminal law because it challenges the centrality of punishment in criminal law and places more emphasis on restorative justice measures such as reparation. There is no need to constantly seek restitution in every occurrence of criminal law; although criminal sanctions or punishments are significant, they are not vital to the development of criminal law and because violations of law are more than just violations of law, restorative justice provides a solution to this criminal reality. In addition, the basic purpose of restorative justice is to promote social harmony. In addition, restorative justice emphasizes a fair balance between victims and perpetrators, as well as the maintenance and preservation of the legal ideals of society. Although the provisions of the law can be defined precisely in ideal circumstances, the existence of disparities is a phenomenon that cannot be characterized accurately in actual societal conditions.<sup>50</sup>

Facing the era of drug law enforcement that prioritizes rehabilitation, the West Jakarta District Attorney's Office needs to formulate a proactive and visionary strategy. The future strategy must ensure that the mechanism for terminating prosecution for drug abusers can be implemented. Some of the strategic directions identified include:

1. Mainstreaming Restorative Justice in Handling Narcotics Cases.
2. Formation of a Special Restorative Justice Team or Focal Point. To ensure the implementation of RJ runs smoothly,

The West Jakarta District Attorney's Office can take the initiative to build a regular coordination forum with these stakeholders. For example, creating a Memorandum of Understanding (MoU) between the Prosecutor's Office, the City BNN, and the West Jakarta Metro Police regarding the mechanism for handling drug addicts through rehabilitation. The MoU can regulate the flow starting from the investigation stage, where every suspect of Article 127 of the Narcotics Law will immediately be assessed in an integrated manner; if

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<sup>48</sup>Bambang Waluyo. "The Relevance of Restorative Justice Doctrine in the Criminal Justice System in Indonesia." *Hasanuddin Law Review*, Vol. 1. No. 2, 2015, pp. 210-226.

<sup>49</sup>Yusna Arsyad et. al., *Restructuring the Principles of Restorative Justice in the Indonesian Criminal Justice System: An Idea to Achieve Ideality*, *Jurnal Ilmu Hukum Prima*, Imu Hukum Prima (IHP), Vol. 6, No. 2, 2023, pp. 253-265.

<sup>50</sup>Noni Rihhadatul Aisya, et. al., "Enforcement of Restorative Justice in Indonesian Criminal Law." *Journal of Master of Law: Law and Welfare* Vol. 8. No. 2, 2023, pp. 72-80.

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they meet the criteria, the prosecutor will consider RJ. This coordination is important so that there are no differences in perception between institutions. Research shows that one of the obstacles to implementing RJ is the lack of understanding and coordination between related institutions. With intensive communication and a common perception, this obstacle can be overcome. In addition, the District Attorney's Office can build networks with more rehabilitation institutions (both government-owned and community components).

West Jakarta as a densely populated area has access to Drug Addiction Hospital (RSKO) or private rehabilitation clinics, where the prosecutor's office can work together so that rehabilitation slots are available sufficiently for suspects whose cases are terminated. This strategy ensures that when the prosecutor decides on restorative justice to rehab, the facilities are ready to accommodate, so that the good intention to stop the prosecution does not fail because the rehabilitation place is full or unavailable.

#### **4. Conclusion**

1. The implementation of the termination of prosecution against drug abusers for themselves based on restorative justice at the West Jakarta District Attorney's Office, shows the commitment of law enforcement institutions to prioritize a rehabilitative approach in handling drug cases. By going through stages such as integrated assessment, profiling, internal exposure, to approval from the Attorney General's Office, this process confirms that justice does not always have to be realized through criminalization. The suspect RBS who was proven to be only a user, not involved in the drug distribution network, and showed good faith, was positioned as an individual who deserves to be restored through rehabilitation, not imprisonment. This is in line with the principle of restorative justice which emphasizes recovery. 2. The implementation of restorative justice in the West Jakarta District Attorney's Office still faces weaknesses in three main dimensions of the legal system, namely legal substance, legal structure, and legal culture. In terms of legal substance, Attorney General Regulation Number 15 of 2020 provides a strong basis, but there is no clear regulation in the Criminal Procedure Code regarding the termination of prosecution based on restorative justice. In terms of legal structure, the main challenge lies in the uneven understanding among law enforcement officers. In terms of legal culture, the community and law enforcement officers are still trapped in a retributive paradigm that prioritizes criminal penalties. For this reason, changes in the substance of the law are needed by revising Article 140 paragraph (2) of the Criminal Procedure Code, strengthening the institutional structure with training, and providing socialization about restorative justice to the community. 3. The efforts of the West Jakarta District Attorney's Office towards the termination of prosecution of drug abusers in the future by prioritizing a more humanistic legal approach through the implementation of restorative justice based on Pancasila values. By making restorative justice the main policy, forming a special RJ team, and strengthening cross-sector coordination with the Police, BNN, Health Service, and rehabilitation institutions, the Attorney General's Office can realize a legal system that not only imposes punishment but also restores social harmony and provides rehabilitation opportunities for drug addicts. This strategy is in line with the spirit of the Pancasila legal system which prioritizes substantive justice and respect for human dignity, and emphasizes the role of the prosecutor's office as a motor of change in modern criminal law reform.

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Interview with Mr. Jan Fanther Rio Simanungkalit, SH as Public Prosecutor of the West Jakarta District Attorney's Office, on March 1, 2025

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