

## Analysis of Termination of Prosecution in Drug Abuse Cases Based on Restorative Justice

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**Abstract.** *Imprisonment of narcotics and dangerous drug users has proven ineffective. This is a common thread in law enforcement against narcotics users. The purpose of this study is to examine and analyze the implementation of the termination of prosecution for narcotics abuse cases based on restorative justice, examine and analyze weaknesses in the termination of prosecution for narcotics abuse cases based on restorative justice. This legal research uses an empirical juridical legal research approach. The implementation of the termination of prosecution for narcotics abuse cases in Indonesia is still based on Law No. 35 of 2009, specifically Article 127 paragraph (1), which positions users as criminal perpetrators, thus causing overcrowding in prisons and social stigma. To address this, the Attorney General's Office issued Attorney General's Guidelines No. 18 of 2021 which opened the opportunity for termination of prosecution with a rehabilitation mechanism, although previously Regulation No. 15 of 2020 excluded narcotics cases. Real implementation is evident in the Eros Prastiyo case at the Sidoarjo District Attorney's Office, which demonstrates the restorative justice process, from pre-prosecution and BNN assessment to rehabilitation. This approach emphasizes punishment as the ultimum remedium and positions users as victims in need of recovery. However, its implementation still faces substantive weaknesses, such as articles that emphasize imprisonment over rehabilitation. Furthermore, structural weaknesses are evident in inter-institutional coordination, limited rehabilitation facilities, and weak oversight. Weaknesses in the legal culture, such as societal stigma and a repressive paradigm by officials, remain dominant. Therefore, reforms in the substance, structure, and culture of the law are needed to create a more humane and just system.*

**Keywords:** *Discontinuation; Justice; Narcotics; Prosecution; Restorative.*

### 1. Introduction

Drug abuse in Indonesia has become a serious problem and a worrying situation, so it is no longer a national problem but a transnational problem.<sup>1</sup> Drug abuse is a crime whose graph

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<sup>1</sup>Jeanne Mandagi, *Combating the Dangers of Narcotics and Psychotropics*, Pramuka Saka Bhayangkara, Jakarta, 1996, p. 33

continues to increase, almost all people, regardless of social status, can be infiltrated by narcotics, such as children, schoolchildren, university students, celebrities, professional institutions and not a few officials.<sup>2</sup>and narcotics are a form of crime or criminal act that is agreed upon (Consensus Crime) because all parties are involved in the crime, whether as perpetrators or victims (Self Victimization).

As a crime that is agreed upon between the perpetrator and the victim, they have mutually agreed in the crime so that determining the victim will be increasingly confusing and unclear. Indonesia has placed the eradication of illicit drug trafficking as one of its main priorities in law enforcement, because illicit drug trafficking is a series of activities carried out without rights and against the law which are determined as narcotics crimes. Legislation that supports efforts to eradicate narcotics crimes is very necessary, especially since narcotics crimes are one of the unconventional crimes that are carried out systematically, using high modus operandi and sophisticated technology and are carried out in an organized manner (organized crime) and are already transnational (transnational crime).<sup>3</sup>

The widespread abuse and victims of narcotics crimes have penetrated all levels of society without exception, including children, adolescents, young people, the elderly, both educated and uneducated, and people from various professions. Law enforcement aims to uphold the law, ensuring that the values championed through the relevant legal instruments can be realized. However, when using the law, the ideals contained in the law are not necessarily genuinely intended to be achieved, as the law is used to justify actions taken to legitimate their actions.

The provisions of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) have also mentioned several terms that have the same essence as Narcotics users themselves, including drug abusers, abusers, victims of abuse, former drug abusers and patients. Based on the various terms related to drug abusers, it has different impacts and implications so that there is inconsistency in treating people who use narcotics as victims of drug abuse for themselves.<sup>2</sup> The Narcotics Law, which regulates that the distribution of narcotics and other addictive substances is subject to criminal penalties. Previously, the Law on Narcotics was regulated through Law No. 22 of 1997 which was amended by the Narcotics Law. Considering that there are several things that need to be improved in Article 2 concerning the regulation of narcotics in order to adapt to existing developments. In Article 127 paragraph 1 every abuser of Narcotics Class I, II, III for themselves is punished with imprisonment.

A report from the National Narcotics Agency (BNN) shows that in 2022, there were 851 cases of narcotics and drug threats in Indonesia. This figure represents an 11.1% increase compared to the previous year, which only recorded 766 cases. The BNN also recorded an increase in the number of suspected drug cases, amounting to 1,350 people throughout 2022, a 14.02%

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<sup>2</sup>Jeanne Mandagi, *Narcotics Problems and How to Overcome Them*, Pramuka Saka Bhayangkara, Jakarta, 1995, p.11.

<sup>3</sup>Arief Wibowo, I Made Minggu Widyantara and Ni Made Sukaryati Karma, *Implementation of Sema 4 of 2010 for Narcotics Abuse Perpetrators in Police Investigations*, Journal of Legal Analogy, Volume 1, Number 1, 2019, pp. 34-39

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increase from the previous figure in 2021, which only reached 1,184 people. Furthermore, the National Narcotics Agency (BNN) also successfully uncovered 49 drug networks in Indonesia in 2022, consisting of 23 international networks and 26 local networks. During that year, the BNN managed to seize 1,904 tons of crystal methamphetamine as evidence, as well as 1.06 tons of marijuana and 262,789 ecstasy pills. Furthermore, 16.5 kg of ecstasy powder was found as evidence the previous year. During 2022, the National Narcotics Agency (BNN) also destroyed 63.9 hectares of marijuana farmland and 152.6 tons of marijuana in its wet form. The sheer volume of data related to drug abuse is certainly concerning.<sup>4</sup>

Imprisoning drug users and dangerous drugs has proven ineffective. This is a common thread in law enforcement against drug users.<sup>5</sup> Drug abuse and illicit trafficking in Indonesia are inextricably linked to global developments. Various government and public attitudes and perspectives on the increasing number of drug users and/or abusers have led to differing perspectives. "With 2014 being declared the year of saving drug users, drug abusers must be handled appropriately, not only by imposing prison sentences but also by taking other legally permitted measures."<sup>6</sup>

In principle, drug abusers are guaranteed medical rehabilitation and social rehabilitation as regulated in Article 4 point (d), and also Article 54 which states that "Narcotics abusers and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation" but in criminal provisions, criminal sanctions have also been regulated for people who use narcotics as regulated in Article 127. However, because the Indonesian Criminal Justice System adheres to the principle of legality, in general practice, all narcotics cases, including narcotics users for themselves who are not dealers, are usually also always processed legally in accordance with legal norms as stipulated in the Narcotics Law, namely with the threat of criminal sanctions in prison. So that narcotics abusers for themselves who are not dealers, where initially as victims who should be rehabilitated, must undergo prison sentences as regulated in Article 127. Not only that, narcotics users who are not dealers when brought before the court will be charged with other overlapping articles. Logically, if a user obtains narcotics illegally, then of course there are also several actions carried out by the user as formulated in Article 111 and/or Article 112 or even Article 114 which have elements of buying, controlling, storing or possessing which are ultimately used for their own use.<sup>7</sup>

Many drug abuse cases occur, and one of them is handled by the Prosecutor's Office. Several of these cases have been resolved or prosecutions have been dropped. The reason for these dismissals is the implementation of restorative justice. This includes considerations that led to the dismissal of these cases.

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<sup>4</sup>Nasution, Rizki Nur Amalia, and Juliana Nasution. "Implementation of the Sakti application in financial management at the National Narcotics Agency (BNN) of Sumatra Province." *ALEXANDRIA (Journal of Economics, Business, & Entrepreneurship)* 3, No. 1 (2022): pp. 5-8.

<sup>5</sup>Sulhin, Iqrak. "Covid-19, Excessive Imprisonment, and the Potential for Humanitarian Catastrophe." *Journal of Law & Development* 50, No. 2 (2020): p. 400.

<sup>6</sup>Rizal, "A Legal Review of Criminalization for Narcotics Users," *Legal Opinion*, Vol. 5, No. 1, 2021, p. 2.

<sup>7</sup>Kusno Adi, *Criminal Policy in Handling Narcotics Crimes by Children*, Malang: UMM Press, 2009, p. 30.

The application of the principle of restorative justice is carried out by the Prosecutor's Office by issuing Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as "Perja 15/2020").<sup>8</sup>Based on the criminal justice system, the Attorney General's Office of the Republic of Indonesia is an institution that has the authority to decide whether a case will be forwarded to court or not. This is in accordance with the authority of the prosecutor's office as regulated in Article 2 paragraph (1) of Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, namely the prosecutor's office is a government institution that exercises state power in the field of prosecution and other authorities based on law. What is meant by prosecution is the action of the public prosecutor to transfer a case to the competent district court according to the method regulated in the Criminal Procedure Code with a request that it be examined and decided by a judge in a court hearing.

One example of a case on March 4, 2025, the Banten High Prosecutor's Office carried out an activity of Requesting Termination of Prosecution Based on Restorative Justice in a Narcotics Abuse case originating from the Tangerang Regency District Prosecutor's Office. On behalf of suspects Rasjiman and suspect Muhamad Irawan who were suspected of violating Article 114 Paragraph (1) or Article 112 Paragraph (1) or Article 127 Paragraph (1) Letter a of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics. The reasons for the request for rehabilitation for the suspects were: The suspect was not involved in a narcotics trafficking network and was the final user (end user); Based on the results of an integrated assessment, the suspect was qualified as a narcotics addict, victim of narcotics abuse, or narcotics abuser; The suspect had never undergone rehabilitation or had undergone rehabilitation, which was supported by a certificate issued by an authorized official or institution; There was a guarantee letter that the suspect would undergo rehabilitation through a legal process from his family or guardian. The Deputy Attorney General for General Crimes through Director B approved the application and subsequently to the Head of the Tangerang Regency District Attorney's Office to issue a Decree on Case Settlement Based on Restorative Justice based on the Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Narcotics Abuse Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle.<sup>9</sup>

The authority of the Indonesian Attorney General's Office to provide narcotics rehabilitation is regulated by Article 30C letter (c) of the Indonesian Attorney General's Office Law, and the Guidelines for Providing Narcotics Rehabilitation Based on Prosecutor's Restorative Justice (Guidelines Number 18 of 2021) serve as a reference in resolving narcotics abuse cases using a restorative justice approach. These guidelines are designed to optimize rehabilitation institutions at the prosecutor's office level, considering that a punitive criminal justice system can lead to overcapacity in Community Institutions. The prosecutor's authority as case

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<sup>8</sup>Wakkary, Reynaldi Sinyo. "Implementation of Restorative Justice Principles in the Prosecution System Based on Prosecutor's Regulation Number 15 of 2020." *Lex Crimen* 10, No. 9 (2021), p. 31

<sup>9</sup>Rinaldo, Rinaldo, Triono Eddy, and Alpi Sahari. "Implementation of Rehabilitation for Narcotics Abusers by Police Investigators (Study at the North Sumatra Regional Police Narcotics Directorate)." *Legalitas: Jurnal Hukum* 14, No. 1 (2022): pp. 43-53.

controller, based on the principle of dominus litis, serves as the basis for resolving narcotics abuse cases using a restorative justice approach.

## **2. Research Methods**

This legal research uses an empirical legal research approach. Empirical legal research utilizes legal principles and principles to review, observe, and analyze problems within the research, while also reviewing the implementation of the law in practice.<sup>10</sup>

## **3. Results and Discussion**

### **3.1. Implementation of Termination of Prosecution in Narcotics Abuse Cases Based on Restorative Justice**

Drug abuse is a form of transnational crime, as stipulated in Law Number 35 of 2009 concerning Narcotics (the Narcotics Law). Modernization of communication and transportation technology has facilitated drug trafficking networks that no longer recognize national borders. Everyone now has easy access to drug transactions. This ease of access to drug trafficking has led to high rates of drug abuse in Indonesia.<sup>11</sup>

In the normative perspective, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, drug abusers or drug abusers are categorized as criminal acts. However, it is known that drug abusers for themselves and drug abusers are only victims of their own actions. In essence, drug abusers for themselves and drug abusers are individuals who use and abuse drugs for themselves. Therefore, drug abusers should be positioned as victims, not as perpetrators of criminal acts who are ultimately subject to criminal sanctions. In other words, individuals who abuse drugs for themselves will automatically become victims of drug abuse. This condition is also known in the typology of victims as self-victimizing victims, namely those who become victims because of crimes they commit themselves.<sup>12</sup> Or, according to Romli Atmasasmita, a dual state is a situation where the relationship between the victim and the perpetrator is single or one, in the sense that the perpetrator is the victim and the victim is the user or drug user.<sup>13</sup>

Drug abusers themselves have been criminalized by legal norms as a criminal act so that what happens then in legal norms and the general public is labeling drug abusers as criminals which then has the possibility of causing drug abusers to form exclusive groups or individuals, resulting in increasing difficulties for the role of society and the government to cure and reduce the negative impacts of drug abuse. As the labeling theory in criminology examines that crime is not a quality of a person's actions, but rather a result of the application of

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<sup>10</sup>Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1990, p. 33.

<sup>11</sup>Rinaldo, Rinaldo, Triono Eddy, and Alpi Sahari. "Implementation of rehabilitation for drug abusers by police investigators (Study at the North Sumatra Regional Police Narcotics Directorate)." *Legalitas: Jurnal Hukum* 14, no. 1 (2022): pp. 43-53.

<sup>12</sup>C. Maya Indah S., *Victim Protection (A Victimology and Criminology Perspective)*, Jakarta: Kencana Prenadamedia Group, 2014, p. 36

<sup>13</sup>Romli Atmasasmita, *The Problem of Compensation for Victims of Crime*, Jakarta: National Legal Development Agency, Department of Justice, 1992, p. 22.



sanctions and regulations by others to an offender.<sup>14</sup> Criminalizing drug abusers themselves would also contradict the purpose of criminal law. The purpose of criminal law is to protect the interests of individuals or human rights and to protect the interests of society and the state by balancing the consequences of crimes/reprehensible acts on the one hand with the arbitrary actions of authorities on the other.<sup>15</sup>

Article 127 Paragraph (1) of the Narcotics Law stipulates that the penalty for drug abusers is imprisonment. The large number of drug abusers, as per data from the 2022 Indonesia Drugs Reports, means that the imprisonment sentences imposed on drug abusers can lead to overcrowding in correctional institutions. This overcrowding can result in poor health and psychological conditions for prison inmates, easy conflict between prison inmates, suboptimal and inconsistent guidance, and budget overruns due to increased consumption of water, electricity, and food.

Due to the problem of overcrowding in correctional institutions, the Attorney General's Office of the Republic of Indonesia, as the state institution exercising power in the field of prosecution, issued the Attorney General's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. This regulation regulates restorative justice, which is the settlement of cases outside the court with a focus on restoring justice in accordance with the wishes of the parties concerned by means of termination of prosecution. However, Article 5 Paragraph 8 Letter c of the Attorney General's Regulation actually stipulates that narcotics crimes are excluded from termination of prosecution based on restorative justice. However, on the other hand, the Attorney General of the Republic of Indonesia issued Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Crime Cases through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle. These guidelines aim to ensure that drug abuse crimes can be handled through rehabilitation using a restorative justice approach, which aims to restore the original state by terminating prosecutions of drug abusers and initiating rehabilitation. This will minimize overcrowding in correctional institutions.

The implementation of restorative justice in narcotics abuse cases at the Sidoarjo District Attorney's Office was first applied to the suspect named Eros Prastiyo (EP) bin Pirnadi with Case Register Number: B4200/M.5.19/Euh.1/08/2022. EP was charged with violating Article 112 Paragraph (1) and/or Article 127 Paragraph (1) of the Narcotics Law. Based on the facts found in the Arrest Report (BAP), EP was arrested because he was proven to be in possession of narcotics in the form of crystal methamphetamine weighing  $\pm 0.40$  grams, used glass pipettes weighing  $\pm 0.015$  grams, and a smoking device.<sup>10</sup> EP underwent a urine test with the results of the examination at the Criminalistics Laboratory No. Lab: 04979/NNF/2022 June 22, 2022, which resulted in positive for Methamphetamine. Based on the results of the investigation report, EP qualifies as a drug user and not a dealer or part of a drug distribution

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<sup>14</sup>C. Maya Indah S. Op. cit., p. 62.

<sup>15</sup>Rena Yulia, *Victimology of Legal Protection for Crime Victims*, Bandung: Graha Ilmu, 2009, p. 130.

network. Based on this investigation report, the Public Prosecutor proposed restorative justice as a resolution to EP's drug abuse case.<sup>16</sup>

Law Number 35 of 2009 concerning Narcotics provides for restorative justice, which is intended to prevent and distance individuals from the criminal justice process. This is expected to prevent stigmatization of individuals facing the law, particularly in the criminal justice process. This allows individuals to return to their social environment normally. Therefore, support and involvement from all parties is essential for this to be realized.

In addition to the perpetrator, the family is also a party that suffers. Second, the perpetrator must demonstrate his capacity and quality while constructively addressing guilt. Finally, the punishment agreed upon for the perpetrator should consider aspects of welfare and equivalency. Concerns that restorative justice will not benefit the perpetrator are rooted in the habit and understanding that punishment must involve imprisonment.

The basis of this restorative justice theory is the necessity to believe and strive for the perpetrator or his family to return to their original state as before the crime occurred. The goal of restorative justice is to gain clarity from the events that occurred by encouraging the perpetrator, and the target of joint accountability is to provide the perpetrator with the opportunity to be directly involved in discussions and decision-making regarding the violation that occurred to him with appropriate sanctions for the perpetrator and to hear directly from the perpetrator about the violation that occurred, then increase the perpetrator's concern for the consequences of his actions and provide the perpetrator with the opportunity to take full responsibility for his actions in addition to the family or the perpetrator can jointly determine sanctions for the perpetrator and guide him after mediation takes place. Finally, it is to provide the perpetrator with the opportunity to connect with each other in strengthening the social order that was once divided due to the violation by the perpetrator.<sup>17</sup>

Restorative justice is not solely aimed at the perpetrator as the main focus of the process, but rather at rehabilitating justice and the law. This restoration theory assumes that sentencing does not provide "revenge" and "reparation" for the perpetrator of the crime, but it also does not deny that perpetrators of crimes should be punished. However, this theory places more emphasis on resolution than imprisonment. The issue of legal protection for first-time offenders is one way to protect them. Legal protection for first-time offenders encompasses all applicable legal regulations. Restorative justice is a justice concept that prioritizes reconciliation and needs-based recovery for victims, perpetrators, and the environment affected by a crime. In practice, not all criminal cases result in imprisonment.<sup>18</sup>

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<sup>16</sup>Tarisa Damayanti, Eka Nanda Ravizki, Implementation of Restorative Justice for Drug Abusers at the Prosecution Stage, *Justitia Nusantara Media Law Journal* Vol. 14 No. 1 February 2024, pp. 1-8

<sup>17</sup>OC. Kaligis, Legal Protection of the Human Rights of Suspects, Defendants and Convicts, Bandung: Alumni, 2006. P. 126.

<sup>18</sup>Sidabutar, Ronny Nicolas. "Resolving Narcotics Cases for Abusers as Victims Using a Restorative Justice Approach in the Study of Justice Norms Based on Pancasila." *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum dan Masyarakat* 23, no. 1 (2023): pp. 10-25.

The concept of restorative justice in Indonesia is still relatively new. According to Mahfud MD, restorative justice is an extension of the theory of justice with a different approach. In this concept, crime is seen as a social ill that must be cured, not simply as a violation of the law. Here, punishment is viewed as the ultimum remedium. In other words, children found guilty of a crime are prioritized for sanctions in the form of measures such as return to their parents or education, rehabilitation, and training.<sup>19</sup>

Many law enforcement officers currently have a mindset that is centered on the understanding that every criminal case must remain within the realm of criminalization (litigation), 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 is in accordance with the principle of equality before the law.

The Attorney General has also issued Attorney General Regulation No. 18 of 2021, a guideline governing the Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle.<sup>20</sup> Meanwhile, in court, referring to the Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice on December 22, 2020. This policy, signed by the Director General of the Supreme Court's General Court, Prim Haryadi, regulates the implementation of restorative justice only in the scope of minor criminal cases, juvenile 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."<sup>24</sup> In the appendix to this Decree, it is stated that restorative justice, in case resolution, can be used as an instrument for restoring justice and has been implemented by the Supreme Court in the form of policy enforcement (Perma and SEMA). However, so far, its implementation in the criminal justice system has not been optimal.

The Supreme Court Regulation and Supreme Court Regulation in question are Supreme Court Regulation No. 2 of 2012 concerning Adjustment of the Limits of Minor Crimes and the Amount of Fines in the Criminal Code; Supreme Court Regulation No. 4 of 2014 concerning Guidelines for the Implementation of Diversion in the Juvenile Criminal Justice System; Supreme Court Regulation No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law; Supreme Court Regulation No. 4 of 2010 concerning Placement of Narcotics Abuse Victims, Abuse Victims, and Abusers in Medical Rehabilitation and Social Rehabilitation Institutions; Supreme Court Chief Justice Circular Letter No. 3 of 2011

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<sup>19</sup>Luthy Febrika Nola, "Restorative Justice for Juvenile Crimes", Brief Legal Information, Vol. VI, No. 17/I/P3DI/September/2014, 2014, p. 2.

<sup>20</sup>Azizah, Ainul, I. Gede Widhianan Suarda, and Mardiyono Mardiyono. "The Principle of Restorative Justice in the Termination of Criminal Prosecution Based on Attorney General Regulation Number 15 of 2020." Journal of Law, Politics and Social Sciences 2, no. 2 (2023): pp. 154-166.



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concerning Placement of Narcotics Abuse Victims in Medical Rehabilitation and Social Rehabilitation Institutions.

In addition, the 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.

### **3.2. Weaknesses in Terminating Prosecution of Drug Abuse Cases Based on Restorative Justice.**

Drug abuse in Indonesia is a serious problem with widespread social, economic, and legal implications. Data shows that the number of drug abusers continues to increase year after year, with prevalence reaching all levels of society, including adolescents and students. This situation emphasizes that the drug problem is not simply a criminal offense, but also a health and humanitarian issue that requires a comprehensive approach.

The Indonesian criminal justice system generally still emphasizes repressive drug case handling, typically involving imprisonment. However, this model has proven ineffective in curbing drug abuse and has even created new problems, such as overcrowding in correctional facilities. Many drug abusers, who are actually victims of addiction, are instead punished as dealers, thus failing to achieve the goals of rehabilitation and social recovery.

The idea of implementing restorative justice has begun to emerge as an alternative solution to drug abuse cases. Restorative justice focuses on restoring the situation by positioning abusers as individuals in need of guidance and rehabilitation, rather than simply punishment. This model aligns with the modern legal paradigm, which emphasizes a balance between legal certainty, expediency, and justice.

The implementation of restorative justice-based prosecution terminations in drug abuse cases still faces various obstacles. An unclear regulatory framework, differing perceptions among law enforcement officials, and public resistance are all factors that hinder its implementation. This situation raises serious issues regarding the consistency of law enforcement and calls into question the extent to which substantive justice can be achieved for drug abusers.

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Weaknesses in terminating prosecutions in restorative justice-based drug abuse cases can be analyzed using Lawrence M. Friedman's legal system theory which emphasizes three main elements: legal substance, legal structure, and legal culture.

#### 1) Weaknesses of legal substance

If traced to its initial use, narcotics are drugs or substances that are useful in the field of treatment or health services and the development of science. Even without these narcotic substances, the world of health, especially medicine, in carrying out its duties would be paralyzed. However, on the other hand, the positive benefits of narcotics also have negative impacts. If the substance is consumed / entered the human body without going through health regulations, control and supervision, it will affect the brain in the central system which will cause addiction for its users. The use of narcotics without rules, without rights or against the law is actually the essence of narcotic crimes / criminal acts.<sup>21</sup>

The Narcotics Law itself does not provide a clear distinction/line between the criminal offenses in Article 127 of the Narcotics Law and other criminal offenses contained in the Narcotics Law, in Article 112 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, where narcotics users who obtain narcotics illegally must fulfill the elements of "controlling", "possessing", "storing" narcotics where this is also regulated as a separate criminal offense in the Narcotics Law. In practice, law enforcement officers also link (include/include/juncto) the criminal offense of narcotics users with the criminal offense of control, possession, storage without rights and against the law where the criminal threat is much higher and uses a special minimum sanction, namely a minimum of 4 years in prison and a fine of at least IDR 800,000,000 (eight hundred thousand rupiah).

The large number of cases of drug abuse, especially for those who abuse drugs for themselves, as well as the criminal policy that responds to this in a repressive manner as regulated in Article 127 in conjunction with Article 111 and/or Article 112 of Law No. 35 of 2009 concerning Narcotics, which prioritizes retributive justice, will certainly have logical consequences for the number of inmates in Correctional Institutions, in addition to users who are not dealers who also experience double victimization.

The substantive weakness in terminating prosecutions for drug abuse cases stems from the reality that Law Number 35 of 2009 concerning Narcotics emphasizes imprisonment and fines rather than providing opportunities for rehabilitation and recovery. Current legal norms do recognize rehabilitation, but its provisions are limited and often not a priority in law enforcement. As a result, drug abusers are more often viewed as criminals than individuals in need of help.<sup>22</sup>

In terms of legal formulation, there is no norm explicitly granting prosecutors full authority to discontinue prosecutions on the basis of restorative justice in drug cases. Prosecutor's

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<sup>21</sup>Nabila, Jihan Rahmi. "MORPHINE COMPOUNDS: EFFECTS AND BENEFITS FROM A SCIENTIFIC AND ISLAMIC PERSPECTIVE." *Interconnection Integration of Islam and Science Conference* 5, no. 1 (2023): p. 38-44.

<sup>22</sup>Djaelani, Asrry. "Termination of Prosecution Based on Restorative Justice in Drug Abuse Cases." *YUSTISIA MERDEKA: Scientific Journal of Law* 8, no. 2 (2022): pp. 14-21.

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discretion remains limited by a rigid formal framework, often sidelining social recovery and rehabilitation efforts. This creates legal uncertainty, as law enforcement officers in the field lack standard guidelines for distinguishing between users who deserve rehabilitation and dealers who must be dealt with decisively.

There is an imbalance between the goal of eradicating narcotics and protecting the human rights of drug users. Regulations that place a greater emphasis on deterrence through imprisonment neglect the humanitarian aspects that should be the foundation of restorative justice. As a result, many drug users ultimately lose the opportunity to recover and become productive members of society. From a humanist perspective, the law should exist not only to punish, but also to heal and restore human dignity.<sup>23</sup>

Furthermore, the existing legal substance does not yet provide clarity regarding the criteria for drug cases that can be terminated using a restorative justice approach. This ambiguity often creates doubt among law enforcement officials and opens the door to inconsistent practices. This situation is dangerous because it can lead to injustice, where one drug user receives the opportunity for rehabilitation, while another remains imprisoned despite their similar circumstances.

The substantive weakness in the termination of prosecution in narcotics abuse cases stems from the normative provisions in Law Number 35 of 2009 concerning Narcotics. Article 127 paragraph (1) states that any person who abuses narcotics for personal gain shall be punished with imprisonment, while provisions regarding rehabilitation are only implied in Article 54, Article 103, and Article 127 paragraph (3). This norm does indeed open up space for rehabilitation, but it is not imperative and is often viewed as an alternative that depends on the interpretation of law enforcement officials. As a result, the substance of the law still emphasizes punishment rather than rehabilitation.

Furthermore, Article 140 of the Criminal Procedure Code (KUHP), which regulates the termination of prosecution, does not explicitly provide a legal basis for prosecutors to use restorative justice in drug cases. Prosecutors' discretion is limited by the lack of explicit norms permitting termination of prosecution on humanitarian grounds and social recovery. This lack of norms creates uncertainty in practice, resulting in many drug users being prosecuted even though they are actually victims of addiction.

Substantive weaknesses are also evident in the formulation, which lacks clear criteria for which drug abusers are eligible for rehabilitation. There is no clear distinction between addicts, victims of abuse, and dealers in the prosecution process. This lack of clarity often leads to drug abusers being equated with dealers, significantly diminishing their chances of recovery.

On the other hand, the regulations regarding rehabilitation, contained in Articles 54 and 103, place greater emphasis on the judge's order, rather than the mechanism for terminating

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<sup>23</sup>Setiawan, Ichwan, Ridho Fitriantoro, and Ibnu Mubarak. "Restrictions on the Rights of Suspects and Defendants in Drug Crimes: The Balance Between State Interests and Human Rights." *Decisio: Law Journal* 1, no. 1 (2024): pp. 23-27.

prosecution at the prosecutor's office. This prolongs the legal process and reduces the effectiveness of restorative justice. However, if prosecutors' authority were strengthened from the outset, drug abusers could be immediately transferred to rehabilitation centers without having to go through a tedious trial process.

Ultimately, the weakness of legal substance in this regard demonstrates that drug regulations in Indonesia are still far from the values of justice that prioritize humanity. As long as legal norms emphasize imprisonment over rehabilitation, restorative justice will struggle to function effectively. The law should be able to view drug abusers not simply as numbers in crime statistics, but as human beings with wounds, needs, and hopes of reintegrating into society.

## 2) Weaknesses of the legal structure

From a legal perspective, coordination between law enforcement agencies in implementing restorative justice in drug abuse cases remains very limited. The Prosecutor's Office, the police, the National Narcotics Agency, and rehabilitation institutions often operate within their own paradigms without clear standards of cooperation. As a result, case handling is often inconsistent, and drug abusers are still directed toward prison sentences, even though they should have the opportunity for rehabilitation.<sup>24</sup>

The prosecutor's office's role as *dominus litis*, which has the authority to halt prosecutions, is not yet fully supported by clear technical instruments. Prosecutors are often in a difficult position: they want to deliver more humane justice, but are also bound by formal regulations and institutional pressure to bring cases to court. This situation often leaves restorative justice implementation as mere talk.

The limited availability of rehabilitation facilities also poses a significant obstacle within the legal framework. The number of rehabilitation centers is far from adequate compared to the high number of drug abusers. Many correctional facilities are actually staffed by users who should be rehabilitated, thus underachieving the goal of rehabilitation. This imbalance between the need for and the availability of facilities demonstrates the system's weak preparedness for implementing restorative justice.

Furthermore, law enforcement officials are not fully prepared due to a lack of training and understanding of the concept of restorative justice. A repressive mindset still predominates, often making officers hesitant or even reluctant to use the restoration-based mechanism for terminating prosecutions. This demonstrates that structural weaknesses lie not only in regulations and facilities, but also in the readiness of human resources.

Another weakness is weak oversight. The absence of a robust control system poses the risk that the restorative justice-based prosecution termination policy will be misused for personal

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<sup>24</sup>Saputra, Andri, Vinko Rafi Joeda, and Anggi Daman. "Law Enforcement Strategy Against Illicit Narcotics Trafficking from the Perspective of the Criminal Code and the Narcotics Law." *Journal of Economic and Management (JEM) Terekam Jejak* 2, no. 1 (2025): pp. 1-10.

gain. This can lead to injustice, undermine public trust, and raise doubts about the implementation of a concept that is supposed to deliver justice.

### 3) Weaknesses of legal culture

Indonesian legal culture still tends to view drug abusers as criminals deserving of harsh punishment. This view is reinforced by the belief that harsh punishments will have a deterrent effect, even though in reality, repressive approaches have not significantly reduced drug abuse rates. This harsh perspective poses a major obstacle to the acceptance of restorative justice.<sup>25</sup>

The social stigma against drug abusers is also very strong. They are often considered a disgrace to their families and communities, making it difficult to re-enter the drug market even after undergoing rehabilitation. This discriminatory view creates a social distance that complicates the recovery process. As a result, many drug abusers relapse due to a lack of community support after leaving rehabilitation.

Law enforcement officials are not entirely free from this repressive culture. The mindset that prison is the best solution remains entrenched, so reparative mechanisms are rarely considered a primary option. A work culture that prioritizes the formalities of trials and criminal sentences further diminishes the space for restorative justice to flourish.

The lack of community participation in supporting rehabilitation also reflects a weak, humanistic legal culture. Communities often refuse to participate in drug abuse recovery programs, even though successful rehabilitation depends heavily on social acceptance. Without community support, rehabilitation efforts will always be half-hearted and fail to bring about meaningful change.

A legal culture that does not yet support humanitarian values makes restorative justice difficult to implement optimally. As long as drug abuse is viewed solely from a criminal perspective, efforts to halt prosecutions based on restitution will always be hampered. A paradigm shift toward a more humane legal system is essential if the legal system is to truly provide a space for recovery and hope for those caught in drug abuse.

A possible solution is to revise Law No. 35 of 2009 concerning Narcotics by explicitly emphasizing that drug abusers must be placed under rehabilitation mechanisms, not imprisonment. Article 127 should be clarified by stating that rehabilitation is mandatory, not merely optional. Furthermore, the Criminal Procedure Code, particularly Article 140, could be expanded by adding a provision that explicitly provides a legal basis for prosecutors to discontinue prosecution through restorative justice in certain drug cases. This would provide legal certainty and ensure that law enforcement is more humanitarian in nature.

Better coordination is needed between law enforcement agencies, namely the police, prosecutors, the National Narcotics Agency (BNN), and rehabilitation institutions. National technical guidelines should be established to serve as a shared reference regarding the

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<sup>25</sup>Ahmadushshodiq, Amjad Fauzan, and Deni Tahyudin. "CRIMINALIZATION OF DRUGS USERS FROM A LEGAL PERSPECTIVE: LEGAL ANALYSIS, SOCIAL IMPACT, AND LAW ENFORCEMENT CHALLENGES." *Synergy: Multidisciplinary Scientific Journal* 3, no. 01 (2025): pp. 1-12.



criteria, mechanisms, and procedures for terminating prosecutions based on restorative justice. The government should also expand the number and capacity of rehabilitation institutions to ensure that drug users diverted from prison have adequate housing and services. Furthermore, law enforcement officials need to be provided with intensive training in restorative justice to develop an understanding and sensitivity to the goal of recovery, not just punishment.

A shift in societal paradigms is crucial to support the success of restorative justice. Public outreach needs to be intensified to ensure the public understands that drug abusers are victims of addiction in need of help, not simply perpetrators of crimes. Eliminating stigma through humane campaigns can encourage the public to accept former drug abusers who have undergone rehabilitation. Law enforcement officials must also be encouraged to abandon a culture of repression and prioritize humanitarian values, substantive justice, and social recovery.

In Portugal, since Law 30/2000 (effective July 1, 2001), personal use/possession has been decriminalized and transferred to the Commissions for the Dissuasion of Drug Addiction (CDT) under the health sector. Sanctions are administrative, focusing on assessment, therapeutic referral, and social intervention; criminal action remains firm for trafficking. This model shifts the response from "punishment" to "recovery" with cross-sectoral governance across social health sectors.<sup>26</sup>

Furthermore, in the Netherlands, the *Opportunititeitsbeginsel* principle gives prosecutors (OM) broad discretion not to prosecute in the public interest. In practice, the tolerance policy (*gedoogbeleid*) for cannabis is strictly enforced; OM guidelines exclude prosecution for "very small amounts for personal use" (e.g., 0–5 grams of soft drugs), while trafficking remains repressive. This creates a sharp distinction between "small users" and "supply chain."<sup>27</sup>

Australia's problem-solving courts (Drug Court) operate under statutory law, combining judicial oversight, routine testing, and access to therapy. The NSW/Victoria evaluation demonstrated reduced recidivism and cost benefits compared to prison, making judicial diversion a mainstream policy for non-violent drug-dependent offenders.<sup>28</sup>

From the Dutch experience, Indonesia can learn important lessons regarding the flexibility of prosecutors' discretion in determining whether a case is worthy of proceeding to court. The principle of *opportunititeitsbeginsel*, which allows prosecutors to assess the public interest, provides room for cases of possession of small amounts of narcotics for personal use to be prosecuted without immediate prosecution. This demonstrates that the legal system can clearly differentiate between users and dealers, thus directing users toward rehabilitation, while dealers remain firmly prosecuted. Portugal demonstrates a more radical approach,

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<sup>26</sup>Moury, Catherine, and Mafalda Escada. "Understanding successful policy innovation: The case of Portuguese drug policy." *Addiction* 118, no. 5 (2023): p. 967-978.

<sup>27</sup>Graaf, Niels. "An introduction to Dutch legal culture." In *Handbook on legal cultures: A selection of the world's legal cultures*, pp. 285-326. Cham: Springer International Publishing, 2023.

<sup>28</sup>Shannon, Lisa, Monica Himes, Shondrah Nash, and Jennifer Newell. "Opioid Intervention Courts." *Taking problem-solving courts to scale: Diverse applications of the specialty court model* (2021): p 289.

namely the decriminalization of small drug use and a complete diversion to health channels through the Commissions for the Dissuasion of Drug Addiction (CDT). This model shifts the legal paradigm from repressive to preventive-rehabilitative, which has had a positive impact on reducing overdose deaths and HIV/AIDS rates among drug users.

Australia provides a concrete example of the implementation of problem-solving courts, or specialized drug courts. Through this mechanism, drug users not only undergo medical rehabilitation but are also under the intensive supervision of judges and multidisciplinary teams who monitor their recovery progress. Evaluations of Drug Courts in New South Wales and Victoria have shown reduced recidivism rates and cost savings compared to conventional criminal justice systems. For Indonesia, this serves as a lesson that restorative justice must be strengthened with specialized institutions, ongoing monitoring mechanisms, and an integrated legal and health approach. By combining the policies of the Netherlands, Portugal, and Australia, Indonesia can build a more humane, effective, and equitable legal system in handling drug abuse cases.

#### **4. Conclusion**

Implementation of termination of prosecution for drug abuse cases based on restorative justice. Drug abuse in Indonesia is still treated as a criminal offense based on Law No. 35 of 2009, specifically Article 127 paragraph (1), so that users are sentenced to prison and contribute to the problem of overcrowding in correctional institutions, social stigma, and failure of rehabilitation. To address this, the Prosecutor's Office presents the concept of restorative justice through Attorney General's Guidelines No. 18 of 2021 which opens the opportunity to terminate prosecution with a rehabilitation mechanism, although Perja No. 15 of 2020 previously excluded narcotics cases. Real implementation is seen in the case of Eros Prastiyo at the Sidoarjo District Attorney's Office, which shows the handling process starting from pre-prosecution, integrated BNN assessment, to rehabilitation execution at the Restorative Justice House. This approach emphasizes punishment as the ultimum remedium, positions users as victims as well as perpetrators who need to be rehabilitated, and aims to reduce the burden on prisons and social stigma. However, its implementation still faces obstacles in substance, structure, and legal culture, so that it requires harmonization of regulations, strengthening coordination between institutions, improving rehabilitation facilities, and changing the paradigm of society towards a more humanistic and just law. Weaknesses in terminating prosecutions of restorative justice-based narcotics abuse cases, The main weaknesses are in three things, namely: substance (articles that are still oriented towards imprisonment and do not provide an explicit basis for terminating RJ-based prosecutions), structure (inter-institutional coordination, limited rehabilitation facilities/human resources, and weak implementation supervision), and legal culture (stigma and repressive paradigm in society and the authorities). Therefore, the solution is that substantive reform needs to emphasize mandatory rehabilitation for narcotics addicts (affirmation of Article 127, strengthening the basis of Restorative Justice in the Criminal Procedure Code/Article 140), structural reform demands national cross-institutional guidelines, expansion of rehabilitation capacity, and data-based monitoring, while cultural reform requires anti-stigma campaigns and humanistic legal education.

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