

Formulation of Settlement of Criminal Cases of Drug Addicts by Prosecutors Using a Restorative Justice Approach

Rischy Akbar Santosa

Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: rischyakbarsantosa.std@unissula.ac.id

Abstract. *Attorney General's Guideline Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach as Implementation of the Principles Mr. Litis Prosecutor. This Prosecutor's Guide emphasizes restorative justice, prioritizing rehabilitation over incarceration for drug users. The purpose of this study is to analyze and identify the current approach to drug addiction cases handled by prosecutors. To analyze and identify weaknesses in the current approach to drug addiction cases handled by prosecutors. To identify a formulation for resolving drug addiction cases by prosecutors using a restorative justice approach. This thesis is written using the theory of restorative justice, the theory of legal systems and progressive legal theory, the sociological juridical approach method, the research specifications are descriptive analysis, the data sources consist of primary data and secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection techniques through observation and interviews. The results of the study show that the resolution of drug addict criminal cases by prosecutors is currently guided by Guideline Number 18 of 2021, which is a new reference for public prosecutors to optimize the resolution of drug abuse criminal cases through rehabilitation with a restorative justice approach as an implementation of the principle the owner of the suit Prosecutors. There needs to be alignment and harmonization between these guidelines and various laws and regulations. Weaknesses in the legal structure include limited human resources, very limited availability of rehabilitation facilities, and a lack of operational funds. Weaknesses in the legal substance include the unclear norms of Narcotics Law Number 35 of 2009 concerning narcotics, and the absence of a law that explicitly authorizes the prosecutor's office to carry out rehabilitative measures at the prosecution stage. Weaknesses in the legal culture include a lack of public knowledge about rehabilitation, users' fear of being imprisoned, and concerns about family reputation. The formulation of drug addict criminal cases by prosecutors using a restorative justice approach, namely through alignment and harmonization between Prosecutor's Guideline Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation and a Restorative Justice Approach as the Implementation of the Principles Mr. Litis with the Criminal Procedure Code.*

Keywords: Drug Addicts; Formulation; Restorative Justice.

1. Introduction

Indonesia is a country based on law and justice for its citizens. Every authority has strong constitutional power, as the 1945 Constitution of the Republic of Indonesia is the main pillar of the country's constitution. Almost all laws in Indonesia protect its citizens without discrimination. Current laws in Indonesia make citizens equal before the law. Every country that adheres to the rule of law has three basic principles: the supremacy of law, equality before the law, and law enforcement in a manner that does not conflict with the law (*due process of law*)¹.

According to Article 1, Number 1 of Law Number 35 of 2009 concerning Narcotics, narcotics are substances or drugs derived from plants, either synthetic or semi-synthetic. Narcotics are a serious crime that has attracted national attention, as it is known to damage a generation. Drug abuse in Indonesia has now penetrated all aspects of life, from adolescence to adulthood, and even into early childhood.

Article 1, Number 13 of Law Number 35 of 2009 concerning Narcotics defines a drug addict as someone who uses or abuses narcotics and is dependent on them, both physically and psychologically.

Physical dependence refers to a person experiencing physical dependence who experiences several unpleasant physical symptoms if the drug is used over a period of time. Psychological dependence refers to a drug abuser feeling extremely dependent on the drug and experiencing discomfort and anxiety when it is not available.

2. Research Methods

The approach used in this research is an empirical legal approach. Based on Soetandyo Wignjosoebroto's view, empirical legal research is research in the form of empirical studies to discover theories regarding the process of how law works in society.²

3. Results and Discussion

3.1. Prosecutor's Resolution of Drug Addict Criminal Cases.

Narcotics are a problem faced by every country in the world, including Indonesia. Etymologically, the word "narcotics" comes from the English word "narcose" or "narcosis," which means to put to sleep and to anesthetize. In Greek, narcotics are called "narke" or "narkam," which means to be drugged and unable to feel anything³. In the Great Dictionary of the Indonesian Language, narcotics are drugs that can calm the nerves, relieve pain, induce

¹ Achmad Ali, *Menguak Realitas Hukum, Rampai Kolom dan Artikel Pilihan dalam Bidang Hukum*, Kencana Prenada Media Group, Jakarta, 2008, p. 12

² Soetandyo Wignjosoebroto, *Hukum, Paradigma, Metode dan Dinamika Masalahnya*, Huma, Jakarta, 2002, p. 147.

³ *Ibid*

Master of Law, UNISSULA

drowsiness, or stimulate. According to Hari Sasangka, the definition of narcotics is opium, marijuana, cocaine, and substances derived from these substances, such as morphine, heroin, codeine, hashish, and cocaine. It also includes synthetic narcotics, which produce substances and drugs classified as hallucinogens, depressants, and stimulants.

According to Law Number 35 of 2009 concerning Narcotics, narcotics are non-plant substances, either synthetic or semi-synthetic, that decrease or eliminate sensation, alter consciousness, reduce or eliminate pain, and can cause dependence.

Drug abuse continues to increase year after year. Based on data obtained from the website dataIndonesia.id, drug trafficking in Indonesia shows an increasing trend. Cases handled by law enforcement officers are spread across various regions, with densely populated areas being the main hotspots. In contrast, remote and island regions record fewer cases, although the potential for spread remains. Most drug cases occur in environments close to people's daily activities: homes, public roads, and busy centers. However, unexpected locations such as rice fields, train stations, and even boarding houses have also been recorded as locations for drug crimes. The motives behind drug crimes vary. Economic factors remain the primary trigger, followed by deliberate action, social pressure, and environmental conditions. In some cases, drug abuse is even linked to personal or ideological conflicts.

Reflecting on this, DataIndonesia.id has compiled a collection of data covering drug case trends over the past decade until 2024, the distribution of cases according to the National Police and the National Narcotics Agency (BNN), as well as the locations and motives for the most common drug crimes. Furthermore, data is also provided on the types of drugs most frequently uncovered, the backgrounds of suspects based on occupation, age, and education level, and the distribution of drug convicts and detainees in correctional facilities. Furthermore, this report also includes data on foreign nationals (WNA) involved in drug cases in Indonesia, as well as Indonesian citizens (WNI) facing the death penalty for similar cases abroad. The following is a summary of the Report on Data Collection on Drug Cases in Indonesia until 2024.

3.2. Weaknesses in Prosecutor's Handling of Drug Addict Crimes

1. Weaknesses in the Legal Structure

Regarding the legal structure, Lawrence explains:⁴

"the legal system has the structure of a legal system consist of elements of this kind: the number and size of courts; their jurisdiction ... Strukture also means how the legislature is organized ...what procedures the police department follow, and so on. Strukture, in way, is a kind of crosss section of the legal system...a kind of still photograph, with freezes the action."

⁴ Lawrence M Friedman. *American Law: An Introduction*. New York: W.W. Norton & Co. 1984, hlm 5-6.

Master of Law, UNISSULA

The structure of the legal system consists of the following elements: the number and size of courts, their jurisdiction (including the types of cases they have jurisdiction to hear), and the procedures for appeals from one court to another. The structure also encompasses how the legislative body is structured, what the president may and may not do, the procedures followed by the police, and so on. Therefore, the structure (legal structure) consists of the existing legal institutions intended to implement existing legal instruments.

The weaknesses of the legal structure in resolving drug addiction cases by prosecutors are as follows:

a. Limited Human Resources

One of the biggest obstacles faced by the prosecutor's office is limited human resources. The number of available prosecutors is often disproportionate to the number of cases they must handle. This is exacerbated by a lack of adequate training and professional development, resulting in some prosecutors lacking specialized expertise in handling certain cases.

Furthermore, prosecutorial facilities and infrastructure are often inadequate. The lack of infrastructure, such as adequate workspace, information technology tools, and access to legal resources, can hinder prosecutors' performance in preparing and processing cases.

b. Very Limited Availability of Rehabilitation Facilities

The availability of facilities and equipment impacts the implementation of rehabilitation, particularly the success of the rehabilitation process. Based on the researchers' findings, healthcare facilities, especially clinics, are very limited. Furthermore, the healthcare staff on duty is suboptimal, with only two nurses and one doctor assigned. Therefore, if an addict is ill and requires intensive care, the prison will refer the addict to the hospital. Based on the information above, it is clear that the communication barrier for drug addicts' rehabilitation is limited facilities. Furthermore, this is evident in other areas, such as libraries and a lack of sports equipment, as well as a shortage of instructors or mentors in the skills field.

c. Lack of Operational Funds

The implementation and fulfillment of rehabilitation rights for drug addicts is influenced by limited operational funds. Although the law stipulates that the state covers all rehabilitation costs, in practice, these funds are not always available. Rehabilitation for drug users is also covered by the family, so the family bears the entire cost of the child's rehabilitation. If the family cannot afford the funds, this also impacts the implementation of the rehabilitation program.

1. Weaknesses of Legal Substance

Legal substance relates to applicable laws and regulations that are binding and serve as guidelines for law enforcement officers in carrying out their duties.

Master of Law, UNISSULA

According to Friedman, legal substance is:⁵

"Another aspect of the legal system is its substance. By this is meant the actual rules, norm, and behavioral patterns of people inside the system ...the stress here is on living law, not just rules in law books".

Lawrence's theory states that substance plays a role in determining whether or not a law can be enforced. Substance also refers to the products produced by individuals within the legal system, including the decisions they issue and the new rules they formulate. Substance also encompasses living law, not just the rules contained in law books.

Weaknesses in legal substance in the prosecutor's resolution of drug addiction cases are as follows:

a. Unclear norms in Law Number 35 of 2009 concerning Narcotics

The unclear norms in Law Number 35 of 2009 concerning Narcotics hinder the prosecutor's office in handling or ordering rehabilitation. The unclear provisions in Articles 112 and 127 of the Narcotics Law do not guarantee legal certainty. Articles are owned, maintained, and controlled by editors, who retain multiple interpretations and ambiguous meanings to charge suspects under Article 112 or 127. Therefore, investigators will also present suspects suspected of violating Article 112. This complicates the application of Attorney General's Regulation Number 18 of 2021, which implements the principle of dominus litis, by the prosecutor's office to handle drug addiction cases through rehabilitation.

As an alternative to Article 112, the article applied by the police allows prosecutors to guess whether a suspect is a drug abuser, addict, or victim. The public prosecutor thus relinquishes their authority to suspend case investigations, even though such authority is in accordance with the principle of dominus litis. This is because the prosecutor's office lacks a strong legal framework, like a judge, to decide on rehabilitation.

b. There is no law explicitly authorizing the prosecutor's office to undertake rehabilitative measures at the prosecution stage. Regulations regarding the implementation of restorative justice are outlined in various decrees and guidelines issued by each law enforcement agency in Indonesia. Specifically, to address issues related to drug crimes through the concept of restorative justice, the Indonesian Attorney General's Office has enacted Guideline No. 18 of 2021 concerning the Settlement of Drug Abuse Crimes Through Rehabilitation Using a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle. The guideline consists of nine chapters, covering pretrial proceedings, prosecution, supervision, training, and funding to resolve drug abuse cases through rehabilitation using a restorative justice approach as an implementation of the Prosecutor's Dominus Litis Principle. Starting November 1, 2021, the effective date of this policy, suspects suspected of violating

⁵ Lawrence M. Friedman, Loc.cit.

Master of Law, UNISSULA

Article 127 paragraph (1) of the Narcotics Law whose cases have not been submitted to court can resolve their cases based on the aquo guidelines⁶.

According to the author, there are several points in these Prosecutor's Guidelines that need to be considered to ensure that efforts to avoid imprisonment for drug users are optimal, fair, and minimize abuse.

First, there is confusion in the legal product of the Prosecutor's determination for rehabilitation. In accordance with the Indonesian Prosecutor's Guidelines Regulation Number 18 of 2021, which stipulates that a suspect can undergo rehabilitation through legal proceedings, the Head of the District Prosecutor's Office or the Head of the District Prosecutor's Office Branch issued a rehabilitation determination through legal proceedings. The impact of this regulation is a problematic issue, given that the Criminal Procedure Code (KUHAP) does not yet regulate the form of case termination through a "determination." This incident raises the question of whether a rehabilitation determination can be equated with a termination of prosecution.

The subsequent question arises as to whether the determination by the Head of the District Prosecutor's Office can be challenged through a pretrial hearing or whether this determination constitutes a waiver of the case held by the Attorney General (seponeering). The concern is the potential confusion that could arise at the implementation level if a pretrial review is conducted. Furthermore, questions arise regarding the issuance of a ruling (see Chapter IV letter E point 10), which would prevent a suspect from being prosecuted for the same case (double jeopardy). Rehabilitation can be considered a form of action based on health reasons and has a clear legal basis for its implementation.

Furthermore, there is apparent confusion in the regulations regarding the requirements for rehabilitation. It is stipulated that if a suspect fails to undergo rehabilitation through legal proceedings without a valid reason, or undergoes rehabilitation through legal proceedings but not in accordance with the ruling, the public prosecutor may take coercive measures, which is part of the regulations in the Indonesian Prosecutor's Office Guidelines Number 18 of 2021 (see Chapter IV letter E points 5 and 6). Questions arising from these regulations include the definition of not undergoing rehabilitation through legal proceedings without a valid reason, and the definition of a "valid reason" that can be used to waive the rehabilitation process.

3.3. Prosecutor's Formulation of Drug Addict Criminal Case Resolution Using a Restorative Justice Approach

Law and justice are two sides of the same coin. The law aims to achieve justice, and justice without the law is like a toothless tiger. However, to obtain justice, justice seekers must go through unfair procedures. Consequently, the law has become a frightening specter for society. The law no longer serves to bring happiness to the people but instead creates misery.

⁶ Admin, "Jaksa Agung Tetapkan Pedoman Keadilan Restoratif Perkara Narkotika," Persatuan Jaksa Indonesia, 2021, <https://pji.kejasaan.go.id/index.php/home/berita/1920>.

Master of Law, UNISSULA

The law has failed to provide justice in society. The so-called supremacy of law is merely a meaningless sign. Legal texts are merely a language game that tends to deceive and disappoint⁷.

One of the causes of this situation in the legal world is the continued entrapment of a single paradigm of positivism, which no longer functions as an analysis and control tool that aligns with the dynamic and multi-interested context of human life, both in legal processes and events. Consequently, law is understood in a very narrow sense, defined only as statutes, while values outside of statutes are not considered law.

Progressive law breaks this deadlock. It demands the courage of law enforcement officials to interpret articles to civilize the nation. If this process is correct, the ideals established in law enforcement in Indonesia align with the nation's efforts to achieve common goals. These ideals will prevent the current uncontrolled practice of legal inequality. Thus, in the future, Indonesia will no longer experience legal discrimination against the poor, because the law will not only serve the rich. If equality before the law cannot be achieved, partisanship is absolute. Humans create laws not only for certainty, but also for happiness. According to Satjipto Rahardjo, progressive law enforcement is enforcing the law not only according to the letter of the law, but also according to the spirit and deeper meaning of the law. Law enforcement is not only based on intellectual intelligence, but also on spiritual intelligence. In other words, law enforcement is carried out with determination, empathy, dedication, and a commitment to the nation's suffering, along with the courage to seek alternative paths⁸.

In legal systems everywhere in the world, justice is always sought after, particularly through the courts. Justice is fundamental to the functioning of any legal system. The legal system is essentially a structure or tool for achieving a mutually agreed-upon concept of justice (Rahadjo, 2006). Formulating the concept of progressive justice is about creating substantive justice, not procedural justice. As a result of modern law's heavy emphasis on procedural aspects, Indonesian law faces a stark choice: whether the courts emphasize procedure or substance. Progressive justice is not justice that emphasizes procedure, but rather substantive justice.

The fact that criminal law is misapplied, reflected in practice in criminal justice, is an absolute reason to immediately reform or update the legal system related to narcotics, particularly Law No. 35 of 2009 concerning Narcotics.

New legislation must be based on philosophical, sociological, and legal foundations. The philosophical foundation is guided by the nation's Nawacita (National Priority), the philosophical foundation of the nation and state ideology, Pancasila. The application of Pancasila to the formulation of new laws must include formulations that prevent discrimination against the diversity of customs, ethnicities, and applicable laws, in this case customary law or unwritten norms that have prevailed in a particular community. This is

⁷ Indrawati, Penerapan Hukum Progresif Dalam Perkara Pidana Di Bidang Narkotika, *Jurnal Cakrawala Hukum*, Vol.8, No.2 Desember 2017,, p. 177

⁸ Satjipto Rahardjo, *Penegakan Hukum Suatu Tinjauan Sosiologis*. Genta Publishing. Yogyakarta. 2009, p. 14

reflected in the "considering" clause in the preamble to every statutory regulation formulated by the state, which applies to all legislation.

The sociological foundation consists of the needs of contemporary society, enabling the state, as the regulator, to accommodate all fundamental needs. These include health needs and economic needs, which have long been a major concern in the lives of both the public and the state in its role of creating stability within society. The sociological foundation is also reflected in the preamble to every statutory regulation, specifically in the "considering" clause, which emphasizes the welfare of the nation.

The legal basis, contained in the preamble to the legislation, is contained in the "remembering" section, which outlines the legal basis justifying the creation of new legislation that is in line with the times. In the context of this paper, the legal basis for decriminalizing drug addicts can be used as the primary reference.

4. Conclusion

The resolution of drug addiction cases by prosecutors is currently guided by Guideline Number 18 of 2021, which serves as a new reference for public prosecutors to optimize the resolution of drug abuse cases through rehabilitation with a restorative justice approach as an implementation of the principle of dominus litis of the prosecutor. There needs to be alignment and harmonization between these guidelines and various laws and regulations. Weaknesses in the resolution of drug addiction cases by prosecutors consist of legal structural weaknesses, including limited human resources, very limited availability of rehabilitation facilities, and a lack of operational funds. Weaknesses in legal substance include the unclear norms of Law Number 35 of 2009 concerning narcotics, and the absence of a law that explicitly authorizes the prosecutor's office to carry out rehabilitative actions at the prosecution stage. Weaknesses in the legal culture include a lack of knowledge about rehabilitation among the public, users' fear of being imprisoned, and reasons of family reputation. The formulation of the settlement of drug addict criminal cases by the Prosecutor using a restorative justice approach, namely through alignment and harmonization between the Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Principle with the Criminal Procedure Code.

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Master of Law, UNISSULA

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