

Implementation of Restorative Justice in Resolving Criminal Actions of Narcotics Users Through Rehabilitation

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Abstract. *The restorative justice approach is carried out so that there is no overcrowding of narcotics convicts who dominate correctional institutions (prisons) in Indonesia. The implementation of restorative justice is to look for alternatives to punishment without prioritizing imprisonment. Article 54 of Law Number 35 of 2009 states that narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation. The approach method in this research uses a sociological juridical approach. The results of the research state that the construction of resolving criminal acts of Narcotics Abusers through rehabilitation, namely the application of restorative justice, is regulated in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. And for narcotics users, it is regulated based on Attorney General Regulation Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse through Rehabilitation, the application of a restorative justice approach to criminal acts of Narcotics Abusers in the future. oriented towards healing and recovery, both through medical institutions and social institutions.*

Keywords: Actor; Criminal; Embezzlement; Liability.

1. Introduction

Narcotics are natural or synthetic substances or drugs derived from plants with impaired consciousness, loss of taste, pain relief, or psychoactive properties which, if used without medical supervision, cause addiction and physical addiction in the user, and can cause mental health disorders. Narcotics abuse usually begins with trial and error. Following friends to relieve or relieve pain, malaise, and

mental tension, for entertainment and social purposes. But if you continue to use this, it will become an addiction.¹

The circulation of narcotics in society, as if it never stops, and there is a criminal act of abuse of narcotics, then there are rules of law that are violated. In this case, the law that has been violated must be upheld. It is through law enforcement that law becomes a reality. Law enforcement is a pillar (main pillar) that strengthens the fundamentals that support the welfare of people's lives, various aspects of life.²

The restorative justice approach in narcotics cases is of course different from restorative justice solutions applied to general crimes. The implementation of restorative justice is to look for alternatives to punishment without prioritizing imprisonment. Article 54 of Law Number 35 of 2009 states that narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation. Medical Rehabilitation is a process of integrated treatment activities to free addicts from narcotics dependence. Meanwhile, Social Rehabilitation is a process of integrated recovery activities, both physical, mental and social, so that former narcotics addicts can return to carrying out social functions in community life. Self-abusers are people who use narcotics without rights or against the law, whether they consume it themselves or not. for sale in accordance with the provisions of Article 127 of the Narcotics Law. A victim of Narcotics Abuse is someone who accidentally uses Narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use Narcotics as stated in the explanation of Article 54 of the Narcotics Law. Narcotics addicts who do not report are people who use or abuse narcotics and are in a state of dependence on narcotics, both physically and psychologically in accordance with the provisions of Article 1 point 13 and Article 134 of the Narcotics Law.

In previous research compiled by Sienny Karmana, it was stated that the implementation of restorative justice is carried out for perpetrators of criminal acts of narcotics abuse if there are conditions, namely that when they are caught red-handed, evidence of narcotics use is found for 1 (one) day with the classification of narcotics and psychotropics in accordance with the provisions of the laws and regulations. invitation, no evidence of a drug crime was found, but the urine test results showed positive for drugs, not involved in a drug crime network, dealer and/or dealer, an assessment has been carried out by an integrated assessment team, the perpetrator is willing to cooperate with National

¹Haris Wirayuda, Anak Agung Sagung Laksmi Dewi, Made Minggu Widyantara, Rehabilitation Efforts for Drug Abusers by the National Narcotics Agency (BNN) of Gianyar Regency, Journal of Legal Construction, Vol 3 No 2, April 2022, p. 252-258

²Andri Winjaya Laksana, Harmonization of Law Enforcement Regulations of Narcotic Addictives, Pena Justisia, Vol 22 No. 1.March. 2023, p. 383-392

Police investigators to carry out an investigation advanced,³The results of research conducted by Haposan Sahala Raja Sinaga also stated that Restorative Justice can also be applied if it meets the requirements, namely when caught red-handed by Police investigators and/or National Narcotics Agency (BNN) investigators, evidence of one day's use is found and also has the results of an assessment from the Team. Integrated assessment for each case file assignment. It is hoped that the existence of alternative case resolution through Restorative Justice can realize the principles of justice that are fast, simple and low cost with balanced justice. In the future, we just have to wait at the implementation level within the scope of law enforcement officials to better understand and be able to implement Restorative Justice efforts in the criminal justice system as a solution to solving the problem of overcrowding in correctional institutions (Lapas) and as an alternative for resolving criminal cases which have so far been too formalistic in nature. and positivistic.⁴

The aim of the research is to determine and analyze the construction of resolving criminal acts of narcotics abusers through rehabilitation within the concept of legal certainty by implementing a restorative justice approach to criminal acts of narcotics abusers through rehabilitation and implementing a restorative justice approach to criminal acts of narcotics abusers in the future.

2. Research Method

The research method used uses a socio-legal research approach. Socio Legal research methodology is influenced by social science towards the purity of legal science.⁵This cannot be separated from the nature of legal science, namely interdisciplinary, which means that various other scientific disciplines are needed to explain various aspects related to the presence of law in society.⁶This has logical consequences, namely the use of a social science approach in explaining the legal problems being studied.⁷

3. Results and Discussion

3.1. Construction of Resolving Criminal Acts of Narcotics Abusers Through Rehabilitation Within the Concept of Legal Certainty

³Sienny Karmana, Anak Agung Sagung Laksmi Dewi, Luh Putu Suryani, Implementation of Restorative Justice for Drug Abusers at the Bali Police Narcotics Research Directorate, *Journal of Legal Interpretation*, Vol. 4 No. 1 – April 2023, p.68-73

⁴Haposan Sahala Raja Sinaga, Implementation of Restorative Justice in Indonesian Narcotics Cases, *Jurnal Hukum Lex Generalis*, Vol.2. No.7 (July 2021), p.528-541

⁵Depri Liber Sonata, Normative and Empirical Legal Research Methodology: Typical Characteristics of Legal Research Methods, *Fiat Justisia Journal of Legal Studies*, Vol. 8, No. 1, 2014, P. 27.

⁶Satjipto Rahardjo, *Legal Studies*, 8th edition, Citra Aditya Bakti, Bandung, 2014, p. 7

⁷Kornelius Benuf, Muhamad Azhar, Legal Research Methodology as an Instrument for Analyzing Contemporary Legal Problems, *Jurnal Gema Keadilan*, Volume 7 Issue 1, June 2020, p.20-33

Law is something that exists because of society, where the development of law itself also follows the development of society. One of the pillars of law that continues to develop in Indonesia today is criminal law. The term "criminal" is a more specific term, namely indicating sanctions in criminal law. Crime is a concept in the legal field that still needs further explanation to understand its meaning and essence.⁸

Restorative Justice is a new concept of thought that has developed from society as a pattern of thinking about modern criminal law. This concept developed as a response to the existence of a retributive justice approach and a criminal justice system which was felt to not satisfy society's sense of justice. The concept of restorative justice, or what is usually called restorative justice in Indonesian, has been accommodated in a small portion of national law. The concept of restorative justice was developed based on critical thinking and disappointment with the concept of conventional punishment which is ineffective and seen as inhumane.⁹

Regulations regarding the restorative justice approach in dealing with criminal acts can now also be found in Prosecutor's Regulation Number 15 of 2020 and Republic of Indonesia State Police Regulation Number 08 of 2021. In general, the practice of using a restorative justice approach is carried out by bringing together the perpetrator and the victim and then agreeing to take place. forgiveness and the amount of compensation for victims to restore them to their original condition. However, what happens when this restorative justice approach is faced with criminal acts of narcotics abuse which are essentially victimless crimes. Restorative Justice basically prioritizes restoring the condition of the parties involved in a criminal act and is oriented towards responsibility for the perpetrators as a result of the actions they have committed.¹⁰

The basic concept of a Narcotics Abuse Victim is someone who accidentally uses Narcotics because they are persuaded, deceived, deceived, forced, and/or threatened to use Narcotics as stated in the explanation of Article 54 of the Narcotics Law. Narcotics addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. Article 57 of Law Number 35 of 2009 states "Apart from medical treatment and/or rehabilitation, healing for Narcotics Addicts can be carried out by government agencies or the community through religious and traditional approaches."¹¹

⁸Marwan Effendy, *Legal Theory from a Policy Perspective, Comparison and Harmonization of Criminal Law*, ME Centre Group Reference, Jakarta, 2014, p. 184

⁹Destri Tsurayya Istiqamah, *Analysis of Restorative Justice Values in the Implementation of Customary Law in Indonesia*, *Veritas et Justitia*, Vol. 4 No. 1 (2018), p. 201-226

¹⁰Yoachim Agus Tridiatno, *Restorative Justice*, Cahaya Atma Pustaka, Yogyakarta, 2015, page.20

¹¹Siti Hidayatun, Yeni Widowaty, *The Concept of Rehabilitation for Drug Users with Justice*, *Journal of Law Enforcement and Justice*, Vol.1 No.2 2020, p. 166-181

Implementation of rehabilitation is the realization of a rule, this is very important because with implementation it can be seen whether a rule has actually been implemented or not. Law Number 35 of 2009 concerning narcotics has provided different treatment for narcotics abusers. Before this law came into effect there was no different treatment between narcotics users, dealers, dealers and producers. On the one hand, narcotics users or addicts are perpetrators of criminal acts, but on the other hand they are victims.¹²

Based on the provisions of Article 54 of the Narcotics Law, Narcotics addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation. However, this rehabilitation is not a form of a restorative justice approach. "Until now, the concept of rehabilitation is still part of punishment." Article 103 of the Narcotics Law opens up space for judges to decide or determine whether to order rehabilitation, but can also decide to undergo imprisonment in accordance with the provisions of Article 134 of the Narcotics Law. Moreover, the period undergoing rehabilitation is included as the period serving the sentence. This is what makes rehabilitation actually part of punishment. "We still adhere to the principle of a double track system, where there is criminal action and there is rehabilitation," he said. In fact, rehabilitation is a form of fulfilling the right to health for narcotics abusers. Philosophically, restorative justice and rehabilitation do have similarities in that the aim is to restore perpetrators and victims to not only recover, but also return to society and not use narcotics again. Therefore, restorative justice for perpetrators of narcotics abuse will be explained more on its philosophical aspects through rehabilitation efforts as the state's obligation to restore the condition of perpetrators who are also victims of their own actions.

Then, there is the fact that the number of narcotics addicts and victims of narcotics abuse as suspects, defendants or prisoners in narcotics crimes is increasing and treatment and/or treatment efforts have not been carried out optimally and in an integrated manner. In fact, in the explanation of Article 21 Paragraph (4) Letter b of the Criminal Code (KUHP) it is stated that suspects or defendants who are narcotics addicts are detained as far as possible in a certain place which is also a place of treatment.

Based on this, it turns out that the state is starting to think about how to take steps that can restore and/or develop the physical, mental and social development of suspects, defendants or convicts in narcotics cases which are carried out with integrated and coordinated treatment, care and recovery programs by issuing Joint Regulation of the Chief Justice of the Supreme Court, 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

¹²Kusno Adi, *Diversion as an Alternative Effort to Overcome Drug Crimes by Children*, UMM Press, Malang, 2009, p. 3

01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (abbreviated as "Joint Regulation" from valid from 11 March 2014).

The Joint Regulation is aimed at realizing optimal coordination and cooperation in resolving narcotics problems in order to reduce the number of narcotics addicts and victims of narcotics abuse through treatment, care and recovery programs in handling narcotics addicts and victims of narcotics abuse as suspects, defendants or prisoners, on a regular basis. carrying out the eradication of illicit narcotics trafficking. Apart from that, it is also intended to serve as a technical guideline in handling narcotics addicts and victims of narcotics abuse as suspects, defendants, or prisoners to undergo medical rehabilitation and/or social rehabilitation. It is also hoped that the medical rehabilitation and social rehabilitation processes can be carried out at the investigation, prosecution, trial and punishment levels in a synergistic and integrated manner.

The Prosecutor's Office of the Republic of Indonesia, as a pioneer in humanist law enforcement, considers that the criminal justice system / integrated criminal justice system has not been able to develop effective treatment, because it tends to run its course, resulting in punitive law enforcement, namely pursuing punishment and retribution. This is what causes the costs of handling cases to become large and has an impact on the occupancy rate of correctional institutions increasing and even exceeding capacity, where 60% of the inmates are narcotics abusers.

The regulations made by the government regarding narcotics are regulated in a special law, namely Law Number 35 of 2009 concerning Narcotics. Article 54 of the Narcotics Law Number 35 of 2009 concerning Narcotics states that: "Narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation". This article does not necessarily mean that narcotics addicts and abusers have the right to rehabilitation. This article actually places the burden on addicts and abuse victims to have an obligation to undergo rehabilitation.

If the abuser is proven to be a victim of drug abuse, then he is obliged to undergo rehabilitation, this is stated in Article 127 paragraph (3) "In the event that the abuser as intended in paragraph (1) can be proven or proved to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation."¹³

The application of restorative justice is a paradigm in regulations issued by the government, but in its implementation it continues to carry out medical

¹³Article 127 Paragraph 3 of Law Number 35 of 2009 concerning Narcotics

rehabilitation and social rehabilitation through legal processes which is a form of criminal justice system that is regulated by Law Number 35 of 2009 concerning Narcotics. As is known, restorative justice is a new concept of thought that has developed in case resolution as a pattern of modern legal thought because it considers the concept of restorative justice to be able to resolve cases outside of court most effectively, efficiently, and fairly. The concept of restorative justice has also received appreciation from the United Nations Office on Drugs and Crime (UNODC) and supports the resolution of cases of victims of narcotics abuse using this concept.

The application of restorative justice is regulated in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. And for narcotics users, it is regulated based on Attorney General Regulation Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as Implementation of the Prosecutor's *Dominus Listis* Principle, carried out very strictly by looking at the amount of evidence, the qualifications of the suspect, the qualifications of the criminal act and the alleged article, the elements of guilt (*mens rea*) in the suspect, as well as a thorough examination of the suspect through the results of an integrated assessment.

In carrying out the duties and authority of the prosecutor in the field of prosecution, this is done through optimizing rehabilitation institutions. Prosecutors as case controllers based on the *dominus listis* principle can resolve criminal cases of narcotics abuse through rehabilitation at the prosecution stage. Completion of the handling of criminal cases of narcotics abuse through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice, with the spirit of restoring the original situation which is carried out by recovering criminal acts of narcotics abuse which are victimless crimes. Completion of the handling of criminal acts of narcotics abuse through rehabilitation is carried out by prioritizing restorative justice and expediency, as well as considering the principles of fast, simple and low-cost justice, the principle of criminal justice as a last resort and recovery of the perpetrator.

The implementation of the case control function is carried out within the scope of the duties and authority of the Prosecutor in the context of building an integrated criminal justice system from the investigation stage to the implementation of court decisions that have obtained permanent legal force to uphold law, justice and truth, including carrying out pre-prosecution and carrying out horizontal supervision through pretrial institutions. The provisions governing the rehabilitation of narcotics users are a form of reform of the national criminal law which indicates the existence of a policy aimed at ensuring that narcotics users no longer abuse these narcotics.

After the public prosecutor receives or receives back the complete results of the investigation from the investigator and accepts the handover of responsibility for the suspect and evidence, the public prosecutor immediately determines whether or not the case file meets the requirements to be submitted to court based on the dominus listis principle. Types of rehabilitation through legal processes consist of medical rehabilitation and social rehabilitation. Medical rehabilitation is carried out at rehabilitation institutions or local health services, while social rehabilitation is carried out at social rehabilitation centers organized by the Ministry of Health, Social Services or the community. Supervision of the implementation of rehabilitation through the legal process is carried out by the public prosecutor by means of the suspect making a mandatory report at a time and method determined by the public prosecutor and supported by a certificate of rehabilitation from the rehabilitation institution.

Under the dominus listis principle, the prosecutor can carry out profiling to convince himself whether the person is entitled to restorative justice or not. Profiling is carried out by checking in the field what the condition of the perpetrator is in the surrounding community so that there is no mistake in placing the perpetrator in the application of restorative justice by means of medical rehabilitation or social rehabilitation.

3.2. Implementation of a Restorative Justice Approach to Criminal Acts of Narcotics Abusers Through Rehabilitation

Law enforcement as a form of state protection of human rights must be implemented consistently and in line with legal developments and pay attention to the sense of justice and paradigm changes that exist in society. In accordance with the 1945 Constitution in article 1 paragraph (2) that sovereignty is in the hands of the people and is implemented according to the Constitution. It is clear that the Indonesian state is a country based on a Constitution which regulates all aspects of life with regulations that originate from the sovereignty of the people which are delegated to the state which ends in the sovereignty of the people themselves. Because even though the existing tools are considered adequate, in reality the law still does not show the situation as expected.¹⁴

The danger of narcotics abuse shows that the trend of victims is increasing, especially among children, teenagers and the younger generation, so that commitment and synergy are needed from all elements of law enforcement officials, relevant authorities and the community, in responding to this paradigm shift.¹⁵ Narcotics abuse has become widespread in some communities in big cities

¹⁴Bambang Heri Supriyanto, Law Enforcement Regarding Human Rights (HAM) According to Positive Law in Indonesia, AL-AZHAR INDONESIA Journal SOCIAL INSTITUTIONS SERIES, Vol. 2, No. 3, March 2014, p.151-168

¹⁵Agung Firmansyah, The Role of Integrated Assessment Institutions in Resolving Narcotics Abuse Cases Through a Restorative Justice Approach, IBLAM Law Review, Vol. 2 No. 02 2022.p.66-79

and small towns and distribution is even difficult to stop. Narcotics abuse is not used for the purpose of treating disease, but is used deliberately to achieve a "certain awareness" because of the effect of drugs on the soul. As Indonesian society, in general, we are currently facing a very difficult and worrying situation due to the widespread use, indiscriminately, of various kinds of narcotics and psychotropic substances.¹⁶

Apart from that, handling narcotics abuse is carried out using two methods, namely prevention without punishment through mandatory reporting of addicts and implementation of rehabilitation law enforcement using a restorative justice approach. Restorative Justice is a model approach to resolving criminal cases where all parties with an interest in the case meet together to resolve it fairly by considering returning to the original state and not retaliation. The implementation of restorative justice is to look for alternatives to punishment without prioritizing imprisonment. Article 54 of Law Number 35 of 2009 states that narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation.

Narcotics abuse cases are cases of using narcotics for consumption with a limited amount of narcotics possession for one day's use. The grammaticality is determined in SEMA number 4 of 2010. It is the obligation of investigators and prosecutors to carry out scientific investigations and prosecutions whether the abuser is considered an addict or the addict is also a dealer. In restorative justice, the priority is not the imposition of punishment on the criminal perpetrator, but rather how the perpetrator can be held responsible for the criminal act committed. And how victims can obtain justice. Until things can return to normal. The main goal of restorative justice is to create a fair trial.¹⁷

3.3. Implementation of a Restorative Justice Approach to Criminal Acts of Narcotics Abusers in the Future

Criminal law with such great sanctions has existed and has existed for a long time, but why do crimes and violations still occur? Basically, criminal law makers hope that one day crime will disappear. It is a fact that serious criminal witnesses are not the main factor in driving the effectiveness of criminal law.¹⁸This is what needs to be reviewed regarding the purpose and function of applying criminal law to victims of drug users. The application of criminal law in the form of imprisonment for victims of drug users has proven to be successful, what actually happens is that every year the number of victims of drug users sentenced to prison

¹⁶Andri Winjaya Laksana, Review of Criminal Law Against Narcotics Abusers With Rehabilitation System, *Journal of Legal Reform*, Volume II No. 1 January-April 2015, p.74-85

¹⁷Jesyliia Hillary Lawalata, Juanrico Alfaromona Sumarez Titahelu, Julianus Edwin Latupeirissa, Restorative Justice Approach in Resolving Narcotics Crime Cases at the Investigation Stage, *TATOHI Journal of Legal Studies*, Vol 2, No 1 (2022), p.91 - 112

¹⁸Topo Santoso and Eva Achjani Zulfa, *Criminology*, Rajawali Press, Depok, 2014, p. 4

increases.¹⁹This is what needs to be reviewed regarding the purpose and function of applying criminal law to victims of drug users. The most important factor in efforts to overcome drug abuse which is often ignored, especially by law enforcement officials in Indonesia, is rehabilitation efforts. The model of punishment for victims of drug users up to now still places them as perpetrators of criminal acts, so that rehabilitative efforts are often neglected.²⁰

Rehabilitation and criminal punishment are often seen as two opposing things. Rehabilitation supporters always put forward a number of reasons why rehabilitation is much better than imprisonment, and vice versa. The article entitled *Punishment Fails, Rehabilitation Works*, written by James Gilligan, a professor from New York University provides an illustration of how prison sentences are no longer effective in the United States. In fact, rehabilitation, which has not been accepted as a theory of punishment for decades, has been promoted by the Supreme Court in the United States in the *Graham Florida* case in 2010.²¹

Drug abuse developed in Portugal after the Democratic Revolution and the return of Portuguese soldiers from colonies in Africa. Starting from marijuana brought by soldiers, drug abuse in Portugal became more widespread when cheap heroin from Afghanistan and Pakistan flooded the European market. As a result, in the late 1990s, the number of infections of HIV, TB, Hepatitis B and C due to narcotics use increased greatly and deaths due to narcotics use also increased.

In 1998, a Commission was formed to negotiate an appropriate national strategy to deal with the growing narcotics problem. From the results of the Commission's analysis, it is realized that the lack of access to treatment for drug users is an important aspect that causes narcotics abuse to continue to grow. Drug criminalization is seen as worsening the situation which results in marginalization and social exclusion for narcotics users. The results of this report became the basis for a new drug policy in Portugal, namely the policy of decriminalizing illicit drugs for personal use in accordance with Law 30/2000. Since July 1 2001, personal consumption and possession of plants, substances or other forms of narcotics below the specified limit will only be subject to administrative sanctions. The use of narcotics is still prohibited and monitored, just not in the criminal realm. Meanwhile, quantities of drugs above the personal consumption limit will be identified as narcotics trafficking, which is a criminal offense.

¹⁹Parasian Simanungkalit, *The Ideal Punishment Model for Drug User Victims in Indonesia*, Yustisia, Vol.1 No. 3 September - December 2012, p. 80-93

²⁰Zainudin Hasan, Rissa Afni Martinouva, Kartika, Habib Shulton Asnawi, Uswatun Hasanah, *Social Rehabilitation of Drug Addicts Through Music Therapy from a Human Rights Perspective*, AS-SIYASI: Journal of Constitutional Law, Volume: Vol 2, No 1 (2022), p. 58-72

²¹Allegra M. Mcleod, *Decarceration Courts, Possibilities and Perils of a Shifting Criminal Law*, The Georgetown Law Journal, Vol. 100, No. 1587 2012, p. 1604

Portugal has explicitly stated the “decriminalization” of drug addicts. While other countries in the European Union are developing various forms of de facto decriminalization, in which case substances deemed less harmful (such as cannabis) rarely give rise to criminal prosecution. Portugal is the only country that openly states that illegal drugs are “decriminalized”. Since it is more than seven years since the implementation of the decriminalization system in Portugal, there is a lot of data that makes it possible to assess its impacts. In July 2000 a new law was passed to revise drug control, especially regarding the illegality of possession and use without the permission of the competent authorities. The offense was changed from what used to be a prison sentence to a more lenient administrative punishment. This law automatically decriminalizes drug users and they are treated like patients who have the right to recovery and a return to normal life. If someone has a small amount of drugs, namely less than a 10 day supply, he will not be immediately thrown into jail. He will be met by the Commission for the Dissuasion of Drug Addicts (Comissões para a Dissuasão da Toxicodependência-CDT) which consists of three people: a social worker, a psychiatrist and a lawyer. This institution will determine the user's fate based on a series of sanctions. Among these sanctions are a fine equal to the salary of one hour of work, temporary revocation of work permits that could endanger the lives of other people (drivers, doctors, etc.), prohibited from going to special places (night clubs, etc.), prohibited from communicating with other people. certain, prohibited from going abroad, obliged to report to the CDT every certain period, revoked the right to carry firearms, confiscated a number of personal items, and stopped subsidies received from the state. If he has the status of an addict, and this is the most important thing, he will be enrolled in a rehabilitation program.²²

This program is free or fully borne by the government. The 2001 law cannot operate without universal health coverage for all Portuguese citizens. So that in its implementation the ministry of health in that country receives greater state funding. Health centers in Portugal used to be crowded with people who died due to contracting HIV/AIDS due to the use of unsafe heroin injection needles. Since the policy under the 2001 law was implemented, according to data from the European Monitoring Center for Drugs and Drug Addiction, the rate of new HIV diagnoses among drug users has fallen by 17 percent. HIV infections among drug users have also fallen by 90 percent.²³

The application of criminal law in the form of imprisonment for victims of drug users has proven unsuccessful, what actually happens is that every year the number of victims of drug users sentenced to prison increases. This is what needs to be reviewed regarding the purpose and function of applying criminal law to

²²Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Developing Fair and Successful Drug Policies*, CATO Institute, Washington DC, 2009, p. 2

²³Akhmad Muawal, *Rejecting Criminalization of Addicts, Portugal Successfully Eradicates Drugs*, <https://tirto.id/tolak-criminalization-pecandu-portugal-sukses-berantas-narkoba-cCLy>

victims of drug users. The most important factor in efforts to overcome drug abuse which is often ignored, especially by law enforcement officials in Indonesia, is rehabilitation efforts. The model of punishment for victims of drug users up to now still places them as perpetrators of criminal acts, so that rehabilitative efforts are often neglected.

Meanwhile, if you look at the development of treatment for drug addicts in several countries, there has been a trend that continues to change. In the 1980s, global policy trends moved toward harsher approaches to criminalization, even at the user level. In recent years, world drug policy makers have attempted to formulate and recommend policies on how best to manage drug-related problems based exclusively on empirical reasons, one of which is by decriminalization or depenalization of drug addicts. However, these two terms have different working forms.

The obligation to undergo rehabilitation for victims of drug users is intended to reduce the share of the drug market in Indonesia, so that in the future it is hoped that there will be a balance between supply and demand reduction factors. The policies and strategies implemented by the government to reduce demand for drugs are by rehabilitating all addicts, increasing community immunity, and increasing efforts to empower the community. The strategy to reduce the amount of drug availability is carried out through efforts to eradicate or enforce the law against drug trafficking networks.

Thus, future models of punishment for victims of drug abuse must be oriented towards healing and recovery, both through medical institutions (hospitals and community health centers) and social institutions. So that gives birth to a model of treatment that can be applied to victims of drug users. Forms of treatment for victims of drug users can be carried out through medical channels (the reporting agency) and through law enforcement officers (law enforcement). Medical route means that the government provides reporting places in each province, district/city and sub-district throughout Indonesia to record and report victims of drug users or addicts and then take them to rehabilitation centers. Meanwhile, law enforcers, the police and/or BNN as institutions that have the authority have the right to arrest and then take directly victims or drug addicts who have not reported themselves for treatment at a rehabilitation center until they recover.

4. Conclusion

The results of the research and discussion show that the construction of resolving criminal acts of Narcotics Abusers through rehabilitation, namely the application of restorative justice, is regulated in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. And for narcotics users, it is regulated based on Attorney General Regulation Number 18 of 2021 concerning Settlement of Criminal Cases of Narcotics Abuse through

Rehabilitation with a Restorative Justice Approach as Implementation of the Prosecutor's Dominus Listis Principle, carried out very strictly by looking at the amount of evidence, the qualifications of the suspect, the qualifications of the criminal act and the alleged articles, the element of guilt (*mens rea*) in the suspect, as well as a thorough examination of the suspect through the results of an integrated assessment, Implementation of the Restorative Justice Approach to Criminal Acts of Narcotics Abusers Through Rehabilitation at the Pesisir Selatan District Prosecutor's Office as follows: from the results of the investigation, integrated assessment and profiling carried out by facilitator prosecutors, Implementation of a restorative justice approach to criminal acts of Narcotics Abusers in the future. Future punishment models for victims of drug abuse must be oriented towards healing and recovery, both through medical institutions (homes, hospitals and health centers), as well as social institutions. So that gives birth to a model of treatment that can be applied to victims of drug users

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