

The Role of the Police in Realizing Effective Criminal Procedure Against Drug Users Dominating the Courts

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Abstract: *The purpose of this research is to review and analyze the Police scheme in realizing the effectiveness of criminalization against narcotics users who dominate. In this writing, the author uses a normative legal method with research specifications in the form of descriptive analysis. The Regulation of the Republic of Indonesia Police Number 8 of 2021 was enacted with the consideration that the Republic of Indonesia National Police needs to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society. As well as realizing an effective punishment that has implications for the problems of Indonesian corrections. The police took the initial step in implementing the concept of restorative justice through one of the policies taken by the Republic of Indonesia National Police by enacting Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The resolution of narcotics cases through Restorative Justice does not only involve investigators and suspects but also involves several institutions.*

Keywords: *criminal; implications; investigators.*

1. Introduction

Indonesia as a country of law, of course law enforcers will not ignore the purpose of the law. The purpose of law according to LJ Van Apeldoorn is to control human interaction peacefully. The supremacy of law promotes peace between humans by protecting certain legal rights, honor, freedom, life, and property from attackers.¹ Crime has been known since the existence of human civilization, the higher the civilization, the more rules there are and accompanied by more violations. It is often said that crime is the shadow of civilization. Evil brings

¹Inez Indira Putri, (2023), Implementation of Restorative Justice in the Context of Resolving Narcotics Abuse Cases at the Mojokerto City Police, Novum: Jurnal Hukum, 3 (1), p 220

suffering and misery, shedding blood and tears. One example is the illegal distribution of narcotics which has destroyed the future of children and even adults.²

The dangers of drug use for health include: the brain and nerves are forced to work beyond reasonable limits, blood circulation and heart disorders due to blood contamination by substances that have very strong effects, as a result the heart is stimulated to work as usual, breathing does not work properly and tires more easily, use of more than the dose that the body can withstand will result in a terrible death, and dependence arises both spiritually and physically until a serious condition arises due to stopping use.³ Therefore, drug users are very vulnerable to health problems.

Based on data from the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkuham), the number of inmates of correctional institutions (prisons) with special criminal offenses is 264,000 people, which should only accommodate 146,000 people, resulting in overcapacity, of which 60% are drug abuse prisoners.⁴

Decriminalization of drug users can be one solution to the problem of overcrowded prisons in Indonesia. Based on these figures, it can be seen that almost 30% of prison inmates are convicted only as drug users. If decriminalization of drug abuse can be realized, efforts to reduce the burden on prison capacity can be realized more easily. Decriminalization is the opposite of the criminalization process, which can be interpreted as a policy for an act that was originally declared a criminal act that is threatened with criminal sanctions to become a non-criminal act and is no longer subject to criminal sanctions. The need for decriminalization of drug users in Indonesia can be re-examined using the criteria of criminalization.⁵

If examined from the criteria of implementation costs, it can be said that criminalization for drug users costs a lot of money, but is also unable to overcome the problem of drug abuse in Indonesia. The Minister of Law and Human Rights stated that his party must spend Rp1.7 trillion on food costs for all prisoners in prisons. If 30% of the number of drug users are no longer serving prison sentences, the government can save Rp51 billion in prison food costs.⁶

One of the policies taken by the Indonesian National Police in handling the dominance of criminalization of drug users is to enforce the Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts

²Emilia Susanti, et al. (2018). *Law and Criminology*. Bandar Lampung: CV Anugrah Utama Raharja. p 107

³Fransiska Novita Eleanora. (2011), *The Dangers of Drug Abuse and Efforts to Prevent and Overcome It*. *Journal of Law*, XXV (1), April. p 443

⁴Inez Indira Putri, (2023), *Op.Cit*, 3 (1), p 220

⁵Marfuatul Latifah. (2019), *Decriminalization of Drug Abuse in Indonesia*, DPR RI, Legal Sector: Brief Information (Brief Study of Current and Strategic Issues, XI (2)/II, January, p 3

⁶*Ibid*

Based on Restorative Justice. This Police Regulation is enforced with the consideration that the Indonesian National Police needs to realize the resolution of criminal acts by prioritizing restorative justice that emphasizes the restoration of the original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal need of society. As well as realizing an effective punishment that has implications for the problems of Indonesian corrections.

Researchers determine a theme and form a title to be continued in conducting a scientific study in the form of systematic and basic writing. the purpose of the research is review and analyze the Police scheme in realizing the effectiveness of criminalization against narcotics users who dominate.

2. Research Methods

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

3. Results and Discussion

3.1. Criminalization of Drug Users

Criminalization is an object of study of substantive criminal law that discusses the determination of an act as a criminal act (criminal act or crime) that is threatened with certain criminal sanctions. Reprehensible acts that were previously not qualified as prohibited acts are justified as criminal acts that are threatened with criminal sanctions. According to Soerjono Soekanto, criminalization is an action or determination of the authorities regarding certain acts that are considered by society or groups of society as acts that can be punished as criminal acts.⁷ or make an act a criminal act and therefore can be punished by the government by working on its behalf.⁸

Since the enactment of Law Number 35 of 2009, many perpetrators have been caught in this law. Law enforcement is expected to be a factor in preventing the spread of narcotics distribution and abuse for all levels of society. Law Number 35 of 2009 concerning Narcotics Crimes, the sanctions applied by the law are actually quite severe, the sanctions are in the form of imprisonment and fines, and also most importantly, the minimum threat of punishment is imposed and the threat of the death penalty shows the severity of the criminal sanctions that regulate the law on narcotics crimes.

Common forms of narcotics crimes include the following:

⁷Soerjono Soekanto, (1981), *Criminology: An Introduction*, First Edition, Jakarta: Ghalia Indonesia, p 62.

⁸Henry Campbell Black, (1979), *Black Law Dictionary*, Fifth Edition, Sint Paul Minn: West Publishing Co., p 337

- a. Abuse or overdose;
- b. Distribution of Narcotics;
- c. Buying and Selling Narcotics.⁹

One of the problems that has not been clearly accommodated is related to the regulation of drug users in the Narcotics Law. However, Article 1 number 15 states that abusers are people who use narcotics without rights or against the law. Drug abusers can be interpreted broadly including producers, dealers and users. They all abuse drugs. This makes it difficult to position the position of drug users as perpetrators or victims of drug crimes. If positioned as a perpetrator, a criminal sentence will be imposed and if positioned as a victim, they will be directed to rehabilitation. The unclear regulation will lead to misinterpretation in giving criminal sentences.

The provision can cause confusion in the Narcotics Law, especially in the provisions of rehabilitation for users. In the provisions in the Narcotics Law, it is stated that every addict is required to undergo rehabilitation, but in the next provision it is stated that in the procedures that must be passed in the rehabilitation stages, the consent of the victim concerned must be obtained.¹⁰ These are 2 (two) contradictory things because in general addicts will not give their consent to undergo rehabilitation. In the Narcotics Law, there still needs to be clearer regulation regarding the position of users as victims and it is also necessary to revise the substances in the appendix.

3.2 Police Scheme in Realizing Effective Criminalization of Dominant Drug Users

The fact is that the number of drug addicts and victims of drug abuse as suspects, defendants, or prisoners in drug crimes is increasing and efforts to treat and/or care 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 states that drug addict suspects or defendants are as far as possible detained in a certain place which is also a place of treatment.¹¹

Correctional Institutions (Lapas) are an important part of the correctional system that functions as a medium/place for prison officers to conduct prisoner guidance. The emergence of problems in prisons is not solely caused by errors and mistakes in handling by prison officers, but it occurs in a complex manner between the system and implementation in the field with all its limitations.¹² One of the problems in prisons is overcapacity. Prisons, which are places for fostering

⁹Moh. Taufik Makarao, Suhasril, Moh Zakky, (2003), *Narcotics Crimes*, Ghalia Indonesia, Jakarta, p 21

¹⁰Harris YP Sibuea, (2015). *Position of Narcotics Users and Readiness for Rehabilitation Facilities for Drug Abusers Narcotics by Law Number 35 of 2009 on Narcotics*, State of Law, 6 (1), June, p 53

¹¹Haposan Sahala Raja Sinaga. (2021). *Implementation of Restorative Justice in Indonesian Narcotics Cases*, *Rewang Rencang: Jurnal Hukum Lex Generalis*. 2 (7), July, p 534

¹²Ruli Novian (ICJR), (2018), *Strategy for Handling Overcrowding in Indonesia: Causes, Impacts and Solutions*, Institute for Criminal Justice Reform (ICJR), p 1

prisoners, in reality still find it difficult to carry out fostering effectively and optimally. This is because almost all prisons in Indonesia are overcapacity.

Overcapacity is a condition where the prison is overloaded with the inmate population resulting from the disproportionate number of inmates entering and those being released, in other words, the very high growth rate of inmates is not comparable to the limited prison facilities. The total number as of March 2022 was 294 prisons with a total capacity of 132,107 inmates from all correctional UPTs. From this capacity, in fact, in the field, the results were very different, namely a total of 270,831 inmates with 225,661 inmates and 45,170 detainees, which means experiencing 169% overcapacity and dominated by types of narcotics crimes as many as 138,079 people.¹³

To see the effectiveness of punishment can be seen from the number of prisoners in a prison, in this case narcotics prisoners. According to data from the Directorate General of Corrections, almost all prisons in Indonesia are overcapacity and are dominated by perpetrators of narcotics crimes. This indicates that the implementation of punishment from Law Number 35 of 2009 concerning Narcotics can be said to be ineffective, with many narcotics prisoners in the user category still being sentenced to prison.¹⁴

In fact, without going to court, the Police can take the initial step in implementing the concept of restorative justice through one of the policies taken by the Indonesian National Police by enacting "Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice". This is in line with the 2020-2024 Medium-Term Development Plan (RPJMN) in terms of improving the criminal law system through a restorative justice approach. The restorative justice approach is expected to be one way to reduce overcapacity in correctional institutions in Indonesia.

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

Drug users themselves who are not involved in a network of dealers or dealers are included in the type of "self-victimizing victims", namely victims of crimes they themselves commit. Therefore, the relevant sanctions applied to them are sanctions that reflect the value of restorative justice and not criminal sanctions in prison which focus more on retributive justice that is oriented towards revenge.

¹³Syachrul Ichwan & Padmono Wibowo, (2023), Effectiveness of Law and Efforts to Overcome Overcapacity of Narcotics Prisoners in Class IIA Bogor Prison, *Muqoddimah Scientific Journal: Journal of Social, Political and Humanitarian Sciences*, 7 (1), p 69

¹⁴*Ibid*, p 71

Because drug users for themselves are essentially victims of a crime that needs to receive treatment and/or care.

Restorative Justice in narcotics cases can be applied if the requirements are met when caught red-handed by police investigators, evidence of use is found in the form of one of:

- 1) Maximum of 1 gram of crystal methamphetamine;
- 2) Ecstasy Maximum 8 pills;
- 3) Heroin Maximum 1.8 grams;
- 4) Cocaine Maximum 1.8 grams;
- 5) Maximum Marijuana 5 grams;
- 6) Coca Leaves Maximum 5 grams;
- 7) Mescaline Maximum 5 grams;
- 8) Psilocybin group Maximum 3 grams;
- 9) LSD group maximum 2 grams;
- 10) PCP group maximum 3 grams;
- 11) Fentanyl group maximum 1 gram;
- 12) Methadone group maximum 0.5 grams;
- 13) Morphine group maximum 1.8 grams;
- 14) Pethidine group maximum 0.96 grams;
- 15) Maximum codeine group 72 grams;
- 16) Bufferorphine group maximum 32 grams.¹⁵

The settlement of narcotics crime cases with Restorative Justice takes into account the Instructions and directions of the Criminal Investigation Agency of the Republic of Indonesia Police, as follows:

- 1) The Republic of Indonesia National Police Regulations are not retroactive;
- 2) Handling of restorative justice cases, equipped with mindik etc.;
- 3) Perform urine/hair/blood tests;
- 4) Taking statements from suspects (BAP), BAP of related witnesses, cellbrate communication tools to find out network involvement;
- 5) Submit a search warrant and seizure order to the local prosecutor's office (Guidelines Article 140 Law No. 35 of 2009);
- 6) Time limit 3x24 hours, period 3x24 hours, on the third day submit an assessment application to TAT;
- 7) Submission of assessment through case title:

¹⁵Haposan Sahala Raja Sinaga. (2021). Op. Cit. 2(7), July, p 537

- a. The regional police level is led by a director/deputy director or at the lowest level by the head of the wassidik division.
 - b. The police station level is led by a police chief/deputy police chief, with the lowest being a narcotics unit chief.
- 8) Due to the limited time for arrest, investigators must coordinate with TAAT BNNT, BNNK, to immediately issue the results of the TAT assessment/recommendation on the 6th day, then based on the results of the TAT recommendation, investigators must immediately send the suspect to the designated rehabilitation center;
 - 9) There are no government rehabilitation centers, they are placed in private rehabilitation centers where the costs are borne by the suspect/family;
 - 10) Sending the suspect to a rehabilitation center was stated so that the rehabilitation center would provide a report to investigators regarding the implementation of treatment for the suspect;
 - 11) After the suspect is in the rehabilitation center, the case is stopped by law;
 - 12) Termination of cases through case titles;
 - 13) Complete the administration of the case termination by attaching the recommendation for the Thematic Aperception Test, the Minutes of the handover of the suspect to the rehabilitation center and the results of the case hearing;
 - 14) Destruction of Evidence is carried out 7 days after receiving the Thematic Aperception Test on the status of confiscated Narcotics Evidence from the local prosecutor's office (so that investigators adhere to Article 91 of Law No. 25 of 2009 concerning narcotics);
 - 15) For addicts and victims of drug abuse who have repeatedly committed crimes and have been rehabilitated, they must be processed legally;
 - 16) Report periodically on the termination of cases (restorative justice) to the Head of the Criminal Investigation Agency of the Republic of Indonesia Police, Directorate of Narcotics Crimes, Criminal Investigation Agency of the Republic of Indonesia Police;
 - 17) So that the ranks of the Directorate of Narcotics can open a public complaint channel if there are complaints regarding the case process carried out with restorative justice.¹⁶

The settlement of narcotics cases through Restorative Justice not only involves investigators and suspects but also involves several institutions that are members of the TAT Team (Integrated Assessment Team), namely Police Investigators, the Prosecutor's Office and the BNN. Based on the above, Restorative Justice occurred due to the advice of the TAT Team (Integrated Assessment Team) which had

¹⁶Jesyliya Hillary Lawalata, et al. (2022). Restorative Justice Approach in Resolving Narcotics Crime Cases at the Investigation Stage, *Tatohi Journal of Law*, 2 (1) March, p 100

analyzed and identified the case, where the case met the formal, material and special requirements contained in Perpol Number 8 of 2021.

The settlement of narcotics cases through Restorative Justice has a maximum in the settlement of narcotics cases through Restorative Justice where a maximum of 2 times the perpetrator can submit a case settlement through Restorative Justice on the condition that the perpetrator has previously undergone rehabilitation, so if the perpetrator commits his actions again, the perpetrator can submit a case settlement through Restorative Justice for the second time.¹⁷

In cases of narcotics abuse, there are special requirements for resolving cases based on restorative justice, namely as regulated in Article 9 of Police Regulation Number 8 of 2014, namely:

1) Special requirements for Drug Crimes as referred to in Article 7 letter b, include:

- a. Drug addicts and victims of drug abuse who apply for rehabilitation;
- b. When caught red-handed:
 - a) Evidence of narcotics found for 1 (one) day's use with the classification of narcotics and psychotropic drugs in accordance with the provisions of laws and regulations; and
 - b) No evidence of drug crimes was found, but the urine test results showed positive for drugs;
 - c. Not involved in drug crime networks, distributors and/or lords;
 - d. An assessment has been carried out by an integrated assessment team; and
 - e. The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.

2) The integrated assessment team as referred to in paragraph (1) letter d is implemented in accordance with the provisions of statutory regulations.¹⁸

Initially, the police were not very active in their involvement in the mediation or deliberation process, however, after the issuance of the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, which mandates the Police to realize the resolution of a criminal act by prioritizing restorative justice which emphasizes restoration.

Based on the explanation, the termination of the investigation into the criminalization of drug users is the right step, because it is in accordance with the rules as stipulated in the Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice, this is also a step to reduce

¹⁷Inez Indira Putri, et al. (2023). Op.Cit, Vol 3 No 1, p 224

¹⁸Ibid

overcrowding in Correctional Institutions in Indonesia as the essence of the effectiveness of criminalization.

4. Conclusion

The police took the initial step in implementing the concept of restorative justice through one of the policies taken by the Indonesian National Police by enacting "Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice". The resolution of narcotics cases through Restorative Justice not only involves investigators and suspects but also involves several institutions that are members of the TAT Team (Integrated Assessment Team), namely Police Investigators, the Prosecutor's Office and the BNN. Based on the above, Restorative Justice occurred due to the advice of the TAT Team (Integrated Assessment Team) which had analyzed and identified the case, where the case met the formal, material and special requirements contained in Perpol Number 8 of 2021.

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