

Legal Analysis of Termination of Prosecution of Drug Abuse in the Framework of Restorative Justice

Bilal Bimantara

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:
BilalBimantara.std@unissula.c.id

Abstract. *The purpose of this study is to examine and analyze the implementation of the termination of prosecution of drug abusers within the framework of restorative justice, to examine and analyze the termination of prosecution of drug abusers within the framework of restorative justice in the future. The research approach method is included in sociological research. Approach Restorative justice in handling drug abuse in Indonesia, as regulated in the Attorney General's Guidelines No. 18 of 2021, emphasizes medical and social rehabilitation as an alternative to criminal punishment for addicts who meet the legal requirements. This policy aims to restore individuals, reduce prison overcapacity, and create a more humane law enforcement. The Netherlands and Australia offer progressive models that emphasize harm reduction, rehabilitation, and social reintegration through decriminalization policies, safe consumption spaces, diversion programs, and drug courts. Indonesia can adapt these elements, such as decriminalization of light users and community-based programs, to increase the effectiveness of handling narcotics in a more humane, holistic, and social justice-based manner.*

Keywords: *Abusers; Justice; Restorative.*

1. Introduction

The Republic of Indonesia is a country based on law (*Law State*), not a state based on power alone (*State*) is expressly regulated in the body, namely in Article 1 paragraph (3) of the 1945 Constitution. In the concept of a state based on law, it is idealized that the commander in all dynamics of state life is the law.

One form of crime that is classified as a special crime that often occurs in society is drug abuse. Drug abuse is currently increasing day by day. Action against drug crimes in Indonesia reached 15,455 cases in the first semester of 2022. Even data from the National Police Criminal Investigation Center shows that drug cases are the second highest crime after aggravated theft or theft. However, the impact of drug crimes is more dangerous.

Drug abuse is currently increasing day by day. It can be observed from the news in both print and electronic media which almost every day reports on the arrest of perpetrators of drug abuse by state officials through the National Narcotics Agency. (BNN) and the Indonesian National Police (POLRI) The widespread abuse and victims of narcotics crimes have penetrated all levels of society without exception, starting from children, teenagers, young people, parents, both educated and uneducated people and from various types of professions. In the context of law enforcement *law enforcement* there is a desire for the law to be upheld, so that the values fought for through the relevant legal instruments can be realized. Meanwhile, in using the law, the ideals contained in the law are not necessarily truly intended to be achieved, because the law is used to justify the actions taken. *to use the law to legitimate their actions.*

The provisions of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) also mention several terms that have the same essence as narcotics users themselves, including drug abusers.

narcotics, abusers, victims of abuse, former drug abusers and patients. Based on various terms related to drug abusers, it causes different impacts and implications so that there is inconsistency in treating people who use drugs as victims of drug abuse for themselves. 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. Given that there are several things that need to be improved in Article 2 concerning the regulation of narcotics in order to adjust to existing developments. In Article 127 paragraph 1, every abuser of Class I, II, III Narcotics for themselves is subject to imprisonment. Imprisonment of users of narcotics and dangerous drugs has proven to be ineffective. This is a common thread in law enforcement against drug users. Drug abuse and illicit trafficking in Indonesia cannot be separated from the influence of global developments. Various attitudes or views from the government and society in responding to the increasing number of drug users and/or abusers have resulted in different points of view. "With the declaration of 2014 as the year of saving drug users, drug abusers must be handled properly, not only subject to imprisonment but also other actions permitted by law.

This reorientation of law enforcement policy is intended to carry out the duties and authorities of the Prosecutor's Office in the field of prosecution through optimization of rehabilitation institutions.⁸This is in accordance with the Attorney General's Guidelines No. 18 of 2021 concerning the Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Principles *Dominus Litis* Prosecutor. The prosecutor as the case controller based on the principle *dominus litis* can carry out the settlement of criminal

cases of drug abuse through rehabilitation at the prosecution stage. Settlement of the handling of criminal cases of drug abuse through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice, with the spirit of restoring the original state which is carried out by

Many law enforcement officers whose current mindset is centered on the understanding that every criminal case must remain within the realm of criminalization (litigation path), even though these cases are criminal acts with relatively small losses or minor crimes. This is legitimate in legal positivism, provided that the act is clearly in the law (the principle of legality is fulfilled) and in accordance with the principle *quality before the law*. The basic principle of Restorative Justice is the restoration of victims who suffer from crimes by providing compensation to victims, peace, perpetrators doing social work or other agreements. Fair law in restorative justice is certainly not biased, impartial, not arbitrary, and only sides with the truth in accordance with applicable laws and regulations and considers equality of compensation rights and balance in every aspect of life.

Restorative justice is a term often used for approaches in the criminal justice system that focus more on the parties including victims and society, and ignores criminalization of perpetrators of crimes.

The basic principles of restorative justice (*restorative justice*) is the existence of restitution for victims who suffer as a result of crime by providing compensation to the victim, peace,¹⁰the perpetrators carry out social work or other agreements. Issuance of guide lines *Restorative Justice Drug abuse cases* are motivated by the current criminal justice system which tends to be primitive. This is reflected in the number of correctional facility inmates exceeding capacity (*overcrowding*) and most of them are prisoners for drug crimes. Issue *over crow ding* has become a serious concern for society and the government.

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 potential to cause drug abusers to form exclusive groups or individuals, resulting in the increasing difficulty of 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 sanctions.

and regulations by other people against a violator. Criminalizing drug abusers themselves would also be contrary to 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 with a harmonious balance of crimes/reprehensible acts on the one hand and from arbitrary

actions of the authorities on the other.

2. Research Methods

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing, viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice. The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study. The document study in this study is a literature study using laws and regulations. The data analysis used in this study is a descriptive analysis. *Qualitative* namely, data that has been obtained from field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of the objects being studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the research problem.

3. Results and Discussion

3.3. Implementation of Termination of Prosecution of Narcotics Abusers Within the Framework *Restorative Justice*

One form of crime that is classified as a special crime that often occurs in society is drug abuse. Drug abuse is currently increasing day by day. Action against drug crimes in Indonesia reached 15,455 cases in the first semester of 2022. Even data from the National Police Criminal Investigation Center shows that drug cases are the second highest crime after theft with aggravation or theft. However, the impact of drug crimes is more dangerous.

There is an example of a case of the application of medical and social rehabilitation for drug abuse in the jurisdiction of the West Pasaman District Attorney's Office. Where the West Pasaman District Attorney's Office stopped the prosecution or *Restorative Justice* against three narcotics case files with 4 (four) suspects to undergo rehabilitation because the suspects are drug addicts, not dealers. The suspects are suspected of being users or addicts of class I narcotics, not plants of the crystal methamphetamine type, violating Article 127 paragraph (1) letter a of the Narcotics Law.

Law is an essential factor in all aspects of life, the existence of which is expected to be an instrument that helps realize social order. Law enforcement is an important part of the implementation of the supremacy of law. A state of law is the obligation of every state, with all its law enforcement tools, to implement a state of law by defending the law based on the law.¹⁶ Regulatory law cannot be separated from criminal law, the general aim of which is the realization of an orderly society, when other legal instruments, such as state law, administration, discipline or custom, have previously been used or are considered inappropriate. In its development, the concept of restorative justice was born to emphasize that criminal

justice is a last resort. The concept of restorative justice emphasizes that the purpose of crime is to restore the situation. In principle, rehabilitation should be possible for drug addicts and victims of drug addiction, as long as they meet the legal requirements. The principle of social justice of rehabilitation policies can be combined with the rule of law. The aspect of rehabilitation is reviewed from a philosophical, legal and sociological perspective. The characteristic of drug-related rehabilitation is the recovery of drug addicts and victims of drug addiction.

This reorientation of law enforcement policy is intended to carry out the duties and authorities of the Prosecutor's Office in the field of prosecution.

carried out through optimization of rehabilitation institutions.¹⁹This is in accordance with the Attorney General's Guidelines No. 18 of 2021 concerning the Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Principles *Lord of the Lathies* Prosecutor. The prosecutor is the case controller based on principles *dominus litis* scan carry out the settlement of drug abuse criminal cases through rehabilitation at the prosecution stage. Settlement of handling of drug abuse criminal cases through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice, with the spirit of restoring the original state which is carried out by restoring the perpetrators of drug abuse criminal acts which are of a nature *victimless crime*.

In the termination of three narcotics case files, for example at the West Pasaman Prosecutor's Office, the Public Prosecutor (JPU) carried out handling using restorative justice, because it had met the requirements stated in the Attorney General's Guidelines No. 18 of 2021 concerning the Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Principles *Dominus Litis* Prosecutor. This restorative justice is an effort to provide atonement for the mistakes made by the perpetrator of the crime, with the aim that legal problems arising from the crime can be resolved properly.

In order to implement law enforcement that is oriented towards the concept or approach of Restorative Justice, the East Java High Prosecutor, Dr. Mia Amiati, SH, MH on Thursday, January 25, 2024, accompanied by the Aspidum, Coordinator and Head of Narcotics in the Criminal Division together with the Kediri, Nganjuk and Sampang City Prosecutors have conducted an expose before the Criminal Division through virtual means by submitting 3 cases for which a Termination of Prosecution request was made based on Restorative Justice.

The resolution of criminal cases through a mechanism for terminating prosecution based on restorative justice is proof that the state, through its law enforcers, is present to provide humanism in law enforcement in order

to create a sense of justice in the midst of.

in the midst of society, but it is necessary to underline that restorative justice does not mean providing forgiveness for criminals to repeat similar mistakes.

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

Implementation *restorative justice* first started in 1974 in Ontario through a reconciliation program between victims and perpetrators which then developed in several countries including the United States and New Zealand. *Restorative justice* can be defined as a systematic response to unlawful acts by focusing on healing victims, perpetrators and the community caused by the crime. So that, *restorative justice* unlawful acts as violations of a relationship while retributive justice sees crime as a violation of the state. In this case, the settlement *restorative* prioritizing dialogue between the victim and the perpetrator plus a neutral facilitator, which can involve or not involve law enforcement officers.

Prison is not the way to save addicts and victims of drug addiction. The current criminal justice system is generally pro-criminal, reflected in prison overcrowding, and most of them were convicted of drug-related offenses. *Overcrowding* has become a major concern of the community and government to improve the criminal justice system through a restorative justice approach. Therefore, a strategic criminal policy is needed, especially in handling narcotics crimes, which also includes a reorientation of criminal law enforcement policies in the implementation of Law No. 35 of 2009 on Narcotics. The plan to harmonize the prosecutor's policy in carrying out the duties and authorities of the prosecutor's office will be carried out by optimizing rehabilitation facilities. Like the prosecutor's office, the prosecutor's office can mediate drug addiction cases through rehabilitation at the prosecution stage according to the principle *dominus litis*. The resolution of drug crime through rehabilitation is a mechanism that cannot be

separated from the implementation of *restorative justice* which seeks to restore the original state, which is done through the rehabilitation of drug addicts which is a victimless crime.

3.2. Termination of Prosecution of Drug Abusers with in the Frame work *Restorative Justice in the Future Restorative justice*

for drug addicts in the Netherlands is an approach that emphasizes rehabilitation, social integration, and reduction of negative impacts rather than severe punishment. This system focuses on *harm reduction* (harm reduction) and restoration of social relationships.

In the Netherlands, the policy of decriminalizing narcotics was implemented as part of the approach *harm reduction*. small amounts of drug use, especially for substances like marijuana, are not considered a serious offense. This is in contrast to legalization, where the substance is completely legalized. Decriminalization means that while marijuana remains technically illegal, its use for personal consumption within certain limits will not be subject to criminal penalties. This move is intended to separate low-level drug users from the criminal environment and reduce the burden on the criminal justice system.

The main philosophy of this policy is that drug addicts are not criminals, but rather individuals in need of medical and social assistance. The Dutch government understands that criminalizing addicts often only worsens their problems and hinders their access to treatment. Therefore, this policy aims to create an environment where addicts can seek help without fear of punishment.

The approach to drug addicts focuses on rehabilitation and intervention, not punishment. Addicts are encouraged to participate in rehabilitation programs rather than face criminal penalties. This policy is based on the understanding that drug addiction is a health problem that requires medical and psychosocial solutions, not just legal approaches. In this way, addicts can get the support they need to recover and live productive lives without fear of stigma or severe punishment.

Drug Courts or drug courts in Australia²⁸ is a special court that handles minor criminal cases related to drugs. These courts operate in several states, such as New South Wales and Victoria, with a focus on rehabilitation and recovery rather than on imposing prison sentences. The main purpose of *Drug Courts* is to help individuals overcome their drug addiction, while breaking the cycle of crime that is often associated with addiction.

Drug courts offer an alternative for addicts facing criminal charges. Instead of imposing a prison sentence, these courts impose sentences that require defendants to participate in rehabilitation programs, such as medical therapy, counseling, or community-based rehabilitation programs. In some cases, the courts also require individuals to undergo regular screenings, such as drug

tests, to ensure compliance with the recovery program.

One of the advantages *Drug Courts* is its integrated, community- based approach. This system involves collaboration between judges, prosecutors, defense attorneys, rehabilitation workers, and counselors to design a recovery plan that fits the individual's needs. This approach addresses not only the addiction itself but also other underlying factors, such as mental health issues, economic hardship, or social pressures. In doing so, this court provides more holistic support to help individuals start anew.²⁹

Restorative Practices Social Reintegration is an important part of Australia's approach to dealing with drug addicts, with a focus on restoring social relationships damaged by addiction.

Community-based programs are designed to help addicts reconnect with family, friends, and community. This step is considered important because social support is a key element in the ongoing recovery process. Indonesia can adopt some progressive approaches from the Netherlands and Australia in dealing with drug addicts, with adjustments to the social, cultural, and legal context in Indonesia.

Decriminalization of small drug use, as implemented in the Netherlands, can be a progressive approach that is relevant to Indonesia. In the Netherlands, the use of light drugs such as marijuana is decriminalized, meaning that users are not subject to criminal penalties as long as their use is within certain limits. This approach aims to separate drug users from the criminal world, reduce stigma, and encourage them to seek medical help or rehabilitation without fear of legal consequences.

The establishment of a dedicated drug court in Indonesia could be a step forward in ensuring fairer and more recovery-focused treatment. The court could integrate a multi-sectoral approach, involving judges, prosecutors, counselors, and medical personnel to design decisions that are in line with the rehabilitation needs of users. In doing so, the system could ensure that users receive appropriate treatment, including individual therapy, family counseling, or job training to help them become productive again in society.

4. Conclusion

The application of restorative justice in handling drug abuse in Indonesia, as regulated in the Attorney General's Guidelines No. 18 of 2021, emphasizes medical and social rehabilitation as an alternative to criminal punishment for addicts who meet the legal requirements. This approach aims to restore addicts as individuals, reduce prison overcapacity, and create more humane law enforcement. However, the implementation of this policy requires strict supervision to prevent abuse, as well as expanding options for users who do not require rehabilitation by optimizing seponering or conditional sentences. This emphasizes the importance of a recovery- based

approach in creating a balance between law enforcement and social justice. The restorative justice approach to handling drug addicts in the Netherlands and Australia offers a model that emphasizes rehabilitation, harm reduction, and social reintegration as an alternative to criminal punishment. The Netherlands implements decriminalization and harm reduction such as safe consumption spaces to reduce the negative impacts of addiction, while Australia develops diversion programs and drug courts that focus on rehabilitation and recovery. Both countries pay attention to reducing stigma, multi-sectoral collaboration, and community-based support to help addicts recover and return to being productive.

Indonesia can adopt these progressive elements with adjustments to the local context, including decriminalization of light users, specialized drug courts, and community-based programs, to create a more humane and effective drug problem management.

5. References

Busz, M., Schiffer, K., Voets, A. et al. Reframing Dutch drug policies: a new era for harm reduction. *Harm Reduction Journal* 21, (2024).

[criminal-action-based-on-restorative-justice/](#)

Edi, PW (2022). Reconstruction of Rehabilitation Law for Addicts and Victims Drug Abusers. Bandung: First Printing, Refika Aditama.

Fat Supriyanto, *Restorative Justice in Traffic Crime Cases and Death Toll*, National Seminar on Realizing a National Legal System Based on Pancasila, Faculty of Law, University of August 17, 1945, Surabaya, 2024,

Fauziah, N., & Megawati, W. Application of Criminal Sanctions Against Children as Narcotics Trading Intermediaries Based on Law No. 35 of 2009 (Study of Decision 05/PID.SUS-ANAK/2015). *pro Patria: Journal of Education, Citizenship, Law, Social, and Politics*, 7(1), 2024,

Gani, HA (2015). Rehabilitation as an Effort to Depenalize Addicts Narcotics. Malang: Brawijaya University, Faculty of Law.

Hanafi Arief et al., 2018, Application of Restorative Justice Principles in the Criminal Justice System Criminal Justice In Indonesia, *Al'Adl Journal*., Volume X Number 2,

<https://kejati-jatim.go.id/3-perkara-narkotika-dihentikan-tuntutannya-oleh->

https://pusiknas.polri.go.id/detail_article/narkoba_kejahatan_tertinggi_kedua_di_Indonesia

https://pusiknas.polri.go.id/detail_article/narkoba_kejahatan_tertinggi_kedua_di_Indonesia

Laurensius Arliman, Realizing Good Law Enforcement for Realizing Indonesia as a State of Law, *Al Qadau Journal*, Vol 8 No 1, 2021,

- Oheo K. Haris, "Legal Review of the Application of Special Sub-Minimum Sanctions on Special Criminal Cases", *Journal of Ius Constituendum*, Volume 2, Number 2, 2017,
- Prosecutor's Office, 2021, *Guideline No. 18 of 2021 Concerning Settlement of Handling Criminal Cases of Drug Abuse Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle*, Prosecutor.
- Prosecutor's Office, *Guideline No. 18 of 2021 Concerning Handling Settlement Criminal Cases of Drug Abuse Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle*, Prosecutor. 2021,
- Rena Yulia, *Victimology Legal Protection for Crime Victims*, Bandung: Graha Ilmu, 2009,
- Rizal, "Legal Review of Criminalization for Narcotics Users", *Legal Opinion*, Vol. 5, No. 1, 2021,
- Rizky Ramadhani, & Muhammad Fajar Hidayat. The Role of the Narcotics Agency National Narcotics Agency of Riau Islands Province (BNNP) in Law Enforcement against Narcotics Abusers in the Riau Islands. *Progressive Politics: Journal of Law, Politics and Humanities*, 1(3), 2024,
- Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990,
- ST, B. (2021). *Restorative Justice within the Frame of Conscience*. Jakarta: Print First Faculty of Law, Pancasila University,
- Sudarwan Denim, *Becoming a Qualitative Researcher*, Library of Faith, Bandung, 2012,
- Tajudin; Nella, 2015, Settlement of Traffic Crimes Through a Legal Approach Restorative Justice as a Basis for Termination of Investigation and the Realization of the Principle of Justice in the Imposition of Verdicts, Vol. 2, No. 4, *Journal of Legal Studies*, Padjajaran University,
- Yahya Sultoni, 2015, *Development of Restorative Justice Principles Justice) Against Children in the Criminal Law Realm*, Article of Wisnuwardhana University of Malang,
- Yansen Dau, "Rehabilitation Decision", Thesis, Airlangga University, 2020,