

Termination of Prosecution of Narcotics Crimes from the Perspective of Pancasila Justice

Diyan Kurniawan¹⁾ Taufan Fajar Riyanto²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: diyankurniawan82@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: taufanfajarriyanto@unissula.ac.id

Abstract. *The purpose of terminating the prosecution of narcotics crimes from the perspective of Pancasila justice. The sociological approach method or socio-legal research, a research approach that examines the perception and legal behavior of people (humans and legal entities) that occur in the field. The results of the study that the termination of the prosecution of narcotics crimes from the perspective of Pancasila justice is carried out as long as they can be categorized as addicts, abusers, victims of abuse, drug dependence. Article 4 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 stipulates that the public prosecutor has the authority to stop prosecution based on restorative justice taking into account the interests of the victim and legal interests.*

Keywords: *Justice; Prosecution; Pancasila.*

1. Introduction

In order to realize a prosperous, just and prosperous Indonesian society that is evenly distributed materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the quality of Indonesia's human resources, including their health, must continue to be maintained and improved.

To improve the welfare of the Indonesian people, it is necessary to make improvements in the field of medical treatment and health services, including ensuring the availability of certain much-needed medicines and preventing the misuse and illicit trafficking of narcotics and their precursors.

Drug abuse in Indonesia has been going on for a long time, victims of abuse are teenagers, adults using various types of drugs. Drug abuse becomes more dangerous when combined with stronger substances such as morphine and heroin. In Law Number 35 of 2009 concerning Narcotics, it is stated that the use of narcotics is only permitted for medical purposes and/or scientific purposes, with due observance of the conditions stipulated by law. If it is used outside of those explained above, it constitutes narcotics abuse.

Drug users can be sentenced to a maximum of 4 years in prison. However, if the user admits to being addicted and is willing to undergo treatment, then they can choose rehabilitation as an alternative to imprisonment. The narcotics criminalization system in Indonesia is regulated in Law Number 35 of 2009 concerning Narcotics. Meanwhile, the criminal justice system in the Criminal Code (KUHP) is in the form of an integrated criminal justice system. This system is based on the principle of functional differentiation among law enforcement officers in accordance with the authority process granted by law.¹

Every criminal law enforcement has public and private dimensions. The public dimension is in the criminal justice process against the perpetrator and the private dimension is in the fulfillment of the Victim's Rights.² Meanwhile, the criminal justice system is not only regulated in the Criminal Code, but also outside the Criminal Code which is related to the criminal justice system.³ A criminal justice system recognizes three approaches, namely the normative, administrative and social approaches. The normative approach views the four law enforcement apparatuses (police, prosecutors, courts, and correctional institutions) as institutions implementing applicable laws and regulations so that the four apparatuses are an inseparable part of the law enforcement system.⁴

Based on the description above, it can be concluded that the criminal justice system always has the following consequences and implications:

1. All subsystems will be interdependent because the product (output) of one subsystem is input for another subsystem.
2. The systems approach encourages interagency consultation and cooperation which in turn will increase the strategy development efforts of the entire system.
3. Policies decided and implemented by a subsystem will affect other subsystems.⁵

The interdependence of subsystems in the criminal justice system will automatically make the criminal justice system an integrated system into a system with the same goal. The justice system has a major goal, namely to protect society and uphold the law.⁶ This condition inspires us to review (reorient) the punishment model used in criminal law enforcement. The orientation of criminal law

¹M. Yahya Harahap. (2009). Discussion of Problems and Application of Criminal Procedure Code: Investigation and Prosecution, Sinar Grafika, Jakarta, p.90

² **Zvi D. Gabbay**, Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices, Journal of Dispute Resolution Vol.205 2015, Url: <https://scholarship.law.missouri.edu/jdr/vol2005/iss2/4/> accessed November 16, 2024

³Tolib Effendi. (2013). Criminal Justice System: Comparison of Components and Processes of Criminal Justice Systems in Several Countries, Pustaka Yustisia, Yogyakarta, p. 145

⁴Romli Atmasasmita. (2010). Criminal Justice System: Perspective of existentialism and abolitionism, Putra Abardin, Bandung, p. 14

⁵Ibid,

⁶Tolib Effendi, op.cit., p. 25

enforcement that has been understood so far, imposes sanctions on those who are guilty or who violate the law with sanctions that have been determined.⁷

The imposition or provision of sanctions is intended to provide a deterrent effect on violators and on other communities to be used as a lesson. However, it is not certain that the orientation in enforcing criminal law will provide direct recovery for victims and perpetrators. Therefore, Restorative Justice provides a new effort by approaching the perpetrator and victim directly to take the best middle ground with their agreement, and can restore victims and perpetrators directly in a short time through mutual agreement.⁸

Restorative Justice as an alternative to resolving criminal cases is greatly influenced by legal culture both from society including law enforcement officers. The understanding of justice that only prioritizes the application of rules to prove the guilt of the perpetrator and then punish him cannot accept this concept. Justice is the right of the state to impose sanctions on citizens who have violated the rules. The imposition of sanctions in the form of imprisonment or rehabilitation for the benefit of the perpetrator, society and the state.⁹ This research aims to find out Termination of prosecution of narcotics crimes from the perspective of Pancasila justice.

2. Research Methods

Writing method which uses a sociological or socio-legal research approach, a research approach that examines the perceptions and legal behavior of people (humans and legal entities) that occur in the field.¹⁰

Specification Analytical descriptive research takes a problem or focuses on a problem when the research is conducted and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal material sources consist of primary, secondary, and tertiary legal materials.

The data collection method consists of three stages. First, researchers collect data through observation and questions; second, they conduct library research by reading, reviewing, and processing literature, laws and regulations, articles, or writings related to the research topic.¹¹

Data analysis method is done qualitatively and presented in the form of words or sentences. Qualitative data is analyzed using a deductive approach. One way to make specific conclusions about general things The author uses an interactive

⁷ <https://law.uad.ac.id/penanganan-tindak-pidana-based-keadilan-restoratif/> accessed June 13, 2024

⁸ Ibid,

⁹ Strong Praise Prayitno., Op.Cit., p.7

¹⁰ Soerjono Soekanto. (2012). Normative Legal Research. Jakarta: PT Raja Grafindo, p.14 Ibid,

¹¹ Abdulkadir Muhammad. (2004). Law and Legal Research, First Edition, Bandung: Citra Aditya Bakti, p. 50

analysis model. So, the qualitative data analysis method collects and selects data from literature studies.¹²

3. Results and Discussion

Law enforcement is used to achieve legal objectives, so all efforts must be made to ensure that the law is able to realize moral values. The failure of the law to realize moral values is a threat of danger to the destruction of existing law, and laws that do not implement moral values will be distant and isolated from their communities. The success of law enforcement will determine the legitimacy of the law in the context of society.¹³

Laws are created to be implemented, therefore, law cannot be separated from society as the basis for the law to work. So the law is between the world of values or ideas and the world of everyday reality. Because the law moves between two different worlds, the result is often tension when the law is applied.

The issue of law enforcement is not simple, this is not only caused by the complexity of the legal system itself, but also because of the complexity of the relationship between the legal system and the social, political, economic and cultural systems of society. Value-oriented laws are closely related to many factors that influence the environment and social structure of the society in which they are enforced.

According to Taverne who explained that law enforcement is not a law that determines but is determined by humans. Furthermore, Soerjono Soekanto's opinion states that law enforcement is one of the factors that determine the effectiveness of the implementation of the law in addition to the law itself, means and facilities, society and culture.¹⁴

Success of law enforcement involving various parties, such as security forces and courts. In the process of implementing the law carried out by the authorities to ensure that the law is obeyed by citizens. In this case, the law that has been violated must be enforced, the essence of criminal law is the imposition of suffering or misery or other unpleasant consequences, placing perpetrators of drug abuse crimes as a form of crime.

Narcotics crimes are basically regulated separately in Articles 609 to 611 of the Criminal Code (KUHP). While the rules on the classification and quantity of narcotics are based on the laws and regulations governing Narcotics (Law Number 35 of 2009 concerning Narcotics). The ideal punishment system for perpetrators of narcotics crimes, in this case drug addicts, is very appropriate if rehabilitative

¹²Ibid,

¹³Satjipto Rahardjo. (2009). Law Enforcement, A Sociological Review, First Edition, Genta Publishing, Yogyakarta, p. 7

¹⁴Alfajri Firmansyah, Legal Review of the Prosecutor's Authority in Additional Examination According to the Dominus Litis Principle Based on the Criminal Procedure Code, Jurnal Hukum Jurisdictie Vol. 2, No. 1 of 2020. [Url: https://doi.org/10.34005/jhj.v2i1.19](https://doi.org/10.34005/jhj.v2i1.19) accessed November 19, 2024.

punishment is used. Rehabilitation theory focuses more on reforming or improving the perpetrator, although in Andrew Ashworth's view it provides an understanding that rehabilitation is a reason for imposing a sentence that is different from the deterrence view, which is often included in the deterrence subgroup because it has the purpose of punishment.¹⁵

The main objective of deterrence theory is to take preventive action against the occurrence of crime, the concept of rehabilitation aims to reform or improve the perpetrator. Especially in the context of implementing law enforcement that is oriented towards the concept or approach of Restorative Justice.¹⁶ Criminal sanctions against drug users have increased with the enactment of Law Number 35 of 2009 concerning Narcotics, but the imposition of criminal sanctions for drug users has caused problems. Problems arise because there is no clear distinction between drug dealers and users. Policies that encourage punitive or criminal treatment of users do not solve the drug problem. This causes excess capacity in correctional institutions with drug user prisoners and detainees.¹⁷

Furthermore, regarding narcotics cases, Article 54 of Law Number 35 of 2009 concerning Narcotics mandates:

"Drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation, and judges in deciding cases of drug abuse are required to pay attention to the provisions of Article 127 Paragraph (2) and Paragraph (3)."

The fact that the number of addicts and victims of drug abuse as suspects, defendants, or convicts in drug crimes continues to increase, along with the fact that the treatment and care efforts carried out are not yet complete and effective.¹⁸

The joint regulation is an effort that is hoped for in overcoming narcotics problems through restorative justice for cases that are indeed adequate to be resolved based on restorative justice. The implementation of restorative justice has been implemented in every law enforcement agency in Indonesia, namely at every level of the criminal justice system from investigation to examination in court.¹⁹ The narcotics crime case handled by the Nganjuk District Attorney's Office was resolved through Restorative Justice with the chronology, the defendant on Friday, October 20, 2023 at around 11.00 WIB, October 2023.

¹⁵Andi Sofyan and Nur Azisa. (2016). Criminal Law Textbook, Pustaka Pena Pers, Makassar, p. 105

¹⁶Ibid,

¹⁷Supriyadi Widodo Eddyono et al., (2017), Working Paper: Strengthening the Revision of the Indonesian Narcotics Law Proposed by Civil Society, Institute for Criminal Justice Reform, South Jakarta, p.89

¹⁸Haposan Sahala Raja Sinaga, Implementation Of Restorative Justice In Indonesian Narcotics Cases, Jurnal Hukum Lex Generalis. Vol.2. No.7 Tahun 2021. Url:<https://jhlg.rewangrencang.com> accessed November 30, 2024.

¹⁹Wayne R. LaFave. (2010). LaFave's Principles of Criminal Law, 2d (Concise Hornbook Series), West Academic, St. Paul, p.301

Prosecution carried out by the Public Prosecutor at the Nganjuk District Attorney's Office, based on the Letter of Appointment of a Public Prosecutor for the Settlement of Criminal Cases of the Head of the Nganjuk District Attorney's Office Number Print-10/M.5.31/Enz.2/01/2024 Dated 11 January 2024 To facilitate Peace based on Restorative Justice in crime cases criminal offense of drug abuse of suspects who suspected of violating Article 114 paragraph (1) of Law of the Republic of Indonesia No. 35 of 2009 regarding Narcotics, or Second Article 112 paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics or Third Article 127 Paragraph (1) Letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics in conjunction with Article 55 Paragraph (1) Ke- 1 of the Criminal Code, we respectfully request approval for this criminal act to be... was terminated based on restorative justice. The research findings show that the case in question requested approval to stop prosecution because the following conditions were met:

1. The suspect is only a drug abuser for himself
2. The suspect did not act as a producer, dealer, distributor or courier in connection with the dark network. narcotics.
3. The suspect was never included in the wanted list (DPO).
4. The suspect is the end user and therefore controls the narcotics for the purpose of to be used personally based on the results of the examination of the Case Files.
5. The suspect tested positive for using narcotics based on laboratory tests.
6. The suspect is not a repeat offender in a narcotics case.
7. There have been assessment results from the Nganjuk BNNK assessment team and the team of doctors which stated against suspects who are worthy of rehabilitation.

Explanation of the description above regarding the implementation of restorative justice has been stated in various kinds of decisions and guidelines issued by each law enforcement agencies in Indonesia. Specifically in dealing with problems related to narcotics crimes through the concept of restorative justice, the Attorney General's Office of the Republic of Indonesia has enacted Guidelines No. 18 of 2021 on Settlement of Handling of Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the implementation of the principle *Dominus Litis* Prosecutor, in this case the Nganjuk District Attorney's Office.

The hope is that the restorative justice approach can provide legal protection that can be a barrier to the circulation of narcotics causing impacts on society. Although there is already Law Number 35 of 2009 concerning Narcotics that regulates,

narcotics-related crimes have not yet been fully resolved, requiring a more holistic and sustainable approach from the authorities.²⁰

Opinion Yudi Latif quotes Nicolaus Driyarkara's view that social justice is a special manifestation of humanitarian values related to the spirit of compassion for others in human efforts to fulfill physical needs.²¹

Justice in Pancasila is based on the Fifth Principle, namely Social Justice for All Indonesian People. Social justice does not look at who, but all people or the Indonesian people who have the rights and guarantees to obtain social justice. That the only principle of Pancasila that formulated in the Opening of the 1945 Constitution of the Republic of Indonesia using the verb is a statement about one of the goals of the state in a series the word to realize social justice for all people Indonesia. A construction of social justice as a crystallization moral.²²

Justice in Pancasila is based on the Fifth Principle, namely Social Justice for All Indonesian People. Social justice does not look at who, but all people or the Indonesian people who have the rights and guarantees to obtain social justice. That the only principle of Pancasila that formulated in the Opening of the 1945 Constitution of the Republic of Indonesia using the verb is a statement about one of the goals of the state in a series the word to realize social justice for all people Indonesia. A construction of social justice as a crystallization moral.²³

Based on this, it can be analyzed that the handling of drug abusers so far requires special services or special treatment. Changes in the handling approach towards drug users, namely from a criminal approach to a criminal approach restorative justice, because Law Number 35 of 2009 concerning Narcotics in handling narcotics crime cases has not provided a clear concept regarding narcotics addicts, narcotics abusers, and victims of narcotics abuse.

4. Conclusion

Termination of prosecution of narcotics crimes from the perspective of Pancasila justice is carried out as long as the person can be categorized as an addict, abuser, victim of abuse, or dependent on narcotics. Article 4 of the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 stipulates that the public prosecutor has the authority to stop prosecution based on restorative justice taking into account the interests of the victim and legal interests. Handling of drug abusers so far requires special services or special treatment. There is a change in the handling approach against drug users, a criminalization approach to restorative

²⁰ Nur Alim Rachim and M. Aris Munandar. (2003). Legal Aspects of Criminal Acts of Narcotics Abuse, KBM Indonesia Publisher, Yogyakarta, pp. 2-3

²¹ Yudi Latif (2014). The Fountain of Exemplary Role Model: Pancasila in Action, Mizan, Jakarta, p.483.

²² Yudi Latif. (2011). The Perfect State: Historicity, Rationality, and Actuality of Pancasila, Gramedia, Jakarta, p. 606

²³ Yudi Latif (2011) The Perfect State: Historicity, Rationality, and Actuality of Pancasila, Gramedia, Jakarta, p. 606

justice, because Law Number 35 of 2009 concerning Narcotics in handling narcotics crime cases has not provided a clear concept of narcotics addicts, narcotics abusers, and victims of narcotics abuse. So the application of restorative justice is very necessary so that efforts to resolve cases for narcotics criminals who are new users can be focused on recovery (rehabilitation) for the violations committed, no longer as revenge for the perpetrator but as a form of recovery.

5. References

Journals:

Alfajri Firmansyah, Legal Review of the Prosecutor's Authority in Additional Examination According to the Dominus Litis Principle Based on the Criminal Procedure Code, *Jurnal Hukum Jurisdiction* Vol. 2, No. 1 of 2020. [Url: https://doi.org/10.34005/jhj.v2i1.19](https://doi.org/10.34005/jhj.v2i1.19) accessed November 19, 2024.

Gomgom Tp Siregar, Rudolf Silaban. "The Relevance of Criminal Close to the Modern Criminal Justice System". *Journal of Legal Sovereignty* Vol. 5 No. 4, (2022), [Url: http://jurnal.unissula.ac.id/index.php/RH/article/view/27612](http://jurnal.unissula.ac.id/index.php/RH/article/view/27612) accessed 17 November 2024.

Haposan Sahala Raja Sinaga, Implementation Of Restorative Justice In Indonesian Narcotics Cases, *Jurnal Hukum Lex Generalis*. Vol.2. No.7 Tahun 2021. [Url: https://jhlg.rewangrencang.com](https://jhlg.rewangrencang.com) accessed November 30, 2024.

Zvi D. Gabbay, Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices, *Journal of Dispute Resolution* Vol.205 2015, [Url: https://scholarship.law.missouri.edu/jdr/vol2005/iss2/4/](https://scholarship.law.missouri.edu/jdr/vol2005/iss2/4/) accessed November 16, 2024.

Books:

Abdulkadir Muhammad. (2004). *Law and Legal Research*, First ed., Bandung: Citra Aditya Bakti.

M. Yahya Harahap. (2009). *Discussion of Problems and Application of Criminal Procedure Code: Investigation and Prosecution*, Sinar Grafika, Jakarta.

Nur Alim Rachim and M. Aris Munandar. (2003). *Legal Aspects of Criminal Acts of Narcotics Abuse*, KBM Indonesia Publisher, Yogyakarta.

Satjipto Rahardjo. (2009). *Law Enforcement, A Sociological Review*, First Edition, Genta Publishing, Yogyakarta.

Soerjono Soekanto. (2012). *Normative Legal Research*. Jakarta: PT Raja Grafindo.

Supriyadi Widodo Edyono et al., (2017), *Working Paper: Strengthening the Revision of the Indonesian Narcotics Law Proposed by Civil Society*, Institute for Criminal Justice Reform, South Jakarta.

Tolib Effendi. (2013). *Criminal Justice System: Comparison of Components and Processes of Criminal Justice Systems in Several Countries*, Pustaka Yustisia, Yogyakarta.

Yudi Latif (2011) *The Perfect State: Historicity, Rationality, and Actuality of Pancasila*, Gramedia, Jakarta.

Yudi Latif (2014). *The Fountain of Exemplarity: Pancasila in Action*, Mizan, Jakarta.

Yudi Latif. (2011). *The Perfect State: Historicity, Rationality, and Actuality of Pancasila*, Gramedia, Jakarta