

Analysis of Drug Abuse Case Settlement Based on Restorative Justice (Case Study: Semarang District Prosecutor's Office)

Ismail Fahmi¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: ismailfahmi.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. *The urgency of implementing Restorative Justice for drug abusers is to avoid and distance someone from the judicial process so that they can avoid stigmatization of someone who is dealing with the law and it is hoped that the person can return to the social environment naturally. The purpose of this study is to review and analyze the settlement of drug abuse cases based on restorative justice at the Semarang District Attorney's Office, to review and analyze the obstacles and solutions to the settlement of drug abuse cases based on restorative justice at the Semarang District Attorney's Office. Referring to the background and focus of the research taken, this research is categorized as empirical legal research. Empirical legal research or empirical juridical research is another word that is a type of sociological hulum research and can be mentioned as field research, which examines the applicable legal provisions and those that have occurred in the life of society. The settlement of drug abuse cases at the Semarang District Attorney's Office refers to the Indonesian Attorney General's Guidelines Number 18 of 2021 which emphasizes rehabilitation through a restorative justice approach. These guidelines give prosecutors the authority not to prosecute certain perpetrators, such as light users who are not part of the drug trafficking network. The main objective of this approach is to reduce prison overcapacity and encourage more humanistic legal policies. The RA case is an example of successful implementation, where the perpetrator was rehabilitated without a trial process.*

Keywords: *Abusers; Justice; Narcotics; Restorative.*

1. Introduction

The Indonesian nation is a country of law as regulated in Article 1 paragraph 3 of the 1945 Constitution which reads "The State of Indonesia is a State of Law," According to Mochtar Kusumaatmadja, law is the principles and overall rules that regulate human life in society. Over time, Indonesia has known the criminal justice system, where the first legal expert from the United States was Frank Remington, this idea was then placed in the administrative mechanism of the criminal justice system which is commonly called the (criminal justice system).¹ The rule of law aims to enforce the law. However, the facts that occur in society are starting to be the opposite of the goals of our country. Today, various problems occur in society, one form of problem that often occurs in society is the crime of drug abuse.²

Narcotics in Law Number 35 of 2009 (Law No. 35 of 2009), has the aim of ensuring the availability of health and scientific interests, preventing drug abuse, and eradicating illicit drug trafficking. Drug law enforcement has been partially implemented by law enforcement officers to the point of obtaining a judge's decision in a court hearing. Law enforcement is highly expected to be able to prevent the large number of illegal drug trafficking, but in reality, the more intensive law enforcement will be carried out, the more rampant the illegal drug trafficking will be. Drug crimes (the drug trafficking industry) have become part of the group of activities of transnational criminal organizations.³

In the case of drug abuse, it is seen as an extraordinary crime because of the many problems in implementing the rehabilitation process, especially for drug addicts in undergoing the legal process. Articles 54 and 56 regulated in the Narcotics Law have made it mandatory for addicts to undergo rehabilitation.⁴ From medical and social rehabilitation that must be undergone by drug addicts which is expected to be able to make addicts healthy again, productive, free from criminal acts, and the loss of drug dependence. The period for undergoing rehabilitation is calculated as a substitute for prison sentences. Rehabilitation of drug addicts can be said to be a social protection that makes drug addicts no longer use drugs and stay away from drug abuse.⁵ Drug abuse is

¹Mochtar Kusumaatmadja, *Introduction to Indonesian Law*, Bina Cipta, Bandung, 1976, p. 3

²Ni Putu Wulan Noviarini, *Criminological Review of Drug Abuse Crimes Among Adolescents in Buleleng Regency*, e-Journal of Yustisia Community, Ganesha University of Education, Law Study Program, Vol 4 No 2, 2021, pp. 416-427

³Sudarto. *Selected Chapters of Criminal Law*. Bandung: Alumni. 2010, p. 10

⁴Al-Anshori, Huzaimah; Febriana, Mariana. *Judge's Considerations in the Implementation of Drug Abuser Rehabilitation (Study of Decision Number: 392/Pid.Sus/2021/PN Mdn)*. Mizan: Journal of Legal Studies, Vol. 12, No. 1, 2023, pp. 33-43,

⁵Intan Permata Sari, *Law Enforcement against Drug Addicts*, Journal of Legal Analogy, Vol. 1 No. 1, (2019), pp. 104-109

increasing and is no longer limited to certain groups, from high to low economic classes.

The urgency of implementing Restorative Justice for drug abusers is to avoid and distance someone from the judicial process so that they can avoid stigmatization of someone who is dealing with the law and it is hoped that the person can return to the social environment naturally. In addition, it is also to avoid overcrowding or over capacity in correctional institutions so that Restorative Justice by the Public Prosecutor is important. The application of restorative justice is very necessary so that efforts to resolve cases for drug crimes who are new to using can be focused on recovery (rehabilitation) for the violations committed, no longer as revenge for the perpetrator but as a form of recovery.

The spread of drug abuse in Indonesia is something that needs to be considered by the government. Until 2022, the National Narcotics Agency recorded 851 (eight hundred and fifty one) cases related to drug abuse in Indonesia. When compared to the previous year, Indonesia experienced an increase of 11.1% which was originally 766 (seven hundred and sixty six cases) in 2021.⁶This will certainly be a problem if drug abusers are prosecuted and given prison sentences, which will result in prisons being overcrowded.

The Semarang City District Attorney's Office (Kejari) has resolved one drug abuse case outside the court through a restorative justice mechanism throughout 2024. In resolving the case, he said, the suspect was required to undergo rehabilitation with a guarantee from his family. The rehabilitation was carried out at a rehabilitation center owned by the Semarang City District Attorney's Office located at the Wongsonegoro Hospital in Semarang. The requirements for resolving the case through restorative justice, he said, were that it was the first legal case carried out by the suspect and the evidence was less than 1 gram.⁷

2. Research Methods

Referring to the background and focus of the research taken, this research is categorized as empirical legal research.⁸Empirical legal research or empirical juridical research is another word that is a type of sociological upstream research and can be mentioned as field research, which examines the applicable legal provisions and those that have occurred in the life of society. Or in other words, it is research conducted on the actual situation or real conditions that have

⁶Heriyanto The Role and Strategy of Local Government in Preventing Drug Abuse Among Adolescents. *Hakim: Journal of Law and Social Sciences*, 1(3), 2023, pp. 279–295.

⁷ Semarang District Attorney's Office resolves one drug abuse case through RJ, <https://jateng.antaranews.com/berita/565522/kejari-semarang-selesaikan-satu-kasus-penyalahgunaan-narkoba-lewat-rj> accessed March 10, 2025

⁸Soejono and Abdurrahman, *Research Methods; A Thought and Application*, (Jakarta: Rineka Cipta, 2005), 2nd edition, p. 56

occurred in society with the intention of knowing and finding the facts and data needed.⁹ Soerjono Soekanto is of the opinion that in sociological or empirical legal research, the data studied first is secondary data which is followed by research on primary data in the field or on the community. In this research, it was conducted with prioritizing the interaction between researchers and what is studied through sources and informants, and paying attention to the context that forms the input, process and results of the research, as well as its meanings. This study also uses qualitative data when necessary to support the validity of qualitative data.¹⁰

3. Results and Discussion

3.1. Settlement of Drug Abuse Cases Based on Restorative Justice at the Semarang District Attorney's Office

The prosecutor's office, which is also a sub-system of the criminal justice system in Indonesia, has a fairly central and crucial role.¹¹ This is because the prosecutor's office has functions related to judicial power in the field of prosecution, and other powers in accordance with Article 1 Number 1 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of 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 implemented Guideline Number 18 of 2021 which consists of 9 (nine) chapters, with a scope including pre-prosecution, prosecution, supervision, training, and financing for the settlement of handling narcotics abuse criminal cases through rehabilitation with a restorative justice approach as an implementation of the Prosecutor's *dominus litis* principle. When this Guideline comes into effect, namely on November 1, 2021, suspects who are suspected of violating Article 127 paragraph (1) of the Narcotics Law whose cases have not been transferred to the Court, the handling of their cases is carried out based on Guideline Number 18 of 2021.

Restorative justice is a philosophy of punishment that requires comprehensive recovery from the negative impacts experienced by the perpetrator, victim and society. The restorative justice approach is also considered appropriate to be applied in drug abuse cases because it is in line with one of the objectives of

⁹Cholid Narbuko and Abu Achmadi, "Research Methodology" (2003; PT. Bumi Aksara, Jakarta), p. 1

¹⁰Ronny Hanitijo Soemitro, *Legal Research Methods and Jurimetrics*, Jakarta: Ghalia Indonesia, 2015, p. 39.

¹¹Mentari Primaria Br Tarigan and Jinner Sidauruk, "Evidence Strategies Carried Out by Public Prosecutors in Revealing Corruption Crimes (Study at the Subulussalam District Attorney's Office)," *Nommensen Law Review* 1, No. 1 (May 31, 2022): p. 69.

punishment that has been formulated in the Draft National Criminal Code, that punishment aims to resolve conflicts caused by criminal acts, restore balance and bring a sense of peace to society.

The obstacle in the implementation of restorative justice by the Attorney General's Office of the Republic of Indonesia, especially by the Public Prosecutor, is because in current drug abuse cases, restorative justice has been carried out by the Indonesian Police Investigators who handle the case. This refers to Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The rules for implementing restorative justice in the Police Regulation, as stated in Article 9 paragraph (1), regulate special requirements, namely:

(1) Special requirements for handling criminal acts based on restorative justice for drug crimes, include:

- a. Drug addicts and victims of drug abuse who apply for rehabilitation;
- b. when caught red-handed:
 - 1) evidence of narcotics used for 1 (one) day was found, categorized as narcotics and psychotropics in accordance with statutory provisions;
 - 2) no evidence of drug crimes was found, but 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;
- e. and the perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.

Strengthening the role and institution of the Prosecutor's Office as the controller of criminal cases has also been seen in the Draft Criminal Procedure Code which is being designed to be ratified. This is so that the role of the Prosecutor's Office in particular and the criminal justice system in Indonesia in general can follow developments in the international world. According to him, this is in accordance with the spirit of modernization of the Criminal Code and Criminal Procedure Code in Indonesia where the Prosecutor's Office as the holder of the *dominus litis* principle plays a central role in every criminal case.¹²

¹²Sinaga, Fransiska, and Herlina Manullang. "Collaboration of the Medan District Attorney's Office with the Police in Investigating and Resolving Narcotics Crimes." *Jurnal Prisma Hukum* 8, No. 10 (2024).

Restorative justice is one form of functionalizing the principle of *dominus litis* held by the prosecutor's office.¹³ Although previously if we look at the old prosecutor's regulations, namely Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, it will not be found either explicitly or implicitly related to the legal basis for the application of restorative justice. As a result of the absence of such a basis, the prosecutor's office views that the old prosecutor's law is not strong enough to provide a basis related to the application of restorative justice.

The purpose of establishing Guideline Number 18 of 2021 as stated in the Purpose and Objectives section of the Guidelines states that this Guideline is intended as a reference for public prosecutors in resolving the handling of drug abuse criminal cases through rehabilitation with a restorative justice approach as an implementation of the Prosecutor's *dominus litis* principle.

Meanwhile, the purpose of establishing the guidelines is stated that these guidelines are intended to optimize the resolution of handling of narcotics abuse criminal cases through rehabilitation with a restorative justice approach as an implementation of the Prosecutor's *dominus litis* principle.

The principle of *Dominus Litis* held by the Attorney General's Office of the Republic of Indonesia, has positioned the Public Prosecutor,¹⁴ is the case controller. Whether or not a prosecution can be carried out in a criminal case based on the results of the investigator's investigation is the absolute authority of the Public Prosecutor. Where the Public Prosecutor can stop the prosecution on the grounds that the evidence is insufficient, the incident is not a criminal act, and the case is closed by law. That the principle of *dominus litis* plays a central role in the professionalism and proportionality of the Public Prosecutor as the controller of the case process. With the principle of *deponering*, it can also be proven that the authority of the Public Prosecutor is indeed based on *dominus litis*. The principle of *deponering*, regulates that the Public Prosecutor has the authority to set aside a case in the public interest, which is stated in the provisions of Article 35 paragraph (1) letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office, which gives the Attorney General the authority to set aside a case in the public interest. Then in the explanation of the Article, it is stated that:

"Public interest" means the interest of the nation and state and/or the interest of the wider community. The Attorney General shall pay attention to the advice and opinions of state authorities that have a relationship with the problem."

¹³Adi Riyanto, "Functionalization of the *Dominus Litis* Principle in Criminal Law Enforcement in Indonesia," Gramedia, Jakarta, 2016, p. 481.

¹⁴Artadinata, Naomi, and Sahuri Lasmadi. "Regulation of Public Prosecutors in Handling Corruption Crimes Based on the *Dominus Litis* Principle." *PAMPAS: Journal of Criminal Law* 4, No. 3 (2023): pp. 311-321.

Then the scope of the guidelines includes pre-prosecution, prosecution, supervision, training and financing of the settlement of the handling of drug abuse criminal cases through rehabilitation with a restorative justice approach as the implementation of the *dominus litis* principle of the Prosecutor. Then in Chapter II regarding the general explanation of the Guidelines, it is stated in numbers 1 and 2 that the Public Prosecutor carries out the settlement of the handling of drug abuse criminal cases through rehabilitation with a restorative justice approach in order to implement the *dominus litis* principle of the Prosecutor as the case controller. The implementation of the case controller function as referred to above is carried out within the scope of the duties and authorities of the Prosecutor in order to build an integrated criminal justice system from the investigation stage to the implementation of court decisions that have permanent legal force to uphold the law, justice and truth including conducting pre-prosecution and implementing horizontal supervision through the Pretrial Institution.¹⁵

The background of the establishment of the aquo guidelines is, First, to address the issue of overcrowding because the issue has become a serious concern for the community and government as stated in the 2020-2024 National Medium-Term Development Plan in order to improve the criminal law system through a restorative justice approach. And second, the need for strategic criminal policies, especially in handling cases of drug abuse, one of which is through reorientation of law enforcement policies in the implementation of Law Number 35 of 2009 concerning Narcotics. Therefore, in order to implement the 2020-2024 National Medium-Term Development Plan and reorientation of law enforcement policies in implementing the Narcotics Law, it is necessary to establish these Guidelines.¹⁶

Then in Chapter III it is explained about the Pre-Prosecution stage where in number 1 it is stated that, in studying and examining the results of the investigation from the investigator, the Public Prosecutor ensures the formal completeness and material completeness. Then number 2 states that the research on formal completeness and material completeness as referred to in number 1 is carried out specifically related to:

- a. evidence of criminal acts of narcotics abuse;
- b. qualifications of the suspect;

¹⁵Ichram, Wahyu, M. Zainuddin Muslim, Intan Safitri Pulungan, Fitri Adilah, Khairul Amri, Fatimah Fitri, and Ida Aliza. "The Role of the Prosecutor's Office in Efforts to Eradicate Narcotics Crimes in the Jurisdiction of the Mandailing Natal District Attorney's Office." *Journal of Multidisciplinary Research Nation* 1, No. 11 (2025): pp. 2051-2062.

¹⁶Kurniawatie, Eka. "Basic Considerations of Judges Regarding Drug Abuse Reviewed from the Rehabilitation Aspect Based on Article 127 of Law Number 35 of 2009 Concerning Narcotics." *SINERGI: Scientific Research Journal* 1, no. 12 (2024): pp. 1374-1396.

- c. qualification of the criminal act and its conformity with the alleged Article;
- d. element of guilt (*mens rea*) in the suspect;
- e. examination of the suspect; and
- f. recommendations from integrated assessment results.

In number 3 it is explained that in the case where based on the case file research, the Public Prosecutor is of the opinion that the suspect can be qualified as an abuser, then the suspect must be suspected of violating Article 127 paragraph (1) of the Narcotics Law. Then number 4 explains that in order to prove the suspect's guilt, especially involvement in the illegal narcotics distribution network, the Public Prosecutor provides instructions to investigators to:

- a. check whether the suspect is the end user; and
- b. check the suspect's profile in relation to the suspect's financial transactions and lifestyle (know your suspect).

In number 5 it is stated that in the case of narcotics evidence found does not exceed the amount of use of 1 (one) day, the Public Prosecutor gives instructions to the investigator so that the suspect must undergo a forensic laboratory examination to determine the suspect's qualifications. Furthermore, at the prosecution stage, in the general section letter A it is explained that after the Public Prosecutor receives or receives back the complete investigation results from the Investigator and accepts the transfer of responsibility for the suspect and evidence (stage 2), the Public Prosecutor immediately determines whether the case file has met the requirements to be submitted to the court based on the principle of *dominus litis*.

Then in letter B, it is stated that the types and requirements for rehabilitation through the legal process consist of: a. Medical rehabilitation; and b. Social rehabilitation. In number 2 it is explained that for suspects who are suspected of violating Article 127 paragraph (1) of the Narcotics Law, rehabilitation can be carried out through the legal process as referred to in number 1. Number 3 states that those suspected of violating Article 127 paragraph (1) of the Narcotics Law as referred to in number 2, are qualified as abusers consisting of:

- a. Narcotics abusers (see Article 1 number 15 of the Narcotics Law);
 - b. Victims of narcotics abuse (vide Explanation of Article 54 of the Narcotics Law); or
 - c. Narcotics addicts (see Article 1 number 13 of the Narcotics Law).
- d. In point 4 it is explained that the requirements for rehabilitation through the legal process for abusers as referred to in point 3 are:

- e. Based on the results of the forensic laboratory examination, the suspect tested positive for using narcotics;
- f. Based on the results of the investigation using the know your suspect method, the suspect was not involved in a narcotics trafficking network and was an end user;
- g. The suspect was arrested or caught red-handed without evidence of narcotics or with evidence of narcotics that did not exceed the amount used for 1 (one) day;
- h. Based on the results of the integrated assessment, the suspect is qualified as a drug addict, victim of drug abuse, or drug abuser;
- i. The suspect has never undergone rehabilitation or has undergone rehabilitation no more than twice, which is supported by a certificate issued by an authorized official or institution; and
- j. There is a guarantee letter that the suspect will undergo rehabilitation through the legal process from his family or guardian.

Then number 5 explains that the requirements as referred to in number letter e are excluded for victims of drug abuse and drug addicts. Still in chapter 4 regarding prosecution, in chapter 4 letter D it is explained in number 1 that the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch as the Public Prosecutor issues a rehabilitation determination through a legal process based on the opinion note and attachments as referred to in letter c number 3. Then, in number 2 it is stated that the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch issues a rehabilitation determination through a legal process within a maximum of 3 (three) days from receiving the opinion note and attachments as referred to in number 1.

In number 3 it is explained that in the case of a submission for rehabilitation through a legal process, an exposure is carried out with the leadership, the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch will issue a determination of rehabilitation through a legal process within a maximum of 14 (fourteen) days from receiving the opinion note and attachments as referred to in number 1. Furthermore, in number 4 it is explained that the determination of rehabilitation through a legal process as referred to in number 1 contains:

- a. Determine the suspect to undergo rehabilitation through the legal process;
- b. Determining the place and duration of rehabilitation through legal process;
- c. Determining the status of evidence, including narcotics evidence, a small portion of which is set aside for the purposes of prosecution and examination in

court, remains under the responsibility of the Public Prosecutor until the completion of rehabilitation through the legal process; and

d. Ordering the release of the suspect, if detained.

In number 5 it is explained that the determination of the place and duration of rehabilitation through the legal process as referred to in number 1 is conveyed to the suspect or family or Legal Counsel, State Detention Center Officials, Investigators and Judges. Number 6 explains that the determination of rehabilitation through the legal process as referred to in number 1 is conveyed to the suspect or family or Legal Counsel, State Detention Center Officials, Investigators and Judges. In number 7, it is formulated that the Determination of rehabilitation through the legal process as referred to in number 1 is recorded in the Prosecution Stage Case Register.

In section E in chapter 4 of the aquo Guidelines, which regulates the implementation of rehabilitation through legal processes, in point 1 it is stated that the implementation of rehabilitation through legal processes is as follows:

- a. Medical rehabilitation is carried out at local rehabilitation institutions and/or health services; and
- b. Social rehabilitation is carried out at social rehabilitation centers organized by the Ministry of Social Affairs, the Social Service, or the community.

Then number 2 explains that in the case of the determination of rehabilitation through a legal process does not include the duration of rehabilitation, then the duration of the rehabilitation implementation is determined by the rehabilitation institution. Number 3 states that the implementation of rehabilitation through a legal process as referred to in number 1 is stated in the minutes of the implementation of rehabilitation. Furthermore, number 4 explains that supervision of the implementation of rehabilitation through a legal process is carried out by the Public Prosecutor by means of the suspect carrying out mandatory reporting, the time and method of which are determined by the Public Prosecutor and supported by a certificate of rehabilitation from the rehabilitation institution.

In number 5 it is explained that in the case of a suspect not undergoing rehabilitation through the legal process without a valid reason or undergoing rehabilitation through the legal process but not in accordance with the placement, the Public Prosecutor shall give a written warning to the suspect. Furthermore, in the provisions of number 6, it is stated that in the case of a suspect not heeding the warning as referred to in number 5, the Public Prosecutor shall prosecute and may take coercive measures against the suspect. In number 7, it is stipulated that in the case of a suspect having completed

rehabilitation through the legal process, the suspect shall report it to the public prosecutor.

In point 8, it is stated that the Public Prosecutor does not prosecute suspects who have completed rehabilitation through the legal process as referred to in point 7. In point 9 it is stated that the Public Prosecutor forwards the report as referred to in point 7 in a hierarchical manner to the Head of the District Attorney's Office or the Head of the District Attorney's Office Branch as the Public Prosecutor issues a determination as referred to in point 9 which contains:

- a. Determining that the suspect will not be prosecuted; and
- b. Determining the status of evidence for evidence as referred to in letter D number 4 letter c is completed in accordance with the provisions of laws and regulations.

In number 11, it is stated that in the event of a repeat of the crime of drug abuse, rehabilitation through the legal process that the suspect has undergone is counted as having undergone rehabilitation as referred to in letter B number 4 letter e. In chapter 5, it is regulated regarding supervision. In this chapter, the provisions in number 1 are regulated, namely that the implementation of these Guidelines is carried out by functional supervision and inherent supervision. Then in number 2 it is stated that violations of the implementation of these Guidelines are subject to sanctions in accordance with the provisions of laws and regulations. In addition, in the following chapters, especially in chapter 6, it is regulated regarding training to optimize the aquo Guidelines, by organizing technical guidance and training education. Then in chapter 7, it is regulated regarding the financing of the implementation of these Guidelines.

In chapter 8, which regulates transitional provisions, it is stipulated that when these guidelines come into effect, suspects who are suspected of violating Article 127 paragraph (1) of the Narcotics Law whose cases have not been transferred to the Court, their cases will be handled based on these Guidelines. Referring to the Institute for Criminal Justice Reform (ICJR), the presence of the Indonesian Attorney General's Guidelines Number 18 of 2021 needs to be appreciated as a form of effort by the Attorney General's Office to reorient narcotics policies that should not impose imprisonment on drug users. These guidelines encourage the optimization of the use of rehabilitation compared to imposing prison sentences. However, according to them, there are a number of notes in these Attorney General's Guidelines that need to be considered to ensure that efforts to provide avoidance of imprisonment for drug users can run optimally, fairly and with minimal abuse.

ICJR stated that first, not only rehabilitation can be a means of avoiding imprisonment for drug users. However, rehabilitation can also be carried out at the prosecution stage in accordance with the Regulation of the Indonesian

Attorney General's Guidelines number 18 of 2021. Rehabilitation in the 2009 Narcotics Law is defined as a series of treatment and recovery activities from the effects of drug dependence, but not all drug users are addicts or experience dependence.¹⁷

Based on the Semarang District Attorney's Order Letter Number, PRINT-271 XXX/2024 dated December 30, 2024 for the settlement of criminal case Number. PDM XXX/2025 dated January 2, 2025 with the suspect name RA with a narcotics crime suspected of violating First Article 112 paragraph (1) of the Republic of Indonesia Law No. 35 of 2009 in conjunction with Article 55 paragraph (1) 1 of the Criminal Code or Second Article 127 Paragraph (1) letter a of the Republic of Indonesia Law No. 35 of 2009 concerning Narcotics in conjunction with Article 55 paragraph (1) 1 of the Criminal Code with the following results:

The Peace Efforts carried out on Thursday, January 2, 2025 at the Semarang Regency District Attorney's Office were successful, for the following reasons:

- a. The suspect was not involved in the illegal narcotics trafficking network and was the last user;
- b. The suspect was arrested with evidence of narcotics in the form of crystal methamphetamine weighing 0.62 grams;
- c. Based on the results of the Integrated Assessment, the Suspect was qualified as a light category methamphetamine abuser with a relapsing pattern of use, so that treatment and medication was required by way of inpatient rehabilitation at Prof. Dr. Soerojo Magelang Mental Hospital for 3 (three) months;
- d. The suspect has never undergone rehabilitation;
- e. The suspect can be qualified as a drug abuser and is suspected of violating Article 127 Paragraph (1) letter a of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics with a maximum prison sentence of 4 (four) years.

3.2. Obstacles and solutions to resolving drug abuse cases based on restorative justice at the Semarang District Attorney's Office

The resolution of drug abuse cases based on restorative justice in the Prosecutor's Office generally faces a number of fairly complex obstacles, both from the normative legal, institutional, and social aspects. The first fairly fundamental obstacle is the limited understanding of law enforcement officers regarding the concept and implementation of restorative justice itself. Although the Prosecutor's Office has issued various technical guidelines, not all

¹⁷Fauziah, Eva, Slamet Fatrika, and Utari Dwi Pratiwi. "Harmony of Law Enforcement Institutions in the Implementation of Restorative Justice for Drug Abusers in Indonesia." *Journal of Strategic Studies of National Resilience* 5, No. 1 (2022): p. 6.

prosecutors have the same level of understanding regarding the application of restorative justice,¹⁸ especially in cases of drug abuse which have health and social dimensions.

The next obstacle is the less than optimal synergy between law enforcement agencies and other related institutions. In the implementation of restorative justice, close cooperation is needed between the Prosecutor's Office, Police, BNN, rehabilitation hospitals, and the perpetrator's family. However, in the field, this coordination is still carried out sectorally and has not been fully integrated, thus causing confusion in the implementation of assessment procedures, rehabilitation supervision, and post-rehabilitation follow-up.

In addition, the limited rehabilitation facilities are a major obstacle to the implementation of restorative justice. In the Semarang area, the number of medical and social rehabilitation institutions available has not been able to accommodate all drug abusers who are recommended for rehabilitation. As a result, many abusers are still directed to the criminal process due to limited space in rehabilitation institutions.

Funding issues are also a serious obstacle. The rehabilitation process, integrated assessment, and post-rehabilitation recovery require a significant budget. Although the state provides a budget, its availability is often insufficient or is disbursed late, making it difficult for the Prosecutor's Office to realize optimal restorative case resolution.

The next factor is pressure from the community that still considers drug abusers as criminals who must be punished severely. This negative stigma causes objections from the community if the perpetrators are only rehabilitated without being imprisoned. This is a dilemma for prosecutors in taking a policy of terminating prosecution based on restorative justice.

In practice, prosecutors often have difficulty in determining whether a drug abuser is an addict, a victim of abuse, or a covert dealer. This error in classification can lead to abuse of restorative justice policies by perpetrators who are not actually victims.

The low participation of the community and victims in the restorative justice process is also an obstacle. In many cases, the victim or the victim's family is not actively involved in the mediation or recovery process, even though the principle of restorative justice emphasizes the participation of all parties involved.

¹⁸Siringoringo, Ruhut, and Herlina Manullang. "Implementation of Minor Crime Investigation at the Prosecutor's Office Level." *RECTUM JOURNAL: Legal Review of Criminal Action Handling* 7, No. 1 (2025): pp. 71-78.

Regarding legal instruments, the absence of imperative or mandatory regulations on the application of restorative justice to drug abusers also hampers its implementation. Existing regulations are still guidelines and open to wide interpretation, thus causing differences in treatment between prosecutors in various regions.

Rejection from the abuser or his/her family towards the rehabilitation program is also an obstacle. There are cases where the perpetrator or his/her family is unwilling to follow the rehabilitation program because of cost, distance, or distrust of the effectiveness of the rehabilitation institution.

In addition, the integrated assessment conducted by the BNN has not fully become a reference for prosecutors in making decisions. Sometimes the results of the assessment are contradicted by the facts in the case files obtained by investigators, resulting in inconsistencies in the follow-up of case handling.

In reducing community resistance to the restorative approach, the Prosecutor's Office can conduct a massive public campaign on the importance of rehabilitation for drug abusers. This campaign can be done through social media, seminars, and cooperation with community or religious leaders.

Indonesia can adopt a health-based approach and mandatory rehabilitation as implemented in Thailand and Australia. In Thailand, drug abusers are diverted from the criminal justice process into a rehabilitation program supervised by a joint team (prosecutors, doctors, psychologists, and social workers). Meanwhile, in Australia, a special drug court (Drug Court) provides an opportunity for offenders to undergo an intensive rehabilitation program rather than imprisonment. This system is in line with Article 54 of Law No. 35 of 2009 concerning Narcotics, but its implementation in Indonesia has not been optimal due to the lack of integration between institutions and the dominance of a repressive approach.

In addition, Indonesia can also develop a community-based restorative justice approach like in Australia, which involves community rehabilitation institutions and social organizations in the recovery process. This creates a more humane and effective participatory space in overcoming drug abuse, especially for novice users or those not involved in the distribution network. This adoption not only lightens the burden on correctional institutions, but also strengthens the values of social justice, family, and mutual cooperation which are characteristic of Indonesian legal culture.

4. Conclusion

The settlement of drug abuse cases based on restorative justice at the Semarang District Attorney's Office refers to the Indonesian Attorney's Guidelines Number 18 of 2021, which aims to prioritize rehabilitation for drug abusers with a

restorative justice approach. These guidelines strengthen the principle of *dominus litis* held by prosecutors as controllers of criminal cases. In the process, prosecutors have the authority not to prosecute perpetrators who meet certain requirements, such as not being part of a drug trafficking network, only using it for themselves, and having an assessment result as a light abuser. In addition, the perpetrator must undergo rehabilitation, both medical and social, according to the prosecutor's determination. The main objective of this approach is to overcome the problem of prison overcapacity and encourage more humanistic legal policies. The RA case is a real example of the application of restorative justice at the Semarang Regency District Attorney's Office. RA was arrested with evidence of 0.62 grams of crystal methamphetamine and was proven to have consumed it himself without any involvement in a drug trafficking network. The assessment results showed that RA was a light category drug abuser with a relapse pattern, so it was recommended to undergo inpatient rehabilitation for three months. The Prosecutor's Office then issued a Case Settlement Order with a restorative justice approach. The peace process was carried out and was successful, demonstrating the success of this approach in prioritizing rehabilitation over imprisonment, in accordance with the objectives of Guideline Number 18 of 2021 and the direction of a more progressive national legal policy.

5. References

Journals:

- Al-Anshori, Huzaimah; Febriana, Mariana. Pertimbangan Hakim Dalam Implementasi Rehabilitasi Penyalahguna Narkotika (Studi Putusan Nomor : 392/Pid.Sus/2021/PN Mdn). *Mizan: Jurnal Ilmu Hukum*, Vol. 12, No. 1, 2023,
- Amrianto, Andika Dwi, and Indra Hafit Zahrulswendar. "Comparison of Punishment Policies Against Children Narcotics Abuses in Indonesia and Thailand." In *Prosiding International Conference on Sustainable Innovation (ICoSI)*, Vol. 3, No. 1, 2021,
- Artadinata, Naomi, and Sahuri Lasmadi. "Pengaturan Jaksa Penuntut Umum Dalam Penanganan Tindak Pidana Korupsi Berdasarkan Asas *Dominus Litis*." *PAMPAS: Journal of Criminal Law* 4, No. 3 (2023):
- Fauzi Rizky, Pelaksanaan Rehabilitasi Terhadap Pecandu Penyalahguna Dan Korban Narkotika, *Riau Law Journal* Vol. 1 No.1, Mei 2017,
- Fauziah, Eva, Slamet Fatrika, and Utari Dwi Pratiwi. "Keselarasan Lembaga Penegak Hukum dalam Implementasi Restorative Justice bagi Penyalahguna Narkotika di Indonesia." *Jurnal Kajian Stratejik Ketahanan Nasional* 5, No. 1 (2022):

- Habibul Umam Taqiuddin dan Risdiana Risdiana, "Penerapan Keadilan Restoratif (Restorative Justice) Dalam Praktik Ketatanegaraan," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, No. 1 (2022):
- Heriyanto Peran Dan Strategi Pemerintah Daerah Dalam Mencegah Penyalahgunaan Narkotika Di Kalangan Remaja. *Hakim: Jurnal Ilmu Hukum Dan Sosial*, 1(3), 2023,
- Ichram, Wahyu, M. Zainuddin Muslim, Intan Safitri Pulungan, Fitri Adilah, Khairul Amri, Fatimah Fitri, and Ida Aliza. "Peran Kejaksaan dalam Upaya Pemberantasan Tindak Pidana Narkotika di Wilayah Hukum Kejaksaan Negeri Mandailing Natal." *Jurnal Penelitian Multidisiplin Bangsa* 1, No. 11 (2025):
- Inggal Ayu Noorsanti dan Ristina Yudhanti, Kemanfaatan Hukum Jeremy Bentham Relevansinya dengan Kebijakan Pemerintah melalui Bantuan Langsung Tunai Dana Desa, *Sultan Jurisprudance: Jurnal Riset Ilmu Hukum*, Vol. 3, No. 2, 2023,
- Intan Permata Sari, Penegakan Hukum terhadap Pecandu Narkotika, *Jurnal Analogi Hukum*, Vol. 1 No. 1, (2019),
- Joel Efraim Yohanis Walintukan, Danial F. Aling, dan Roy Ronny Lembong, "Penerapan Restorative Justice Dalam Proses Penyelesaian Pelanggaran Kecelakaan Lalu Lintas Yang Menyebabkan Kematian," *Lex Crimen* 10, No. 11 (2021):
- Kurniawatie, Eka. "Dasar Pertimbangan Hakim Terhadap Penyalahgunaan Narkotika Ditinjau Dari Aspek Rehabilitasi Didasarkan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." *SINERGI: Jurnal Riset Ilmiah* 1, no. 12 (2024):
- Marune, Abraham, and Brandon Hartanto. 2023. "Keadilan Restoratif Dalam Penyelesaian Perkara Penyalahgunaan Narkotika Pasca Pedoman Jaksa Agung Nomor 18 Tahun 2021: Perspektif Teori Keadilan Bermartabat". *The Prosecutor Law Review* 1 (3). 2023,
- Mentari Primaria Br Tarigan dan Jinner Sidauruk, "Strategi Pembuktian Yang Dilakukan Oleh Penuntut Umum Dalam Mengungkap Tindak Pidana Korupsi (Studi Di Kejaksaan Negeri Subulussalam)," *Nommensen Law Review* 1, No. 1 (31 Mei 2022):
- Ni Putu Wulan Noviarini, Tinjauan Kriminologis Terhadap Tindak Pidana Penyalahgunaan Narkotika Dikalangan Remaja Di Kabupaten Buleleng, *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum*, Vol 4 No 2 Tahun 2021,

Parasian Simanungkalit, Model Pemidanaan Yang Ideal Bagi Korban Pengguna Narkoba DiIndonesia, *Yustisia* Vol.1 No. 3 September-Desember 2012,

Sinaga, Fransiska, and Herlina Manullang. "Kolaborasi Kejaksaan Negeri Medan Dengan Aparat Kepolisian Dalam Penyidikan Penyelesaian Kejahatan Narkotika." *Jurnal Prisma Hukum* 8, No. 10 (2024).

Siringoringo, Ruhut, and Herlina Manullang. "Penerapan Penyidikan Tindak Pidana Ringan Pada Tingkat Kejaksaan." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 7, No. 1 (2025):

Sukmayati Alegantina, Penetapan Kadar Nikotin Dan Karakteristik Ekstrak Daun Tembakau (*Nicotiana Tabacum*), *Jurnal Penelitian Dan Pengembangan Pelayanan Kesehatan*, VOL.I, No. 2, (Desember, 2017),

Werri, Pertimbangan Hakim Terhadap Rekomendasi Tim Asesmen Terpadu Pada Penyalahguna Narkotika, Vol. 7 No. 3 (2023): *Unes Journal of Swara Justisia* (Oktober 2023),

Yayan indriani, Pengembalian Ganti RugiKeuangan Negara Pada Perkara Tindak Pidana Korupsi, *Jurnal Cepalo*, Vol. 2, No. 2, 2018,

Books:

Abdul Majid, 2010, *Bahaya Penyalahgunaan Narkoba*, ALPRIN, Semarang,

Adam Chazawi, 2010, *Pelajaran Hukum Pidana Bagian 1*, Raja Grafindo Persada, Jakarta,

Adi Riyanto, 2016, *"Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia,"* Gramedia, Jakarta,

Alisan Morris & Gabrielle Maxwel, (2001), *Restorative Justice for Junvile; Coferencing. Mediation and Cirlce*, Oxford-Portland Oregeon USA, Hart Publishing,

Amir Ilyas, 2012, *Asas-asas Hukum Pidana Memahami Tindak Pidana dan Pertanggungjawaban Pidana sebagai Syarat Pemidanaan*. Rangkang Education Yogyakarta & PuKAP Indonesia, Yogyakarta,

Amiruddin dan Zainal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, Raja Grafindo, Jakarta,

Andi Hamzah, (1986), *Sistem Pidana dan Pemidanaan Indonesia, dari Retribusi ke Reformasi*, Jakarta: Pradnya Paramita,

- B.E. Morrison, (2001), *The School System: Developing its capacity in the regulation of a civil society*, in J. Braithwaite & H. Strang (Eds.), Restorative Justice and Civil Society, Cambridge University Press,
- Bambang Sunggono. 2010, *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta,
- Mansyur Kartayasa, 2012, "*Restorative Justice dan Prospeknya dalam Kebijakan Legislasi*" makalah disampaikan pada Seminar Nasional, Peran Hakim dalam Meningkatkan Profesionalisme. Menuju Penelitian yang Agung, Diselenggarakan IKAHI dalam rangka Ulang Tahun IKAHI ke59,
- Marlina, (2009), *Peradilan Anak di Indonesia dan Pengembangan Konsep Diversi dan Restorative Justice*, Bandung: Refika Aditama,
- Mastar Ain Tanjung, 2005, *Pahami Kejahatan Narkoba, Lembaga Terpadu Pemasyarakatan Anti Narkoba*, Jakarta,
- Moctar Kusumaatmadja, 1976, *Pengantar Hukum Indonesia*, Bina Cipta, Bandung,
- Moeljatno, 1985, *Fungsi dan Tujuan Hukum Pidana Indonesia*, Bina Aksara, Jakarta,
- Moh. Makaro Taufik, Suhasril, dan Moh. Zakky, 2005, *Tindak Pidana Narkotika*, Cetakan Kedua, Ghalia Indonesia, Bogor,
- Muhammad Nazir, 1988, *Metode Penelitian*, Ghalia Indonesia, Jakarta,
- Muhammad Yamin, 2012, *Tindak Pidana Khusus*, Pustaka Setia, Bandung,
- Muladi dan Barda Nawawi Arief, 1984, *Teori-Teori dan Kebijakan Pidana*, Bandung, Alumni,
- Mustafa Abdullah dan Ruben Achmad, 1983, *Intisari Hukum Pidana*, Ghalia Indonesia, Jakarta,
- Pipin Syarifin, 2000, *Hukum Pidana di Indonesia*, Pustaka Setia, Bandung,
- R. Abdoel Djamali, 2010, *Pengantar Hukum Indonesia Edisi Revisi*, Rajawali Pers, Jakarta,
- Roeslan Saleh, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana dan Pengertian Dasar dalam Hukum Pidana*, Aksara Baru, Jakarta,
- Roeslan Saleh, *Perbuatan Pidana dan Pertanggungjawaban Pidana*, Aksara Baru Jakarta, 1981, hlm. 150.

- Romli Atmasasmita, 2003, *Tindak Pidana Narkotika Transnasional Dalam Sistem Hukum Pidana Indonesia*, Citra Aditya Bakti, Bandung,
- Ronny Hanitijo Soemitro, 2015, *Metode Penelitian Hukum dan Jurimetri*, Jakarta : Ghalia Indonesia,
- Rosdiana, 2018, *Cegah Penggunaan Narkotika Melalui Promosi Kesehatan*, CV. Kaffah Learning Center, Pare-Pare,
- S.R.Sianturi, 1996, *Asas-asas Hukum Pidana Di Indonesia dan Penerapannya*, Alumni Ahaem-Petehaem, Jakarta,
- Satochid Kartanegara, 1998, *Hukum Pidana Bagian Satu*, Balai Lektur Mahasiswa, Jakarta,
- Setiono, 2004, *Rule of Law (supremasi hukum)* Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, Surakarta,
- Siswanto, 2012, *Politik Hukum Dalam Undang-Undang Narkotika*, Rineka Cipta, Jakarta,
- Soedjono D, 1977, *Segi Hukum tentang Narkotika di Indonesia*, Karya Nusantara, Bandung, (selanjutnya disebut Soedjono, D II),
- Soejono Soekanto, 1984, *Pengantar Penelitian Hukum*, Universitas Indonesia Press, Jakarta,
- Sudarto. 2010, *Kapita Seleksi Hukum Pidana*. Bandung: Alumni.
- Sunarso, H. Siswanto, (2014), *Viktimologi dalam Sistem Peradilan Pidana*, Jakarta: Sinar Grafika,
- Sutan Remi Sjahdeini, 2006, *Pertanggungjawaban Pidana Korporasi*, Grafiti Pers, Jakarta,
- Sutan Remy Sjahdeini, 2007, *Pertanggungjawaban Pidana Korporasi*, Grafiti Pers,
- Takdir, 2013, *Mengenal Hukum Pidana*, Lascar Perubahan, Palopo,
- Taufik Makaro, 2005, *Tindak Pidana Narkotika*. Ghalia Indonesia, Bogor, hlm,49
- Tony Marshall, (1999), *Restorative Justice: An Overview*, London: Home Office Research Development and Statistic Directorate,
- Visimedia, 2008, *Mencegah Penyalahgunaan Narkoba*, Gramedia, Jakarta,
- Wahid, Eriyantouw, 2009, *Keadilan Restoratif Dan Peradilan Konvensional Dalam Hukum Pidana*, Jakarta: Universitas Trisaksi,

Regulation:

Attorney General's Guidelines Number 18 of 2021 concerning Settlement of Handling of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle of the Prosecutor

Criminal Code;

Criminal Procedure Code;

Law Number 35 of 2009 concerning Narcotics

The 1945 Constitution of the Republic of Indonesia.

Etc:

https://www.jdih.tanahlautkab.go.id/artikel_hukum/detail/restorative-justice-alternatif-baru-dalam-sistem-pemidanaan

Kejari Semarang selesaikan satu kasus penyalahgunaan narkoba lewat RJ, <https://jateng.antaranews.com/berita/565522/kejari-semarang-selesaikan-satu-kasus-penyalahgunaan-narkoba-lewat-rj>

Suwandi, 2009. *Hukum Bisnis Syariah*. diakses dari: <http://www.miras-dan-narkoba-dalam-hukum-islam.html>.

Tri Cahyo Wibowo, 2012, *Narkoba dalam Pandangan Islam*. <http://tricahyowibowo.blogspot.co.id/2012/12/.html>.