

The Role of the Prosecutor's Office in Terminating Prosecution of Drug Addicts Using a Restorative Justice Approach

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Abstract. *The purpose of this study is to examine and analyze the role of the Prosecutor's Office in terminating the prosecution of drug addicts using a restorative justice approach. to examine and analyze the weaknesses of terminating the prosecution of drug addicts using a restorative justice approach. to examine and analyze the future enforcement of the law on terminating the prosecution of drug addicts using a restorative justice approach. The method of approach in this study is normative legal research. Normative legal research is research that uses methods that refer to legal norms contained in laws and court decisions. Terminating the prosecution of drug addicts using a restorative justice approach requires a central role for the Prosecutor's Office in directing addicts to recovery based on medical and social assessments, but its effectiveness is still hampered by weaknesses in the structure, substance, and legal culture described by Friedman, such as suboptimal institutional coordination, unclear legal basis, limited rehabilitation facilities, and the stigma of officials and society who still view addicts as criminals; In the future, this policy will be increasingly important because drug addiction is understood as a public health issue, so strengthening regulations, the capacity of officers, rehabilitation facilities, post-rehabilitation supervision, and the transformation of legal culture will be the keys to success, supported by the role of families and communities in eliminating stigma, so that the criminal justice system can move towards a more effective, humane recovery approach, and in line with the objectives of protecting addicts in the Narcotics Law.*

Keywords: Addicts; Narcotics; Office; Prosecutor's.

1. Introduction

The 1945 Constitution states that Indonesia is a country based on law, this is stated in the 1945 Constitution of the Republic of Indonesia which is the constitution for the State of Indonesia.¹From these provisions, it can be concluded that everything in Indonesia is governed by law. Law regulates all aspects of life, from both individual and institutional perspectives. The law even regulates individual behavior, including the actions they take and the consequences of those actions.

A rule of law as a state that places law above everything else should aim to provide legal certainty, protect rights, and provide a sense of justice for every citizen in order to create order and peace.²In interpreting the objectives of the rule of law, law enforcement officials, especially judges, mostly adhere to or are influenced by the philosophy of legal positivism. Johni Najwan argues that legal positivism adheres to two basic principles: First, only laws are law; outside of laws, there is no law. Second, the state or authority is the sole source of law. The implication of these two principles is that every law enacted by a legitimate authority must be considered law and must be obeyed, regardless of its content. Consequently, the law will become a tool of legitimacy for those in power in exercising and maintaining their power.³

One form of crime classified as a special crime that frequently occurs in society is drug abuse. Drug abuse is currently increasing daily. Enforcement of drug crimes in Indonesia reached 15,455 cases in the first semester of 2022. Drug cases are extraordinary crimes that are of concern to all countries worldwide, as they can destroy an entire generation of a nation.⁴

The National Narcotics Agency (BNN) as a Non-Ministerial Government Institution (LPNK) of Indonesia was formed to carry out government duties in the field of prevention,⁵Eradicating the abuse and illicit trafficking of narcotics, psychotropic drugs, precursors, and other addictive substances, except for addictive substances for tobacco and alcohol. The BNN is led by a head who reports directly to the President.

¹Jawade Hafidz Arsyad, *Corruption in the Perspective of HAN (State Administrative Law)*, Sinar Grafika, Jakarta, 2015, p. 5

²Azharie, Ade. "Utilizing Law as a Means to Achieve Social Justice." *Lex Aeterna Law Journal* 1, no. 2 (2023): pp. 72-90.

³Johni Najwan, *Implications of Positivism on Legal Thought*, paper presented at the Legal Philosophy Lecture, Master of Law Program, Postgraduate Program, University of Jambi, Jambi University, Jambi, 2021, pp. 26-27.

⁴Sayutis, Sayutis, Elwi Danil, and Yoserwan Yoserwan. "Termination of Prosecution of Narcotics Abuse Cases as an Implementation of Restorative Justice at the Prosecution Stage (Case Study at the West Pasaman District Attorney's Office)." *UNES Law Review* 6, no. 4 (2024): pp. 11256-11267.

⁵Assa, Vania Chrestella. "The Authority of the National Narcotics Agency in Combating Narcotics Abuse in Bitung City." *Lex Administratum* 12, no. 2 (2024). P. 21

In the case of narcotics cases, Article 54 of Law Number 35 of 2009 concerning Narcotics mandates: "Drug addicts and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation, and judges in deciding cases of narcotics abuse are required to pay attention to the provisions of Article 127 Paragraph (2) and Paragraph (3)."

Then, there is the fact that the number of drug addicts and victims of drug abuse as suspects, defendants, or prisoners in drug crimes is increasing and efforts to treat and/or care have not been carried out optimally and in an integrated manner. In fact, in the explanation of Article 21 Paragraph (4) Letter b of the Criminal Code (KUHP) it states that suspects or defendants who are drug addicts should be detained as far as possible in a certain place which also serves as a place of treatment.⁶

Based on this, it turns out that the state has begun to think about how to take steps that can restore and/or develop the physical, mental, and social well-being of suspects, defendants, or prisoners in narcotics cases through integrated and coordinated treatment, care, and recovery programs by issuing Joint Regulations of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions (abbreviated as "Joint Regulations" effective from March 11, 2014).

The Joint Regulation is aimed at realizing optimal coordination and cooperation in resolving narcotics problems in order to reduce the number of narcotics addicts and victims of narcotics abuse through treatment, care and recovery programs in handling narcotics addicts and victims of narcotics abuse as suspects, defendants or prisoners, while continuing to eradicate the illicit trafficking of narcotics.⁷ It is also intended to serve as a technical guideline for handling drug addicts and victims of drug abuse as suspects, defendants, or convicts, who undergo medical and/or social rehabilitation. It is also hoped that the medical and social rehabilitation processes can be implemented synergistically and integrally at the investigation, prosecution, trial, and sentencing levels.

Narcotics abusers are one of the criminals who need to be subjected to law enforcement and given punishment for their actions, but if seen from another

⁶Pasaribu, Francisco Lundu Hesehel, Siti Marwiyah, Wahyu Prawesthi, and Bachrul Amiq. "Restorative Justice at the Investigation Level for Drug Addicts and Victims of Drug Abuse." *COURT REVIEW: Journal of Legal Research* (e-ISSN: 2776-1916) 4, no. 03 (2024): pp. 11-23.

⁷Tarigan, Edi Kristianta, and Christine Sitio. "Integrating Restorative Justice in Drug Prevention Policies: A Sustainable Solution for the Community." *Journal of Multidisciplinary Scientific Research* 1, no. 04 (2025): pp. 716-735.

side, narcotics abusers can also be said to be victims of narcotics abuse, namely because they consume narcotics so that the perpetrators become dependent on the use of narcotics. Narcotics abusers as narcotics addicts are required to undergo medical rehabilitation and social rehabilitation for the healing of the perpetrators, this has been regulated in Article 54 of Law Number 35 of 2009 concerning Narcotics which states that Narcotics Addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation.⁸

The provisions for resolving narcotics crimes in the Prosecutor's Office using a restorative justice approach are regulated in the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Crime Cases Through Rehabilitation Using a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle, which states that the Public Prosecutor resolves narcotics abuse crimes through a restorative justice approach in order to implement the prosecutor's dominus litis principle as the case controller.⁹

The provisions for resolving narcotics abuse cases through a restorative justice approach in the Attorney General's Guidelines Number 18 of 2021 concerning the settlement of narcotics abuse cases through rehabilitation stipulate conditions, including the results of the investigation and the Public Prosecutor's belief that the narcotics addict or is said to have violated Article 127 paragraph (1) of the Narcotics Law and that the narcotics evidence found does not exceed the amount used for 1 (one) day.¹⁰

The case of a narcotics addict submitted for Restorative Justice was approved by JAM-PIDUM. In the termination of the case carried out on January 23, 2024, it has approved 2 requests for termination of prosecution based on restorative justice originating from the jurisdiction of the Padang District Attorney's Office and also the Bukit tinggi District Attorney's Office. The Restorative Justice carried out by the Attorney General today is related to the criminal case of narcotics abuse. For the termination of the case carried out today by the Attorney General, there are 2 requests for termination of prosecution based on justice. Where for the first case, namely originating from the jurisdiction of the Padang Panjang District Attorney's Office with the suspect GS, who is suspected of violating First Article 112 Paragraph (1) of Law Number 35 of 2009 concerning Narcotics or Second Article

⁸Rinaldo, Rinaldo, Triono Eddy, and Alpi Sahari. "Implementation of rehabilitation for drug abusers by police investigators (Study at the North Sumatra Regional Police Narcotics Directorate)." *Legalitas: Jurnal Hukum* 14, no. 1 (2022): pp. 43-53.

⁹Budiyasa, I. Gusti Ngurah, Anak Agung Sagung Laksmi Dewi, and Ni Made Sukaryati Karma. "Handling of Narcotics Abuse Crimes Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle at the Denpasar District Attorney's Office." *Journal of Legal Preferences* 4, no. 1 (2023): pp. 45-50.

¹⁰Sinaga, Haposan Sahala Raja. "The Application of Restorative Justice in Narcotics Cases in Indonesia." *Lex Generalis Law Journal* 2, no. 7 (2021): pp. 528-541.

127 Paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics. And for the second case originating from the jurisdiction of the Bukit tinggi District Attorney's Office, the suspect RYP, who is suspected of violating Article 114 Paragraph (1) in conjunction with Article 132 Paragraph (1) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics or Article 127 Paragraph (1) letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. After the approval of the request to stop the prosecution based on restorative justice today, JAM-Pidum ordered the Heads of the District Attorney's Office to issue a Case Settlement Decree.¹¹

In contrast to the case of narcotics addicts who were not resolved with restorative justice, namely the case of the crime of narcotics abuse for oneself in 2024 which was carried out by R who had abused narcotics for himself weighing 0.04 grams of crystal methamphetamine, however the case of the crime of narcotics abuse carried out by R was tried at the Bireuen District Court with case number 133 / Pid.Sus / 2024 / PN Bir. The Bireuen District Court judge tried the defendant Rakjab with the verdict that it was true that the defendant Rakjab had committed Narcotics Abuse in the form of 0.04 grams of crystal methamphetamine for his own use, and the defendant Rakjab was declared to have violated Article 127 paragraph (1) of the Narcotics Law, so that he was sentenced to 3 (three) years in prison.

Based on the description above, it can be seen that the case of drug addicts committed by R is the same as committing the crime of drug abuse for themselves and they also both violated the provisions of Article 127 paragraph (1) of the Narcotics Law, and the evidence obtained at the time of arrest was also the same, namely that all three of them were arrested with evidence of less than 1 (one) day's use. However, the implementation of the resolution of the case against R must be resolved through a judicial process and sentenced to prison.

2. Research Methods

The approach used in this research is normative legal research. Normative legal research is research that uses methods that refer to legal norms contained in legislation and court decisions.¹² related to the legal analysis of the termination of prosecution of drug addicts. In normative legal research, the source of legal material is used, namely research that refers to legal norms contained in legal instruments. According to Ronald Dworkin, normative legal research is also known

¹¹2 Restorative Justice Proposals in Narcotics Crimes Approved by JAM-PIDUM, <https://www.kejaksaan.go.id/index.php/conference/news/163/read>

¹²Soerjono Soekanto and Sri Mamudji, *Normative Legal Research*, Raja Grafindo Persada, Jakarta, 2004, p. 14

as doctrinal research, namely research that analyzes both written law (law as written in the book) and law decided by judges through a process.¹³

3. Results and Discussion

3.1. The Role of the Prosecutor's Office in Terminating Prosecutions of Drug Addicts Using a Restorative Justice Approach

Drug abuse has become a crucial social and health issue in many countries, including Indonesia. In Indonesia, the issue of drug abuse increases annually, and drug abuse has spread to all Indonesian regencies, including Karawang Regency. Drug abuse can have numerous negative impacts, not only on the individual involved but also on the surrounding environment, such as family and community. In this era, drugs are easily obtained and distributed.¹⁴

According to Article 127 of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, the punishment for drug abuse is imprisonment, with varying terms depending on the class of narcotics consumed. Abusers of Class I narcotics can be sentenced to up to four years in prison, Class II to two years in prison, and Class III to one year in prison.

In this regard, Aristotle's view of justice becomes relevant, where justice is seen as the essence of law, demanding the granting of rights proportionally, not equally. Aristotle classified justice into two types: distributive justice, which grants rights based on merit or contribution, and commutative justice, which provides equal treatment in reciprocal relationships. This view emphasizes that handling drug abuse requires fair legal treatment according to the individual's condition and role, not simply the uniform application of the law.

Based on Article 1 Paragraph 1 of the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, restorative justice is a mechanism for resolving criminal cases that involves the perpetrator, victim, family, and other parties involved in order to reach a just settlement agreement by focusing on restoring conditions.

Following the current dynamics of modern criminal law,¹⁵ The paradigm in criminal law has shifted from a retributive approach to a restorative approach, focusing on

¹³Bismar Nasution, Normative Legal Research Methods and Comparative Law, presented at the "Interactive Dialogue on Legal Research in Accreditation Magazine", Medan, February 18, 2003, p. 1.

¹⁴ Ramadhan, Dhiya Nabilah, and Rudi Saprudin Darwis. "Analysis of the phenomenon of drug abuse in adolescents based on ecological systems theory." *Focus: Journal of Social Work* 6, no. 2 (2023): pp. 241-249.

¹⁵ Sudiadi, Muhammad Hikmat. "Implementation of the Dominus Litis Principle in the Modern Criminal Justice System in Indonesia." *Journal of Interdisciplinary Legal Perspectives* 1, no. 1 (2024): pp. 1-15.

restoring interactions between the perpetrator, victim, and the community. A restorative justice approach is considered more effective in resolving certain cases, such as drug abuse, which often require rehabilitation rather than punishment. In Indonesia, this shift was marked by the issuance of Attorney General Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, demonstrating the commitment of law enforcement institutions, particularly the Prosecutor's Office, to implementing a more humane, responsive, and socially just case resolution approach.

In the Indonesian Attorney General's Office, restorative justice has begun to be adopted as an alternative legal approach in handling criminal cases. Restorative justice emerged as a response to the limitations of the criminal justice system, which tends to focus on retributive justice.¹⁶

Legally, the provision of rehabilitation based on Article 4 letter (d) of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) states that this law was created to guarantee the regulation of medical and social rehabilitation efforts related to narcotics abuse. Based on these provisions, the main objective of the Narcotics Law is to protect and ensure the availability of adequate rehabilitation efforts for individuals involved in narcotics abuse. so that the existence of medical rehabilitation refers to treatment and recovery measures carried out by professional medical personnel, such as doctors and psychologists, to help individuals who have been caught in narcotics abuse. The goal is to reduce or eliminate physical and mental dependence on narcotics and restore overall health. Meanwhile, social rehabilitation is related to efforts to return individuals involved in narcotics abuse to society by helping them reintegrate socially, economically, and educationally. These efforts involve social support, coaching, and providing opportunities to rebuild productive and meaningful lives.

The provision of narcotics rehabilitation for narcotics addicts and victims of narcotics abuse is mandatory for them to undergo medical and social rehabilitation based on the provisions of Article 54 of the Narcotics Law.¹⁷Based on these provisions, drug addicts and victims of drug abuse are obliged to undergo rehabilitation programs that encompass both medical and social aspects. The goal is to help them overcome drug dependence, restore their physical and mental health, and assist them in social reintegration. Therefore, the government and relevant institutions are obligated to provide and organize effective medical and social rehabilitation programs for drug addicts and victims of drug abuse. This aims

¹⁶ Sinurat, Patar Marojahan, and Janpatar Simamora. "The Role of Prosecutors in the Implementation of Restorative Justice: A Review of the Principles of Legality and Substantive Justice in Prosecutor's Regulation 15/2020." *Al-Zayn: Journal of Social Sciences & Law* 3, no. 5 (2025): pp. 7606-7617.

¹⁷ Nasadi, Irmawaty, Asdar Arti, and Hijrah Lahaling. "Implementation of Judges' Decisions on Narcotics Rehabilitation." *Journal of Lex Philosophy (JLP)* 4, no. 1 (2023): pp. 41-48.

to assist them in recovery, prevent relapse into drug abuse, and provide the necessary support to enable them to return to a healthy and meaningful life.¹⁸

Narcotics rehabilitation in the legal context is provided to addicts who are undergoing the judicial process, in accordance with Article 13 paragraph (3) of Government Regulation Number 25 of 2011. The decision to place in a medical or social rehabilitation institution depends on the authority of the investigator, public prosecutor, or judge, according to the level of examination carried out, to provide adequate protection and treatment for addicts who are undergoing the judicial process. The authority of the Indonesian Attorney General's Office in providing narcotics rehabilitation is regulated by Article 30C letter (c) of the Indonesian Attorney General's Law, and the Guidelines for Providing Narcotics Rehabilitation Based on Prosecutor's Restorative Justice (Guidelines Number 18 of 2021) serve as a reference in resolving narcotics abuse cases using a restorative justice approach. These guidelines are designed to optimize rehabilitation institutions at the prosecutor's office level, considering that the punitive criminal justice system can result in excess capacity in Community Institutions. The authority of the prosecutor as a case controller, based on the principle of *dominus litis*, is the basis for resolving narcotics abuse cases using a restorative justice approach.

Restorative Justice is a criminal case resolution process involving the perpetrator, victim, the perpetrator/victim's family, and other relevant parties to jointly seek a just solution, emphasizing restoration to the original state, rather than retaliation. Therefore, the implementation of the Guidelines for Prosecutor's Restorative Justice-Based Narcotics Rehabilitation includes pre-prosecution, prosecution, supervision, training, and settlement financing. During the pre-prosecution stage, prosecutors conduct research into narcotics cases, and the guidelines provide guidance for prosecutors to consider rehabilitation as a case resolution option. During the prosecution process, prosecutors prepare indictments, and the guidelines provide guidance on considering rehabilitation. Following a court ruling, the guidelines provide direction regarding prosecutors' responsibilities in overseeing the implementation of rehabilitation by rehabilitation institutions. Structural issues in the provision of rehabilitation related to the authority of agencies such as the Police, the National Narcotics Agency (BNN), and the Prosecutor's Office can be obstacles, and the implementation of Prosecutor's Regulation Number 18 of 2021 needs to be reviewed. The *dominus litis* authority of the Indonesian Attorney General's Office in handling narcotics cases needs to be followed by ideal implementation in accordance with Prosecutor's Regulations. Obstacles related to facilities and infrastructure within the Prosecutor's Office, such as limited rehabilitation facilities, need to be addressed to increase the effectiveness of the rehabilitation program. Program optimization involves

¹⁸ Hastuti, Ari, Joko Sriwidodo, and Basuki Basuki. "Implementation of Prosecutor's Regulation Number 18 of 2021 Concerning Narcotics Rehabilitation Based on Restorative Justice." *SINERGI: Scientific Research Journal* 1, no. 3 (2024): pp. 124-132.

improving infrastructure, procuring facilities, collaborating with external rehabilitation institutions, as well as increasing financial and human resource support.

The role of the Prosecutor's Office in terminating prosecutions of drug addicts using a restorative justice approach positions the prosecutor not only as a prosecutor but also as a controller of the case process, with an interest in ensuring that each abuser receives treatment proportionate to their status as an addicted individual. At this stage, the prosecutor bears the responsibility of assessing the context of the act, the level of dependency, and the addict's need for recovery, which is more appropriately handled through rehabilitative mechanisms rather than imprisonment.

As *dominus litis*, prosecutors have the authority to determine whether a case should proceed to trial or be dismissed through restorative justice mechanisms. This authority provides the prosecutor's office with ample scope to prioritize the health and safety of addicts by reviewing medical records, BNN assessments, and rehabilitation recommendations from authorized institutions. This approach aligns with the spirit of the Narcotics Law, which emphasizes the state's obligation to provide rehabilitation for addicts.¹⁹

The prosecutor's office plays a role in ensuring that law enforcement remains focused on rehabilitation, not retribution. When investigations reveal that a perpetrator is an addict in need of intensive treatment, the prosecutor can seek to discontinue the prosecution and transfer the individual to a rehabilitation facility. This helps prevent addicts from sinking into the criminal culture that often results from prison sentences.

In practice, prosecutors are required to coordinate with investigators from the outset of the investigation to ensure that an integrated assessment process is properly conducted. The results of this assessment serve as a crucial basis for determining the appropriateness of restorative justice implementation. Without an assessment, prosecutors lack a strong basis for declaring an offender an addict and deserving of rehabilitation.²⁰

Another important role is ensuring that the perpetrator's family is involved in the recovery process. A restorative approach not only rehabilitates the perpetrator but also improves social relations within the community. Prosecutors can mediate

¹⁹ Sihalo, Alasandar Polasio. "The Role of Prosecutors as *Dominus Litis* in the Indonesian Criminal Justice System (A Critique of Functional Differentiation in the Criminal Procedure Code Draft Bill)." *Integrative Perspectives of Social and Science Journal* 2, no. 2 March (2025): pp. 1509-1517.

²⁰ Daenunu, Annisa Refi, Lisnawaty W. Badu, and Jufryanto Puluhalawa. "Analysis of the limits of authority between investigators of the Republic of Indonesia Police and the National Narcotics Agency in coordinating investigations of narcotics crime cases." *Jaksa: Journal of Legal and Political Studies* 1, no. 4 (2023): pp. 73-89.

communication between rehabilitation institutions, the perpetrator's family, and other relevant parties to ensure an effective and sustainable recovery process.

In terms of policy, the Prosecutor's Office, through internal guidelines such as the Prosecutor's Regulation on restorative justice, serves as a policy implementer, translating the spirit of the law into concrete actions on the ground. Through this internal legal instrument, prosecutors have technical guidelines for assessing when a drug case should be terminated for the sake of rehabilitation.

The Prosecutor's Office also bears a moral responsibility to prevent the excessive criminalization of addicts. By maximizing the use of its authority to terminate prosecutions, this institution can direct law enforcement to be more humane, in line with the view that addicts are victims who require treatment, not punishment.

In addition to ensuring protection for addicts, prosecutors play a role in raising public awareness that drug abuse is not a problem that can be solved solely through criminal prosecution. Through the implementation of restorative justice, the public can see that rehabilitation is a more effective way to reduce dependence and suppress subsequent crime.

The Prosecutor's Office also serves as a bridge between institutions, particularly the National Narcotics Agency (BNN), the National Police Chief (Bapas), the Witness and Victim Protection Agency (LPSK), and rehabilitation institutions. Every case terminated through the rehabilitation scheme requires cooperation from various institutions to avoid overlapping policies or lack of oversight. Prosecutors act as the controllers of this coordination. In terms of legal protection, prosecutors play a crucial role in ensuring that the rights of addicts are respected. The process of terminating prosecutions must not be discriminatory but must be based on measurable, objective criteria. This is where prosecutors are tested to maintain their integrity and professionalism in exercising their authority.²¹

The Attorney General's authority to terminate prosecutions also aims to prevent a backlog of narcotics cases in court. The large number of narcotics abuse cases places significant pressure on the justice system, necessitating a more appropriate filtering of cases for restitution. The Attorney General's Office serves as the primary filter for determining the direction of these resolutions.

At the same time, prosecutors must ensure that the rehabilitation process is carried out according to standards. Monitoring the success of rehabilitation can be done by collaborating with correctional centers and rehabilitation institutions to monitor the offender's progress, so that the recovery process does not stop

²¹ Ramadhana, Widodo, Reza Farhansyah, Dinda Khairunnisa Nasution, and Mathew Christofel Sinaga. "Legal Review of the Right to Rehabilitation for Victims of Narcotics Abuse (Study of Law Number 35 of 2009)." *SIBATIK JOURNAL: Scientific Journal of Social, Economic, Cultural, Technology, and Education* 4, no. 3 (2025): pp. 151-160.

with the decision to terminate the sentence. In implementing restorative justice, prosecutors must assess the offender's risk and potential for relapse into drug abuse. This assessment is crucial to ensuring that the decision to terminate the prosecution does not negatively impact the offender or the community. This aspect requires sensitivity and expertise in understanding the offender's characteristics.

The Prosecutor's Office plays a role in ensuring that the termination of prosecutions against addicts does not create the perception that the state is condoning drug abuse. Therefore, prosecutors must be able to objectively explain the rationale for implementing restorative mechanisms, stating that their primary goal is healing and prevention, not inaction. The Prosecutor's Office's approach also reflects the principle of substantive justice, where justice is seen not merely as the rigid application of articles, but as a policy that takes into account the human condition of the perpetrator. In this regard, the Prosecutor's Office is an institution that brings humanitarian values to law enforcement practices.

The Prosecutor's Office is also tasked with educating subordinate officials about the importance of prioritizing rehabilitation for addicts. Through internal training and outreach, the Prosecutor's Office can reinforce the paradigm that addicts require medical treatment, not imprisonment, so that restorative justice can be implemented consistently. Furthermore, the Prosecutor's role does not end after the prosecution is terminated.²² Prosecutors can monitor the progress of offenders and ensure that rehabilitation institutions provide not only treatment but also adequate social reintegration. This affirmation is crucial to prevent addicts from returning to the cycle of abuse. The Prosecutor's Office also plays a role in reducing the risk of irregularities in drug law enforcement. With transparent procedures for terminating prosecutions, prosecutors can close loopholes that often lead to the commercialization of cases or the over-criminalization of users. The presence of restorative justice within the Prosecutor's Office's authority opens up space for community and family participation in the recovery of addicts. Prosecutors can facilitate dialogue or meetings that allow for stronger social support, so that the rehabilitation process does not rely solely on state institutions.

3.2. Weaknesses of Terminating Prosecution of Drug Addicts Using a Restorative Justice Approach

The Indonesian criminal justice system aims to determine guilt or innocence through a fair process while upholding the presumption of innocence. However, the legal approach, which tends to be positivistic and formal, is often deemed incapable of resolving problems substantively. This is reflected in the backlog of

²² Yanlua, Siti Zainab, Fauzia Rahawarin, and Muhammad Nasir Prawira. "Dynamics of Prosecutor's Authority: Role in Current Prosecutions and Direction of Change in the Criminal Procedure Code Bill." *Al-Ahkam Journal: Journal of Islamic Criminal Law* 7, no. 1 (2025): pp. 14-23.

cases, the high cost of legal proceedings, and the overcapacity of correctional institutions due to the dominance of imprisonment. In response, a restorative justice paradigm has developed, emphasizing the restoration of social relationships through the involvement of perpetrators, victims, and the community, rather than solely punishment.²³

However, the implementation of restorative justice in drug cases, particularly for addicts and users, still raises various issues. On the one hand, they are medically and socially in need of protection and rehabilitation, not just punishment. On the other hand, legally, drug crimes are considered extraordinary crimes and, in some regulations, such as Attorney General Regulation No. 15 of 2020, are even excluded from the restorative justice-based prosecution termination mechanism. However, Attorney General Guidelines No. 18 of 2021 open up rehabilitation opportunities for drug user cases through restorative justice mechanisms as a form of implementing the prosecutor's *dominus litis* principle. In practice, the implementation of this prosecution termination does not involve peace efforts involving both parties, the victim and the perpetrator, due to the victimless nature of the crime. Therefore, the indicators of success are not the same as those for general criminal cases.²⁴

The weaknesses of terminating prosecutions of drug addicts through a restorative justice approach can be analyzed more comprehensively using Lawrence M. Friedman's legal system theory, which emphasizes three key elements in the functioning of law: structure, substance, and legal culture. This approach demonstrates that the problem lies not only in the normative realm but also relates to the way institutions operate, the quality of legal instruments, and the mindsets of officials and the public.

From a legal structural perspective, one of the main weaknesses lies in coordination between the institutions involved, such as the police, prosecutors, the National Narcotics Agency (BNN), the Penitentiary Supervisory Agency (Bapas), and rehabilitation institutions. The mechanism for terminating a prosecution requires a comprehensive assessment as a basic requirement, but the assessment process is often ineffective due to weak structural coordination. This bureaucratic fragmentation leads to delayed or even failed implementation of decisions to terminate prosecutions.

Institutional structures also face challenges because not all regions have adequate rehabilitation facilities. The disparity in rehabilitation infrastructure makes the policy of halting prosecution easier to implement in large cities than in remote areas. When rehabilitation facilities are limited, prosecutors struggle to divert

²³ Berlian, Berlian, and Aras Firdaus. "Good governance through evidence-based policies for reformulating the national criminal justice system." *Jurnal Juridis* 9, no. 1 (2022): pp. 27-36.

²⁴ Hasan, Tasya Nafisatul, and Marli Candra. "A Victimological Review of the Right to Protection in Drug Abuse (Victimless Crime)." *PAMPAS: Journal of Criminal Law* 2, no. 2 (2021): pp. 89-103.

addicts to appropriate treatment, so cases continue to be processed conventionally.

The heavy workload of investigators and prosecutors also undermines the implementation of restorative justice. The large number of drug cases filed causes authorities to focus more on completing files than on ensuring the quality of assessments and the suitability of rehabilitation. This situation often overlooks opportunities to discontinue prosecution due to administrative pressures. Limited human resources also pose a barrier. Not all officers possess the understanding, technical skills, or sensitivity to mental health and drug addiction issues. Without adequate understanding, officers tend to take the safe route by continuing to bring cases to trial even though addicts would be better placed in the recovery process.

From a legal substantive perspective, weaknesses are evident in the regulations, which do not yet provide complete certainty. Although the Narcotics Law stipulates mandatory rehabilitation for addicts,²⁵ The mechanism for terminating prosecutions is largely regulated through internal prosecutorial regulations, rather than legislation. This inconsistency creates hesitation among authorities to implement restorative policies, as they are perceived as lacking a strong normative foundation.

The legal substance also displays ambiguity regarding the definitions of drug addicts, abusers, and victims of drug abuse. This ambiguity impacts the process of identifying offenders eligible for rehabilitation. When basic norms do not provide clear categories, officers in the field often interpret them differently, resulting in inconsistent legal application.

Another substantive weakness is evident in the lack of a clear monitoring mechanism after the prosecution is terminated. Legal norms only stipulate rehabilitation obligations but do not provide clear guidelines for post-rehabilitation supervision or evaluation of recovery success. This lack of norms opens up the potential for addicts to relapse into old patterns of use.

Within the framework of legal substance, according to Friedman, unclear, inconsistent, or incomplete legal regulations will hamper the performance of the entire legal system. This is evident in the policy of halting prosecutions of addicts. When norms are not firmly binding and integrated across regulations, authorities' decisions are inconsistent and often unfavorable to recovery.

The legal culture element is a significant weakness. Law enforcement officials' paradigm is still heavily influenced by the view that drug abuse is a crime that

²⁵ Simbolon, Nanci Yosepin, Ramsi Meifati Barus, and Alusianto Hamonangan. "Punishment and Rehabilitation of Drug Dealers and Abusers." *Al-Zayn: Journal of Social Sciences & Law* 3, no. 2 (2025): pp. 591-600.

requires harsh action. This view contradicts the health approach that underpins restorative justice. As a result, although regulations provide space for rehabilitation, its implementation is often hampered by cultural resistance.

A legal culture that positions addicts as criminals makes authorities reluctant to use discretion to discontinue prosecutions. Officials feel administratively safer if cases are transferred to the courts rather than taking rehabilitative measures, which require greater consideration and responsibility. This mindset prevents restorative justice policies from being implemented optimally. The public also still views addicts with a negative stigma, weakening support for policies to discontinue prosecutions. This stigma undermines authorities' willingness to make rehabilitative decisions, fearing they may be perceived as lenient toward drug crimes. An unsupportive legal culture robs restorative justice of its social legitimacy.

3.3. Enforcement of the Law on Termination of Prosecution of Drug Addicts Using a Restorative Justice Approach in the Future

The prosecutor's office, which is also a sub-system of the criminal justice system in Indonesia, has a fairly central and crucial role.²⁶This 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.

Not only that, it is said to be important and crucial because the prosecutor's office is the only institution in the criminal justice sub-system that has the universally recognized principle of *dominus litis* and is reflected in Article 2 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.²⁷This principle of *dominus litis* gives the prosecutor a great deal of authority in determining whether a criminal case that has been transferred by investigators to the prosecutor can proceed to the trial stage or not based on valid evidence according to criminal procedural law.²⁸This principle also has a function in regulating the authority to stop prosecution held by the prosecutor's office.²⁹

²⁶Mentari Primaria Br Tarigan and Jinner Sidaurok, "Evidence Strategies Implemented by Public Prosecutors in Revealing Corruption Crimes (A Study at the Subulussalam District Attorney's Office)," *Nommensen Law Review* 1, no. 1 (May 31, 2022): p. 69.

²⁷Rico Yodi Tri Utama and Retno Saraswati, "Independence and the Urgency of Restructuring the Indonesian Criminal Justice System Based on the Aspect of Judicial Power," *Adjudication: Journal of Legal Studies* 5, no. 1 (June 20, 2021): p. 58

²⁸Georgia Monica Candra Apriliana, "Dominus Litis in Termination of Prosecution Based on Restorative Justice (Case Study at the Surakarta District Attorney's Office)," *Verstek* 10, no. 3 (2023): p. 580

²⁹Tiar Adi Riyanto, "The Functionalization of the Dominus Litis Principle in Criminal Law Enforcement in Indonesia," *Jurnal Lex Renaissance* 6, no. 3 (2021): p. 488

Initially, the legal basis for the prosecutor's office to be able to apply restorative justice to narcotics abuse crimes was only based on a mutual agreement between the criminal justice sub-system and related institutions in Indonesia.³⁰

The joint agreement is stated in the form of Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Attorney General, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number PER/005/A/JA/03/ 2014, Number 1 of 2014, Number PERBER/011112014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions, on March 11, 2014, this new regulation came into effect.

The goal of this consolidated regulation is to improve collaboration between correctional institutions, resulting in fewer inmates requiring rehabilitation and treatment for drug-related harm and deaths. However, this joint agreement, which serves as a legal basis, is insufficient to accommodate the implementation of restorative justice by the prosecutor's office. This led to the issuance of Attorney General's Guidelines Number 18 of 2021, which provides a breath of fresh air for the prosecutor's office to implement restorative justice for drug abuse crimes.

The reason the prosecutor's office considers restorative justice necessary for drug abuse crimes is because it is a particularly interesting and distinctive crime, characterized by its specific nature. This specific nature often involves only the suspect as the perpetrator, while the suspect is also the victim.

This means that anyone who commits a drug abuse crime can be categorized as a criminal because they violate the Narcotics Law. Furthermore, illegal drug use without following the rules and proper dosage can have negative health impacts and even be life-threatening, making the perpetrator also categorized as a victim.³¹

The Prosecutor's Office believes that restorative justice should be implemented whenever possible. The existing guidelines also explain that restorative justice and expediency must be prioritized in resolving a case. Furthermore, these guidelines are implemented based on the principle of low costs, based on the principle of cost and benefit, as well as the principle of speedy and simple justice, and the principle of restitution for the perpetrator. Criminal law can also be implemented as a last resort, or *ultimum remedium*.

³⁰Agung Firmansyah, "The Role of Integrated Assessment Institutions in Resolving Narcotics Abuse Cases Through a Restorative Justice Approach," *IBLAM Law Review* 2, no. 02 (2022): pp. 72–73

³¹Cakra Rismanda and Rehnalemken Ginting, "Factors Causing Narcotics Abuse Crimes in Surakarta City," *Journal of Criminal Law and Crime Prevention* 6, no. 2 (2018): p. 32

These guidelines provide a legal basis for prosecutors, who wield significant authority, to implement restorative justice in criminal cases involving drug use. As we know, the law provides a way to set boundaries for both authorities and individuals to prevent their actions from becoming arbitrary.³²

The procedure for implementing restorative justice by the prosecutor's office, there will be stages, namely after the public prosecutor receives the criminal case file related to narcotics abuse from the investigator, it will first be checked whether the crime meets the formal and material requirements so that restorative justice can be implemented in terms of rehabilitation through the legal process.

Enforcing the halt to prosecution of drug addicts using a restorative justice approach will become increasingly urgent in the future, as awareness grows that drug addiction is a public health issue, not simply a crime. This shift in perspective will influence the direction of national legal policy, including how prosecutors, police, and judicial institutions handle drug abuse cases.

The policy of discontinuing prosecution will position prosecutors as key actors in determining the course of case resolution. In the future, prosecutors will no longer be positioned solely as prosecutors, but as those determining the most appropriate path to justice for addicts. By understanding the dynamics of substance abuse and the social factors that influence addict behavior, prosecutors can direct cases toward a more constructive rehabilitation path.

The integrated assessment process will increasingly serve as an objective foundation before making decisions to discontinue prosecution. With comprehensive medical and social assessments, law enforcement officials can ensure that rehabilitation programs are truly needed and can effectively support addicts' recovery. The use of assessment technology is also expected to expedite the data collection process.

Collaboration between law enforcement agencies will be a crucial element in determining the success of the restorative approach. Close working relationships between prosecutors, investigators, the National Narcotics Agency (BNN), rehabilitation institutions, the Penitentiary Agency (Bapas), and social services will create a more integrated process, allowing timely decisions to terminate prosecutions without being hampered by structural barriers.

Strengthening rehabilitation facilities across all regions will be a priority. Many cases fail to be diverted to rehabilitation not because of the offender's unsuitability, but because of inadequate facilities. The government needs to

³²Muhamad Naufal Hibatullah, "Implications of Renewal in Enforcement of Environmental Law in Indonesia Through Criminal Sanctions as the Ultimatum Remedium Post Omnibus Law," *International Journal of Social Science Research and Review* 5, no. 10 (2022): p. 300

expand the reach of rehabilitation services so that restorative policies can be implemented regardless of geographic location.

The capacity of rehabilitation personnel will also significantly impact the success of addicts' recovery. Going forward, professionals who understand medical, psychological, social, and vocational aspects are needed to ensure that addicts receive comprehensive recovery services. The involvement of psychologists, addiction counselors, and social workers must be expanded within the system.

Post-rehabilitation supervision will be a crucial component for maintaining the sustainability of recovery. Without structured supervision, the potential for relapse remains high. Strengthening the role of the Penitentiary Agency (Bapas) and a technology-based monitoring system will help ensure that addicts continue to receive support after leaving rehabilitation institutions. Regulatory reform is a strategic step needed for the future. Clarity and legal certainty regarding the mechanism for discontinuing prosecution and rehabilitation standards will give authorities greater confidence in making decisions. Legislation needs to be drafted to provide a solid foundation for restorative justice.

4. Conclusion

The role of the prosecutor's office in terminating the prosecution of drug addicts through a restorative justice approach places the prosecutor as the main controller of case resolution by ensuring that addicts are treated proportionally as individuals who need recovery, not punishment, through medical-BNN assessments, cross-agency coordination, and rehabilitation supervision; the effectiveness of this policy is still hampered by weak coordination between institutions, limited facilities, unclear regulations, and resistance to a legal culture that still views addicts as criminals; going forward, strengthening regulations, increasing rehabilitation capacity, improving the legal culture of officials, supporting families and communities, and integrating international practices such as the Portugal, Switzerland, and Canada models are the keys to transformation so that the termination of prosecution is truly able to suppress overcriminalization, reduce the burden on the courts, and provide a more humane and effective recovery for addicts.

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