

Enforcement of Criminal Law for Drug Addicts with a Restorative Justice Approach

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Abstract. *The research objectives in this study: 1). to study and analyze the enforcement of criminal law on drug abuse with a restorative justice approach; 2). to study and analyze the obstacles to the enforcement of criminal law on drug abuse with a restorative justice approach. This study uses a normative juridical approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using Lawrence Friedman's legal system theory and restorative justice theory. The results of the study conclude that: 1) Criminal Law Enforcement on Drug Abuse with a Restorative Justice Approach is carried out through rehabilitation, mediation, customary institutions, consudication, coordination, consultation, counseling guidance, diversion. The process of implementing restorative justice according to Perja No. 18 of 2021 is carried out by an Integrated Assessment team consisting of 3 agencies, namely the Prosecutor's Office, the Police, and the National Narcotics Agency. Regarding the financing of the entire process, it is covered by the state budget (APBN), but for other additional costs required for drug addicts in undergoing rehabilitation, it can be obtained by the family or others provided that it does not conflict with the law; 2). The implementation of Restorative Justice in handling drug abuse cases in Indonesia faces various complex obstacles. Although Restorative Justice offers peaceful conflict resolution outside the court and is supported as a form of moral justice, its implementation in Indonesia is not optimal because there is no legal unification that regulates it systematically in the form of legislation. Law enforcement officers are often hesitant to offer Restorative Justice for fear of being misunderstood, especially in narcotics cases. Other obstacles include the lack of competence of law enforcement officers, inadequate rehabilitation facilities, and the lack of courage of abusers or addicts to report themselves for*

rehabilitation even though there are privileges they will get. The solution to the obstacles experienced in restorative justice is to improve the competence of law enforcement officers, improve inadequate rehabilitation facilities, provide socialization to the community about restorative justice for drug abusers.

Keywords: Enforcement; Justice; Law; Restorative.

1. Introduction

Narcotics are substances or drugs that come from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain, and can cause dependency.¹

Likewise with psychotropic drugs, psychotropic drugs are substances or drugs, whether natural or synthetic, not narcotics, which have psychoactive properties through selective influence on the central nervous system which causes typical changes in mental activity and behavior.² On the one hand, narcotics are drugs or substances that are useful in the fields of medicine, health services and scientific development, but on the other hand, they can cause very detrimental dependency if used without strict and thorough control and supervision.

Drug abuse in Indonesia is becoming increasingly disturbing. As we know, drugs are not only circulating in large cities with high per capita incomes, but also in rural areas with diverse backgrounds of perpetrators. Perpetrators are not limited to adults but have also spread to all segments of society, from schoolchildren, entrepreneurs, officials, to children who are considered underage. The results of a survey on the prevalence of drug abuse conducted by the National Narcotics Agency (BNN) Research Center in 2021, among the productive Indonesian population aged 15-64 years. Sampling used a multistage random sampling method and obtained a real sample of 64,348 respondents (after refocusing).

Drug crimes occur due to several factors, including: technological developments, the era of globalization that has resulted in easy access to information, and the desire of perpetrators to gain large profits quickly in difficult economic situations, which are all triggers for drug crimes. The National Narcotics Agency (BNN) and the Indonesian National Police (Polri) are central institutions for law enforcement in eradicating drug crimes. Given the complex nature of drug trafficking, comprehensive, continuous, and consistent eradication efforts are required.

The application of sanctions in cases of narcotics abuse for perpetrators of

¹Article 1 of Law Number 35 of 2009 concerning Narcotics.

²Article 1 of Law Number 5 of 1997 concerning psychotropics.

narcotics abuse generally consists of 2 (two) sanctions decided by the judge, namely criminal sanctions in the form of imprisonment and sanctions in the form of rehabilitation for narcotics abusers, and the decisions handed down to narcotics abusers seem to be far from what is expected by the provisions of the legislation on narcotics, in fact, judges in handing down decisions must pay attention to 3 (three) important elements, namely Justice, Legal Certainty, and Benefit.

Both preventive and repressive measures can be taken to address this issue. Preventive measures can be taken by increasing faith and raising public awareness of the dangers of drug abuse. Meanwhile, repressive measures can be taken by implementing the criminal justice system in Indonesia. This process begins with the investigation and inquiry process at the Police institution. The law enforcement process carried out by the Police and the National Narcotics Agency (BNN) as investigators of narcotics cases must fulfill the principle of legality, namely that all steps and actions taken by the BNN and the Police must be based on applicable law. BNN and Police investigators in carrying out their duties are required to be professional, transparent and accountable in every case they handle in order to realize the supremacy of law that reflects legal certainty, as well as providing a sense of justice and benefit.

One of the policies adopted by the Indonesian National Police in handling criminal acts is the implementation of "National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice." This aligns with the 2020-2024 Medium-Term Development Plan (RPJMN) regarding improving the criminal justice system through a restorative justice approach. The restorative justice approach is expected to be one way to reduce overcapacity in correctional institutions in Indonesia.

Law Number 35 of 2009 concerning Narcotics contains Article 54, which regulates rehabilitation. Article 54 states, "Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation." Medical rehabilitation is an integrated treatment process to free addicts from drug dependence. Medical rehabilitation for drug addicts can be carried out in hospitals designated by the Minister of Health, namely hospitals run by the government or by the community.

In narcotics crime cases, investigators from the National Police (Polri) and the National Narcotics Agency (BNN) are also involved. Article 81 of the Narcotics Law states that "The BNN has the authority to conduct investigations into the abuse and illicit trafficking of narcotics and narcotic precursors based on... Article 84 of the Narcotics Law explains the need for institutional coordination in investigating narcotics crimes."

The approach to resolving criminal acts through restorative justice can also be taken and implemented by the BNN in accordance with the applicable provisions and requirements ("Regulation of the Head of the National Narcotics Agency

Number 11 of 2014"). Restorative justice, whose initial goal was to reduce overcapacity, is carried out by providing medical rehabilitation for perpetrators. Restorative justice in the crime of narcotics abuse only results in the provision of rehabilitation, while rehabilitation in drug-related regulations is a type of punishment/sanction based on a court decision whose period can be used to reduce the period of imprisonment, so it can be said that rehabilitation is not a form of restorative justice approach.

The law enforcement process through a restorative justice approach in resolving criminal cases carried out by the prosecutor's office refers to PERJA No. 15 of 2020, the definition of restorative justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge.

This regulation is one of Attorney General Burhanudin's innovations to provide legal certainty for ordinary people. This policy was echoed by Burhanudin at the international level. In an event themed "integrated approaches to challenges facing the criminal justice system," Burhanudin in his presentation stated that the restorative justice method in Indonesian criminal justice is an integrated approach from investigation, inquiry, prosecution, to the imposition of court decisions. Burhanudin said Restorative Justice can shorten the lengthy judicial process and resolve the issue of overcrowding in prisons. Seeing these achievements, the pillars of reform within the Attorney General's Office have been re-established. However, public participation is needed to oversee the return of the dignity of the prosecutor's office. The regulation of restorative justice has been regulated by the Circular Letter of the Chief of Police No. SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases; Regulation of the Chief of Police No. 6 of 2019 concerning Criminal Investigation; Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and Decree of the Director General of the General Court of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice.

Based on the background description above, the author is interested in conducting research entitled "Enforcement of Criminal Law for Narcotics Addicts Using a Restorative Justice Approach".

This study aims to examine and analyze the enforcement of criminal law on narcotics abuse using a restorative justice approach; 2). to examine and analyze the obstacles to enforcing criminal law on narcotics abuse using a restorative justice approach.

2. Research Methods

This is a descriptive analytical study. The data used are primary and secondary data, which will be analyzed qualitatively. The research problem is analyzed using Lawrence Friedman's legal system theory and restorative justice theory.

3. Results and Discussion

3.1. Criminal Law Enforcement for Drug Addicts Using a Restorative Justice Approach

Restorative justice is a process of resolving cases outside of formal courts. Restorative justice employs a new way of thinking and paradigm in viewing a crime committed by an individual, without simply imposing a criminal penalty. Criminal acts can be handled by considering the broader impact on the victim, the perpetrator, and society. The concept of restorative justice begins and stems from the understanding that crime is an act against an individual or society and is related to the violation or destruction of applicable legal norms.³

According to the concept of restorative justice, handling crimes is not only the responsibility of the state but also the responsibility of society. The concept of restorative justice is built on the understanding that crimes that have caused harm must be redressed, both the losses suffered by the victim and the losses borne by society. Regarding the concept of restorative justice, many experts call it a new paradigm in thinking patterns in responding to crimes that occur. In its implementation, the concept of restorative justice provides many opportunities for the community to play an active role in resolving criminal problems. The concept of restorative justice becomes a framework for thinking in an effort to find alternative solutions to criminal cases that occur. Alternative solutions are carried out as a resolution effort that creates humane justice.⁴

According to the concept of restorative justice in resolving a criminal case, the role and involvement of community members is very important in helping to correct errors and deviations that occur in the community concerned.

The hope is that resolving the case through a restorative justice system will restore all aggrieved parties and foster respect and appreciation for the victims of a crime. This respect is shown to victims by requiring the perpetrator to recover from the impact of their crime.⁵

Restorative Justice is not merely a peacemaking process between perpetrators and victims, but rather a legal approach that emphasizes the restoration of the status

³Marlina, Op.cit., pp. 181-182.

⁴Marlina, Op.cit., p. 183

⁵Marlina, Op.cit., pp. 183-184

quo, the active participation of victims and perpetrators, or other affected groups or individuals, and the achievement of solutions through deliberation that is in accordance with the understanding of the disputing parties. However, many law enforcement officials still view Restorative Justice as "forgiveness" or "leniency" in sentencing perpetrators. In both cases, security forces are using excuses or assuming that the crimes are "extraordinary," even though most of the perpetrators involved are deviant and should be rehabilitated by the state.

These factors cause narcotics cases to become an extraordinary crime which has become a concern for all countries in the world because of its destructive effects on generations in a country.⁶ Positive law in Indonesia has now accommodated the criminal act of narcotics abuse which has been regulated in the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. The definition of narcotics itself has been regulated in Article 1 number 1 of the Narcotics Law which reads: "Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic which can cause a decrease or change in consciousness, loss of feeling, reduce or eliminate pain and can cause dependence which is differentiated into groups as attached to this law."

The crime of drug abuse itself is a victimless crime, which, broadly speaking, means that the abuser or addict can be considered a victim of their drug use. While drug abuse or addiction is inherently a crime, due to the side effects of drugs, users can also become victims. Indonesia's current criminal justice system tends toward retributive goals, emphasizing justice over retribution. Judges tend to use imprisonment as the primary sanction for perpetrators found guilty in court. Sentencing is a reaction to a crime in the form of suffering imposed on the perpetrator by the state through a court decision.⁷

The Narcotics Law clearly states that drug abusers can be subject to imprisonment. Imprisonment is a punishment that should be reduced, especially for drug abusers and addicts who are still eligible for rehabilitation and alternative solutions, such as restorative justice. The principle of restorative justice is an alternative method of resolving criminal cases through mediation, aimed at improving or restoring the situation and compensating for losses incurred as a result of the incident.⁸

"Restorative Justice arrangements have been regulated in various regulations, including":

⁶Sinaga, HSR, "Implementation of Restorative Justice in Narcotics Cases in Indonesia," *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 2, No. 7 (2021), p. 529.

⁷Yulianto, Taufiq, "Restorative Justice as an Alternative for Resolving Criminal Cases", *ORBITH*, Vol. 19, No. 2 (2023), p. 155.

⁸Affan, Ibnu and Gema R., "Implementation of Restorative Justice in Narcotics Abuse Cases Based on Progressive Law", *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, Vol. 23, No. 1 (2024), p. 66.

1. "Circular Letter of the Chief of the Republic of Indonesia Police Number SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases;"
2. "Regulation of the Chief of the Republic of Indonesia Police Number 6 of 2019 concerning Criminal Investigation and Regulation of the Republic of Indonesia Prosecutor's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice;"
3. "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 Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions;"
4. "Decision of the Director General of the General Court of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice in the General Court on December 22, 2020."
5. "Joint Regulation of 2014 Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions."
6. Prosecutor's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice."
7. "Chief of Police Regulation Number 8 of 2021 Concerning Handling of Restorative Justice Crimes."

This decision defines Restorative Justice as the resolution of a crime by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties, to jointly seek a just resolution by emphasizing restoration to the original state, not retaliation (imprisonment). In the appendix to this decision it is stated that restorative justice in case resolution can be used as an instrument for restoring justice and has been implemented by the Supreme Court in the form of implementing policies (PERMA and SEMA). However, so far its implementation in the criminal justice system has not been optimal. "This decision is intended to encourage the optimization of the implementation of PERMA, SEMA, and the Decree of the Chief Justice of the Supreme Court which regulates the implementation of Restorative Justice is to reform the criminal justice system which still prioritizes imprisonment.

The development of the criminal justice system is no longer focused on the perpetrator, but has moved towards aligning the interests of victim recovery and

criminal accountability. Furthermore, the purpose of issuing this decree is to facilitate courts in the general court environment in understanding and implementing the application of the Supreme Court Regulation, the Supreme Court Circular Letter and the Decree of the Chief Justice governing the implementation of Restorative Justice, encouraging the increased application of Restorative Justice as regulated by the Supreme Court in the decisions of the panel of judges, and fulfilling the principles of fast, simple, and affordable justice.

Indonesian society itself has been familiar with the concept of restorative justice through customs, customary law, and the values borne therein. Before it was enacted in a specific regulation in Indonesia, this country, renowned for its Pancasila, actually had a concept of restorative justice long before this idea was introduced and incorporated into the juvenile criminal justice system. The fourth principle of Pancasila states that "democracy is guided by the wisdom of deliberation among representatives." This means that the Indonesian people themselves have glorified the principle of deliberation as an ingrained habit for resolving all problems in this nation. This is evidence that restorative justice has actually developed within it. Deliberation will reach a win-win solution without harming or causing imbalance to any party, thus achieving a resolution. In the Indonesian context, Bagir Manan stated that the concept and principles of restorative justice have actually been practiced by a number of Indonesian indigenous communities.⁹

The restorative justice approach in criminal law has the power to restore the relationship between the perpetrator and the victim. It also has the power to prevent further hostility between the parties and encourage voluntary reconciliation between the perpetrator and the victim. Another strength is encouraging the participation of other community members, such as family members or neighbors, and emphasizing the importance of the victim's role in the process towards justice. For the victim, restorative justice empowers the perpetrator to express remorse to the victim, preferably facilitated by a professional meeting. This restorative justice perspective is the result of a legal shift from *lex talionis* or retributive justice to an emphasis on restorative efforts. In efforts to restore victims, when a more retributive and legalistic approach is difficult to heal the victim's wounds, restorative justice seeks to emphasize the perpetrator's responsibility for their behavior that causes harm to others.¹⁰

In general, assessment can be described as a process of obtaining comprehensive information about a client, both when the client begins the program, during the program, and until completion. Information about clients is generally obtained through three approaches: observation, interviews, and medical examinations. Assessment is an activity of reviewing and uncovering problems to identify all the

⁹Abintoro Prakorso, 2013, *Criminology and Criminal Law*, Laksbang Graphics, Yogyakarta, p. 162

¹⁰Siswanto Sunarso, 2014, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, p. 157

client/resident's problems, determine plans, and implement interventions. Assessment activities include:

1. Explore and reveal the background and circumstances of the client/resident.
2. Carry out problem diagnosis.
3. Determine rehabilitation steps.
4. Determine the training support required.
5. Placing clients/residents in the rehabilitation process.

Based on these joint regulations, it is hoped that drug abusers and addicts will no longer face prison sentences, but will instead receive rehabilitation. Suspects caught using narcotics by the police during investigations suspected of drug abuse are rarely referred by the police for assessment. Meanwhile, the assessment process is regulated by joint regulations, which require those caught using narcotics to undergo an assessment to determine whether they are classified as victims of drug abuse or as dealers or distributors of the drugs themselves.

This assessment aims to ensure that those classified as drug abusers can undergo rehabilitation rather than face criminal sanctions. Therefore, based on the joint regulation, an Integrated Assessment Team was formed at the central, provincial, and district/city levels, consisting of a team of doctors and a legal team tasked with analyzing the role of suspects arrested at the request of investigators related to drug trafficking, especially for addicts. The team then conducts legal, medical, and psychosocial analyses and creates a rehabilitation plan that includes the length of rehabilitation required.

The emergence of assessment as a means to obtain information related to narcotics from victims of narcotics abuse by forming an integrated assessment team based on the Joint Regulation of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia and Head of the National Narcotics Agency of the Republic of Indonesia Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11/Year 2014, Number: 03 of 2014, Number: PER 005/A/JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions. Drug addicts and abusers who have entered the legal jurisdiction require careful and prudent action through a prior assessment process to determine whether or not they, who have been named suspects and/or defendants, are suitable for placement in medical and/or social rehabilitation institutions. In short, the purpose of the assessment is to determine the extent of

addiction and the role of drug addicts and abusers in drug crimes.¹¹Assessments leading to rehabilitation can begin during the investigation stage. The National Narcotics Agency (BNN) and the Indonesian National Police (Polri) are responsible for investigating drug crimes.¹²The assessment process that occurs during the investigation stage carried out by both the BNN and the Police is the same.¹³This similarity stems from the police and the BNN (Prosecutor's Office and the Ministry of Law and Human Rights) being part of a legal team within the integrated assessment team. Since the enactment of the aforementioned Joint Regulation, police investigators of narcotics abuse who self-report will be recommended to visit a Mandatory Reporting Receiving Institution (IPWL) for an assessment to determine the level of addiction, which will determine the timing of rehabilitation.¹⁴

Criminal law enforcement for drug addicts using a restorative justice approach is carried out through rehabilitation, mediation, traditional institutions, consudication, coordination, consultation, counseling, and diversion. According to Perja No. 18 of 2021, the restorative justice implementation process is carried out by an Integrated Assessment Team consisting of three agencies: the Prosecutor's Office, the Police, and the National Narcotics Agency (BNN). The entire process is funded by the state budget (APBN), but additional costs required for drug addicts' rehabilitation can be obtained by their families or others, provided they do not conflict with the law.

3.2. Obstacles Faced in Enforcing Criminal Law for Drug Addicts Using a Restorative Justice Approach

In recent cases, many drug dealers and distributors have been caught and severely punished, but other perpetrators seem to ignore the situation and are even more inclined to expand their operations. Law enforcement against crime in Indonesia, where the government, as the organizer of state life, needs to provide protection and public welfare through various policies outlined in the national development program. These government policies are integrated into social policy. One component of this social policy is law enforcement policy, which includes

¹¹Article 18 paragraph (4) of the Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants who are Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, reads: Recommendations as referred to in paragraph (3) are submitted to Investigators which include: 1) The role of the suspect as: a) Addicts with their level of dependence on Narcotics; b) Addicts who are also distributors or involved in the illegal distribution network of Narcotics; and c) Victims of Narcotics Abuse. 2) Rehabilitation plans according to the level of narcotics dependence.

¹²Ibid

¹³Ibid.

¹⁴Dani Krinawati & Niken Subekti Budi Utami, *Implementation of Rehabilitation for Narcotics Addicts at the Investigation Stage After the Implementation of Joint Regulations of 7 (Seven) State Institutions of the Republic of Indonesia*, Yogyakarta: Research Results of the Faculty of Law, Gadjah Mada University, 2014, p. 28.

legislative policy. Meanwhile, crime prevention policy (criminal policy) itself is part of law enforcement policy.

The concept of the restorative justice approach is an approach that emphasizes the conditions for creating justice and balance for perpetrators of crimes and their victims because the practice of implementing the law of justice is still unstable, so that the law is still biased towards certain people, the law is sharper downwards and blunt upwards, restorative justice is a criticism of the application of the concept of the criminal justice system that views crime as *Fiat justisia ruat coelum*, this Latin proverb means "even if the sky falls, justice must be upheld" The problem of drugs in Indonesia is still something that is urgent and complex in the last decade this problem has become rampant, as evidenced by the significant increase in the number of drug abusers or addicts, along with the increasing disclosure of drug crime cases that are increasingly diverse in pattern and the increasingly massive syndicate network. Drug abuse also involves mental problems because abused drugs circulate in the body and some enter the brain tissue, the effect on the brain is what has the heaviest risk and can cause mental, physical and behavioral decline. Some causes of drug abuse include matters of religion, soul, mind, property, and descent.

The main principle of restorative justice is law enforcement that always prioritizes restoration to the original state and restoring good relationships within society. The application of restorative justice began with the implementation of an out-of-court settlement program conducted by the community, called victim-offender mediation (VOM), in Canada in the 1970s. The Restorative Justice Program was initially implemented as an alternative measure in punishing juvenile offenders, where before the sentence was carried out, the perpetrator and victim were allowed to meet to formulate a legal proposal that became one of the many considerations of the judge. According to criminal law experts

Mardjono Reksodiputro, written by Jurnal Perempuan (2019), restorative justice is an approach that aims to build a criminal justice system that is sensitive to victim issues.¹⁵ Mardjono said that restorative justice is important to be associated with crime victims, because this approach is a form of criticism of the current criminal justice system in Indonesia which tends towards retributive goals, namely emphasizing justice in retaliation, and ignoring the role of victims to participate in determining the process of their case. Among Indonesian law enforcement or the Criminal Justice System (CJS) to apply the principle of Restorative Justice settlement to drug abusers already have legal instruments internally institutionally, for example the Supreme Court issued SEMA (Supreme Court Circular) Number 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abusers and Addicts into Medical Rehabilitation and Social Rehabilitation Institutions. Furthermore, the Attorney General's Office of the Republic of

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Indonesia has also issued regulations regarding restorative justice through Attorney General Regulation (PERJA) Number 15 of 2020 concerning the Termination of Prosecution based on Restorative Justice.

Based on Article 2 of Perja Number 15 of 2020, considerations for implementing the concept of restorative justice are carried out based on the principles of justice, public interest, proportionality, criminal law as a last resort, and the principles of speed, simplicity, and low cost. The Public Prosecutor has the authority to close a case for legal reasons, one of which is because there has been a settlement of the case outside the court/afdoening buiten proces, this is regulated in Article 3 paragraph (2) letter e of Perja Number 15 of 2020. In the Attorney General's Regulation in Article 3 paragraph (3) there are provisions if you want to settle a case outside the court for certain crimes with a maximum fine paid voluntarily or there has been a restoration of the original state through restorative justice.

The government's policy of guaranteeing drug addicts and victims of drug abuse rehabilitation is considered a very effective formula today, where prisons are currently considered inappropriate and unsafe for drug addicts. This is due to the large number of illicit drug trafficking within correctional institutions, which indicates that correctional institutions can no longer serve as a place as it should: a place to keep victims of drug addiction away from these illicit goods and a safe place for drug addicts to undergo treatment and prevent repeat drug abuse.

In the sense that a narcotics abuser is a person who uses narcotics without rights or against the law; a victim of narcotics abuse is someone who accidentally uses narcotics because he is persuaded, tricked, deceived, forced, and/or threatened to use narcotics; while a narcotics addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically based on SEMA 04 of 2010, it is explained that narcotics addicts and abusers are the act of using narcotics for consumption with a limited amount of narcotics or daily use.

According to the provisions of SEMA No. 4 of 2010 concerning the Placement of Abusers, Victims of Abuse and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions in Article 2 of the SEMA, it is explained that rehabilitation is given when: The defendant is caught red-handed by investigators from the National Police and the National Narcotics Agency; when caught red-handed, evidence of 1 day's use is found; there is a positive laboratory test for using narcotics based on the investigator's request; there is a certificate from a government psychiatrist appointed by the judge; there is no evidence that the person concerned is involved in the illicit trafficking of narcotics.¹⁶

¹⁶SEMA No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

From the description above regarding the limitations of providing rehabilitation recommendations, it can be concluded that rehabilitation is only limited to users and addicts, while dealers cannot be rehabilitated. Apart from that, handling the problem of narcotics abuse has its own criteria and uniqueness in the sentencing of decisions by the Judge, where abusers can be placed as victims and not merely considered as perpetrators of crimes.

Drug abusers can be placed as someone who has a disease so that imprisonment is not a solution but can be given rehabilitation to recover from the disease. Therefore, SEMA No. 4 of 2010 is a reflection of the Supreme Court's view on drug users with an approach that prioritizes public health interests. So it can be concluded that the determination of a drug abuser's right to receive rehabilitation is based on several conditions, namely: The perpetrator has the awareness to undergo rehabilitation by making a statement and filling out a form to undergo rehabilitation measures at the BNN; The perpetrator is declared positive for using narcotics based on the results of a forensic laboratory test if the determination is negative through an examination by the Integrated Assessment Team; The perpetrator is not a recidivist, the perpetrator is not a drug dealer and is not involved in a drug trafficking network; Arrested or caught red-handed without narcotics evidence or with narcotics evidence under 1 gram; Classified as a drug addict or victim of drug abuse based on the results of the Integrated Assessment Team examination

The legal procedures for implementing the resolution of a criminal case in Indonesia currently adhere to three important objectives of the principles of law enforcement that must be considered, namely legal certainty, benefit and justice.¹⁷As the legal paradigm in the eyes of the public continues to develop, they now expect that law enforcement will not be fixated on rigid articles of legislation but rather pay more attention to the interpretation of legal conditions that prioritize social values and conscience but remain within the applicable legal corridor as projected by Satjipto Rahardjo regarding the theory of "Progressive Law" which states that law was created for humans and not vice versa.¹⁸Within the concept of punishment, there are two law enforcement options that need to be considered: retributive justice and restorative justice. Retributive justice is the concept of resolving criminal cases by punishing the perpetrator, either by imprisonment or confinement. This is different from

Restorative Justice prioritizes the creation of justice on both sides for both victims and perpetrators of criminal acts, in addition to alternative punishments or penalties in the form of social work, rehabilitation, and so on. Restorative Justice

¹⁷Adami Chazawi, *Criminal Law Lesson 1*, (Jakarta: PT Raja Grafindo, 2007)

¹⁸Gilang Fajar Shadiq. "Law Enforcement Against Narcotics Crimes Using New Psychoactive Substances Based on Law Number 35 of 2009 Concerning Narcotics." *Juridika Insight* 1, no. 1 (2017): 35-53

can be applied to drug addicts, abusers, victims of drug abuse, drug dependence, and one-day use of narcotics, in cases where they meet the requirements such as when caught red-handed by National Police investigators and/or BNN investigators, evidence of one-day use is found and also have assessment results from the Integrated Assessment Team in each transfer of case files. The existence of alternative case resolution through restorative justice can realize the principles of fast, simple and low-cost justice, as well as restore and/or develop the physical, mental, and social well-being of suspects, defendants, or prisoners in narcotics cases carried out through integrated and coordinated treatment, care and recovery programs.¹⁹

Lawrence M. Friedmann has developed a theory on law enforcement and implementation. He believes that social stratification within society is key to explaining why laws are discriminatory, both in their regulations and in their enforcement. Friedman argues that law must be discussed from its own perspective: legal structure, legal substance, and legal culture. Legal culture is the most influential factor in how the law can continue to operate on its intended path, and it is also related to society's response to the existence of a law.²⁰

Restorative justice is an initiative to peacefully resolve conflicts outside the courts, a practice that remains difficult to implement. Restorative justice also has the potential to create conflict within society over the criminal justice system, as some believe that perpetrators should be punished commensurate with their crimes. However, restorative justice's emergence is undeniably driven by public criticism of the moral justice that can be achieved through out-of-court settlements, given that criminal convictions can lead to the discovery of other victims. The successful implementation of restorative justice requires public appreciation for the law enforcement process in Indonesia, including the institutions that implement it. Implementing restorative justice is not as easy as imagined, as there are still obstacles to its implementation.

A barrier to implementing restorative justice is the lack of legal unification. Current restorative justice approaches are still sectoral, regulated by each law enforcement agency through institutional regulations, which are inherently problematic. Law enforcement officials are often hesitant to offer restorative justice to perpetrators of crimes, particularly in drug cases, as it can lead to misperceptions among the perpetrator's family and the community.

Another frequently encountered obstacle is the competence of investigators or prosecutors (as part of the integrated assessment team), which can lead to

¹⁹Haposan Sahala Raja Sinaga. "The Application of Restorative Justice in Narcotics Cases in Indonesia." *Lex Generalis Law Journal* 2, no. 7 (2021): 528-541

²⁰Pamungkas, CWA, "Implementation of Restorative Justice for Drug Abuse Victims in the Jurisdiction of the North Sumatra Regional Police (Study at the Directorate of Research of the North Sumatra Regional Police), Thesis. Faculty of Law, Sultan Agung Islamic University (2023), p. 113

disagreements and differing views in determining whether a case can be resolved using a restorative justice approach. This is because during the assessment, the suspect is assessed based on factors such as health, history of drug use, and involvement in drug trafficking. These indicators are often the subject of intense debate within the assessment team. In addition to the competence and capabilities of law enforcement officers, inadequate facilities and infrastructure are another obstacle. Currently, the number of rehabilitation facilities owned by the National Narcotics Agency (BNN), hospitals, and other private institutions is insufficient to accommodate all drug abusers and addicts, making it difficult to implement a restorative justice approach. The public is also still reluctant to report themselves to the police or the BNN as abusers or addicts and apply for rehabilitation. This self-reporting will not actually land you in jail, but instead shows that drug abusers or addicts are aware of the law and are friends of the law, and help the government which is actively eradicating drug abuse, so that the authorities will certainly direct the resolution of the report with a restorative justice approach at the rehabilitation center without the need to investigate them as perpetrators of drug abuse crimes.

The implementation of Restorative Justice in handling drug abuse cases in Indonesia faces various complex obstacles. According to Lawrence M. Friedman's theory, social stratification in society and legal culture significantly influence discrimination in law enforcement. Although Restorative Justice offers peaceful conflict resolution outside the courts and is supported as a form of moral justice, its implementation in Indonesia is not optimal due to the lack of legal unification that systematically regulates it in the form of legislation. Law enforcement officials are often hesitant to offer Restorative Justice for fear of being misunderstood, especially in drug cases. Other obstacles include a lack of legal competence, inadequate rehabilitation facilities, and the reluctance of abusers or addicts to report themselves for rehabilitation despite the privileges they would receive. The successful implementation of Restorative Justice depends heavily on the integration of a solid justice system and holistic support from all elements of society and law enforcement agencies.

4. Conclusion

Criminal law enforcement for drug addicts using a restorative justice approach is carried out through rehabilitation, mediation, traditional institutions, consudication, coordination, consultation, counseling, and diversion. According to Regulation No. 18 of 2021, the restorative justice implementation process is carried out by an Integrated Assessment Team consisting of three agencies: the Prosecutor's Office, the Police, and the National Narcotics Agency (BNN). The entire process is funded by the state budget (APBN), but additional costs required for drug addicts' rehabilitation can be obtained by their families or others, provided they do not conflict with the law. The implementation of Restorative

Justice in handling drug addiction cases in Indonesia faces various complex obstacles. According to Lawrence M. Friedman's theory, social stratification within society and legal culture significantly influence discrimination in law enforcement. Although Restorative Justice offers peaceful conflict resolution outside the courts and is supported as a form of moral justice, its implementation in Indonesia is not optimal due to the lack of legal unification that systematically regulates it in the form of legislation. Law enforcement officials are often hesitant to offer Restorative Justice for fear of being misunderstood, especially in drug cases. Other obstacles include a lack of legal competence, inadequate rehabilitation facilities, and the reluctance of abusers or addicts to report themselves for rehabilitation despite the privileges they would receive. The successful implementation of Restorative Justice depends heavily on the integration of a solid justice system and holistic support from all elements of society and law enforcement agencies.

5. References

Journals:

- Sinaga, H.S.R., "Penerapan Restorative Justice dalam Perkara Narkotika di Indonesia", *Rewang Rencang: Jurnal Hukum Lex Generalis*, Vol. 2, No. 7 (2021)
- Yulianto, Taufiq, "Keadilan Restoratif Sebagai Alternatif Penyelesaian Perkara Tindak Pidana", *ORBITH*, Vol. 19, No. 2 (2023)
- Affan, Ibnu dan Gema R., "Penerapan Restorative Justice dalam Perkara Penyalahgunaan Narkotika Berbasis Hukum Progresif", *Jurnal Hukum Kaidah: Media Komunikasi dan Informasi Hukum dan Masyarakat*, Vol. 23, No. 1 (2024)
- Gilang Fajar Shadiq. "Penegakan Hukum Terhadap Tindak Pidana Narkotika New Psychoactive Substances Berdasarkan Undang Undang Nomor 35 Tahun 2009 Tentang Narkotika". *Wawasan Yuridika* 1, no 1 (2017) :35-53
- Haposan Sahala Raja Sinaga. "Penerapan Restorative Justice Dalam Perkara Narkotika Di Indonesia". *Jurnal Hukum Lex Generalis* 2, no 7 (2021): 528-541
- Pamungkas, C.W.A, "Penerapan Restoratif Justice Pada Korban Penyalahguna Narkoba di Wilayah Hukum Polda Sumatera Utara (Studi di Direktorat Reserse Polda Sumatera Utara", *Tesis. Fakultas Hukum Universitas Islam Sultan Agung* (2023)

Books:

- Abintoro Prakorso, 2013, *Kriminologi dan Hukum Pidana*, Laksbang Grafika, Yogyakarta

Siswanto Sunarso, 2014, *Viktimologi dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta

Dani Krinawati & Niken Subekti Budi Utami, 2014, *Pelaksanaan Rehabilitasi Bagi Pecandu Narkotika Pada Tahap Penyidikan Pasca Berlakunya Peraturan Bersama 7 (Tujuh) Lembaga Negara Republik Indonesia*, Hasil Penelitian Fakultas Hukum Universitas Gadjah Mada, Yogyakarta.

Adami Chazawi, 2007, *Pelajaran Hukum Pidana 1*, PT Raja Grafindo, Jakarta.

Regulation:

Law Number 35 of 2009 concerning Narcotics.

Law Number 5 of 1997 concerning psychotropics.

Pancasila.

Regulation of the Head of the National Narcotics Agency No. 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions

SEMA No. 4 of 2010 concerning the Placement of Drug Abusers, Victims of Drug Abuse and Drug Addicts in Medical Rehabilitation and Social Rehabilitation Institutions.

The 1945 Constitution of the Republic of Indonesia.