

The Role of The Prosecutor in Case Settlement Criminal Acts of Drug Abuse with a Restorative Justice Approach (Case Study at The Kulon Progo District Attorney's Office)

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Abstract. *The prosecutor has a very vital and central role in carrying out the enforcement of law, especially in the application of Restorative Justice in Criminal Acts. The settlement of cases carried out by the Prosecutor against narcotics users is not only about punishing the perpetrators, but also provides the opportunity to rehabilitate, especially for users who are trapped in dependency problems who are not perpetrators involved in the production and distribution of narcotics. The approaches used in this writing are the statute approach, the conceptual approach, and the document analysis approach. This study uses a problem formulation, namely the Role of the Prosecutor's Office in Solving Narcotics Abuse Criminal Cases with a Restorative Justice Approach; Weaknesses in the Settlement of Narcotics Abuse Criminal Cases with a Restorative Justice Approach; The Role of the Prosecutor's Office in Solving Narcotics Abuse Criminal Cases with a Restorative Justice Approach in the future. The approach method used is normative juridical, the research specification is descriptive analytical. Data types and sources use primary data and secondary data. The data collection method is carried out through literature studies and the data analysis method is qualitative analysis. The theories to analyze the research are authority theory, legal system theory, and restorative justice theory. Based on the results of the study, it can be concluded that the Prosecutor's Office has a major role in determining the termination of prosecution for narcotics addicts with rehabilitation conditions, as a link between law enforcement and rehabilitation needs. However, restorative justice practices still face judicial constraints, inter-institutional coordination, capacity of rehabilitation facilities, as well as social influence and post-rehabilitation monitoring. In the future, the role of the Prosecutor's Office is expected to be more strategic and*

comprehensive by strengthening mechanisms, coordination, and rehabilitation capacity so that case settlement is fairer, more effective, and supports the social recovery of suspects and community protection.

Keywords: *Narcotics Users; Prosecution Termination; Restorative Justice; Rehabilitation.*

1. Introduction

Indonesia is a state based on the rule of law (*rechtsstaat*), meaning that all aspects of national and state life, including governance, must be based on applicable legal regulations. This concept is explicitly enshrined in Article 1, paragraph 3 of the 1945 Constitution, which affirms that Indonesia is a state based on the rule of law. Therefore, the supremacy of law is a key principle, stating that there is no absolute power, and every action of the government and society must comply with the law to ensure justice, certainty, and the protection of human rights for every citizen. Implementing this principle is an essential pillar in realizing good and clean governance, and ensuring that no individual or institution is above the law.

Joost Jaspers, a lawyer from the Netherlands, explains:¹"Criminal law is perhaps the most well-known area of law within public law." This expression can be said to accurately describe the conditions in Indonesia, where the general public often associates law with "prison" and "police." Indeed, if we examine the views of legal experts, such as CST Kansil, who states that public law is the law that regulates the relationship between the state and its apparatus or the relationship between the state and its citizens.², then of course criminal law is what Jan Remmelink refers to as "law containing strict commands and prohibitions" in the context of protecting certain legal objects or interests for which the State has the authority (*ius puniendi*).³, then it is certainly correct to say that criminal law is public law.

The description of criminal law as a law that provides protection for legal

¹ Joost Jaspers, "Wat is publiekrecht?" <https://jaspersadvocaat.nl/kennisbank/begrippen/publiekrecht/>, accessed on December 1, 2021

²CST Kansil, Introduction to Indonesian Law and Legal System, 9th Edition, Balai Pustaka, Jakarta, 2018, p. 76.

³Jan Remmelink, Criminal Law (Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code), Jakarta, Gramedia Pustaka. 2003, p.9.

interests, Toetik Rahayuningsih states that:⁴

"The general purpose of criminal law is to protect the interests of individuals or human rights, as well as the interests of society and the state. This protection must be balanced, meaning protection from crimes/reprehensible acts by individuals and from arbitrary government action."

Based on this description, it can be understood that criminal law is law created to protect the interests of individuals or human rights, as well as the interests of society and the state. Regarding these legal interests, Didik Endro Purwoleksono outlines the classification of legal interests protected by criminal law:⁵

1. Human life
2. Human body
3. Honor
4. Property

There are legal interests that must be protected, so one way to concretize this criminal law so that it can truly be enforced is by having criminal sanctions (straaf), which are in fact one of the objects of study of penal law.⁶ Tri Andrisman defines criminal sanctions as:⁷"Suffering or misery that is deliberately imposed on a person who commits an act that fulfills certain conditions." With the existence of this criminal sanction, humans, according to Erich Seligmann Fromm, are entities whose essence cannot be separated from freedom.⁸, then his freedom is limited because the person concerned fails to comply with laws, rules or orders.⁹

It can be said that criminal sanctions are a mechanism that makes people comply with criminal law (in casu: not committing criminal acts), because it will cause discomfort in the person who receives the sanction. The feeling of discomfort that will arise is consistent with R. Soesilo's opinion that criminal sanctions will

⁴Toetik Rahayuningsih, "Return of Assets Proceeding from Crime as an Alternative to Combating Money Laundering Crimes", Dissertation, Doctoral Program, Legal Studies Program, Faculty of Law, Airlangga University, 2011, p. 103.

⁵Didik Endro Purwoleksono, *Criminal Law: A Strand of Thoughts*, Airlangga University Press, Surabaya, 2019, p. 6.

⁶ Djoko Prakoso, *Penitentiary Law in Indonesia*, Liberty, Yogyakarta, 1988, p. 14.

⁷Tri Andrisman, *Principles and Basis of Indonesian Criminal Law Rules*, UNILA, Lampung, 2009, p. 8.

⁸Nana Sutikna, "The Ontological Dimension of Freedom According to Erich Fromm: Its Relevance for the Development of the Press in Indonesia", Dissertation, Doctoral Program, Philosophy Study Program, Faculty of Philosophy, Gadjah Mada University, Yogyakarta, 2013, p. 4.

⁹Bryan A. Garner states: "A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovered abuse)" See Bryan A. Garner, *Black's Law Dictionary*, Tenth Edition, Thomson Reuters, St. Paul, 2014, p. 15441.

cause a feeling of discomfort (misery).¹⁰The existence of criminal sanctions as a mechanism to prevent someone from committing a crime is parallel to a classical legal adage, namely: "quia peccatum, sed ne peccetur" (free translation: a wise person does not punish because a sin is committed, but so that a sin does not occur).¹¹

The various types of sanctions in Indonesia are based on Article 10 of the Criminal Code (hereinafter referred to as the KUHP):¹²

- a. Principal crime:
- b. Death penalty;
- c. Imprisonment;
- d. Imprisonment;

Article 10 of the Criminal Code clearly states that there are two types of sanctions that can be imposed: principal penalties and additional penalties. The difference between principal penalties and additional penalties is that principal penalties are independent of other penalties, meaning they can be imposed on the convict independently.¹³ The additional punishment is only an addition to the main punishment, so it cannot be imposed without the main punishment (not independent).¹⁴ Additional penalties can only be imposed in conjunction with the principal penalty. In construction, the imposition of additional penalties is optional, meaning the judge is not required to impose additional penalties.¹⁵

Of the various sanctions, imprisonment is one of the sanctions often stipulated as a criminal threat in various laws and regulations. In addition to the Criminal Code, since the beginning of the reform era (1998) until its formation in 2016, there have been ±563 new laws and regulations, 154 of which are criminal rules

¹⁰R. Soesilo, *Criminal Code*, Politeria, Bogor, 1974, p. 30.

¹¹Andreas Schilling, "Nemo prudens punit quia peccatum est sed ne peccetur – Strafen und Strafzwecke im römischen Strafrecht", *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte*, Vol. 21, no. 1, 2017, p.159-175.

¹²In 1918, during the Dutch colonial era, the Criminal Code (hereinafter referred to as WvS) began to be enforced in Indonesia based on the 1915 Staatsblad number 732 with the name *Wetboek van Strafrecht voor Nederlandsch-Indie* (WvSvNI). In its development. After Indonesia's independence, based on Law Number 1 of 1946 concerning Criminal Law (UU 1/1946), WvSI was changed to *Wetboek van strafrecht* which is now often called the Criminal Code and was then enforced in Indonesia. See Taufik Rachman, "Can The Indonesian Criminal Justice System Be Enhanced By Replacing The Mandatory Prosecution System With A Discretionary One, Like That Used In Australia?", *Dissertation*, Victoria University, 2016, pp. 97-98.

¹³Leden Marpaung, *Principles-Theory-Practice of Criminal Law*, Second Edition, Sinar Grafika, Jakarta, 2005, p. 107.

¹⁴Didik Endro Purwoleksono, *Criminal Law*, Airlangga University Press, Surabaya, 2016, p. 97.

¹⁵Alexandra EJ Timbuleng, "Criminal Acts in the Field of Licensing According to Law Number 11 of 2010 Concerning Cultural Heritage", *Lex Crimen*, Vol. 9, No. 2, 2010, p. 31.

and provisions.¹⁶ A total of 1,601 (one thousand six hundred and one) acts were categorized as criminal acts, with a proportion of 716 (seven hundred and sixteen) acts being new criminal acts, the majority of which are punishable by imprisonment.¹⁷ It was recorded that at least 654 criminal acts (91.34%) were criminal acts with imprisonment sanctions, 45 criminal acts (6.28%) with imprisonment sanctions, and 17 criminal acts (2.37%) with fine sanctions.¹⁸

So With numerous laws and regulations that carry the penalty of imprisonment, it is not surprising that many judges impose such sentences. This, in turn, has led to overcrowding in correctional institutions (Lapas) and detention centers (Rutan). This overcrowding can be seen, for example, in data from the Directorate General of Corrections at the Ministry of Law and Human Rights of the Republic of Indonesia (Kemenkumham) as of September 12, 2021, which shows that prisons in 33 Regional Offices (LKkanwil) have a capacity of 134,835,000 inmates, while the total number of inmates has reached 271,007.¹⁹ This means that there is an excess capacity of 136,173 prison inmates or twice the total (101%).

The continued use of prison sentences against drug abusers indiscriminately seems counterproductive to one of the objectives stipulated in Article 4 letter d of Law Number 35 of 2009 concerning Narcotics, which was later amended by Article 63 of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Narcotics Law), namely to guarantee the arrangement of medical and social rehabilitation efforts for drug abusers and addicts. In the Narcotics Law, when viewed from the perspective of the suspect in a narcotics case, the suspect's condition can be classified into 3 (three) groups.²⁰:

- a. Users/addicts occupy the largest number;
- b. Distributors/sellers are in second place;

¹⁶The types of criminal penalties in Article 10 of the Criminal Code, including imprisonment, also apply to offenses written outside the Criminal Code, unless the provisions of the law stipulate differently. This is based on Article 103 of the Criminal Code which stipulates that: "The provisions in Chapters I to VIII of this book also apply to acts which are threatened with criminal penalties by other statutory provisions, unless otherwise stipulated by law." See Saptono Rahardjo, *Kitab Undang-undang Hukum, Buana Ilmu Populer*, Jakarta, 2017, p. 636.

¹⁷Erasmus AT Napitupulu et.al., *Non-Imprisonment: Regulation, Implementation, and Projection of Alternative Non-Imprisonment Sentencing in Indonesia*, Institute for Criminal Justice Reform (ICJR), Jakarta, 2019, p.2.

¹⁸Office of the High Commissioner for Human Rights and International Bar Association, , *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, and Lawyers*, UN Publications, New York, 2003, p. 373.

¹⁹ Viva Budy Kusnandar, "Almost All Prisons in Indonesia Are Overcrowded"<https://databoks.katadata.co.id/datapublish/2021/09/13/hampir-semua-lapas-di-indonesia-kelebihan-kapasitas>, accessed December 1, 2021

²⁰ Moh. Taufik Makarao, Suhasril, and Moh. Zakky AS, *Narcotics Crime*, Ghia Indonesia, Jakarta, 2003, p. 74.

c. Suppliers/manufacturers with relatively smaller numbers.

In addition to the several groups of perpetrators of narcotics crimes mentioned above, in fact the Narcotics Law also uses another concept that is categorized as a victim of narcotics abuse. In the explanation of Article 54 of the Narcotics Law, it is regulated that: "What is meant by "victim of narcotics abuse" is a person who accidentally uses narcotics because he was persuaded, tricked, deceived, forced, and/or threatened to use narcotics." The existence of the concept of "victim of narcotics abuse" in the Narcotics Law is unfortunately not followed by certain legal consequences, such as the differentiation of substantive criminal process mechanisms between "victims of narcotics abuse" and "narcotics abusers", so that "victims of narcotics abuse" also have the potential to be subject to prison sanctions, as regulated in Article 127 paragraph (1) of the Narcotics Law. This is consistent with the opinion of Mohamad Dofir, namely:²¹

In accordance with Peter Mahmud Marzuki's opinion, legal issues within the scope of dogmatics arise if:²²(1) the parties in the case or those involved in the debate put forward different or even conflicting interpretations of the regulatory text due to the ambiguity of the regulation itself; (2) there is a legal vacuum and (3) there are different interpretations of the facts." Based on this opinion, if associated with the description above regarding the existence of conflicting legal rules and the ambiguity of legal rules, then it can be said that there is a legal issue. Therefore, this research will examine the related settlement of narcotics abuse criminal cases by prosecutors using a restorative justice approach with the title "The Role of the Prosecutor's Office in Resolving Narcotics Abuse Criminal Cases Using a Restorative Justice Approach (Case Study at the Kulon Progo District Attorney's Office".

2. Research Methods

The type of research used in writing this thesis is normative legal research, namely the enforcement or implementation of normative legal provisions (in abstracto) in specific legal events (in concrete) and their results. In normative legal research, research will be conducted on legal documents related to the relevant parties.

Type The research used in this study is legal research, which is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is conducted not only to learn something, but also to solve existing legal issues. Conducting legal research is not simply a process of discovering applicable

²¹Mohammad Dofir, "Criminal Justice System in the Framework of Combating Narcotics Abuse.", Dissertation, Doctoral Program, Legal Studies Program, Faculty of Law, Airlangga University, 2015, p. 103.

²²Peter Mahmud Marzuki, Legal Research (Revised Edition), Kencana Prenadamedia Group, Jakarta, 2017, p.103.

laws in social life, as Cohen stated. It is also a process of creating laws to address the problems faced.²³In the context of this legal research, it is conducted to resolve related problems settlement of drug abuse criminal cases by prosecutors using a restorative justice approach.

3. Results and Discussion

3.1. The Role of the Prosecutor's Office in Resolving Narcotics Abuse Cases Using a Restorative Justice Approach

The role of the Prosecutor's Office in resolving drug abuse cases using a restorative justice approach is part of the transformation of criminal law, prioritizing humanitarian values and social recovery. Drug abuse is fundamentally viewed not only as a legal violation but also as a health, social, and moral issue requiring comprehensive treatment.²⁴Within this framework, the Prosecutor's Office not only carries out its prosecutorial function in a repressive manner, but also has the responsibility to provide more humane solutions by taking into account the interests of victims, perpetrators, and the community.

The role of the Prosecutor's Office in criminal law enforcement is not limited to prosecuting suspects in court, but also plays a crucial role as a case controller (*dominus litis*), determining the direction of case resolution. In the context of drug abuse crimes, this authority is crucial because it involves handling perpetrators who are essentially victims of substance abuse. The Prosecutor's Office is required to balance legal interests, the interests of the community, and the interests of both the victims and suspects themselves.

This is evident in the case of narcotics abuse in the name of the suspect FH by the Kulon Progo District Attorney. Based on the facts revealed in the investigation, the suspect was arrested with evidence of 2 (two) plastic clips containing narcotics of the type of crystal methamphetamine weighing 0.36 (zero point thirty six) grams and 0.32 (zero point thirty two) grams with a total gross weight of 0.68 (zero point sixty eight) grams. The suspect bought crystal methamphetamine from an intermediary for Rp. 1,600,000, - (one million six hundred thousand rupiah), then consumed the narcotic type of crystal methamphetamine by preparing a crystal methamphetamine smoking tool from a cleo bottle and the suspect prepared a gas lighter, then the suspect filled the cleo bottle with water as much as ½ bottle and the suspect took the crystal methamphetamine with a straw, the crystal methamphetamine was put into a glass pipette. Next, the suspect burned the glass pipette with a gas lighter after the crystal methamphetamine attached to the glass pipette melted and smoke appeared, then the suspect inhaled it with a straw (bong), the smoke was inhaled

²³PeterMahmud Marzuki Op.cit., p.130.

²⁴Subagyo Partodiharjo, Get to Know Drugs and Fight Against Drug Abuse, Gelora Aksara Pratama, Jakarta, 2012, p.11.

through the mouth and then released through the mouth, after approximately 3 puffs, the smoking device was placed on the floor and the suspect cleaned it. When the raid was carried out, the suspect was in a condition where he had just used the narcotics, and the urine test results showed positive for amphetamine and methamphetamine.

Legally, the Suspect's actions can be charged with Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, which regulates the prohibition of possessing or controlling class I narcotics without a permit, as well as Article 127 paragraph (1) letter a which specifically ensnares narcotics abusers for themselves. However, the Kulon Progo District Attorney in this case did not immediately take the conventional criminal route through the courts. Based on the Integrated Assessment Recommendation Number: R/452/VI/KA/PB/2025/BNNP dated June 11, 2025, the suspect FH was qualified as a methamphetamine narcotics addict with a moderate level of dependence and a regular pattern of use. And based on the Minutes of the Assessment Implementation Meeting Number: BA.ASM/028/VI/2025/BNNP DIY dated June 11, 2025 with the conclusion, the suspect is categorized as a moderate narcotics addict, has never undergone rehabilitation, is not involved in the illegal trafficking network, and is a pure user (end user), and then the suspect was subjected to a laboratory examination concluded, with the results Positive (+) Amphetamine and Positive (+) Methamphetamine. From a medical and social aspect, the suspect is more appropriately viewed as a victim of narcotics abuse rather than a criminal who must be sentenced to prison.

These considerations are in line with the mandate of Article 127 of Law Number 35 of 2009 concerning Narcotics, which states that drug addicts are required to undergo medical and social rehabilitation. On this basis, the Prosecutor's Office uses its authority in accordance with the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Criminal Cases with a Restorative Justice Approach, then based on the Order for the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation with a Restorative Justice Approach Number: Print-1408/M.4.14/Enz.2/07/2025 (RJ-1) to request a termination of prosecution (deponering) on the condition that the suspect undergoes four months of inpatient rehabilitation at NAWACITA JOGJA.

Based on the Order for Settlement of Narcotics Abuse Criminal Case Handling Through Rehabilitation with Restorative Justice Approach Number: PRINT- 1408 / M.4.14 / Enz. 2/07/2025 dated July 3, 2025 has implemented the Approval for Case Settlement Based on Restorative Justice of the Head of the Yogyakarta High Prosecutor's Office Number: R-119 / M.4.4 / Enz.2 / 07/2025 dated July 15, 2025 which ordered to carry out rehabilitation at the Nawacita Jogja Community-Based Addiction Recovery House (PABM) located at Jl. Raya Kadisoka, Kadisoko, Purwomartani, Kalasan District, Sleman Regency, Yogyakarta for suspect FH for 4

(four) months and Social Rehabilitation in coordination with the relevant agencies. For this purpose, the suspect's progress can be reported in stages over 2 (two) weeks during the medical rehabilitation and social rehabilitation processes.

This step illustrates the strategic role of the Prosecutor's Office in implementing a restorative justice approach. The Prosecutor's Office goes beyond simply prosecuting, but also assesses the legal merits and objectives of sentencing. This restorative approach emphasizes restoration, not mere retribution. The suspect, who is the breadwinner of the family, needs rehabilitation to resume his or her social and economic role in society, rather than simply serving a prison sentence, which could potentially worsen the family's situation.

The pre-exposure process at the Yogyakarta High Prosecutor's Office is an important part of the Prosecutor's Office's accountability in implementing restorative justice. The basis of this Forum is a Request for case resolution based on Restorative Justice on behalf of suspect FH who is suspected of violating First Article 112 paragraph (1) or Second Article 127 paragraph (1) letter a of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics Number: (RJ-33) involving the prosecutors handling the case to assess the feasibility of the proposal to stop the prosecution, so that the decision is not taken unilaterally by the Public Prosecutor, but based on collective and objective considerations. From the results of the pre-exposure, it was agreed that the suspect is worthy of being placed on the rehabilitation path, considering that all formal and material requirements have been met, starting from the amount of evidence that is still in the one-day use category, the suspect's status as an end user, to the existence of family guarantees to support the rehabilitation program, for which the Kulon Progo District Prosecutor's Office will later issue a letter with the code (RJ-34)

This case demonstrates that the role of the Prosecutor's Office is no longer merely that of a "public prosecutor" tasked with ensuring that perpetrators receive criminal penalties, but rather as a guardian of the public interest, prioritizing substantive justice over mere legal certainty. The resolution of narcotics cases using a restorative justice approach provides a concrete example of how the law functions not only as a repressive mechanism, but also as a preventive and rehabilitative one. In this way, the Prosecutor's Office strives to create a more humane and just criminal justice system that favors community recovery, particularly for those who are victims of drug abuse.

The Prosecutor's Office acts as an institution that can initiate the termination of prosecution through restorative justice mechanisms when a case meets certain criteria. In drug abuse crimes, this role is realized by assessing the suspect's background, the extent of the evidence found, involvement in the distribution network, and history of drug use. If the suspect is proven to be only a final user, not part of a syndicate or illicit trafficking network, and the evidence found is

relatively small and appropriate for personal consumption, the Prosecutor's Office can prioritize a rehabilitation approach over imposing a prison sentence.

1. Basis of the Prosecutor's Authority

The Prosecutor's Office's authority to resolve drug abuse cases through a restorative justice approach is firmly grounded in philosophy, juridical, and technical terms. Three main foundations reinforce the Prosecutor's central role: the principle of *dominus litis*, the substantive legal framework of the Narcotics Law, and technical instruments issued by the Indonesian Prosecutor's Office.

First, the Prosecutor's Office's authority rests on the principle of *dominus litis*. This principle places the Prosecutor in control of the case, empowered to determine the final direction of a criminal case. Within this principle, the Prosecutor can decide whether a case should proceed to prosecution, be resolved through alternative methods, or even be discontinued, as long as it remains within the applicable legal framework.²⁵ The Indonesian Attorney General's Guideline Number 18 of 2021 explicitly provides the Prosecutor's Office with the authority to exercise this authority, particularly in narcotics abuse cases, so that case resolution is not solely oriented toward punishment but also toward recovery and rehabilitation for the perpetrator.

Second, the Prosecutor's Office's authority is also based on the substantive legal framework stipulated in Law Number 35 of 2009 concerning Narcotics. Several provisions in this law clearly provide a basis for the Prosecutor's Office to prioritize rehabilitation. Article 54 states that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision demonstrates that the state views drug addicts and victims not only as lawbreakers but also as individuals in need of help. Furthermore, Article 103 authorizes judges to decide on rehabilitation for drug addicts, either at the request of the individual or based on recommendations from authorities. Article 127 further emphasizes that drug abusers for their own sake can be punished, but at the same time, it also opens up discretion for judges and law enforcement to place perpetrators in rehabilitation programs. These norms demonstrate that the legal orientation is not merely repressive but also has a rehabilitative dimension.

2. The Role of the Prosecutor's Office at Each Stage of the Process

a. Pre-Prosecution Stage

In the pre-prosecution stage, the Prosecutor's Office has a very important role in screening or selecting drug abuse cases to determine whether the case is worthy

²⁵Satjipto Rahardjo, "Progressive Law: An Introduction," *Journal of Progressive Law*, Vol. 1, No. 1, 2015, p. 1

of being resolved through a restorative justice approach with a rehabilitation mechanism.²⁶ This process not only emphasizes the formal legal aspects, but also emphasizes the substantive and sociological aspects, so that the decision taken is not only based on the fulfillment of the elements of the crime, but also takes into account the personal condition of the suspect and his social background.

One of the initial steps taken by the Prosecutor's Office is to profile the suspect, known as the "know your suspect" principle. Through this principle, the Prosecutor's Office strives to ensure that the suspects facing the case are truly end-users or addicts of narcotics, and not part of a drug trafficking network, either as a dealer or distributor. This identification is crucial because only those who abuse drugs for their own benefit can be directed to rehabilitation, while those involved in illegal drug trafficking networks must be prosecuted according to applicable law.²⁷

At this stage, the Prosecutor's Office also ensures the evidentiary aspect through scientific mechanisms or scientific evidence. Some documents typically examined include urine test results indicating the presence of certain substances such as amphetamine or methamphetamine, laboratory test results on the recovered evidence, and an analysis of the amount of evidence adjusted to the threshold for personal use. If the amount of evidence exceeds the reasonable daily consumption limit, the case cannot be processed through restorative justice because there are indications of involvement in drug trafficking.

3.2. Weaknesses in Resolving Narcotics Abuse Crimes Using a Restorative Justice Approach

The application of restorative justice in drug abuse cases, as seen in the FH case, does present significant opportunities for addict recovery and reduce the burden on the criminal justice system. However, in practice, this approach faces various structural, social, and implementation obstacles, often limiting its effectiveness. From a legal perspective, although Law Number 35 of 2009 provides space for addict rehabilitation through Articles 54, 127, and 103, this provision does not provide clear mechanisms for the application of prosecution termination. As a result, law enforcement officials often face multiple interpretations regarding the criteria for addicts who are eligible for rehabilitation and which cases should still be brought to court. This creates inconsistent implementation, where decisions can be influenced by officers' personal perceptions, social proximity, or external pressures. This situation is exacerbated by the dominance of the retributive paradigm in the criminal justice system, resulting in restorative justice

²⁶Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

²⁷Winanti, Atik, "Rehabilitation Efforts for Narcotics Addicts in the Perspective of Criminal Law," ADIL: Journal of Law 10.1 (2019), p. 142.

being applied only half-heartedly, leaving a gap of injustice for other addicts who may have similar conditions but are denied the opportunity for rehabilitation.²⁸

Ambiguous legal frameworks and coordination between law enforcement agencies and rehabilitation institutions also pose significant obstacles. In FH's case, although the Bantul District Attorney's Office had filed a request to halt prosecution and approved four months of inpatient rehabilitation at NAWACITA Jogja, the process still required approval from the Yogyakarta High Prosecutor's Office. This demonstrates the existence of multiple procedures that can delay implementation. Furthermore, the capacity of rehabilitation facilities in various regions remains limited, both in terms of professional staff, infrastructure, and capacity. This can hinder rehabilitation opportunities even when authorities agree to provide restorative treatment. This obstacle becomes even more pronounced when the number of addicts requiring services exceeds available capacity, leaving restorative justice accessible only to a small number of fortunate individuals or those who meet certain requirements.

From a social and cultural perspective, the negative stigma against drug addicts also poses a serious obstacle. Society often views drug users as equivalent to dealers or dealers, thus perceiving rehabilitation as a form of "forgiveness" that is detrimental to the public. This perception not only diminishes the legitimacy of restorative justice but also pressures law enforcement to maintain a retributive approach to maintain the legal image. Family and social support, essential prerequisites for successful rehabilitation, are also not always optimal.²⁹In FH's case, family support was adequate, but in general, many addicts come from environments that lack understanding or readiness to support the recovery process. Without this support, addicts are vulnerable to relapse into old patterns after rehabilitation, making the goal of restorative justice, which aims for long-term recovery, difficult to achieve.

Another weakness arises in the implementation aspect, where restorative justice is often viewed simply as a suspension of prosecution with the condition of rehabilitation, without ongoing post-rehabilitation monitoring and evaluation. The absence of an effective monitoring system leads to the potential for addicts to return to drug use after undergoing rehabilitation programs, thus increasing the risk of relapse. This situation is exacerbated by the subjectivity of law enforcement officials in determining the appropriateness of a suspension of prosecution, which can be influenced by personal closeness, economic power, or political pressure, resulting in unequal opportunities for rehabilitation.

²⁸*Ibid.*

²⁹. Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

Overall, the FH case demonstrates that the weaknesses of restorative justice extend beyond individual addicts to an ambiguous legal framework, suboptimal institutional coordination, strong social stigma, limited rehabilitation facilities, a minimal post-rehabilitation monitoring system, and the potential for a reduced deterrent effect. For this approach to be truly effective, comprehensive reform is needed, ranging from strengthening the legal framework, increasing the capacity of rehabilitation institutions, fostering family and community awareness, and establishing a sustainable monitoring mechanism. Restorative justice can function as a just and valid legal instrument that provides tangible benefits for the recovery of addicts and the prevention of drug crimes in society.

The restorative justice approach to resolving drug abuse crimes offers significant benefits, particularly in the rehabilitation of addicts. However, its implementation is not without several weaknesses that can impact its effectiveness and sustainability. These weaknesses can be examined from a legal, institutional, social, and practical perspective.

1. Weaknesses of the Legal Aspect

The weakness of the legal aspect in the application of restorative justice in drug abuse cases in Indonesia can be traced to the still limited legal framework that is clear, firm, and comprehensive. Law Number 35 of 2009 concerning Narcotics has actually provided space for addicts to undergo rehabilitation as regulated in Article 54 which states that addicts and victims of drug abuse are required to undergo medical and social rehabilitation, and Article 103 which gives the authority to judges to decide on rehabilitation as a substitute for criminal punishment.³⁰ However, the formulation of these norms is not accompanied by a detailed description of the procedures, criteria, or mechanisms for implementing rehabilitation within a restorative justice framework. These general provisions, however, give rise to multiple interpretations, resulting in law enforcement officials at the investigative, prosecution, and court levels often having differing interpretations of how to handle drug addicts. As a result, in some cases, some investigators or prosecutors prioritize rehabilitation as a solution, while in others, others insist on prison sentences, arguing that addicts remain criminals. This inconsistency creates gaps in law enforcement practices and undermines the principle of legal certainty that should be the soul of the criminal justice system.³¹

Legal weaknesses are also evident in the legal status of drug addicts, which continues to generate considerable debate. Addicts are often positioned in a dilemma: on the one hand, they are considered criminals who violate the law for

³⁰. Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

³¹Husmiati et al., *Competence of Social Workers in Social Rehabilitation Services in Dib Alai/Loka in the New Order Era* (Jakarta: Center for Welfare Research and Development, 2020), 13.

consuming narcotics without permission, but on the other, they are also victims of drug trafficking networks, victims of substance dependence, and even victims of weaknesses in the social and public health systems. This paradox often results in restorative justice in drug cases in Indonesia being suboptimal, hampered by a persistent retributive paradigm. Law enforcement officials, including police, prosecutors, and judges, still tend to emphasize punishment with the aim of providing a deterrent effect, rather than emphasizing restoration, which should be more relevant to addicts. The unclear legal framework exacerbates the situation, as authorities seem to lack a solid foundation for prioritizing rehabilitation over punishment, resulting in the practice of restorative justice in drug cases appearing half-hearted.

2. Weaknesses of Institutional Aspects

Institutional weaknesses in the application of restorative justice in drug abuse cases are also a crucial issue. The Prosecutor's Office holds a central position, having the authority to determine whether a case is suitable for restorative justice or whether it should proceed to trial. However, this dominant authority does not necessarily guarantee smooth implementation, as the success of restorative justice in drug cases requires cross-institutional coordination, particularly between the Prosecutor's Office, the Police, and the National Narcotics Agency (BNN).³²In practice, coordination between law enforcement agencies remains strained. One frequently encountered issue is differing perceptions regarding the legal status of perpetrators, whether they are categorized as users, addicts, or dealers. When the police deem a perpetrator worthy of prosecution as a dealer, while the prosecutor's office emphasizes that the perpetrator is more accurately described as an addict in need of rehabilitation, a tug-of-war between the institutions often leads to uncertainty and even failure in implementing a restorative justice approach due to a lack of consensus among law enforcement officials.

Furthermore, institutional weaknesses are also evident in the limited capacity of rehabilitation institutions in Indonesia. Restorative justice in drug cases is fundamentally dependent on the availability of rehabilitation facilities, both medical and social. However, not all regions have adequate rehabilitation facilities. Large urban areas may have referral hospitals or specialized drug rehabilitation centers, but in many other areas, especially in rural areas or districts far from city centers, such facilities remain very limited. This disparity impacts the uneven implementation of restorative justice. Addicts in urban areas

³²Husmiati et al., *Competence of Social Workers in Social Rehabilitation Services in Diklat/Loka in the New Order Era* (Jakarta: Center for Welfare Research and Development, 2020), 13.

are more likely to access rehabilitation, while addicts in remote areas still end up behind bars.³³

Capacity issues in rehabilitation institutions extend beyond the number of facilities to their quality and capacity. Many rehabilitation centers lack professional staff, such as addiction specialists, clinical psychologists, and trained counselors. The available facilities and infrastructure are often substandard, with limited treatment rooms, therapy facilities, and social reintegration programs for post-rehabilitation patients.³⁴ Under these conditions, although the Prosecutor's Office has proposed rehabilitation as a form of restorative justice, in practice, this proposal is often hampered by the inability of rehabilitation institutions to accommodate or provide appropriate services. As a result, many addicts end up being sentenced to prison again due to the lack of adequate alternatives.

Institutional weaknesses also relate to coordination across non-law enforcement sectors. A restorative justice approach to drug cases should ideally involve other ministries or institutions responsible for social and health aspects, such as the Ministry of Health, the Ministry of Social Affairs, and local governments. However, the involvement of these non-law enforcement actors remains relatively minimal. Local governments, for example, which should play a role in providing community-based rehabilitation facilities, have not yet optimally supported rehabilitation programs due to budget constraints and the low priority of drug issues in regional development agendas. This lack of cross-sectoral coordination often leads to restorative justice stalling at the legal discourse level, without being balanced by comprehensive institutional readiness.

Sectoral egos among law enforcement agencies also contribute to obstacles. The police, the prosecutor's office, and the National Narcotics Agency (BNN) often maintain their respective authority, so that what should be collaborative cooperation turns into a struggle for authority. As a result, restorative justice, which should emphasize synergy in recovery, is hampered by internal dynamics between institutions. These sectoral egos also lead to a lack of effective communication channels, so information about an addict's rehabilitation status is often poorly conveyed from one institution to another. This has the potential to lead to overlapping treatment or even repeated administrative processes, which actually delays case resolution.

3.3. The Role of the Prosecutor's Office in Resolving Narcotics Abuse Cases Using a Restorative Justice Approach in the Future

Narcotics crimes are essentially crimes related to the possession, control, abuse, or illicit trafficking of narcotics. In this context, perpetrators can be classified into

³³Ibid.

³⁴. Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

two main categories: abusers and dealers. Abusers are individuals who possess narcotics for their own consumption, without any intention of selling or distributing them, so the legal focus is directed towards recovery and rehabilitation. Meanwhile, dealers are those who possess or control narcotics with the intention of distributing, selling, or trading them for personal gain, so their handling focuses more on punishment and eradicating narcotics distribution networks.³⁵

The elements of the crimes in these two categories are essentially the same: possessing, controlling, providing, or storing narcotics. However, the difference lies in the intent and purpose of such possession. If possession is solely for personal consumption and not for sale, then the act is categorized as abuse, as regulated in Article 127 of Law Number 35 of 2009 concerning Narcotics. Within the Indonesian legal framework, this approach aligns with international principles, such as those set out in the 1961 Single Convention on Narcotic Drugs and the 2009 Political Declaration and Plan of Action, which emphasize the need for a balance between demand reduction and supply control.³⁶

Law Number 35 of 2009 explicitly adopts the "Balance Approach" principle, where demand reduction is the primary focus in dealing with drug abusers, through rehabilitation, education, and social recovery programs. This demonstrates that law enforcement in Indonesia does not solely emphasize deterrence or retributive punishment, but also prioritizes protecting public health and individual recovery as strategic objectives.³⁷ Thus, the Indonesian narcotics legal system attempts to balance social, health, and security interests, ensuring that the legal approach is not only repressive but also preventive and restorative.

The role of the Prosecutor's Office in resolving drug abuse cases using a restorative justice approach in the future has a very complex and significant strategic depth. The FH case is a clear illustration that the Prosecutor's Office is not merely a prosecutor focused solely on formal punishment, but also functions as a decision-maker capable of balancing legal, social, and health aspects in the case resolution process. In this context, the Prosecutor's Office positions itself as a mediator connecting the formal legal framework with the addict's rehabilitation needs, so that the decision to discontinue prosecution is not merely administrative, but also considers the long-term impact on the suspect's behavioral recovery.

³⁵Winanti, Atik, "Rehabilitation Efforts for Narcotics Addicts in the Perspective of Criminal Law," *ADIL: Journal of Law* 10.1 (2019), p. 142.

³⁶Satjipto Rahardjo, "Progressive Law: An Introduction," *Journal of Progressive Law*, Vol. 1, No. 1, 2015, p. 1

³⁷. Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

This strategic function is clearly visible when the Prosecutor's Office assesses the suitability of suspects for rehabilitation based on professional assessment data from the National Narcotics Agency (BNNK), including user categories, usage patterns, and levels of addiction, so that the restorative justice approach is applied with scientific and factual considerations.³⁸ Such decisions require the Prosecutor's Office to possess sharp analytical skills, not only examining evidence of drug possession but also understanding the social, economic, and psychological context of the suspect. Thus, the Prosecutor's Office becomes the center of decision-making, ensuring that every law enforcement action aligns with the goal of recovery, not merely retaliation or deterrence, without neglecting the public interest.

The role of the Prosecutor's Office in the context of restorative justice broadens the dimensions of law enforcement, from merely adjudicating to overseeing and directing the rehabilitation process. In FH's case, this is reflected in how the Prosecutor's Office assessed evidence, criminal history, BNNK assessment recommendations, and social and family factors as primary considerations. In this way, restorative justice goes beyond legal formalities but emphasizes real recovery for the suspect, ensuring a humane, controlled, and professional legal process. This approach also emphasizes protection for pure users who have not yet become entangled in drug trafficking networks, while maintaining a sense of security for the community because the entire process is carried out under strict supervision and based on objective considerations.

Efforts to realize justice, legal certainty, and uphold human rights place the Prosecutor's Office as an institution that has a strategic role in the criminal justice system, particularly through its prosecution function.³⁹ The Prosecutor's Office (PKI) not only serves as the prosecutor but also has the responsibility to direct the legal process to align with the principles of substantive justice, including in the context of restorative justice for drug abusers. However, in practice, the Prosecutor's Office still faces various structural challenges. One of these is the mechanism for sending case files from police investigators, which often goes back and forth, due to the rigid and inflexible territorial and procedural regulations in the Criminal Procedure Code (KUHAP). This condition causes delays and uncertainty in case handling, even though the Prosecutor's Office, according to the *Dominus Litis* principle, is actually the main state organ with the authority to determine the continuation of a case—whether it is submitted to court, suspended, or transferred to alternative resolution mechanisms such as restorative justice. This *Dominus Litis* principle becomes increasingly relevant when Prosecutor's Office is given the authority to

³⁸Husmiati et al., *Competence of Social Workers in Social Rehabilitation Services in Diklat Alai/Loka in the New Order Era* (Jakarta: Center for Welfare Research and Development, 2020), 13.

³⁹Yohanes Sogar Simamora, "Legal Theory and Law Enforcement in Indonesia," *Journal of Law and Development*, Vol. 49, No. 1, 2019, p. 23.

participate in investigations alongside police investigators, so that the Prosecutor's Office does not simply wait for the results of the investigation, but actively monitors and directs the course of the legal process. The strategic role of the Prosecutor's Office can be strengthened by improving institutional coordination, refining the file delivery flow, and optimizing the supervisory function of the implementation of restorative justice, so that the principles of justice and legal certainty are truly realized for suspects, victims, and the wider community.

4. Conclusion

Based on the previous discussion, several conclusions can be drawn regarding the resolution of narcotics abuse criminal cases using a restorative justice approach, particularly regarding the role of the Prosecutor's Office: 1. The Prosecutor's Office plays a central role in determining the eligibility for termination of prosecution for drug addict suspects on the condition of rehabilitation. The Prosecutor's Office not only carries out formal prosecutorial functions but also acts as a liaison between the legal aspects and the rehabilitation needs of suspects. In practice, the Prosecutor's Office assesses cases based on evidence, BNN assessments, and social considerations, so that suspects who meet the criteria can be given the opportunity for recovery through rehabilitation programs. This role demonstrates the Prosecutor's Office's strategic role in achieving a balance between law enforcement and social protection for drug addicts. 2. Although the restorative justice approach offers a more humane alternative for drug abusers, its practice faces several weaknesses. From a legal perspective, multiple interpretations remain in the application of the law, resulting in differing opinions among law enforcement officials regarding the eligibility for rehabilitation. Institutionally, coordination between law enforcement agencies is not yet fully aligned, while the capacity of rehabilitation facilities in some regions remains limited. Furthermore, social and cultural factors, such as community stigma and family readiness, influence the effectiveness of rehabilitation. Implementation also shows weaknesses, particularly in post-rehabilitation monitoring and evaluation, thus maintaining the potential for reoffending.

5. References

Journals:

Ali Imron, Transformasi Hukum Islam Ke Dalam Hukum Nasional Indonesia, Jurnal Pemikiran Hukum Islam al-Ahkam Vol.5 No.2 April 2012.

Carapinha, L. dkk. Efek Intervensi Dissuasi, berdasarkan aktivitas CDT. SICAD. 2017.

SICAD dkk, Laporan kepada EMCDDA oleh Reitox National Focal Point Pada tahun 2013, dari 7.258 putusan yang dibuat oleh Komisi, 83% prosesnya ditangguhkan sementara dan 5% menyatakan pelaku dugaan pelanggaran tidak bersalah: SICAD (2014). hlm. 11.

SICAD dkk. Pedoman Intervensi dalam Dissuasi. hlm. 18-19, 2013.

Silvestri, A., Gerbang dari Kejahatan ke Kesehatan: Komisi Narkoba Portugal. Winston Churchill Memorial Trust dan Prison Reform Trust. hlm. 12 & 28, 2014.

Simamora, Yohanes Sogar. "Teori Hukum dan Penegakan Hukum di Indonesia." *Jurnal Hukum dan Pembangunan*, Vol. 49, No. 1, 2019.

Stevens, A. dan Hughes, C. *Dépénalisation et santé publique: politiques des drogues et toxicomanies au Portugal*. Gerakan 86. 2016.

Books:

A, Zainal Abidin Farid. (1990). *Hukum pidana 1*. Semarang: Yayasan Sudarto.

Abdul Rahman Sholeh. (2005). *Pendidikan agama dan pengembangan untuk bangsa*. Jakarta: PT Raja Grafindo Persada.

Abdul Salam Siku. (2012). *Perlindungan HAM: Sanksi dan korban dalam peradilan pidana*. Jakarta: Rabbani Press.

Amirudin & Zainal Asikin. (2004). *Pengantar metode penelitian hukum*. Jakarta: Raja Grafindo Persada.

Arief, Barda Nawawi. (2003). *Kapita selekta hukum pidana*. Bandung: Citra Aditya Bakti.

Choirul Rizal, M. (2021). *Buku ajar hukum pidana*. Kediri: Lembaga Studi Hukum Pidana.

Effendi, T. (2014). *Dasar-dasar hukum acara pidana (perkembangan dan pembaharuannya di Indonesia)*. Malang: Setara Press.

Emy Rosna Wati & Abdul Fatah. (2020). *Hukum pidana*. Sidoarjo: UMSIDA Press.

Hadjon, Philipus M. (2003). *Hukum administrasi negara*. Jakarta: PT Raja Grafindo Persada.

Hamdan, H. M. (2014). *Alasan penghapus pidana: Teori dan studi kasus*. Bandung: PT Refika Aditama.

Ibrahim, Johnny. (2006). *Teori & metodologi penelitian hukum normatis*. Surabaya: Bayumedia.

- Kanter, E. Y., & Sianturi. (2012). Asas-asas hukum pidana di Indonesia dan penerapannya. Jakarta: Alumni.
- Lamintang, F. T. (2022). Dasar-dasar hukum pidana di Indonesia. Jakarta: Sinar Grafika.
- Mahrus Ali. (2015). Dasar-dasar hukum pidana. Jakarta: Sinar Grafika.
- Manan, Bagir. (2002). Wewenang provinsi, kabupaten, dan kota dalam rangka otonomi daerah. Makalah pada Seminar Nasional, Fakultas Hukum Universitas Padjajaran, Bandung.
- Poernomo, Bambang. (1985). Asas-asas hukum pidana. Jakarta: Ghalia Indonesia.
- Prasetyo, Teguh. (2012). Hukum pidana. Jakarta: Rajawali Pers.
- Rahardjo, Satjipto. (2014). Ilmu hukum (ctk. kedelapan). Bandung: Citra Aditya Bakti.
- Rasyid Ariman, M., & Raghieb, F. (2016). Hukum pidana. Malang: Setara Press.
- Shant Dellyana. (1992). Konsep penegakan hukum. Yogyakarta: Liberty.
- Soekanto, Soerjono. (1981). Pengantar penelitian hukum. Jakarta: UI Press.
- Subagyo Partodiharjo. (2012). Kenali narkoba dan musuhi penyalahgunaannya. Jakarta: Gelora Aksara Pratama.
- Teguh Prasetyo, 2012, Hukum Pidana, Rajawali Pers, Jakarta.
- Teguh Prasetyo, 2016, Hukum Pidana edisi revisi, Raja Grafindo Persada, Jakarta.
- Tolib Effendi, 2014, Dasar Dasar Hukum Acara Pidana (Perkembangan dan Pembaharuannya Di Indonesia), Setara Press, Malang
- Zainuddin Ali. (2013). Menemukan hukum: Suatu pengantar. Jakarta: Kencana.

Regulation:

Criminal Code (KUHP)

Criminal Procedure Code (KUHP).

Prosecutor's Guidelines Number 18 of 2021 concerning the Settlement of Narcotics Abuse Criminal Cases Through Rehabilitation.

The 1945 Constitution of the Republic of Indonesia