

Effectiveness of Termination of Investigations of Narcotics Addicts in The Framework of Restorative Justice Based on Benefit Value

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Abstract. This study aims to analyze the effectiveness of terminating investigations for drug addicts within a restorative justice framework that prioritizes utility. The enactment of various regulations, such as Law Number 35 of 2009 concerning Narcotics, the 2014 Joint Regulation of Seven Institutions, and the integrated assessment policy, have encouraged a paradigm shift that drug addicts are not merely criminals but individuals in need of recovery. However, in practice, the implementation of restorative justice for drug addicts still faces various challenges, including overlapping regulations, limited understanding among law enforcement officials, limited rehabilitation facilities, social stigma, and a suboptimal integrated assessment mechanism. This study uses a normative juridical approach combined with an empirical approach through interviews with law enforcement officials, health workers, and relevant parties. The results indicate that restorative justice-based investigation termination can provide significant benefits for drug addicts, their families, and the state by reducing the burden of punishment, increasing rehabilitation effectiveness, and preventing institutional overcrowding Correctional institutions. However, this effectiveness has not been achieved optimally due to weak inter-agency coordination, a lack of uniform technical guidelines, and limited rehabilitation facilities in various regions. The application of restorative justice in the termination of drug investigations has great potential to realize expedition-oriented justice, but requires strengthened regulations, increased officer capacity, provision of rehabilitation facilities, and cross-sector collaboration for optimal implementation.

Keywords: Benefits; Drug Addicts; Restorative Justice; Rehabilitation; Termination of Investigation.

1. Introduction

Indonesia is a country based on the rule of law, with legally binding rules for every citizen. As a country based on law, Indonesia is based on law, not just power. Therefore, in Indonesia, the law holds the highest position (the rule of law). Equality before the law is a crucial principle in modern law, serving as a cornerstone of the rule of law doctrine in developing countries like Indonesia. This principle serves as a foundation for everyone in enforcing the law.¹

Crime is an inseparable part of human life worldwide. All human activities, whether political, social, or economic, can contribute to crime. In principle, crime is not a stand-alone issue, but rather interconnected with other social, economic, political, and cultural issues, all of which are interconnected phenomena. The advancement of scientific knowledge is accompanied by the emergence of problems, both violations and crimes, within the criminal law framework. The problem of violating the law, or otherwise known as crime, is the responsibility of every element of society.² Therefore, crime is the result of interaction caused by the interrelationship between existing phenomena and their mutual influence, interaction as a phenomenon that participates in the occurrence of crime, and has a functional relationship with each other.³ Crime falls under the realm of criminal law. Crimes that have become a trending topic in the news are narcotics crimes. This is very unfortunate because not only adults are involved, but also minors also play a role in these crimes. Various crimes are growing, this is in line with the increasing development of science and technology that individuals and corporations misuse in the form of criminal acts. The occurrence of crime is also greatly influenced by character, values, norms, behavior and daily interactions, social environment and so on. Speaking of crime, many people assume that crimes must have victims, such as murder, theft and various other crimes, and these are regulated in the Old Criminal Code regarding crimes and violations. As crime develops, not always crimes must have victims, but crimes can also occur without victims. Without victims here, because the victims are themselves, as in this article discussing narcotics crimes where the perpetrators of narcotics crimes are drug users.

Criminal law is a branch of public law that has an important role in maintaining order, justice, and protecting human values in society.⁴

¹Bambang Poernomo, Selected Chapters on the Criminal Justice System, Jayabaya University, 2016, p. 3.

²Andri Winjaya Laksana..“Cybercrime Criminalization from a Positive Criminal Law Perspective.” Unissula Law Journal 35 (2). 2019

³Arif Gosita, Problems of Crime Victims, (Jakarta: CV Akademika Pressindo, 1983), p. 3.

⁴Sitta Saraya; Maureen V; Jonathan FM, et al. 2025. Indonesian Criminal Law Literacy & Comprehensive Insight into Criminal Law in Indonesia. Yogyakarta: PT. Star Digital Publishing,.

In Indonesia, criminal law developed through a long historical process, influenced by social dynamics, culture, colonialism, and national struggle.

Law enforcement in modern society is not only interpreted narrowly but also broadly, as in Indonesia, where law enforcement is linked to human elements and their social environment. Law enforcement efforts are in line with the principles of the Unitary State of the Republic of Indonesia, namely Pancasila.⁵. Upholding the law is a prerequisite for a state based on the rule of law. Law enforcement always involves humans and, thus, influences human behavior. Criminal law enforcement efforts are essentially part of the law enforcement effort and are often referred to as criminal law policy, which is part of the law enforcement policy (Law Enforcement Police).⁶

In recent years, we have certainly become familiar with the circulation of various types of narcotics in Indonesia. This problem is a serious one that must be addressed by the Indonesian government, as our generation must be guaranteed by the state as a generation free from the clutches of narcotics, which can damage the future of a nation. Protecting children in criminal acts, especially narcotics crimes, is crucial, as children are the nation's future generation.⁷ It is certain that drug crimes (psychotropic drugs, narcotics, and other addictive substances) endanger human life. If consumed in the wrong way, they can result in death for the user.⁸

Narcotics and psychotropic drugs are drugs or substances that are useful in the fields of medicine, health services, and scientific development, and on the other hand, can cause very detrimental dependency if used without strict control and supervision.⁹

Narcotics crimes are a form of transnational crime that have widespread negative impacts on society and the state. Indonesia is a nation governed by the rule of law, and every aspect of social, national, and state life must comply with applicable laws and regulations. In the Indonesian legal context, these crimes are regulated by Law Number 35 of 2009 concerning Narcotics (the Narcotics Law), the Old Criminal Code, and the New Criminal Code (Law Number 1 of 2023).

Drug abuse is a serious problem facing many countries worldwide, including Indonesia. This phenomenon not only impacts individual health but also has

⁵Achmad Ali. 2002. *Unveiling the Veil of Law (A Philosophical and Sociological Study)*. Jakarta: PT. Toko Gunung Agung. Page 44

⁶Barda Nawawi Arief, *Anthology of Criminal Law Policy*, PT. Citra Aditya Abadi, Jakarta, 2014, p. 29.

⁷Ika Ratna Utami, "Application Policy in Narcotics Crimes Committed by Children in Semarang District Court", *Jurnal Law Reform*, Vol. 9, No. 2, 2014, pp. 98-109.

⁸Fransiska Novita Eleanora, "The Dangers of Drug Abuse and Efforts to Prevent and Overcome It", *Journal of Law*, Faculty of Law, Unissula. Vol. 25, No. 1, 2011, pp. 439-452.

⁹Muhammad Yamin, *Special Crimes*, (Bandung: Pustaka Setia, 2012), First Edition, p. 163.

implications for social, economic, and national security. Within the context of criminal law, drug users are often treated as criminals, automatically subject to criminal sanctions in the form of imprisonment without considering the background of their dependency and mental health issues. This entirely repressive approach has drawn widespread criticism as it is deemed ineffective in comprehensively addressing the drug problem and, in fact, contributes to overcrowding in correctional institutions. In response to this problem, the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) ushers in a new direction in national criminal policy. This new KUHP not only contains provisions on criminal sanctions but also accommodates rehabilitative approaches for certain offenders, including drug users. Articles such as Article 65, Article 90, and Article 103 provide opportunities for judges to impose conditional sentences, supervision, or rehabilitation as part of the criminal justice process. This reflects a shift in the paradigm of punishment from retributive to restorative and corrective.

2. Research Methods

Legal research is a study within the framework of legal know-how. The results achieved are intended to provide a proper description of the issues raised. The type of research adopted in this thesis is empirical normative legal research. Empirical normative legal research combines normative legal elements, supported by additional data and empirical elements, using primary data as the primary source. This type of research examines legal issues in relation to their application in society.

Empirical research is a legal research method based on data and field research to obtain primary data. The approach used in this thesis is a normative juridical approach. The research examines legal science and other written regulations.

3. Results and Discussion

3.1. The Effectiveness of Termination of Investigations for Drug Addicts in Indonesia

The law enforcement paradigm tends to view drug users as criminals, resulting in rare enforcement of rehabilitation provisions, especially for drug users from vulnerable economic groups. Yet, rehabilitation is the right of every addict and victim of drug abuse.¹⁰

In principle, drug abusers are guaranteed medical rehabilitation and social rehabilitation as regulated in Article 4 point (d), and also Article 54 which states that "Narcotics abusers and victims of narcotics abuse are required to undergo

¹⁰Wawan Edi Prastiyo. Reconstruction of Rehabilitation Law for Drug Addicts and Victims of Drug Abuse. PT. Refika Aditama. Bandung. 2022. P. 13.

medical rehabilitation and social rehabilitation" however, criminal provisions also regulate criminal sanctions for people who use narcotics as regulated in Article 127.

However, because the Indonesian Criminal Justice System adheres to the principle of legality, in general practice, all narcotics cases, including those involving personal narcotics users who are not dealers, are usually also processed legally in accordance with legal norms as stipulated in the Narcotics Law, namely with the threat of criminal sanctions in prison. So that narcotics abusers who are not dealers, who were initially victims who should have been rehabilitated, must serve a prison sentence as regulated in Article 127. Not only that, narcotics users who are not dealers when brought before the court will be charged with other overlapping articles. Logically, users who obtain narcotics illegally, then of course there are also several actions carried out by the user as formulated.

Narcotics crimes differ from other crimes, both in terms of evidence and the method of disclosure. Because of this difference, narcotics crimes have their own procedural law, which is a stark contrast to how they are handled compared to other common crimes such as murder, assault, and so on. Since the enactment of Law Number 9 of 1974 and up to Law Number 35 of 2009 concerning Narcotics, several changes have occurred in the regulation of narcotics issues, both materially and formally. From a material perspective, there have been several changes in the classification of narcotics, which have become increasingly complex to keep up with current developments. Meanwhile, formal changes have occurred within the scope of procedural law and rehabilitation for drug addicts, all of which are solely intended to meet the legal needs of a dynamic society. Narcotics, often referred to as drugs, are a type of substance. These narcotic substances have specific characteristics. Narcotics are substances that can cause certain effects on those who use them by inserting them into the body. These effects include anesthesia, pain relief, arousal, and hallucinations or delusions. These properties are known and discovered in the medical world for use in medical treatments and for human benefit, such as in surgery, pain relief, and other applications. However, it was later discovered that narcotics have addictive properties that can cause users to become dependent on them. This can be avoided if their use is regulated medically and pharmacologically. Therefore, narcotic use requires supervision and control.

According to Article 1 number 1 of Law Number 35 of 2009 concerning Narcotics, 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 dependency, which are divided into groups as attached to this Law.

Meanwhile, according to Article 1 number 1 of Law Number 5 of 1997 concerning Psychotropics, the definition of psychotropics is a substance or drug, whether natural or synthetic, not narcotic, which has psychoactive properties through selective influence on the central nervous system which causes typical changes in mental activity and behavior. The provisions of Law Number 35 of 2009 concerning Narcotics (Narcotics Law) have also mentioned several terms that have the same essence as Narcotics users themselves, including narcotics abusers, abusers, victims of abuse, former narcotics abusers and patients. Based on the various terms related to narcotics abusers, it has different impacts and implications so that there is inconsistency in treating people who use narcotics as victims of narcotics abuse for themselves.

The Narcotics Law stipulates that the distribution of narcotics and other addictive substances is punishable by criminal penalties. Previously, the Narcotics Law was regulated through Law No. 22 of 1997, which was amended by the Narcotics Law. Considering that there are several things that need to be refined in Article 2 concerning the regulation of narcotics to adapt to current developments, Article 127 paragraph 1 states that any abuser of Class I, II, or III narcotics for themselves is subject to imprisonment.

Imprisoning drug users and dangerous drugs has proven ineffective. This is a common thread in law enforcement against drug users. Drug abuse and illicit trafficking in Indonesia are inseparable from the influence of global developments. Various attitudes and views from government and society in responding to the increasing number of drug users and/or abusers have resulted in differing perspectives. "With the declaration of 2014 as the year of saving drug users, drug abusers must be handled properly, not only by imposing prison sentences but also by taking other actions permitted by law.¹¹

In principle, drug abusers are guaranteed medical rehabilitation and social rehabilitation as regulated in Article 4 point (d), and also Article 54 which states that "Narcotics abusers and victims of narcotics abuse are required to undergo medical rehabilitation and social rehabilitation" but in criminal provisions, criminal sanctions have also been regulated for people who use narcotics as regulated in Article 127. However, because the Indonesian Criminal Justice System adheres to the principle of legality, in general practice, all narcotics cases, including narcotics users for themselves who are not dealers, are usually also always processed legally in accordance with legal norms as stipulated in the Narcotics Law, namely with the threat of criminal sanctions in prison. So that narcotics abusers for themselves who are not dealers, where initially as victims who should be rehabilitated, must undergo prison sentences as regulated in Article 127. Not only that, narcotics users who are not dealers when brought

¹¹Rizal, "Legal Review of Criminalization for Narcotics Users," Legal Opinion, Vol. 5, No. 1, 2021, p. 2.

before the court will be charged with other overlapping articles. Logically, if a user obtains narcotics illegally, then of course there are also several actions carried out by the user as formulated in Article 111 and/or Article 112 or even Article 114 which have elements of buying, controlling, storing or possessing which are ultimately used for their own use.¹²

The Narcotics Law itself does not provide a clear distinction/line between the criminal offenses in Article 127 of the Narcotics Law and other criminal offenses contained in the Narcotics Law, where narcotics users who obtain narcotics illegally must fulfill the elements of "controlling", "possessing", "storing", and or "buying" narcotics where this is also regulated as a separate criminal offense in the Narcotics Law. In practice, law enforcement officers link the offense of narcotics users with the offense of controlling, possessing, storing or purchasing narcotics without rights and against the law where the criminal threat is much higher and uses a special minimum sanction, namely a minimum of 4 years in prison and a fine of at least Rp. 800,000,000 (eight hundred thousand rupiah).

The aforementioned offenses are related to the criminal policy for illegal drug use. The policy of using criminal sanctions is one way to address criminal activity. This relates to the purpose of imposing penalties, which aims to:

1. Preventing criminal acts by enforcing legal norms of community protection.
2. Conducting corrections for convicts and thereby reintegrating them into society. Making them good and useful people who are able to live.

The purpose of criminal punishment in narcotics user crimes as regulated in Article 127 of the Narcotics Law must be carried out selectively regarding whether the perpetrator is a user or a dealer. This selective action must also be applied in Article 127 of the Narcotics Law which imposes criminal sanctions for groups I to III as victims, so every abuser has the right to obtain medical and social rehabilitation rights. The implementation of medical and social rehabilitation as regulated in Article 127 paragraph (3) of the Narcotics Law aims to:

1. The purpose of punishment is for prevention
2. This prevention is not the final aim but is a means to achieve a higher goal, namely social welfare.

From a normative perspective, namely Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, drug abusers and drug addicts are categorized as criminals. However, it is known that both drug abusers and drug addicts are merely victims of their own actions. In essence, drug abusers and drug addicts

¹²Kusno Adi, *Criminal Policy in Handling Narcotics Crimes by Children*, Malang: UMM Press, 2009, p. 30

are individuals who use and abuse drugs for their own benefit. Therefore, drug addicts should be positioned as victims, not as perpetrators of criminal acts who ultimately face criminal sanctions.

In other words, individuals who abuse drugs for themselves will naturally become victims of that drug abuse. This condition is also referred to as self-victimizing victims in victim typology, meaning those who become victims of crimes they themselves commit.¹³ Or, according to Romli Atmasasmita, a dual state is a situation where the relationship between the victim and the perpetrator is single or one, in the sense that the perpetrator is the victim and the victim is the user or drug user.¹⁴ The idea of restorative justice first emerged among criminal law experts as a reaction to the negative impact of the application of criminal law (sanctions) with its repressive and coercive nature.¹³ This is evident from Louk Hulsman's statement that the criminal law system is built on the idea that "criminal law must cause misery." According to Hulsman, such a thought is very dangerous.¹⁵

Therefore, Hulsman proposed the idea of abolishing the criminal justice system, which is considered to cause more suffering than good, and replacing it with other, more beneficial methods. The concept of restorative justice in Indonesia is still relatively new. According to Mahfud MD, restorative justice is an extension of the theory of justice with a different approach. In this concept, crime is seen as a social disease that must be cured, not simply as a violation of the law. Here, punishment is seen as the ultimum remedium. In other words, children found guilty of committing a crime are prioritized for sanctions in the form of actions such as returning to their parents or participating in education, rehabilitation, and training.¹⁶ Many law enforcement officers currently have a mindset that focuses on the understanding that every criminal case must remain within the realm of criminal law (litigation), even though these cases are crimes with relatively small losses or minor crimes. This is valid in legal positivism, provided that the act is clearly in the law (the principle of legality is fulfilled) and is in accordance with the principle of equality before the law.

Restorative justice regulations are currently regulated by the Chief of Police Circular Letter No. SE/8/VII/2018 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases; Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation; Prosecutor's

¹³C. Maya Indah S., *Victim Protection (A Victimology and Criminology Perspective)*, Jakarta: Kencana Prenadamedia Group, 2014, p. 36

¹⁴Romli Atmasasmita, *The Problem of Compensation for Victims of Crime*, Jakarta: National Legal Development Agency, Department of Justice, 1992, p. 22

¹⁵LHC. Hulsman, *Goodbye Criminal Law Towards Self-Regulation*, translated by Wonosusanto, Surakarta Forum: Criminal Law Studies, 1998, p. 67.

¹⁶Luthy Febrika Nola, "Restorative Justice for Juvenile Crimes", *Brief Legal Information*, Vol. VI, No. 17/I/P3DI/September/2014, 2014, p. 2

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.

In the Circular Letter of the Chief of Police No. 8 of 2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, it is stipulated that the principle of restorative justice cannot be interpreted as a method of peaceful termination of cases, but more broadly on fulfilling the sense of justice of all parties involved in criminal cases through efforts involving victims, perpetrators, and local communities as well as investigators/investigators as mediators. For case resolution, the Circular Letter of the Chief of Police states, one of the ways is done in the form of a peace agreement and the revocation of the right to sue from the victim, it is necessary to request a judge's decision through the Public Prosecutor to revoke the authority to sue from the victim and the public prosecutor.

However, the definition of restorative justice in the Chief of Police's Circular Letter was changed through Chief of Police Regulation No. 6 of 2019, in which the community is not part of the case resolution. The Attorney General has also issued Attorney General Regulation No. 18 of 2021, a guideline that regulates the Settlement of Narcotics Crime Cases Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Prosecutor's Dominus Litis Principle. Meanwhile, in court, referring to the 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 on December 22, 2020. This policy, signed by the Director General of the Supreme Court's Criminal Investigation Agency, Prim Haryadi, regulates the application of restorative justice only in the scope of minor criminal cases, child cases, cases of women in conflict with the law, and narcotics cases. "Order all district court judges to implement the guidelines for the implementation of restorative justice in an orderly and responsible manner. The Chief Justice of the High Court is obliged to supervise, monitor, and evaluate, as well as report on the implementation of restorative justice in the jurisdiction of the relevant High Court."

3.2. The Effectiveness of Terminating Investigations of Drug Addicts through a Restorative Justice Framework Based on Benefit Values

Within Radbruch's framework, legal expediency is defined as the law's function in addressing the real needs of society and positively impacting social life as a whole. Implementing the termination of prosecutions for drug addicts using a restorative justice approach aligns with this principle of expediency because it focuses on constructive social outcomes, rather than mere punishment.

Radbruch emphasized that law must serve practical purposes and societal needs. If a legal provision only results in suffering or fails to address social problems, it loses its usefulness. In the case of drug addicts, imprisonment often fails to resolve the dependency issue and even adds new problems such as prison overcrowding and social stigma. Therefore, the termination of prosecution accompanied by a rehabilitation program demonstrates that the law is acting wisely to provide a greater benefit, namely the healing and reintegration of the offender into society.¹⁷

Furthermore, Radbruch's theory of utility is inseparable from the idea of balance between legal values. In this regard, justice should not sacrifice utility, and vice versa. The restorative justice approach provides space for the integration of these two values: the offender is not released without responsibility, but is guided to social responsibility through rehabilitation and supervision, ultimately resulting in benefits for the offender and society. This reflects the harmony between justice and utility as envisioned in Radbruch's thinking.

According to Radbruch, the benefits of law must also be viewed from a long-term perspective. If the prosecution of an addict is discontinued, if the offender is successfully rehabilitated and does not return to drug use, this provides a far stronger preventative effect than the mere deterrent effect of punishment. The benefits of law here are not only individual, but also social and national, as it can reduce recidivism rates, reduce the burden on the justice system, and improve people's quality of life. Termination of investigation/prosecution with a focus on rehabilitation for addicts (especially first-time users) has several aspects of effectiveness:

- 1) Focus on Recovery. Imprisonment has proven ineffective in curing addicts of their addiction. Rehabilitation, as stipulated in Law Number 35 of 2009 concerning Narcotics (Article 58), is the most essential effort to medically and socially rehabilitate addicts.
- 2) Application of Substantive Justice: The restorative justice approach provides a more humane sense of justice, given that addicts are often victims of drug trafficking. This aims to avoid and distance individuals from the formal justice process and avoid negative stigmatization.
- 3) Breaking the Chain of Dependence: Rehabilitation aims to break the chain of drug use by returning addicts to society in a recovered state, with skills and the ability to interact socially;

¹⁷Supriyadi, Mohammad Wangsit, Mustafid Milanto Achmad, Nurshoim Ramadhan Putra, and Taufiqurrohman Syahuri. "Gustav Radbruch's Main Thoughts and Fundamental Contributions to the Development of Science and Law." *Quantum Juris: Journal of Modern Law* 7, No. 1 (2025).

4) Compliance with Apparatus Policy: Although Article 109 of the Criminal Procedure Code (regarding the termination of investigations) does not explicitly state the reasons for restorative justice, the evolution of legal doctrine and the policies of law enforcement officers increasingly provides space to apply this substantive justice approach.

Although rehabilitation is considered more effective, its implementation in the field still faces several challenges:

- a) Regulatory Conflict. There is a conflict between the principle of restorative justice in narcotics cases and the formal rules contained in the Criminal Procedure Code;
- b) Social Stigma. There is still a view that every crime (including drug abuse) must be punished with imprisonment to provide a deterrent effect (make them regret it);

Overall, the termination of investigations/prosecutions through a rehabilitation referral mechanism is highly urgent and effective for first-time drug abusers and non-drug dealers, as it focuses on individual rescue and recovery, which aligns with the primary goal of combating drug abuse in Indonesia. The effectiveness of the termination of investigations for drug addicts in Indonesia is currently considered operationally ineffective, although conceptually and legally it is considered far superior to imprisonment. This approach is known as Restorative Justice, where the primary focus is the recovery (rehabilitation) of the victim/addict, rather than retaliation. The following is an in-depth analysis of its effectiveness based on applicable criminal law:

1) Legal Basis for Termination of Investigation (Normative Jurisprudence)

Legally, the instruments to stop investigations for addicts are available and quite strong, but their implementation depends on the discretion of the authorities. This can be explained from two main perspectives: the Power of Legal Instruments and the Need for Discretion of Apparatus.

a) The Strength of Legal Instruments. Legal instruments are considered strong because there has been a paradigm shift from punishment to treatment. This strength is supported by:

1. Narcotics Law Mandate

a. Article 54 of Law No. 35 of 2009 concerning Narcotics expressly states that drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation.

b. Article 127 Paragraph (3) giving the Judge the opportunity to order addicts to undergo rehabilitation if they are proven to be abusers.

2. Integrated Assessment Team (TAT) Mechanism

- a. Through the 2014 Joint Regulation, an Integrated Assessment Team (TAT) was formed, consisting of legal (Investigators, Prosecutors) and medical (Doctors, Psychologists) elements.
- b. The TAT serves as the official gateway to verify a person's status. TAT recommendations are a powerful legal instrument that provides a scientific and legal basis for authorities to avoid confining addicts to prison.

3. Restorative Justice (RJ) Policy

- a. Police Regulation (Perpol) No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice provides room for investigators to stop investigations (SP3) in cases of minor narcotics abuse, provided that the requirements are met (pure user, limited evidence, and first user).
- b. Attorney General's Guidelines No. 18 of 2021 giving discretion to the Prosecutor (Public Prosecutor) to stop prosecution (SKP2) and refer the suspect to rehabilitation.
- b) The Need for Official Discretion. Although the instruments are powerful, their implementation is not automatic. Law enforcement officials (police and prosecutors) must exercise discretion (the authority to act based on judgment) due to gaps, ambiguities, or conflicts in formal regulations. This can be seen in:
 - a) Formally, Article 109 of the Criminal Procedure Code (regarding Termination of Investigation/SP3) only lists three reasons: (1) ne bis in idem, (2) not a criminal act, or (3) insufficient evidence.
 - b) Termination of an investigation for reasons of "rehabilitation/restorative justice" is not explicitly stated in the Criminal Procedure Code. Therefore, investigators must use discretion to interpret whether a case involving a pure addict is not considered a crime with serious social impact or to terminate it for reasons of public interest. Determining "Pure Addict" Status This is the most crucial point of discretion. Investigators must interpret and believe the assessment results.
 - 1) Investigators (Police/BNN): Responsible for distinguishing whether someone is an addict/victim or a dealer/dealer. Even with limited evidence, investigators have the discretion to reject an assessment request if they believe a network is involved.
 - 2) Subjective Nature: This assessment is often subjective and prone to bargaining (transactional), where the integrity of the officers is really tested.

c) Reliance on the Final Decision. Although the TAT issues rehabilitation recommendations, the final decision to:

1. Approved referral to TAT (at the investigation level)
2. Issuing SP3(at the investigation level)
3. Issuing SKP2(at the prosecution level)

Legal instruments have provided a very strong umbrella (mandatory rehabilitation) and a clear mechanism (TAT). However, due to the lack of explicit inclusion in the Criminal Procedure Code (KUHAP) and the need for careful interpretation in separating addicts from dealers, the decision whether or not to implement these instruments remains within the discretion of law enforcement officials.

Instruments or statutory regulations relating to Restorative Justice are listed in:

- a) Police Regulation No. 8 of 2021: Regulates the Handling of Criminal Offenses Based on Restorative Justice. This allows police investigators to terminate an investigation (SP3) if the perpetrator is a pure drug abuser (not a drug distribution network) and is willing to undergo rehabilitation.
- b) Attorney General's Guidelines No. 18 of 2021: Regulating the cessation of prosecution for drug abusers through rehabilitation.
- c) Law No. 35 of 2009 concerning Narcotics (Articles 54 & 127): Require drug addicts to undergo medical and social rehabilitation.

2) Analysis of the Effectiveness of the Implementation of Benefit-Based Restorative Justice

The following table compares the effectiveness and challenges in frequently occurring field conditions.

Aspect	Effectiveness (Positive Side)	Challenges (Obstacles)
Purpose of Criminalization	Very Effective. Changing the paradigm from retributive to rehabilitative. Prison often turns addicts into dealers ("schools for crime").	Social Stigma. The public often perceives the termination of an investigation as "letting the criminal go free," so social pressure remains high.
Justice System	Reducing Overcrowding. Reducing the burden on prisons, which are currently dominated (>50%) by drug cases. Efficient use of the state budget for inmate food costs.	Transactional Potential. There is a risk of abuse of authority ("rubber clause") where the termination of the investigation is used as an opportunity for negotiation/bribery by certain officials.
Victim Recovery	Suppressing Recidivism. Medical rehabilitation cures physical dependency, something prisons cannot do.	Minimal Facilities. The number of government rehabilitation centers (IPWL) is still limited and unevenly distributed, while private rehabilitation is expensive.

From the table above, it is clear that the purpose of punishment is certainly very effective. This changes the paradigm from retributive (revenge) to rehabilitative

(recovery). Prisons often turn addicts into dealers ("schools for crime"). Then, from the criminal justice system, it reduces overcrowding. Reduces the burden on prisons, which are currently dominated (>50%) by narcotics cases. Efficient state budget for food and other costs for prisoners, including care and health. Then, with restorative justice, in terms of victim recovery, it automatically also reduces recidivism. Medical rehabilitation cures physical dependency, something that prisons cannot do.

3) Requirements through the Integrated Assessment Team (TAT) Mechanism

The effectiveness of discontinuation of investigations for drug addicts in Indonesia, particularly those based on restorative justice, emphasizes rehabilitation rather than punishment. This approach is considered more effective in reducing recidivism rates (repeated criminal offenses) than imprisonment.

Thus, the expediency-based termination of investigations for drug addicts aligns with Gustav Radbruch's theory of legal expediency. The law is not merely a tool of punishment, but also a means of social empowerment and human recovery. This demonstrates that the purpose of law is not merely to maintain order through sanctions, but also to bring about social change that benefits all levels of society.

From the chart above, drug addicts or their families/former addicts submit a request for an integrated assessment team to the Police, the Police will submit an Assessment carried out by the BNN, in addition the police are also the Institution Receiving Mandatory Reports (IPWL) related to the rehabilitation plan. Issues regarding rehabilitation policies are stated in the academic text of the Law concerning amendments to Law Number 35 of 2009 concerning Narcotics. In the academic text it is stated that the handling of drug addicts, drug abusers, and victims of drug abuse should be focused on rehabilitation efforts through a comprehensive and accountable assessment mechanism. Meanwhile, the Narcotics Law does not regulate rehabilitation efforts obtained through assessment.¹⁸ Furthermore, rehabilitation regulations are not yet comprehensively regulated in the Narcotics Law. This is evident in the lack of qualifications or criteria for drug abusers to be eligible for rehabilitation.

The content to be regulated in the Draft Law on Narcotics includes new provisions regarding rehabilitation through a legal process by an integrated assessment team. The new provisions regarding the integrated assessment team (TAT) contained in this bill include the addition of a definition of an integrated assessment team. An integrated assessment team, hereinafter referred to as

¹⁸See the Report on the Results of the Harmonization of the Academic Paper of the Draft Law on Amendments to Law Number 35 of 2009 concerning Narcotics, Ministry of Law and Human Rights of the Republic of Indonesia National Legal Development Agency 2018, pp. 4-5.

TAT, is a team consisting of a legal team and a medical team tasked with assessing individuals arrested by law enforcement officers in connection with narcotics cases. The TAT process is carried out from the moment of arrest. The TAT aims to identify/classify from the outset narcotics cases that require follow-up with rehabilitation or remain on the law enforcement path. The effectiveness of restorative justice-based investigation termination in cases of drug addicts is quite promising because:

- a. Prioritize recovery and social reintegration for addicts, so that reduce recidivism rates and social stigma.
- b. Encourage active participation of addicts and their families in the healing process, which strengthens the rehabilitation and social responsibility aspects.
- c. Reduce the burden of criminal cases in courts and correctional institutions, so that the criminal justice system becomes more efficient and humane.

3.3. Efforts to overcome obstacles in the implementation of Restorative Justice for Termination of Investigations of Narcotics Addicts

The implementation of Restorative Justice (RJ) to terminate investigations against drug addicts—which is regulated by Law No. 35 of 2009, SEMA No. 4 of 2010, and the 2014 Joint Regulation of 7 Institutions—often encounters obstacles. These obstacles arise from regulatory aspects, law enforcement officials, rehabilitation facilities, and even social aspects. Here are some strategic efforts that can be implemented:

1. Reformulation and Confirmation of Regulations
 - a. Harmonization of laws between agenciesClarifying the standards for implementing RJ and rehabilitation through revision or updating:
 - a) Narcotics Law (currently under revision discussion)
 - b) National Police Chief Regulation
 - c) Circular Letter from the Prosecutor's Office

b. Single technical guidelines

The development of joint operational guidelines (SOPs) across agencies: the National Police, the National Narcotics Agency (BNN), the Prosecutor's Office, the Ministry of Health, and the Ministry of Social Affairs. These SOPs cover assessment mechanisms, rehabilitation coordination, and procedures for termination of investigations (SP3) based on restorative justice.

2. Strengthening the Capacity of Law Enforcement Officers

a. Special training on RJ and rehabilitation

• Training on:

- 1) The concept of restorative justice.
- 2) Assessment of dependency level (Assessment).
- 3) Social mediation and intervention techniques.

b. Changing the paradigm from "action" to "recovery"

- 1) The internal campaign of the National Police, BNN, and the Prosecutor's Office to view addicts as victims of dependency, not pure criminals.
- 2) Performance incentives for investigators who successfully resolve cases through RJ and rehabilitation.

3. Strengthening the Integrated Assessment Mechanism

a. Expanding the number of Integrated Assessment Teams (TAT)

- 1) Increase the number of psychiatrists, psychologists, and health workers in the region.
- 2) Improve TAT distribution, especially in areas outside Java where there is a lack of skilled personnel.

b. Standardization of dependency measurement tools

- 1) Use of national medical standards (e.g. ICD-10/ICD-11) to ensure more objective assessments.
- 2) Integrated digital system to accelerate assessment results.

Overcoming obstacles to implementing restorative justice in terminating drug addict investigations requires a multifaceted approach: regulatory reform, increased capacity of officers, strengthened assessments, improved rehabilitation facilities, and community collaboration. If implemented in an integrated manner, implementing restorative justice can be an effective

alternative to reducing overcriminalization of addicts and simultaneously strengthening the recovery approach.

4. Conclusion

From the explanation in the Discussion Chapter, the following conclusions can be drawn: 1. The operational effectiveness of the termination of investigations for drug addicts in Indonesia is currently considered less than fully effective, although conceptually and legally it is considered far superior to imprisonment. This approach is known as Restorative Justice, where the primary focus is on the rehabilitation of the victim/addict, rather than retaliation. 2. The effectiveness of restorative justice-based investigation termination in drug addict cases is quite promising because it prioritizes recovery and social reintegration for addicts, thereby reducing recidivism rates and social stigma, encouraging the active participation of addicts and their families in the healing process, which strengthens aspects of rehabilitation and social responsibility, reducing the burden of criminal cases in courts and correctional institutions, so that the criminal justice system becomes more efficient and humane. 3. Overcoming obstacles to implementing restorative justice in terminating drug addiction investigations requires a multifaceted approach: regulatory reform, increased officer capacity, strengthened assessments, improved rehabilitation facilities, and community collaboration. If implemented in an integrated manner, RJ can be an effective alternative to reducing overcriminalization of drug addicts while simultaneously strengthening recovery approaches.

5. References

Journals:

Erna Dewi, dkk, "The Urgency Of The Restorative Justice Model In The Order To Humanistic Law Enforcement", Journal of Namibian Studies: History Politics Culture, Vol. 34, 2023, Hal. 1179.

Fransiska Novita Eleanora, "Bahaya Penyalahgunaan Narkoba serta Usaha Pencegahan dan Penanggulangannya", Jurnal Hukum,Fakultas Hukum Unissula. Vol. 25, No.1, 2011, hal. 439-452.

Ika Ratna Utami, "Kebijakan Aplikasi dalam Tindak Pidana Narkotika yang Dilakukan oleh Anak di Pengadilan Negeri Semarang", Jurnal Law Reform, Vol. 9, No.2, 2014, hal. 98-109.

Laksana Andri Winjaya.. "Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif." Jurnal Hukum Unissula 35 (2). 2019

Laporan Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang tentang Perubahan atas Undang-Undang Nomor 35 Tahun 2009 tentang

Narkotika, Kementerian Hukum dan Hak Asasi Manusia RI Badan Pembinaan Hukum Nasional Tahun 2018, hlm. 4-5.

Luthy Febrika Nola, "Keadilan Restoratif Tindak Pidana Anak", Info Singkat Hukum, Vol.VI, No. 17/I/P3DI/September/2014, 2014, hlm. 2

Muhammad Ihsan, Maroni, dan Ruben Achmad, "Restorative Justice for Users of Narcotics Through Implementation of Depenalizatio", Fiat Justicia: Jurnal Ilmu Hukum, Vol. 16 No. 2, 2022, Hal. 142

Rizal, "Tinjauan Yuridis Terhadap Pemidanaan Bagi Pengguna Narkotika", Legal Opinion, Vol. 5, No. 1, 2021, hlm. 2.

Supriyadi, Mohammad Wangsit, Mustafid Milanto Achmad, Nurshoim Ramadhan Putra, and Taufiqurrohman Syahuri. "Pokok Pikiran Dan Sumbangsih Fundamental Gustav Radbruch Terhadap Perkembangan Ilmu Dan Hukum." Quantum Juris: Jurnal Hukum Modern 7, No. 1 (2025).

Books:

Adi Kusno. 2009. Kebijakan Kriminal dalam Penanggulangan Tindak Pidana Narkotika oleh Anak, Malang: UMM Press.

Ali Achmad, 2009, Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence), Jakarta: Kencana Prenada Media Group.

Amiruddin & Zainuddin, 2004. Pengantar Metode penelitian hukum, , raja grafindo persada.

Bakti, B. D. .2002. Dampak Penyalahgunaan Narkoba Terhadap Remaja & Kamtibmas.

Chaerudin, syaiful Ahmad Dinar, Syarif Fadillah, "Strategi Pencegahan Dan Penegakan Hukum Tindak Pidana Korupsi", Bandung, 2008, Refika Editama. Hal. 87

Darji Darmodihardjo dalam Hyronimus Rhiti, 2011. Filsafat Hukum ;Edisi lengkap (Dari Klasik sampai Postmoderenisme), Jogyakarta : Universitas Atma Jaya Yogyakarta.

Doglas YRN. "Penerapan Asas Restorative Justice Dalam Tindak Pidana Narkotika" Jakarta: Sinar Grafika.

Effendy Marwan. 2015. "Kejaksaan RI Desain dan Fungsinya dan Prespektif Hukum". Jakarta; PT Gramadika Pustaka Umum.

Erwin Muhammad. 2012. Filsafat Hukum, Raja Grafindo, Jakarta.

Evi Hartanti, 2012, Tindak Pidana Korupsi, Edisi Kedua, Sinar Grafika, Jakarta,

Friedman, 1990. Teori dan Filsafat Hukum: Idealisme Filosofis dan Problema Keadilan, diterjemahkan dari buku aslinya Legal Theory oleh Muhamad Arifin, Jakarta :Rajawali.

Gosita Arif. 1983. Masalah Korban Kejahatan, (Jakarta: C.V Akademika Pressindo.

Hadi Supeno, 2006, Peradilan Restoratif: Model Peradilan Anak Indonesia Masa Datang, Universitas Diponegoro, Semarang.

Hamzah Andi. 2005. Pemberantasan Korupsi melalui Hukum Nasional dan Internasional, Grafindo Persada, Jakarta,

Hutauruk ufinus Hocmaulana, 2016, "Penanggulangan Kejahatan Karporasi Melalui Pendekatan Restorative Suatu Terobosan." Jakarta Sinar Grafika.

Jimly Asshiddiqie dalam Bisri Ilham. 2008. Sistem Hukum Indonesia: Prinsip-Prinsip&Implementasi Hukum di Indonesia. Jakarta: Raja Grafindo Persada. Hal. 67

Johnstone dan Van Ness, 2005, The Meaning of Keadilan restoratif, Makalah untuk Konfrensi Lima Tahunan PBB ke-11, Bangkok-Thailand.

Lamintang. 1984, Dasar-dasar Hukum Pidana Indonesia. Bandung: Penerbit Sinar baru

LHC. Hulsman. 1998. Selamat Tinggal Hukum Pidana Menuju Swa Regulasi, diterjemahkan oleh Wonosusanto, Forum Surakarta: Studi Hukum Pidana.

Liebman, Miriam .2007. Restorative justice: How It Works, London: Jessica Kingsley Publishers.

Lilik Rasyididalam Zainuddin Ali,2010. Filsafat Hukum, Jakarta :Sinar Grafika.

M. Djunaidi Ghoni dan Fauzan Almansur. 2012. Metodologi Penelitian Kualitatif, ar-Ruzz Media, Yogyakarta..

Manullang E.fernando M, 2007. Menggapai Hukum Berkeadilan, Kompas, Jakarta.

Nomensen Sinamo. 2010. Metode Penelitian Hukum dala Teori dan Praktek. Bumi Intitama Sejahtera. Jakarta.

P.A.F. Lamintang. 1997. Dasar-Dasar Hukum Pidana Indonesia, Citra Aditya Bakti.

Rahardjo, S. 2009. Penegakan hukum: Suatu tinjauan sosiologis. Yogyakarta: Genta Publishing.

Rufinus Hotmaulana Hutaurnuk, 2013, Penaggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum, Sinar Grafika, Jakarta.

S. C. Maya Indah S. 2014. Perlindungan Korban (Suatu Perspektif Viktimologi dan Kriminologi), Jakarta: Kencana Prenadamedia Grup.

Saraya Sitta; Maureen V; Jonathan FM, Dkk. 2025. Hukum Pidana Indonesia Literasi & Wawasan Komprehensif Hukum Pidana Di Indonesia. Yogyakarta: PT. Star Digital Publishing.

Satjipto Raharjo.1999. Penegakan Hukum Sebagai Tinjauan Sosiologis. Genta Publishing.Yogyakarta.

Sepud I Made. 2013. Perlindungan Hukum Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Diversi Dalam Sistem Peradilan Pidana Anak, R.A.De.Rozarie, Surabaya.

Simons, M. 1996. Asas-asas hukum pidana. Bandung: Citra Aditya Bakti.

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

Soekanto Soerjono.1983. Faktor-Faktor yang Mempengaruhi Penegakkan Hukum. Raja Grafindo.Jakarta.

Sunarso, H. Siswanto, Viktimologi dalam Sistem Peradilan Pidana, Jakarta: Sinar Grafika, 2014.

Sutiyoso Bambang, 2006, "Penyelesaian Sengketa Bisnis,Solusi dan Antisipasi Bagi Peminat Bisnis Dalam Menghadapi Sengketa Kini Dan Mendatang", Yogyakarta;Citra Media.

W. Friedman. 2014. Legal Theory, Teori dan Filsafat Hukum-Idealisme Filosofis dan Problema Keadilan (Susunan II)diterjemahkan oleh Muhammad Arifin, Jakarta, Raja Grafindo Persada.

Wirjono Prodjodikoro, 2003, Tindak-tindak Pidana Tertentu di Indonesia, PT Aditama, Bandung.

Internet:

<https://blog.justika.com/>Accessed October 25, 2025