

## **Legal Analysis of Termination of Investigations in Eradication of Narcotics Crimes**

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**Abstract.** *Drug trafficking is a very serious crime, as it can damage health, the economy, and social morals. The status of the crime of drug trafficking, which can be considered very serious, still has various weaknesses in its enforcement, one of which is the mechanism for terminating investigations in narcotics cases as referred to in Article 109 of the Criminal Procedure Code and PERPOL (Republic of Indonesia National Police Regulation) Number 08 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. This thesis research aims to identify, analyze, and identify issues related to the regulation of investigation termination in the current eradication of narcotics crimes. To identify, analyze, and identify weaknesses in the implementation of investigation termination in the current eradication of narcotics crimes. The type of research in this thesis is empirical. Empirical legal research, also called sociological legal research, is legal research that examines law conceptualized as actual behavior, as an unwritten social phenomenon experienced by everyone in social relationships. Based on the research conducted, it can be seen that The current regulation on termination of investigations in the eradication of narcotics crimes has not been able to realize Pancasila justice, this is because the problem in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice is that there is no regulation on legal efforts that can be taken by parties who are suspects in narcotics cases, the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice also does not contain any strict sanctions for law enforcement officers who abuse their authority in determining the termination of investigations in narcotics cases. This can also result in legal uncertainty for suspects in narcotics criminal cases.*

**Keywords:** *Criminal; Investigation; Juridical; Narcotics.*

## 1. Introduction

Drug crime is a serious problem whose development cannot be easily contained. The rapid growth of drug crime not only poses a threat to individuals in society but also threatens the future of the nation. According to the National Crime Information Center (Pusiknas) of the Indonesian National Police, since the beginning of 2024, the Indonesian National Police have prosecuted 33,924 cases of drug crime and trafficking. In September 2024, the number of crime and drug trafficking cases handled by the Indonesian National Police was 18.86 percent of the total number of crime and drug trafficking cases handled in 2024. The number of narcotics cases handled in September 2024 increased by 1.51 percent from August 2024. The data was obtained from the EMP Pusiknas Bareskrim Polri which was accessed on Monday, September 30, 2024. The number of people reported for narcotics cases was 4,865 people in September 2024. Sadly, the reported status of students and college students was 13.73 percent of the total number of reported cases in September 2024. According to Acting Head of the Banyumas BNN Wiki Sri Erlangga, the group that mostly abuses narcotics in the Banyumas area is teenagers, Wiki added that teenagers, starting from students in grade 8 of junior high school, start drug abuse behavior first. Gradually, the dose increases and they hunt for narcotics.<sup>1</sup>

The circulation of narcotics in Indonesia is increasingly rampant in Indonesia, not only in Banyumas. The Narcotics Investigation Unit of the Banjarmasin City Police, under the South Kalimantan Regional Police, uncovered the illicit trafficking of 6.7 kilograms of methamphetamine during Operation Antik Intan 2024. In addition to uncovering the methamphetamine circulation case, the Banjarmasin Police also uncovered a case of circulation of ecstasy pills type ineks with evidence of 2,011 pills. Then members of the Banjarmasin Police confiscated 10.81 grams of ecstasy powder during Operation Antik 2024.<sup>2</sup> In reality, the use of narcotics has negative impacts on users, namely:<sup>3</sup>

### 1) Physical Health

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<sup>1</sup>National Police Education Center, For Drug Dealers and Distributors, BNN: Don't Play Around with the State, accessed via [https://pusiknas.polri.go.id/detail\\_artikel/untuk para bandar dan pengedar narkotika, bnn : jangan\\_main-main\\_dengan\\_negara](https://pusiknas.polri.go.id/detail_artikel/untuk para bandar dan pengedar narkotika, bnn : jangan_main-main_dengan_negara), on October 3, 2024.

<sup>2</sup>Antara, Banjarmasin Police uncover 6.7 kg of crystal methamphetamine during Operation Antik 2024, accessed via <https://kalsel.antaranews.com/berita/416820/polresta-banjarmasin-ungkap-67-kg-sabu-selama-operasi-antik-2024>, on May 12, 2024.

<sup>3</sup>Kemenpanrb, What are the Negative Impacts of Drugs?, accessed via <https://sippn.menpan.go.id/berita/84867/rumah-tahanan-negara-kelas-iib-tanjung/apa-saja-dampak-negatif-dari-narkoba#:~:text=Kesehatan%20Physik%3A%20Penggunaan%20narkoba%20dapat,yang%20signifikan%20pada%20kesehatan%20mental>, on May 12, 2024.

Drug use can cause serious physical harm. For example, opioid use can lead to decreased respiratory function, overdose, and death.

2) Mental Health

Drugs can have a significant negative impact on mental health. Long-term use can lead to anxiety disorders, depression, psychosis, and other mental health disorders.

3) Dependence and Abuse

Most narcotics have strong addictive potential, so users can become dependent and find it difficult to stop using them.

4) Social and Economic Disruption

Drug abuse can damage social relationships and affect a person's productivity and performance at work or school.

5) Risk of Life and Crime

Illegal drug use often involves criminal activity, including the purchase, sale, and distribution of illegal drugs. Furthermore, drug use can increase the risk of violence, criminal activity, and conflict with the law.

Given the high rate of drug trafficking and the health impacts of drug use, narcotics cannot be underestimated. Narcotics have become a national emergency. According to Police Commissioner Riki Yanuarfi, Head of Public Relations for the National Narcotics Agency, Indonesia is currently entering a narcotics emergency. This situation is emphasized by the President's decision to impose the death penalty on those convicted of narcotics cases, both Indonesian citizens and foreign nationals. Riki then explained that the appropriate punishment for drug traffickers is the death penalty.<sup>4</sup>

The death penalty for narcotics traffickers is necessary because the death penalty is the most severe punishment and is a means of punishment to create a deterrent effect for extraordinary crimes that have a major damaging impact on the life of the nation and state.<sup>5</sup> This is explained in the General Explanation of the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics, in the general explanation it is stated that:

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<sup>4</sup>BNN, Drug Emergency, accessed through <https://bnn.go.id/eksklusif-interview-with-the-head-of-public-relations-of-the-national-narcotics-agency-drugs-emergency/>, on October 3, 2024.

<sup>5</sup>Muhammad Alief Yunas Pahlevi, Catur Wido Haruni and Said Noor Prasetyo, "Implementation of the Death Penalty Sanctions against Narcotics Crime Perpetrators from a Responsive Law Perspective", Rechtsidé, Vol. 11, No. 2, 2023, pp. 8-9.

To create a deterrent effect on perpetrators of narcotics and narcotic precursor abuse and illicit trafficking, regulations regulate the increased criminal penalties, including special minimum sentences, 20 (twenty) years' imprisonment, life imprisonment, and the death penalty. These increased penalties are based on the class, type, size, and quantity of narcotics.

The threat of the death penalty in the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics has been regulated in Article 113, Article 114, Article 116, Article 118, Article 119, Article 121, Article 132, and Article 133. Even though the death penalty is a punishment that is imposed on perpetrators of narcotics crimes, however, the number of narcotics circulation as explained above still occurs. The philosophical issue that often colors the debate on the death penalty for perpetrators of narcotics circulation is related to the right to life of narcotics perpetrators.

Yusril Ihza Mahendra argued that the death penalty was necessary because, for Yusril, extraordinary crimes committed by the state were intolerable, as they were related to the peace of the state. Achmad Ali expressed the opinion that the death penalty was very necessary and was applied through specifications and selectivity. Specification for extraordinary crimes. And selectivity is that the convict must, according to the facts of the trial, convince the judge that the perpetrator is him. As in its decision, the Constitutional Court judge concluded, the death penalty in the Narcotics Law at that time did not conflict with human rights and the right to life as stipulated in the 1945 Constitution of the Republic of Indonesia because the guarantee of human rights and the right to life in the 1945 Constitution of the Republic of Indonesia does not adhere to absolute principles.<sup>6</sup>

Those who oppose the death penalty for drug traffickers have filed a lawsuit with the Constitutional Court. The plaintiffs argue that the death penalty is inhumane and that no party has the right to deprive a person of their right to life, including the right to life of drug traffickers. Meanwhile, the decision of the Indonesian Constitutional Court No. 21/PUU-VI/2008 states that the death penalty included in the sanctions in the Narcotics Law no longer violates basic rights, namely the right to life as guaranteed by the 1945 Constitution because there is no form of torture before the death penalty, so that if the form of execution is in the form of shooting, it does not violate what is called the basic right, namely the right to life. The purpose of the death penalty is to provide a fear effect or discourage others from dealing with narcotics so that human rights remain safe and protected from any form of crime related to the abuse of narcotics and all forms of its negative impacts. The provision of a deterrent effect in the form of the death penalty is

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<sup>6</sup>Christofel Brayn Leonard Totomutu, I Nyoman Gede Sugiarta, and I Made Minggu Widyatara, "The Death Penalty in Narcotics Crimes Reviewed from a Human Rights Perspective (Study of Constitutional Court Decision Number 2-3/PUU-V/2007)", Journal of Legal Construction, Vol. 2, No. 2, 2021, p. 364.

given as the last form of sanction to provide a deterrent effect, therefore the provision of a deterrent effect in the form of the death penalty is considered the most appropriate to be carried out so that someone does not think about committing such a very detrimental act. Even though there has been a lawsuit against the death penalty for narcotics traffickers because it is considered unconstitutional because it violates the right to life of a narcotics trafficker, in reality the rate of narcotics traffic remains quite high.<sup>7</sup>

## 2. Research Methods

This type of research is empirical research. Empirical legal research, also called sociological legal research, is legal research that examines law conceptualized as actual behavior, as an unwritten social phenomenon, experienced by everyone in social relationships. Empirical legal research, in English, is called empirical legal research, in Dutch it is called empirisch juridisch onderzoek, is a type of legal research that analyzes and examines the operation of law in society. Empirical legal research examines law conceptualized as actual behavior, as an unwritten social phenomenon, experienced by everyone in social life. Therefore, empirical legal research is also called sociological legal research. The approach method used is a qualitative method, namely a method that focusing on the general principles underlying the manifestation of units of symptoms that exist in human life, or the patterns analyzed are socio-cultural symptoms with the culture of the society concerned to obtain an overview of the prevailing patterns.<sup>8</sup>

## 3. Results and Discussion

### 3.1. Current Regulations on Termination of Investigations in the Eradication of Narcotics Crimes

Based on the axiological aspect, restorative justice emphasizes the realization of four things, namely:<sup>9</sup>

- a. return criminal law to its original function as the ultimum remedium (last resort), if other legal efforts and peace mechanisms are not realized.
- b. emphasizes the direct responsibility of the perpetrator of the crime to the victim for the crime committed.
- c. paying attention to the interests and protection of victims of crime.

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<sup>7</sup>Putu Amalia Diva Prasista, Ketut Kasta Arya Wijaya, Luh Putu Suryani, "Imposing the Death Penalty on Narcotics Crime Perpetrators Related to Human Rights (Badung District Attorney's Study)", Journal of Legal Construction, Vol. 4, No. 2, 2023, p. 218.

<sup>8</sup>Burhan Ashshofa, 1996, Legal Research Methods, PT. Rineka Cipta, Jakarta, pp. 20-21.

<sup>9</sup>Faculty of Law, Airlangga University, "Restorative Justice for Drug Abusers", <https://fh.unair.ac.id/restorative-justice-bagi-pelaku-penyalahgunaan-narkotika/>, January 25, 2025.

d. rebuilding a harmonious relationship between victims and perpetrators of crimes.

Epistemologically, the restorative justice approach emphasizes the implementation of comprehensive deliberation and participation as a means of finding the best solution to the problem of criminal acts, which includes fulfilling the interests of the victim, fulfilling the perpetrator's responsibilities, and restoring the relationship between the victim and the perpetrator. The implementation of the restorative justice concept for perpetrators of drug abuse can only be applied to drug users and addicts, and this is often done through a rehabilitation system. Based on the provisions of Article 54 of the Narcotics Law, drug addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation. Although rehabilitation for drug users and addicts is often associated as a way to realize restorative justice, in reality, rehabilitation is not part of the concept of restorative justice, this is because rehabilitation is still part of the criminal punishment. Article 103 of the Narcotics Law opens up space for judges to decide or determine to order rehabilitation, but can also decide to serve a prison sentence in accordance with the provisions of Article 134 of the Narcotics Law. Moreover, the period of rehabilitation is counted as the period served by the sentence. This is what makes rehabilitation truly a part of punishment.<sup>10</sup>

Essentially, rehabilitation is a form of fulfilling the right to health for drug abusers. Philosophically, restorative justice and rehabilitation share similarities, with the goal of restoring both perpetrators and victims to not only recovery but also reintegration into society and drug-free use. Therefore, restorative justice for drug abusers will emphasize its philosophical aspects through rehabilitation efforts, as the state's obligation to restore the condition of perpetrators, who are also victims of their own actions. Astutik, a criminal law expert from Airlangga University, explains that:<sup>11</sup>

Until now, the concept of rehabilitation is still part of the criminal punishment and the system for handling narcotics crimes still adheres to the principle of a double track system, where there are criminal actions and there is rehabilitation, however, rehabilitation is a form of fulfilling the right to health for narcotics abusers as well as part of the type of criminal sanctions that can or cannot be implemented based on the judge's conviction.

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<sup>10</sup>*Loc, cit*

<sup>11</sup>Interview with Astutik, a criminal law expert from Airlangga University, Surabaya, on December 16, 2024.

Astutik also explained that the concept of restorative justice cannot be applied to narcotics dealers who have truly destroyed the life of the nation and state, especially teenagers as the nation's future.<sup>12</sup>

*Restorative justice* In the law on the eradication of narcotics crimes, there is also an investigative aspect. This is regulated in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. Article 2 paragraph (1) of the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice states that:

Handling of Criminal Offenses based on Restorative Justice is carried out in the following activities:

- a. implementation of criminal investigation functions;
- b. investigation; or
- c. investigation.

Article 2 paragraph (3) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that "investigations or inquiries as referred to in paragraph (1) letter b and letter c, are carried out by Polri investigators." Article 2 paragraph (5) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that "handling of Criminal Acts as referred to in paragraph (1) letter b and letter c, may result in termination of the Investigation or Inquiry."

Article 3 paragraph (1) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that:

Handling of Criminal Acts based on Restorative Justice as referred to in Article 2, must meet the following requirements:

- a. general; and/or
- b. special.

Article 3 paragraph (3) of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice then states that "the special requirements as referred to in paragraph (1) letter b, only apply to handling of Criminal Acts based on Restorative Justice in Investigation or Investigative activities."

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<sup>12</sup>Loc, cit.

Article 7 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice then states that:

The special requirements as referred to in Article 3 paragraph (1) letter b, are additional requirements for the following crimes:

- a. Electronic information and transactions;
- b. Drugs; and
- c. Then cross.

Article 9 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice states that:

(1) Special requirements for Drug Crimes as referred to in Article 7 letter b, include:

- a. drug addicts and victims of drug abuse who apply for rehabilitation;
- b. when caught red-handed:
  - 1. Evidence of narcotics was found for 1 (one) day's use, classified as narcotics and psychotropics in accordance with the provisions of statutory regulations; and
  - 2. no evidence of drug crimes was found, but the urine test results showed positive for drugs;
- c. not involved in drug crime networks, distributors and/or dealers;
- d. an assessment has been carried out by an integrated assessment team; and
- e. The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.

(2) The integrated assessment team as referred to in paragraph (1) letter d is implemented in accordance with the provisions of statutory regulations.

Based on various provisions in the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, it can also be seen that the termination of investigations on the grounds of restorative justice can only be granted to drug users and addicts, parties who are not proven to be involved in drug trafficking, as well as users and addicts who are willing to assist investigators in uncovering drug trafficking cases. Regarding perpetrators who are categorized as drug dealers, the termination of investigations on the grounds of restorative justice cannot be implemented. The provisions on the termination of investigations on restorative grounds are also closely related to the provisions of Article 109 paragraph (2) of the Criminal Procedure Code regarding the termination of investigations in a criminal case. Article 109 paragraph (2) of the Criminal Procedure Code states that:

If the investigator stops the investigation because there is insufficient evidence or the incident turns out not to be a criminal act or the investigation is stopped by law, the investigator will notify the public prosecutor, the suspect or his family.

The reasons for terminating the investigation of a criminal act according to Article 109 paragraph (2) of the Criminal Procedure Code are insufficient evidence, the alleged incident is not a criminal act, and the investigation is terminated by law. Regarding the termination of the investigation for reasons by law contained in the Criminal Code, there are four things, namely *ne bis in idem* (Article 76 of the Criminal Code), the defendant died (Article 77 of the Criminal Code), the expiration of the statute of limitations (Article 78 of the Criminal Code), and the settlement of the case outside the court (Article 82 of the Criminal Code). This is then also contained in Article 132 of the Republic of Indonesia Law Number 1 of 2023 concerning the Criminal Code which states that:

(1) The authority to prosecute is declared to have lapsed if:

- a. there is a court decision that has obtained permanent legal force against every person for the same case;
- b. the suspect or defendant dies;
- c. expired;
- d. the maximum fine must be paid voluntarily for crimes that are only threatened with a maximum fine of category II;
- e. the maximum category IV fine is paid voluntarily for crimes that are punishable by a maximum prison sentence of 1 (one) year or a maximum category III fine;
- f. withdrawal of complaints for Criminal Offenses complaints;
- g. there has been a settlement outside the judicial process as regulated in the Law; or
- h. granting amnesty or abolition.

(2) Provisions regarding the lapse of prosecution authority for Corporations take into account the provisions as referred to in Article 121.

The various explanations above show that the termination of investigation is only permitted for drug users and addicts on the grounds of restorative justice as referred to in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and is based on legal grounds as referred to in Article 76, Article 77, Article 78, and Article 82 of the Criminal Code and Article 132 of Law Number 1 of 2023. Even though the termination of investigation on legal grounds is closely related to restorative justice, in reality there are several problems that occur in the process

of terminating investigations in narcotics cases that are not related to drug users and addicts.

According to research conducted by the Indonesian Judicial Research Society (IJRS), it shows that the 18/2021 guidelines have never been used by prosecutors in 5 (five) District Attorney's Offices in the DKI Jakarta area because there has been no transfer of narcotics abuse criminal cases as stipulated in Article 127 paragraph (1) of the Narcotics Law from the police to the prosecutor's office. The absence of cases under Article 127 paragraph (1) of the Narcotics Law at the prosecutor's office is because it is possible that the cases have been dismissed at the police level. The possibility that narcotics abuse criminal cases as stipulated in Article 127 paragraph (1) of the Narcotics Law have been dismissed at the police level is a logical reason. The police have indeed regulated the mechanism for terminating investigations and inquiries through Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice (Perpol 8/2021), especially in narcotics cases. Regarding the regulation on the termination of investigations and inquiries as mentioned in Police Regulation 8/2021, an evaluation of the institution's internal regulations is also necessary, particularly regarding the implementation of restorative justice through the termination of investigations. This is because restorative justice implemented at the investigation stage is deemed inappropriate. Restorative justice should only be implemented if a crime has occurred, while at the investigation stage, whether or not it has occurred is unclear. The mechanism for terminating investigations and/or inquiries based on restorative justice principles needs to be reviewed to ensure its regulatory mechanism aligns with the principles stipulated in the law. This will ensure that the restorative justice process in the criminal justice system is more accountable and transparent. To date, there is no data that can be used as a reference or data officially released by the Indonesian National Police regarding investigator discretion in implementing a restorative justice approach in resolving criminal cases.<sup>13</sup> The Indonesian Judicial Research Society (IJRS) further explained that research conducted also revealed that prosecutors stated that Guideline 18/2021 could not be implemented because before being handed over to the Public Prosecutor, namely during the police investigation and inquiry stage, restorative justice could first be implemented by terminating the investigation and inquiry against drug addicts, victims of drug abuse, or drug abusers.<sup>14</sup>

In relation to criminalization, it is crucial for all legal practitioners to understand the role of Pancasila in the development of national law. This is because the existence of law itself is inseparable from space and time. Therefore, Indonesian

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<sup>13</sup>Indonesia Judicial Research Society (IJRS), Assessment of the Implementation of Prosecutor's Guidelines regarding the Handling of Narcotics Cases (Guidelines 11/2021 and Guidelines 18/2021) by Prosecutors in the Jurisdiction of the DKI Jakarta High Prosecutor's Office, Indonesia Judicial Research Society (IJRS), Jakarta, 2024, pp. 155-160.

<sup>14</sup>*Loc, cit.*

national law, including criminal law, must be born from the spirit of the Indonesian people themselves. National law is law or legislation based on the ideological and constitutional foundations of the state, namely Pancasila and the 1945 Constitution, or law built on creativity or activities based on the taste and engineering of the nation itself. In this regard, national law is actually nothing more than a legal system that originates from the nation's long-standing and evolving cultural values. In other words, national law is a legal system that emerged as a result of the cultural efforts of the Indonesian people with national reach, namely a legal system that encompasses all people throughout the national borders of Indonesia.

In relation to the 1945 Constitution, Indonesian legal experts generally agree that the Preamble to the 1945 Constitution holds a higher position than the body of the Constitution. This is because the Preamble contains the basic formulation of the state philosophy, which also serves as the state ideology of the Republic of Indonesia. This formulation is brief, but contains the most fundamental norms for measuring and determining the legitimacy of forms of state administration and important policies adopted in the process of state administration. Viewed from the perspective of legal philosophy, the basic formulation of the state philosophy contained in the Preamble to the 1945 Constitution, although it is outside the legal system, plays a normative role as a leitstern or as a star that will guide the formulation of legal norms that fall under it.

Criminalization in criminal law reform can be viewed from the perspective of community protection, as the basic idea of the balance of Pancasila, which is oriented towards the moral paradigm (Divinity), Humanity (Humanistic), Nationality, Democracy and the wisdom of wisdom, and the paradigm of social justice. The use of Pancasila as an Indonesian perspective in criminalization is based on the assumption that the Pancasila principles provide an opportunity to formulate what is right and good for humans universally. Pancasila formulates the abstract principles or essence of Indonesian human life, which are based on three complete human relationships: the relationship between humans and God, the relationship between humans and humans, and the relationship between humans and objects.

The integral criminalization of Indonesian society in the five principles of Pancasila is a balance of the physical and spiritual in realizing social order and the settlement of punishment that is humane, God-fearing, national, humane, democratic, and just in accordance with the sense of justice of the Indonesian people which is spread in the nuances of Indonesian society which is characterized by magical religion for the sake of balance in life. Therefore, seeking a philosophy of criminalization is a philosophy that has been excavated in the body of the soul of the nation, namely Pancasila. The development of national legal development policy ideas based on Pancasila as the values of national life that are aspired to.

This means that it is based on the basic ideas of Pancasila which contain a balance of religious moral values (Divinity), humanity (humanistic), nationality, democracy, and social justice.

Pancasila-based criminalization must fulfill:

- 1) Punishment is directed at the faith of the convict, which is essentially punishment for punishment;
- 2) criminal punishment must not harm the most basic human rights and must not degrade dignity for any reason, as a manifestation of humane criminal punishment;
- 3) Punishment is directed at instilling love for the nation, punishment that prioritizes efforts to reintegrate into society;
- 4) punishment is directed at instilling maturity in citizens who are solemn, able to control themselves, be disciplined, and respect and obey the law as a form of the people's decision;
- 5) Punishment is aimed at instilling awareness of the obligation to uphold shared justice, in essence reminding us of efforts to punish those who are convicted of the crime of liberating those convicted from the chaos and cruelty of the social reality that is entangled in their status as ex-convicts/former convicts.

### **3.2. Weaknesses and Solutions in the Implementation of Termination of Investigation in the Current Eradication of Narcotics Crimes**

- 1) Weaknesses in the Implementation of Termination of Investigation in the Current Eradication of Narcotics Crimes
  - a. Weaknesses of Legal Regulation

The main weakness that can be seen in this aspect is the problem in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, namely the lack of regulation of legal remedies that can be taken by parties who are suspects in narcotics cases. The Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice also does not contain any strict sanctions for law enforcement officers who abuse their authority in determining the termination of investigations in narcotics cases. This can also result in legal uncertainty for suspects in narcotics criminal cases.

The problem in other legal aspects is that it is known that the reasons for stopping the investigation of a crime according to Article 109 paragraph (2) of the Criminal Procedure Code are insufficient evidence, the alleged event is not a crime, and the

investigation is stopped by law. Regarding the stopping of the investigation by reason of law contained in the Criminal Code, there are four things, namely *ne bis in idem* (Article 76 of the Criminal Code), the defendant died (Article 77 of the Criminal Code), the expiration of the period (Article 78 of the Criminal Code), and the settlement of the case outside the court (Article 82 of the Criminal Code). Based on the provisions of Article 109 paragraph (2) of the Criminal Procedure Code, it can be seen that the reasons by law as referred to in Article 76, Article 77, Article 8, Article 82 of the Criminal Code do not regulate the position of restorative justice reasons as one of the reasons for stopping the investigation by reason of law. This results in there being no clear correlation between Article 109 paragraph (2) of the Criminal Procedure Code and the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.

The final substantive weakness concerns the position of Indonesian National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. This is because restorative justice, implemented during the investigation stage, is deemed inappropriate. Restorative justice should only be implemented if a crime has occurred, while at the investigation stage, it is unclear whether or not this has occurred. The mechanism for terminating investigations and/or inquiries based on restorative justice principles needs to be reviewed to ensure its regulatory mechanisms align with the principles stipulated in the law. This will ensure that the restorative justice process in the criminal justice system is more accountable and transparent. To date, there is no data available to serve as a reference or official release from the Indonesian National Police regarding investigator discretion in implementing a restorative justice approach in resolving criminal cases.<sup>15</sup>

#### b. Weaknesses in Law Enforcement

The existence of weaknesses in the legal substance sector results in weaknesses in the authority structure of law enforcement institutions in carrying out their function of handling narcotics cases. According to research results conducted by the Indonesian Judicial Research Society (IJRS), it shows that guideline 18/2021 has never been used by prosecutors in 5 (five) District Attorney's Offices in the DKI Jakarta area because there has been no transfer of narcotics abuse criminal cases as stipulated in Article 127 paragraph (1) of the Narcotics Law from the police level to the prosecutor's office. The absence of cases under Article 127 paragraph (1) of the Narcotics Law at the prosecutor's office is because it is possible that the cases have been dismissed at the police level. The possibility that narcotics abuse

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<sup>15</sup>Indonesia Judicial Research Society (IJRS), Assessment of the Implementation of Prosecutor's Guidelines regarding the Handling of Narcotics Cases (Guidelines 11/2021 and Guidelines 18/2021) by Prosecutors in the Jurisdiction of the DKI Jakarta High Prosecutor's Office, Indonesia Judicial Research Society (IJRS), Jakarta, 2024, pp. 155-160.

criminal cases as stipulated in Article 127 paragraph (1) of the Narcotics Law have been dismissed at the police level is a logical reason.

The Indonesian Judicial Research Society (IJRS) further explained that research conducted also revealed that prosecutors stated that Guideline 18/2021 could not be implemented because before being handed over to the Public Prosecutor, namely during the police investigation and inquiry stage, restorative justice could first be implemented by terminating the investigation and inquiry against drug addicts, victims of drug abuse, or drug abusers.<sup>16</sup>

The requirements for implementing restorative justice are the same as those stipulated in Guideline 18/2021. Although prosecutors at the District Attorney's Office in the DKI Jakarta region have never implemented Guideline 18/2021, there are sources who explain that if in the future there are cases of narcotics abuse as stipulated in Article 127 paragraph (1) of the Narcotics Law, the prosecutor's office will try to implement Guideline 18/2021 by determining the suspect of narcotics abuse to undergo rehabilitation through the legal process and not prosecuting the case.<sup>17</sup>

Then, as stipulated in Article 109 paragraph (1) of the Criminal Procedure Code, in the event that an investigator has begun investigating an event that constitutes a criminal act, the investigator shall notify the public prosecutor of this, namely through a Letter of Order to Commence Investigation (SPDP). Furthermore, as regulated in Article 109 paragraph (2) of the Criminal Procedure Code, if the investigator stops the investigation because there is insufficient evidence or the event turns out not to be a criminal act or the investigation is stopped by law, the investigator shall notify the public prosecutor, the suspect or his family by issuing a Letter of Order to Stop Investigation (SP3). As for the case of narcotics abuse, this study obtained information that because the case in question had been stopped at the investigation stage, no SPDP or SP3 was sent to the public prosecutor.<sup>18</sup> Regarding the termination of the investigation itself, in accordance with Circular Letter (SE) of the Chief of Police No. 7/VII/2018 and Circular Letter of the Chief of Police No. 8/VII/2018, investigators issue an Investigation Termination Order and a Letter of Decision on Investigation Termination. However, there are no adequate regulations, including provisions of the Criminal Procedure Code, that regulate the issuance of this investigation termination letter. The police, with their own authority, can issue such a letter of termination of investigation, so there is no oversight mechanism (checks and balances) with other institutions, especially with the public prosecutor. Police Regulation 8/2021 itself only stipulates that the issuance of an Investigation Termination Order and a Letter of Decision on Investigation Termination for legal reasons is carried out at the investigation stage

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<sup>16</sup>Loc, cit.

<sup>17</sup>Loc, cit.

<sup>18</sup>Loc, cit.

for the purpose of termination of the investigation requested to the Head of the Criminal Investigation Agency of the National Police, for the National Police Headquarters level, the Head of the Regional Police, for the Regional Police level, or the Head of the Resort Police, for the Resort Police and Sector Police levels.<sup>19</sup>

Problems related to case termination, especially at the investigative level, will undoubtedly impact the minimal accountable and transparent case handling process. For example, regarding the regulation of the destruction of confiscated goods/objects if investigators or investigators terminate an investigation or inquiry based on Restorative Justice. Police Regulation 8/2021 only stipulates that investigators or investigators destroy confiscated goods/objects in the form of narcotics or other dangerous goods after a letter of determination to terminate an investigation or inquiry is issued, and a report is prepared for such destruction. However, Government Regulation Number 40 of 2013 concerning the Implementation of Law Number 35 of 2009 concerning Narcotics stipulates that the destruction of confiscated goods is carried out by BNN investigators and police investigators based on a determination by the local district attorney, accompanied by a report. In carrying out this destruction of evidence, BNN investigators or police investigators are required to invite prosecutors, the Ministry of Health, the Food and Drug Monitoring Agency, and/or other relevant officials, as well as members of the local community as witnesses. These two regulations show very substantial differences regarding the implementation of transparent and accountable destruction of evidence.<sup>20</sup>

## 2) Solutions to Problems in the Implementation of Termination of Investigations in the Eradication of Narcotics Crimes Currently

The legal solution steps that can be taken are:

a. Adding a paragraph to Article 9 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which stipulates that the investigation of perpetrators who produce and distribute narcotics cannot be stopped. Therefore, Article 9 of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice reads:

- 1) Special requirements for Drug Crimes as referred to in Article 7 letter b, include:
  - a. drug addicts and victims of drug abuse who apply for rehabilitation;
  - b. when caught red-handed:

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<sup>19</sup>Loc, cit.

<sup>20</sup>Loc, cit.

- 1) Evidence of narcotics was found for 1 (one) day's use, classified as narcotics and psychotropics in accordance with the provisions of statutory regulations; and
- 2) no evidence of drug crimes was found, but the urine test results showed positive for drugs;
  - c. not involved in drug crime networks, distributors and/or dealers;
  - d. an assessment has been carried out by an integrated assessment team; and
  - e. The perpetrator is willing to cooperate with the National Police investigators to conduct further investigations.
- 2) The provisions as referred to in Article 7 letter b do not apply to parties who produce and distribute narcotics.
- 3) The integrated assessment team as referred to in paragraph (1) letter d is implemented in accordance with the provisions of statutory regulations.
  - b. Adding provisions in Article 132 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code regarding the status of restorative justice as a basis for eliminating the authority to prosecute or as a reason for terminating an investigation for legal reasons. Therefore, Article 132 of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code reads:
    - (1) The authority to prosecute is declared to have lapsed if:
      - a. there is a court decision that has obtained permanent legal force against every person for the same case;
      - b. the suspect or defendant dies;
      - c. expired;
      - d. the maximum fine must be paid voluntarily for crimes that are only threatened with a maximum fine of category II;
      - e. the maximum category IV fine is paid voluntarily for crimes that are punishable by a maximum prison sentence of 1 (one) year or a maximum category III fine;

#### **4. Conclusion**

The current regulation on termination of investigations in the eradication of narcotics crimes has not been able to realize Pancasila justice this is because of the problem in the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice in the form of no regulation of legal remedies that can be taken by parties who are suspects in narcotics cases. The Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on

Restorative Justice also does not contain any strict sanctions for law enforcement officers who abuse their authority in determining the termination of investigations in narcotics cases. This can also result in legal uncertainty for suspects in narcotics criminal cases.

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