



## Settlement of criminal offences of drug abusers with restorative justice approach

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### Abstract

The settlement of the handling of drug abuse criminal cases through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice, with the spirit to restore the original situation carried out by restoring the perpetrators of drug abuse crimes that are victimless crimes. The settlement of the handling of drug abuse criminal cases through rehabilitation is carried out by prioritising restorative justice and expediency, as well as considering the principles of fast, simple, and low-cost justice, the principle of punishment as a last resort (*ultimum remedium*), and the recovery of the perpetrator. This research aims to find out and explain the application of restorative justice against narcotics abuse, the impact of the application of restorative justice and inhibiting factors in the application of restorative justice against narcotics abusers. The results showed that the application of restorative justice to drug abusers is an approach that focuses on recovery and repair, not just punishment. It involves victims, perpetrators and communities in a process of repair involving responsibility, accountability and reconciliation. In implementing restorative justice, it is important to ensure that the process is fair, transparent, and respectful of human rights. Restorative justice should also be conducted with care and based on principles of fairness and equity. This will ensure that the programme is effective and can help individuals involved in drug abuse problems to overcome their problems and restore their relationships with society and victims. The application of restorative justice to people who misuse drugs can have significant positive impacts on the individuals involved, the community, and the criminal justice system. Among the positive impacts are raising awareness, improving relationships, providing alternatives, improving mental health, increasing the effectiveness of rehabilitation. The application of restorative justice can also have negative impacts, including difficulties in determining a fair sentence and harming victims who are not involved in the repair process. The implementation of restorative justice in drug abuse cases can be hampered by several factors, including limited resources, lack of support from related institutions, differences in views, the inability of offenders to access rehabilitation programmes, stigma against drug abusers, involvement of drug gangs, lack of awareness and understanding of restorative justice.

**Keywords:** Restorative justice, narcotics abusers

### Introduction

In principle Abuse narcotics get guarantees for medical rehabilitation as well as social rehabilitation as stipulated in Article 54 of Law Number 35 of 2009 concerning Narcotics which states that drug abusers Narcotics and victims of Narcotics Abuse are required to undergo medical rehabilitation and social rehabilitation, but criminal provisions also stipulate criminal sanctions for people who use narcotics as stipulated in Article 127 of Law Number 35 of 2009 concerning Narcotics.

The findings of the *Institute for Criminal Justice Reform* (ICJR) 'Institute for Criminal Justice Reform Atau ICJR merupakan Lembaga Kajian Independen Dan Advokasi Yang Fokus Pada Reformasi Sistem Peradilan Pidana Dan Hukum Pada Umumnya Di Indonesia'. show that 61% of the charges filed by the Prosecutor for narcotics abuse include Article 111 and Article 112 of Law Number 35 of 2009 concerning Narcotics, these articles are the articles used to ensnare users and Narcotics addicts with very high criminal penalties, namely a minimum of 4 years and a maximum of 12 years. Shinta Riananda Kusuma Wardani et.al, 'Pelaksanaan Rehabilitasi Bagi Pecandu Narkotika Dan Korban Penyalahgunaan Narkotika Pasca Dibentuknya Tim Asesmen Terpadu Tingkat Kabupaten Temanggung', *Jurnal Dinamika Hukum*, 2019, hlm. 2750–66. Criminal sanctions are also ineffective in achieving their goals,

namely to provide a deterrent effect and a frightening effect. In fact, a *punitive* approach or the imposition of criminal sanctions causes law enforcement officials such as the police to actively carry out arrests and detentions.

Completion of handling cases of criminal acts of narcotics abuse through rehabilitation is a mechanism that cannot be separated from the implementation of restorative justice, with the enthusiasm to restore the original situation which is carried out by recovering the perpetrators of narcotics abuse which are *victimless crimes*. Completion of handling cases of criminal acts of narcotics abuse through rehabilitation is carried out by prioritizing restorative justice and expediency, and taking into account the principles of fast, simple and low-cost justice, the principle of punishment as a last resort (*ultimum remedium*), and recovery of the offender. Restorative justice prioritizes the integrity of perpetrators and victims or society as a unit to find solutions and restore good relations between perpetrators and victims <sup>[1]</sup>.

At this time, restorative justice has begun to be widely practiced to resolve criminal cases because of a shift in the paradigm of criminal law enforcement from restorative justice to restorative justice in which restorative justice views that the form of perpetrator's responsibility must lead to the imposition of criminal sanctions, the loss or suffering of the victim is considered to be even and paid or recovered by the offender by undergoing and receiving the sentencing

process, while restorative justice avoids the offender from the formal criminal justice system and gives the offender the opportunity to carry out alternative sanctions without imprisonment.

There are articles related to previous research, namely: (1) Research conducted by Patoni in 2022, with the thesis title "Restorative Justice in Law Enforcement of Drug Abuse in Senyerang District Tanjung Jabung Barat" in the Postgraduate Program, Sulthan State Islamic University Thaha Saifuddin Jambi. The focus of the research conducted in this study is about the general description of the crime of narcotics abuse, the efforts made by the Senyerang Pengabuan Police on the crime of drug abuse from a *restorative justice perspective* as well as the form of Restorative Justice carried out on the crime of drug abuse in Senyerang District, Tanjung Jabung Regency. West. Whereas in-depth study research focuses on how to implement, impact and obstacle factors in the application of restorative justice to abusers narcotics. So it can be concluded that the researcher's research is different from this study, and there are differences in the research location, namely in Tanjung Jabung Barat Regency and while the research to be carried out by researchers takes place at the Aceh Tamiang District Court. (2) Research conducted by Puryaman Harefa Year 2022, with the thesis title "Legal Policy on the Crime of Narcotics Abuse Through Restorative Justice by the Prosecutor's Office (Research Study at the South Tapanuli District Prosecutor's Office)" in the Master of Law Study Program at Pembangunan Panca Budi University, Medan. The research above has significant similarities and differences with the research that will be conducted by researchers. The similarities are that they are both researching *Restorative Justice* in Law Enforcement of Narcotics Abuse Crimes. While the difference lies in the research focus, in the research conducted by Puryaman Harefa examines more about how the legal arrangements regarding rehabilitation for abusers narcotics in Indonesia, what are the factors that cause abusers narcotics as well as how the legal policies regarding the implementation of rehabilitation for abusers narcotics through *Restorative Justice*. Meanwhile, the research conducted by in-depth study researchers focused on how the impact and constraints applied in the implementation of restorative justice against abusers narcotics.

### Research Methods

The type of research used in the preparation of this thesis is *juridical-empirical research*. *Empirical juridical* research, in other words, is a type of sociological legal research and can be referred to as field research, which examines the legal provisions that apply and what has happened in people's lives, or in other words, namely a research conducted on actual conditions or real conditions that have been occurs in society with the intention of knowing and finding the facts and data needed.

### Discussion

#### Application of Restorative Justice Against Narcotics Abusers

When determining and examining the results of investigations the prosecutor's office pays attention to formal and material completeness. Examination of the formal and substantive completeness of Instruction Number 18 of 2021 concerning the completion of the handling of

drug crime cases through rehabilitation through the application of the principle of *dominus litis* by the prosecutor is carried out in particular regarding: a. evidence of drug abuse, determination of the suspect, definition of the offense and implementation of the alleged article, namely the elements of the suspect's guilt (*mens rea*); and Recommendations from the results of the integrated evaluation. If the prosecutor's office based on examination of the documents concludes that the defendant is considered the perpetrator, then the defendant is charged with violating Article 127 (1) of the Narcotics Law. Then, according to the Prosecutor's Office Directive Number 18 of 2021, the prosecutor gave instructions to investigators to prove the suspect's guilt, specifically his involvement in the drug trafficking network, for a. Check whether the suspect is an end user. Examine the suspect's profile regarding financial transactions and the suspect's lifestyle (know the suspect). If the narcotics found do not exceed the useful life of 1 (one) day as stipulated in the Supreme Court Circular No. 4 of 2010 and Instruction of the Minister of Justice of the Republic of Indonesia No. 18 of 2021, penal sanctions against rehabilitation measures will be in the form of imprisonment, the prosecutor's office instructs investigators to conduct forensic laboratory tests to determine the suspect's criminal capacity. After pretrial, the next step that must be taken is prosecution. The Criminal Procedure Code itself does not explain when a prosecution begins or is considered to have existed.

Requirements for the rehabilitation of perpetrators through the judicial process according to the Public Prosecutor's Order No. 18 of 2021, namely, the suspect is positive for using drugs based on the results of a forensic laboratory examination, the suspect is identified based on the results of a preliminary examination and is not involved in a network of illicit narcotics trafficking and end users, the suspect has been arrested or imprisoned. to commit a crime without proof of Narcotics or Drug addiction for a maximum of 1 (one) day, the suspect is classified as a Drug Addict, Drug Addiction Victim or Drug Addict based on the results of a general assessment; and guarantee the rehabilitation of suspects to their families or legal guardians through legal efforts. By handing over responsibility and evidence to the suspect (Step 2), the prosecutor will inform the suspect about the mechanism for resolving cases through rehabilitation in court. Public Prosecutor's Warrant No. 18 of 2021, if the suspect is willing to redeem himself through trial: The suspect writes a letter stating that he wants to redeem himself through trial; and the suspect's family or guardian provides a stamped letter guaranteeing the suspect will be rehabilitated through the legal process. After that, the prosecutor prepared a statement letter step by step and submitted it to the Head of the Aceh Tamiang District Prosecutor's Office, so that the suspect could return it through the court process by adding documents according to the Prosecutor's Instruction Number 18 of 2021, namely: Integrated assessment results; forensic laboratory examination results; Evidence of having been rehabilitated/has never been visited, a letter stating the will of the suspect to be rehabilitated during the trial process; and a statement of assurance that the suspect's family or guardian will be rehabilitated through the court process. If the suspect does not agree to be rehabilitated through a court process, then the suspect must submit a letter of notification of unwillingness to be rehabilitated on stamped paper and

the suspect will be processed legally. Then the Head of the Aceh Tamiang District Prosecutor 's Office as the state prosecutor must hand over the Deputy Public Prosecutor's Head, and if accepted, the Aceh Tamiang District Prosecutor's Head can issue a rehabilitation order. The contents of the legal rehabilitation suspension regulated in the Attorney General's Office Decree No. 18 of 2021 include: Determining the rehabilitation of suspects through the judicial process, Determining the place and time period for rehabilitation taking into account the results of an integrated evaluation. Determining the status of evidence including Narcotics evidence held for prosecution and investigation remains the responsibility of the Attorney General until rehabilitation through the judicial process is completed; and Order the release of the suspect if arrested. In accordance with Attorney-General Regulation Number 18 of 2021, medical rehabilitation is carried out at local rehabilitation facilities and/or health services; while social rehabilitation is carried out in social rehabilitation centers organized by the ministry of social affairs, social services or the city government. Obstacles to implementing the Attorney General's instructions in handling cases of criminal acts of drug abuse through rehabilitation using a restorative justice approach in implementing the principle of *dominus litis* the prosecutor's office at the district attorney's office in Aceh Tamiang.

Restorative justice to abusers Narcotics can be an effective alternative to improve the negative impact of drug abuse. Restorative justice is a legal approach that focuses on repairing the damage caused by criminal acts by restoring balance between the victim, the perpetrator, and society. In the context of narcotics abuse, restorative justice can be applied by involving the abuser narcotics in the process of repairing the damage caused by their actions. This can be done through meetings with victims' families or friends, group therapy, rehabilitation, or skills training programs to help abusers narcotics restart positive life.

In addition, the application of restorative justice can also help prevent drug abuse in the future. By giving opportunities to abusers narcotics to participate in the improvement process, they are able to understand the negative impact that their actions result in and become more aware of the consequences of narcotics abuse. However, the application of restorative justice must also be carried out carefully and must not ignore applicable law. The improvement process must be based on the principles of fairness and equality for all parties involved. In addition, abusers narcotics must also be punished fairly in accordance with applicable law, while still giving them the opportunity to correct their mistakes and start a new life.

Law Number 35 of 2009 concerning Narcotics and Law Number 5 of 1997 concerning Psychotropics are promulgated in the State Gazette RA of the Republic of Indonesia Number 10 and Number 67 and Supplement to the State Gazette of the Republic of Indonesia Number 3671 and Number 3698 then came into effect since the law was promulgated. Talking about criminal law policy, of course, cannot be separated from the meaning of the policy itself, in the Big Indonesian Dictionary what is meant by policy is a series of concepts and principles that form the outline and basis of plans in implementing a leadership job, and how to act (government, organization) and a statement of goals, objectives, principles or intentions as guidelines for management in achieving goals, objectives. While Marc

Ancel stated that penal policy is a science as well as an art which ultimately has a practical goal to enable positive legal regulations to be better formulated and to provide guidance not only to legislators but also to the Courts and also administrators or executors of court decisions applying the law<sup>[3]</sup>.

Therefore, weaknesses or mistakes in criminal policy can be seen as very strategic mistakes, because this can hinder the intermediaries crime with criminal law. In addition, efforts to overcome the crime Violence through the making of criminal laws (laws) is in essence also an integral part of efforts to protect society (*social defense*) and efforts to achieve social welfare (*social welfare*). Thus, it is also natural that criminal law policies or politics are also part of the mind g of policy or social politics (social policy). Social policy can be interpreted as all rational efforts to achieve social welfare and at the same time include community protection<sup>[4]</sup>.

Thus a conclusion can be drawn that criminal law policy is very closely related to law enforcement. In this case the meaning of law enforcement becomes a reality. What is referred to as legal wishes here are the thoughts of the legislature which are formulated in the legal regulations. Thus, the formulation of the thoughts of the legislators as outlined in the legal regulations will determine how the investigators whether the law is enforced<sup>[5]</sup>.

In this case the role of legal regulations is very large related to the implementation of legal regulations carried out by law enforcement officials. It can also be interpreted that the success or failure of the apparatus pen lawlessness in carrying out its duties has started since the legal regulation was made. For example, the *legislature* or the agency authorized to make these regulations has made regulations that are difficult for the community to implement, since then that was the beginning of the failure of the regulatory products made by that body. This can result in the regulation ordering something that is not supported by sufficient means, as a result the regulation fails to be implemented by law enforcement officials. Meanwhile according to another understanding of law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guideline for behavior in traffic or legal relations in the life of society and the state.

Judging from the point of view of the subject, law enforcement can be carried out by broad subjects and can also be interpreted as law enforcement efforts that involve all legal subjects in every law. legal connection. Anyone who ja carry out normative rules or do something or not do something based on the norms of the applicable legal rules, it means that he is enforce or enforce the rule of law. In a narrow sense, from the perspective of the subject matter, law enforcement can only be interpreted as an effort by certain law enforcement officials to guarantee and ensure the upholding of the law, if necessary law enforcement officials are permitted to use force. Law enforcement apparatus includes the notion of research institutions not the law and law enforcers (people).

In a narrow sense, law enforcement officials who are involved in upholding the law, starting from witnesses, police, legal advisers, prosecutors, judges and correctional officers. Each apparatus and related apparatus also includes parties concerned with their own duties or roles, namely those related to reporting or complaint activities, investigations, investigations, prosecutions, evidence,

imposition of sentences and imposition of sanctions, as well as efforts to reinstate ( resocialize ) convicts

## 2. The Impact of the Implementation of Restorative Justice on Narcotics Abuses

Restorative justice to abusers Narcotics can have a significant positive impact on the individuals involved, society, and the criminal justice system. The following are some of the positive impacts that can arise from implementing restorative justice <sup>[6]</sup>:

### a. Raise awareness

Through participation in the repair process, abusers narcotics can better understand the negative impact of their actions and raise awareness about the consequences of drug abuse.

### b. Repairing relationships

Restorative justice can help improve the relationship between victims, perpetrators, and society. This can reduce the possibility of future criminal acts.

### c. Provide alternatives

Restorative justice can provide an alternative to traditional punishments, such as imprisonment or fines. This can help reduce the burden on the criminal justice system and increase the effectiveness of handling drug abuse.

### d. Improve mental health

Restorative justice programs can provide abusers with the support and treatment they need narcotics to treat their mental health and addiction problems.

### e. Increase the effectiveness of rehabilitation

Restorative justice can increase the effectiveness of rehabilitation programs by involving abusers narcotics in the repair process and provide the necessary support.

Restorative justice can also have negative impacts, such as difficulties in determining fair punishments and harming victims who are not involved in the remedial process. Therefore, the application of restorative justice must be carried out carefully and based on the principles of justice and equality.

Other negative impacts include:

#### 1. Not effective in severe cases

Restorative justice approach may not be effective in cases of serious drug abuse, such as drug trafficking or organized crime involving large numbers of people.

#### 2. Lack of support

Restorative justice requires support from many parties, such as the police, courts and the community. If there is a lack of support, then implementation may not be effective.

#### 3. Potential for re- victimisation

4. If the victim does not feel safe or is treated fairly in the restorative justice process, this process can lead to re-victimization of the victim.

#### 5. Bad policy

Restorative justice can be an excuse for ignoring laws or making bad policies. Therefore, there needs to be strict supervision and regulation to ensure that restorative justice

is implemented properly and does not have a negative impact on society.

Restorative justice to abusers Narcotics can have a significant impact. The following are some of the impacts that may occur Focus on recovery and reintegration, improving relations with victims and the community. A restorative justice approach can help reduce the stigmatization of abusers narcotics. By viewing addiction as a health problem that requires recovery, not as a mere crime, this approach can help change negative perceptions and reduce discrimination against abusers. The impact is to encourage social inclusion and provide abusers with opportunities to get the support they need. Restorative justice allows for direct interaction between abusers narcotics with related parties, such as law enforcers, social workers, and counselors. Through dialogue and collaboration, interventions can become more effective in designing rehabilitation programs that suit individual needs, monitor progress, and address underlying risk factors for substance abuse. The result is an increased chance of success in abuser recovery narcotics.

## Obstacle Factors in the Implementation of Restorative Justice against Narcotics Abusers

Despite the application of restorative justice to abusers narcotics can provide significant benefits, there are several inhibiting factors that can hinder its implementation.<sup>7</sup> Stigma associated with abusers Narcotics can make it difficult to apply a restorative justice approach because society may perceive them negatively and be reluctant to participate in remedial processes. Social stigma against abusers Narcotics are still quite strong in society. This can make it difficult to apply restorative justice, because the stigma can affect the views of the public, including victims, towards perpetrators of drug abuse. This stigma and discrimination can limit abusers' participation in restorative processes and affect their successful reintegration. Lack of community support. The implementation of restorative justice requires the participation of the community, including the victim, the victim's family and local residents. Lack of community support can make it difficult to implement this approach effectively. Inability or unavailability of resources. Restorative justice programs require adequate resources such as funds, facilities, and manpower. Inability or unavailability of resources can hinder its implementation. Implementation of restorative justice policies requires adequate resources, including rehabilitation facilities, trained medical and health personnel, and social and psychological support. Not all regions or countries have sufficient resources to support the effective implementation of this policy. This limited resource can become an obstacle in providing an adequate rehabilitation program for abusers narcotics.

Restorative justice must comply with applicable laws and regulations, and some laws may hinder the implementation of these programs. Lack of awareness and understanding of restorative justice and its benefits can make it difficult to introduce it to people and convince them to participate. A criminal justice system that is used to a punitive approach may have resistance to changes towards a restorative justice approach. Law enforcement and other stakeholders may need a deeper understanding of the principles and benefits of restorative justice in order to apply them effectively. This lack of understanding or resistance can become an obstacle

in adopting and implementing this policy. The application of restorative justice can involve encounters between victims and perpetrators, which can potentially lead to security problems<sup>[8]</sup>.

Several cases of abuse Narcotics can be very complex and require careful and coordinated management. This can make it difficult to apply a restorative justice approach effectively. The application of restorative justice involves close collaboration between various institutions, such as criminal justice institutions, health institutions, rehabilitation institutions, and other related parties. Lack of inter-agency coordination and cooperation can hinder the implementation of this policy and affect the successful recovery of abusers. The application of restorative justice in dealing with drug abuse may require changes in existing laws and regulations. This process of change can take time, and political or legal challenges may arise during the process. These changes can become a barrier to effectively implementing restorative justice policies.

The application of *restorative justice* will lead to a shift in the direction of punishment and the purpose of punishment that is punitive or revengeful by being accountable for every act committed into a solution that places more emphasis on efforts to heal/restore to its original state before the occurrence of a crime. To realize restorative justice in the framework of law enforcement in Indonesia, the role of society is needed which is not only the object of the law itself but plays an active role in law enforcement<sup>[9]</sup>.

The goal of law enforcement is to build public confidence in the law by demonstrating that the law is broadly concerned with societal expectations. Appreciation of a person's individual moral values by law gives a wider space for their morals to carry out the rule of law voluntarily. In this case, the relation with diversion is an effort to reduce the use of legal force, trying to resolve and end the conflict. PERMA Number 4 of 2014 states that it is necessary to hold deliberations involving several elements to achieve restorative justice *restorative justice* can be carried out by means of diversionary deliberations between the perpetrators and victims, reparations for the perpetrators to repair everything that is damaged, victim-offender conferences involving the families of both parties and prominent figures in society and victim awareness work (an attempt by the perpetrator to be more concerned about the impact of his actions)<sup>”</sup>

The main principle of diversion and restorative justice is to prevent perpetrators of criminal acts from the formal criminal justice system and provide opportunities for perpetrators to carry out alternative sanctions without imprisonment. Regarding the explanation regarding the purpose of punishment with the concept of restorative justice, it can be seen from several opinions of scholars, namely Barda Nawawi Arief who stated that "the conditions for sentencing are two fundamental things, namely the principle of legality and the principle of error, in other words punishment<sup>[10]</sup>.

Furthermore, Andi Hamzah stated that the issue of criminal imposition or sentencing is very important in criminal law and criminal justice. He continued, the imposition of a sentence or punishment is a concretization or realization of criminal regulations in a law which is an abstract. Then the judge has extraordinary power in choosing how long the prison sentence will be imposed on the defendant in a concrete case<sup>[11]</sup>.

In restorative justice, what is prioritized is not the imposition of punishment on criminal offenders, but how the perpetrators can be held responsible for the criminal acts committed. And how the victim can get justice. Until things get back to normal. The main goal of restorative justice is the creation of a fair trial. In addition, it is hoped that the parties, both perpetrators, victims, and the community, will play a major role in it. Victims are expected to receive appropriate compensation and be mutually agreed upon with the perpetrators to compensate for losses and reduce the suffering experienced. In *restorative justice*, the perpetrator must be fully responsible so that the perpetrator is expected to realize his mistake.

Therefore, the application of restorative justice to abusers Narcotics require strong community support, adequate resources, and a good understanding of the approach to ensure its effectiveness.

### Conclusion

Restorative justice to abusers narcotics is an approach that focuses on recovery and improvement, not just punishment. This approach involves victims, perpetrators and the community in a process of improvement that involves responsibility, accountability and reconciliation. In implementing restorative justice, it is important to ensure that this process is carried out fairly, transparently, and respects human rights. Restorative justice must also be carried out with care and based on the principles of fairness and equity. This will ensure that the program is effective and can help individuals involved in drug abuse problems to overcome their problems and restore their relationship with the community.

Restorative justice to abusers Narcotics can have a significant positive impact on the individuals involved, society, and the criminal justice system. Among the positive impacts are increasing awareness, improving relationships, providing alternatives, improving mental health, increasing the effectiveness of Rehabilitation. The application of restorative justice can also have negative impacts, including difficulties in determining fair punishment and harming victims who are not involved in the remedial process.

Restorative justice in cases of drug abuse can be hampered by several factors, including limited resources, lack of support from related institutions, differences of opinion, inability of perpetrators to access rehabilitation programs, stigma against abusers. narcotics, drug gang involvement, lack of awareness and understanding of restorative justice.

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