



## Optimizing restorative justice for drug abuse addicts in the legal area of the Deli Serdang police (Case study in the Deli Serdang police drug crime unit)

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### Abstract

This research examines the high expectations of Deli Serdang residents regarding overcoming narcotics crimes with a humanist approach through the implementation of restorative justice in the jurisdiction of the Deli Serdang Police. With the trend of increasing narcotics crimes, the author highlights the need for transformation from prosecution to preemptive and rehabilitation efforts. The substance of the problem includes the regulation, implementation, and inhibiting factors of the Deli Serdang Police Narcotics Unit in optimizing restorative justice for drug addicts. The research method used is descriptive-analytical with a normative and empirical juridical approach. Data was obtained through a literature study and interactive interviews with Narkona Satresnarkona personnel. It is hoped that the research results can support the optimization of the Deli Serdang Police Narcotics Unit in using criminal law instruments based on restorative justice, by relevant laws and regulations. In conclusion, this research responds to the National Police Chief's Presisi program to improve the positive image of the National Police in the jurisdiction of the Deli Serdang Police Criminal Drug Investigation Unit.

**Keywords:** Marijuana, purposes, Indonesia, implemented

### Introduction

Restorative Justice (RJ) was first introduced by Albert Eglash as a restitutive approach to retributive and rehabilitative justice. Implemented in the Canadian government in the 1970s, a program for resolving criminal cases outside traditional justice, called victim-offender mediation, brings perpetrators and victims together to resolve cases through agreement. (Maruna, 2014) [14]. This approach is used especially for juvenile crimes, providing benefits in the form of reduced recidivism and a sense of responsibility for the perpetrator. RJ is growing rapidly in Australia, Europe, and America, carrying four practice groups: Victim Offender Mediation (VOM), Family Group Conferencing (FGC), Circles, and Restorative Board/Panels. Each group provides the role of family, community, and discussion as important elements in finding solutions to resolve criminal cases.

The development of Restorative Justice (RJ) in Indonesia was born since the existence of Pancasila as the basis of the state. The fourth principle of Pancasila, "people led by wisdom in representative deliberation," reflects the application of consensus and understanding in community life. The Indonesian nation, as a moderate nation that recognizes diversity, supports RJ to reach an agreement on family and social life (Ginting & Muazzul, 2019a; Isak *et al.*, 2023; Ritonga *et al.*, 2019; Yusuf *et al.*, 2023) [7, 11, 20, 23]. In the context of dealing with narcotics crimes, the concept of resolution must be based on the principles of balance and decency, taking into account justice and benefits for the perpetrator who may also be the victim. Law no. 35 of 2009 concerning Narcotics shows awareness of the urgency and problems of the narcotics sector, especially in the context of law enforcement in Indonesia (Aprilia *et al.*, 2022; Sentosa *et al.*, 2023) [2, 21].

Despite changes in laws regarding narcotics based on United Nations conventions, Indonesia still faces challenges in modernizing its views on marijuana. Some countries, such as the United States, have reregulated cannabis policies

for various purposes, while Indonesia still maintains views resulting from past conventions, creating irony in its approach to dealing with narcotics (Zehr, 2015) [24].

Indonesia changed Law 22/1997 to Law 35/2009 concerning Narcotics, which still follows the 1988 UN convention. Even though it aims to eradicate the distribution and abuse of narcotics, this law tends to be repressive and punitive, increasing narcotics-related crimes. Inconsistencies in the Narcotics Law create inconsistencies in law enforcement, with an emphasis on criminal punishment rather than rehabilitation. Criticism of the Narcotics Law involves issues of inconsistency, especially in determining users and sellers. Regulation Law 35/2009 is considered to be part of the problem, there is even a Supreme Court decision that highlights articles that are considered problematic. The President responded by issuing Presidential Instruction Number 2 of 2020 concerning the National Action Plan for the Prevention, Eradication, Abuse, and Illicit Trafficking of Drugs (P4GN) for 2020-2024 as a serious effort to overcome the problem of narcotics (Burhanuddin, 2017; Fransiska *et al.*, 2020) [3, 6].

According to the BNN report, in 2022 there will be 43,099 drug crime cases in Indonesia, with East Java as the province with the most cases disclosed. North Sumatra, DKI Jakarta, and West Java also recorded a significant number of cases. Overall, 35 provinces in Indonesia are affected by narcotics abuse.

Reports show that East Nusa Tenggara has the lowest number of drug crime cases with 40 cases, followed by Gorontalo (144 cases) and West Papua (158 cases). Marijuana is the type of narcotic with the most cases of abuse, reaching 38,829 cases last year.

The National Narcotics Agency (BNN) and the National Police revealed 43,099 drug crime cases in 2022, with 50,721 male suspects and 4,731 female suspects. Shabu-shabu dominates the type of narcotics most frequently identified, with a total of 40,593 suspects. Marijuana was the second type with 5,078 cases and 8,963 suspects. BNN

also reported cases of drug abuse of class IV psychotropics, synthetic marijuana, and class III psychotropics.

PPATK noted that the National Police handled 98% of the total 223,522 narcotics cases in the 2017-2021 period, while the rest were handled by BNN. Narcotics cases handled by the National Police tend to be high, with a peak in 2017 of 50,547 cases. BNN was more active in 2018 with 1,039 cases. The report also shows that the largest number of drug users are in the 25-49 year age group, with a prevalence of ever-using reaching 3% in 2021.

Law enforcement against narcotics crimes in the Deli Serdang Police jurisdiction faces challenges. Even though the repressive function is high, narcotics handling seems less than optimal in terms of guidance and prevention. According to the *Ultimum Remedium* principle, criminal law should be a last resort and other alternative solutions must be considered before applying criminal sanctions.

The application of the *Ultimum Remedium* concept in handling narcotics crimes according to Police Regulation Number 8 of 2021 indicates restorative justice efforts. This principle makes criminal sanctions the first step, especially for victims of narcotics abuse. National Police Chief General Pol Listyo Sigit Prabowo encourages a precise role for the National Police, with the concepts of prediction, responsibility, transparency, and fairness, to improve police services that are integrated, modern, and fair.

By looking at the picture above, the Transformation of Precision Polri focuses on four target stages which are at the heart of precision Polri. Organizational Transformation, Operational Transformation, Public Service Transformation, and Supervision Transformation (Hasibuan & SH, 2023) <sup>[9]</sup>. Previous research involved two significant studies. First, Nurhana researched the implementation of Islamic law enforcement at the Masamba District Court regarding drug crimes against teenagers. The results show that the court's legal policy is based on the values of Islamic justice and refers to related laws (Nurhana, 2020) <sup>[17]</sup>.

Second, Dhemas Dewa Prasetya explores legal protection for perpetrators and victims of narcotics abuse, highlighting the fact that many perpetrators are forced victims. The research was conducted at the Sleman Class 1A Judge District Court to understand legal protection for perpetrators and victims, especially in Sleman Regency (Prasetya, 2017) <sup>[18]</sup>.

This research aims to explore the arrangements implemented by the Indonesian National Police (Polri) in optimizing a restorative justice approach towards drug abuse addicts in the Deli Serdang Police jurisdiction, especially in the Narcotics Criminal Investigation Unit. Apart from that, this research wants to identify the concrete role played by the National Police in implementing a restorative justice approach towards drug addicts. Through case studies in this area, this research will explore how the National Police is involved in rehabilitation efforts and resolving narcotics cases with a more restitutive approach. Apart from that, the research will also analyze the obstacles that may arise in implementing the role of the National Police, providing a deeper understanding of the challenges faced by the police in implementing restorative policies towards drug abuse cases in the region. With these objectives, it is hoped that this research can provide an important contribution to understanding police practices related to restorative justice in handling narcotics cases.

## Research methods

This research is normative legal, which focuses on intrinsic legal conditions, including law as a system of social values and norms. The main goal is not to evaluate the effectiveness of rules or the impact of non-legal factors on the law, but rather to resolve the legal issues raised. The results of this research are directed at providing prescriptions regarding the conformity of law with constitutional principles or whether a legal entity meets the provisions that regulate it (Rahayu, nd).

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This research, based on the views of Peter Mahmud Marzuki, emphasizes that legal research does not require data, but rather research sources (Marzuki, 2013) <sup>[15]</sup>. These sources are divided into primary, secondary, and tertiary legal materials. Primary legal materials, which are binding, involve laws related to narcotics and legal processes. Secondary legal materials include books, research results, and opinions of legal experts, while tertiary legal materials provide explanations of primary and secondary legal materials, such as legal dictionaries and encyclopedias. The method for collecting legal materials is carried out through document study with the stages of inventory, systematization, synchronization, and harmonization. The analysis is carried out logically using a qualitative descriptive approach, which involves drawing deductive conclusions from general to specific.

In this research, the technique for collecting legal materials was carried out using the stages of inventory, systematization, synchronization, and harmonization of related legal documents. Legal materials, such as laws, regulations, and literature, are analyzed logically using qualitative descriptive methods, which emphasize knowledge to find specific conclusions. Data was also collected through formal and informal interviews, and observations at several Polres, Polsek, and ranks in the jurisdiction of the Deli Serdang Police. The problem approach involves a statutory and conceptual approach, where all relevant laws are reviewed, as well as exploring the legal reasons underlying the judge's decision in a case.

This research selects problems based on the availability of data sources, with quantitative research that is "to explain" and qualitative research that is "to understand." Legal materials, such as statutory regulations, government regulations, textbooks, legal dictionaries, legal journals, and comments on court decisions, are used as sources of bibliographic data (Marzuki, 2013) <sup>[15]</sup>. Analysis of legal materials is carried out qualitatively by interpreting symptoms and connecting them with existing problems, not only in behavioral exposure but also in tendencies.

## Results and Discussion

### Restorative Justice Arrangements Based on Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice

The trend of increasing narcotics use in various regions in Indonesia has had cross-sectoral impacts, including on the psychological, health, economic growth, national security, and rule of law sectors. To overcome this challenge, the Indonesian National Police (Polri) issued a policy for Handling Crimes Based on Restorative Justice, in line with the principles of humanity, benefit, and legal justice.

National Police Regulation Number 8 of 2021 regulates the steps for implementing this policy, especially in the functions of Criminal Investigation, investigation, and investigation. General and specific requirements must be met, including material and formal aspects.

Some general requirements include not causing public unrest, not having an impact on social conflict, not being radicalism or separatism, and not being a criminal act of terrorism, state security, corruption, or affecting people's lives. Material requirements involve criteria such as peace between both parties, not being repeat criminals, and not committing drug crimes.

The special requirements involve electronic information and transactions, drugs, and traffic. Apart from that, there are additional conditions which are referred to as special conditions, as regulated in Article 7 of Police Regulation Number 8 of 2021.

This Restorative Justice arrangement emphasizes peace between the parties involved, the fulfillment of victims' rights, and the responsibility of perpetrators. A peace agreement letter and statement of fulfillment of rights must be signed as proof of implementation of the restorative justice approach. The format of these letters is listed in the Attachment to the Police Regulations.

The regulation of several provisions, including formal requirements and material requirements, general requirements, and special conditions in National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice, shows the high commitment of the National Police Chief to strengthen regulations for Handling Criminal Acts based on Restorative Justice.

According to researchers, National Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts based on Restorative Justice would be stronger if a special law was made regarding Handling of Criminal Acts based on Restorative Justice. Because, according to researchers, the main focus of handling crimes based on restorative justice should be to regulate clearer concepts and mechanisms to support a criminal justice system that is good, harmonious, balanced, and does not have multiple interpretations between law enforcement agencies. This means that handling criminal acts based on restorative justice does not only focus on a joint memorandum of understanding between institutions or law enforcement agencies with the object of medical law being the perpetrator.

One of them is handling in the field of narcotics, where the urgency of the special law related to the handling of criminal acts based on Restorative Justice in the field of narcotics can be used to determine the principles of balance and propriety that develop in society by focusing on

considering medical and social records, perpetrators and the perfection of the elements of the perpetrator's intentions. harmonized with existing evidence in the field

In this way, the categorization of narcotics perpetrators who turn into victims based on restorative justice has permanent legal force starting from the examination, up to the court stage. The potential for handling criminal acts based on restorative justice in the future will be greater if the substance and material for handling

### Resolving Drug Abuse Cases Based on Restorative Justice in the Legal Area of Deli Serdang Police

Deli Serdang Police acts as a barometer in dealing with drug abuse problems with a humanist law enforcement approach. The phenomenon of illegal drug use is a global, regional, and national trend that continues to increase, including in the jurisdiction of the Deli Serdang Police. The impact is not only felt on individual health but also disrupts public health, economic growth, regional security, and the rule of law. Imbalances in handling drug crimes can result in drug trafficking, violence, overdoses, and other negative impacts such as corruption and economic decline. This challenge requires a joint solution with a sustainable and multi-faceted approach to reducing the supply and demand of illicit drugs. A national drug control strategy should include a cross-sectoral government approach, with an emphasis on cracking down on organized criminal groups, reducing drug production, tackling demand, and treating drug use disorders. Handling addict victims, whether in police or non-police custody, requires humane legal action, as well as special services and prevention efforts for addicts who become victims. The Narcotics Law provides a clear definition of drug addicts, drug addicts, and abusers as a basis for dealing with this issue holistically. (Adi, 2009)<sup>[1]</sup>. Narcotics Law No. 35 of 2009 regulates provisions related to the distribution of narcotics. Article 1 number 6 explains that illicit trafficking of narcotics is an activity without rights or against the law which is considered a narcotics crime. CHAPTER VI Articles 35 to Article 38 outline further provisions related to the distribution of narcotics, including activities for distributing or handing over narcotics for trade, non-trade, and transfer, both for health services and the development of science and technology. Article 36 stipulates that narcotics in the form of finished medicines can only be distributed after obtaining permission from the Minister and must be registered with the Food and Drug Supervisory Agency. This law emphasizes the definition of a narcotics addict as a person who uses narcotics without the knowledge and supervision of a doctor. Although addicts can be considered perpetrators of criminal acts, the law also recognizes them as victims. Article 54 emphasizes that addicts and victims of narcotics abuse are obliged to undergo medical and social rehabilitation. Medical rehabilitation includes treatment activities to free addicts from drug addiction, while social rehabilitation involves physical, mental, and social recovery so that former addicts can function again in society. The implementation of rehabilitation is regulated by the standards for social rehabilitation institutions that have been set by the government.

Handling narcotics abuse involves two methods: prevention without punishment through mandatory reporting of addicts and rehabilitation law enforcement with a restorative justice approach. The restorative justice model emphasizes

restoration rather than retribution, where all parties involved meet to resolve fairly. Law no. 35 of 2009 stipulates that addicts and victims of abuse are required to undergo medical and social rehabilitation (Fadhilah, 2021; Nainggolan, 2023) <sup>[5, 16]</sup>.

Narcotics abuse cases involve use for daily consumption with limited ownership, regulated in SEMA Number 4 of 2010. Handling based on restorative justice requires an integrated team assessment and preparation of rehabilitation institutions, and increasing public knowledge about rehabilitation services is important. The implementation of restorative justice is supported by Police Regulation Number 08 of 2021, which emphasizes restoration and balance between the protection of victims and the interests of criminal perpetrators.

Handling drug crimes using a Restorative Justice approach has general and specific requirements. General requirements include not causing social conflict and being proven by a written agreement between the parties involved. Special requirements involve addicts and victims of drug abuse who apply for rehabilitation, are not involved in criminal networks, and have gone through an assessment by an integrated team. Restorative Justice emphasizes reconciliation and restoration for victims and perpetrators, in line with the concept of diversion and restoration of children in conflict with the law (Dermawan *et al.*, 2023; Siregar *et al.*, 2022; Yusuf *et al.*, 2023) <sup>[4, 2, 23]</sup>.

Peter C. Kratcoski identified three types of implementation of alternative drug crime prevention programs, namely social control, social services by the community, and a restorative justice approach. The restorative justice approach emphasizes meetings between all parties involved to reach an agreement on action involving the perpetrator, victim, and community (Kratcoski, 2017) <sup>[13]</sup>.

Restorative Justice is an approach to achieving justice after conflict and social violations. Zehr (2015) <sup>[24]</sup> formulated five principles for the success of Restorative Justice, including a focus on harm and the needs of all parties, resolving obligations resulting from harm, using a collaborative process, involving those with legitimate interests, and seeking to right wrongs. Instructions for National Police investigators in implementing alternative crime prevention in the field of drugs through Restorative Justice are contained in the Republic of Indonesia National Police Regulation Number 08 of 2021 concerning Handling Crimes based on Restorative Justice. Several characteristics of certain criminal acts in the drug sector that can be addressed through Restorative Justice include certain categories, assessment results report, voluntary participation in rehabilitation, attention to the age of the perpetrator, cross-sectoral support, family and community support, as well as the victim's or family's consent. Even though the concept of Restorative Justice is a framework for Narcotics Investigation Unit investigators, in the field, its handling at the Deli Serdang Police, especially in the Narcotics Criminal Investigation Unit, is hampered by budget limitations. Implementation is influenced by budget availability, which influences the process from detention to post-treatment in rehabilitation homes.

The budget focus in handling drug crimes tends to be more focused on taking action in the field against large and small dealers while handling restorative justice for drug addicts receives less attention. The implementation of Restorative Justice at the Deli Serdang Police is hampered by budget

limitations, which affects the implementation mechanism. Even though it is theoretically desirable, the practice of Restorative Justice is still hampered by the lack of a special budget for treating victims of narcotics addiction. The role of the integrated assessment team in determining the status of a narcotics abuser or dealer is important, but it also faces challenges in investigations and investigations. However, it is hoped that the implementation of Restorative Justice can provide solutions for victims of narcotics abuse, involving law enforcement officials, victims' families, victim advocates, and integrated assessment teams.

### **Obstacles Related to Optimizing Restorative Justice for Drug Abuse Addicts in the Legal Area of Deli Serdang Police**

This research highlights the suboptimal implementation of Restorative Justice for drug addicts in the jurisdiction of the Deli Serdang Police. Law no. 2 of 2002 concerning the Police, especially Article 16 and Article 18, gives the police discretionary authority to carry out diversion. However, implementation has not been effective due to budget constraints, lack of accountability standards, and mismatch between theory and practice. The quality and ability of investigators in dealing with restorative justice cases show several obstacles, such as a lack of understanding of regulations, a repressive orientation, and a lack of understanding of the principles of restorative justice. Legal culture factors are also considered as the main influence in law enforcement (Ginting & Muazzul, 2019b; Irawan *et al.*, 2022; Yusuf *et al.*, 2023) <sup>[8, 10, 23]</sup>.

An interview with the Deputy Head of the Narcotics Research Unit for Deli Serdang Police, Inspector Rapolo Tambunan, SH, emphasized that many victims of narcotics abuse come from underprivileged communities, and law enforcers are often confused in handling procedures against them. Limited police facilities and infrastructure also complicate the situation, such as the lack of special detention space for victims before the results of the assessment and the fingerprinting process are stopped. This has consequences for the legal protection of the human rights of detained victims.

Detention in the Criminal Procedure Code (KUHAP) is regulated in articles that limit detention for suspects about the objective reasons for detention. Detention can only be imposed on suspects or defendants who commit criminal acts and/or attempt or provide assistance in criminal acts which are punishable by imprisonment of five years or more and which are mentioned in sub-paragraph (4) of Article 21 of the Criminal Procedure Code. (Karjadi & Soesilo, 2016) <sup>[12]</sup>.

The statement above discusses the basic elements of detention in the context of criminal offenses. Apart from that, it emphasized the importance of implementing the restorative justice model in dealing with drug crimes, even though it is still difficult to implement in Indonesia. Customary law is considered to have the potential for restorative justice but has not been recognized nationally. Furthermore, the research highlights problems with police investigations, especially when "out-of-court settlements" or SP3 occur. There are concerns about abuse of power, and the term SP3 is often seen as a "commodity". To overcome this stigma, the National Police has issued Guidelines for Handling Crimes based on Restorative Justice.

However, the implementation of restorative justice in drug investigations, especially at the Deli Serdang Police, is experiencing problems. One of them is the incompatibility of investigative authority with the Criminal Procedure Code, which does not permit investigators to stop cases based on restorative justice. Another obstacle involves investigators' lack of understanding of customary law as an important component of restorative justice.

The results of interviews with the Head of the Deli Serdang Police Narcotics Unit also revealed that investigators understand normative law better than customary law. This limited understanding is an obstacle in implementing restorative justice because investigators should open themselves to local customary law to provide justice to the community. These obstacles can be grouped into internal and external factors.

**Internal factors:** Regarding internal factors, the main obstacle lies in the unavailability of a special budget for handling restorative justice, especially within the jurisdiction of the Deli Serdang Police. Limited budgets hamper the process of handling cases, especially for victims with low economic levels. Apart from that, the lack of skills and knowledge of investigators in the fields of law, regulations, and the criminal justice system is also a serious obstacle. A limited understanding of the principles of restorative justice in the field of narcotics also makes it difficult to apply this concept. The courage and determination of investigators in carrying out their duties is also a problem, as some of them tend to be influenced by the views of the public and the mass media.

**External Factors:** In the context of external factors, legal problems are often closely related to political, economic, social, cultural, educational, and environmental problems. These factors influence the police's approach to handling restorative justice cases, and the lack of resolution to the root of social problems. The lack of strong synergy between law enforcement agencies, as well as formal communication between sub-systems in the criminal justice system, is a barrier to effective cooperation. Public distrust of the police is also a serious obstacle, caused by a lack of trust in case handling priorities, minimal information, and perceptions of discrimination in case handling. Mass media coverage which tends to be negative, especially on controversial cases, also puts additional pressure on the police.

### Conclusion

Provisions for optimizing restorative justice for drug addicts at Deli Serdang Police are regulated by Law No. 2 of 2002, Law No. 35 of 2009 concerning Narcotics, KABARESKRIM Circular NO. 1/2018, KABARES Telegram Letter NO. 23/2021, and Perpol Number 08 of 2021. Restorative justice is applied in the inquiry and investigation process concerning restorative justice, including terminating investigations and investigations based on restorative justice.

In theory, the application of restorative justice to drug addicts at Deli Serdang Police prioritizes an approach to restoring victims as perpetrators. However, practice is inconsistent, mainly due to the influence of the egos of addict victims' families. This shows a mismatch between theory and practice, which should focus more on public interests and security in the jurisdiction of the Deli Serdang Police.

Internal obstacles to the Deli Serdang Police include the unavailability of budget, limited facilities, and infrastructure, as well as the competency of investigators in understanding regulations, the criminal justice system, and technical skills. External barriers involve a lack of community empowerment, support from anti-drug institutions, and participation of relevant government organizations. To optimize restorative justice, it is necessary to address these obstacles through increasing competence and support from various related parties.

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