

Reformulation of the Application of Restorative Justice towards Narcotics Abusers Through



Helia Shanti Putri Wulandari¹, Handar Subhandi Bakhtiar², Beniharmoni Harefa³

^{1,2,3} Master of Law, Faculty of Law, University Pembangunan Nasional "Veteran" Jakarta

ABSTRACT: Drug abusers may be subjected to criminal sanctions based on the severity of the violation, while drug addicts are directed towards treatment and rehabilitation through government-organized rehabilitation programs. The current criminal justice system predominantly adopts a punitive approach, necessitating a strategic criminal policy, particularly in addressing drug abuse offenses. This study seeks to identify the urgency of reformulating the application of restorative justice for drug abusers through rehabilitation, as well as to explore the reformulation of restorative justice implementation for drug abusers within Indonesia's law enforcement framework. The research methodology employed in this study is normative juridical. The findings underscore the critical need for the application of rehabilitation for drug abusers through a restorative justice approach, which is supported by various pressing factors, including those related to health, social welfare, and criminal policy. The reformulation of criminal penalties under Article 127 of Law Number 35 of 2009 on Narcotics is imperative, as it would foster consistency and integrity in the application of legal provisions to drug abusers, ensuring uniformity in legal standards. Such reformulation would provide all drug abusers with a structured and guaranteed opportunity for rehabilitation. Several strategic actions must be undertaken to optimize the implementation of this policy, including the urgent reformulation of Article 127 of Law Number 35 of 2009 on Narcotics to address discrepancies in the inconsistent application of imprisonment sentences.

KEYWORD: reformulation, restorative justice, narcotics, rehabilitation.

BACKGROUND

The misuse of narcotics constitutes one of the criminal offenses that can be committed by individuals from all walks of life. Article 1, paragraph (1) of Law Number 35 of 2009 concerning Narcotics defines narcotics as substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, that can cause a decrease or alteration in consciousness, loss of sensation, reduce or eliminate pain, and may cause dependence. These substances are classified into groups as outlined in this Law. The formation of Law Number 35 of 2009 concerning Narcotics aims to ensure the availability of narcotics for the purposes of healthcare services and/or the development of science and technology, to prevent, protect, and save the Indonesian nation from the abuse of narcotics, to combat the illicit trafficking of narcotics and narcotic precursors, and to guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers and addicts.¹

According to Article 1, paragraph (15) of Law Number 35 of 2009 concerning Narcotics, a narcotics abuser is defined as a person who uses narcotics without authorization or in violation of the law. Narcotics abuse may be committed by oneself or in collaboration with others. In contrast, a narcotics addict, as defined by Article 1, clause 13 of Law Number 35 of 2009 concerning Narcotics, is a person who uses or abuses narcotics (without authorization or in violation of the law) and is dependent on narcotics either physically or psychologically.

An abuser is, therefore, a person who uses narcotics without authorization or in violation of the law. The sanctions or criminal penalties imposed on narcotics abusers are stipulated in Article 127, paragraph (1) of the Narcotics Law. However, there is a substantial distinction between a punitive approach and a rehabilitative approach. Narcotics abusers may face criminal sanctions according to the level of the offense, while narcotics addicts are directed towards receiving treatment and rehabilitation through narcotics rehabilitation programs organized by the government. Consequently, the Narcotics Law seeks to balance law enforcement with a health-oriented approach to addressing narcotics abuse issues in Indonesia.

¹ Aziz Syamsuddin, *Tindak Pidana Khusus*, Jakarta : Sinar Grafika, 2 014, hlm. 90

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In fact, the protection of narcotics abusers, addicts, and victims of narcotics abuse is clearly provided for in Article 54 of Law Number 35 of 2009 concerning Narcotics,² which states that narcotics addicts and victims of narcotics abuse are required to undergo medical and social rehabilitation. Medical and social rehabilitation is elaborated in Article 1, clause 16 of Law Number 35 of 2009 concerning Narcotics, which states: "Medical rehabilitation is an integrated treatment process to free addicts from narcotics dependence." Article 1, clause 17 further states: "Social rehabilitation is an integrated process of physical, mental, and social recovery, whereby a child who abuses narcotics receives special treatment."³

Article 127 of Law Number 35 of 2009 concerning Narcotics stipulates that narcotics abusers for personal use may face a maximum prison sentence of 4 (four) years for Schedule I narcotics, a maximum of 2 (two) years for Schedule II narcotics, and a maximum of 1 (one) year for Schedule III narcotics. In adjudicating cases as referred to in Article 127, paragraph (1), judges are required to consider the provisions of Article 54, Article 55, and Article 103. In determining which article applies to self-abusing narcotics users, legal proceedings will be necessary to ascertain whether the individual is truly a narcotics abuser for personal use or a victim of narcotics abuse.⁴

The aspect of justice in the provisions of Law Number 35 of 2009 concerning Narcotics in the imposition of punishment on narcotics abusers is often regarded as insufficiently addressed, particularly when the abuse is committed by oneself. The imposition of imprisonment for narcotics abusers who should be rehabilitated instead leads to their imprisonment.⁵ The current criminal justice system tends to be punitive, as reflected in the overcrowding of correctional facilities, the majority of which house narcotics offenders. This overcrowding issue has become a significant concern for both society and the government, as outlined in the National Medium-Term Development Plan 2020-2024, which aims to reform the criminal justice system through a restorative justice approach. Hence, strategic criminal policy is needed, particularly in handling narcotics abuse cases, including the reorientation of law enforcement policies in implementing Law Number 35 of 2009 concerning Narcotics (hereinafter referred to as the Narcotics Law).

Addressing narcotics abuse through a restorative justice approach is crucial, considering the health aspects of the abuser, so that incarceration is not always the outcome. The issuance of Guideline Number 18 of 2021 on the Resolution of Narcotics Abuse Offenses through Rehabilitation with a Restorative Justice Approach as the Implementation of the Dominus Litis Principle of Prosecutors provides a framework for reorienting law enforcement policy. In carrying out the duties and authority of the prosecution, this is done through the optimization of rehabilitation institutions. Prosecutors, as case controllers under the dominus litis principle, can resolve narcotics abuse cases through rehabilitation at the prosecution stage. The resolution of narcotics abuse cases through rehabilitation is an integral part of implementing restorative justice, with the aim of restoring the original state by rehabilitating offenders of narcotics abuse, which is considered a victimless crime.⁶

The resolution of narcotics abuse cases through rehabilitation is conducted by prioritizing restorative justice and utility (doelmatigheid),⁷ while also considering the principles of swift, simple, and low-cost justice, the principle of criminal sanctions as a last resort (ultimum remedium), cost-benefit analysis, and offender recovery.⁸ In order to implement the National Medium-Term Development Plan 2020-2024 and the reorientation of law enforcement policy in the execution of the Narcotics Law, it is necessary to establish Guidelines on the Resolution of Narcotics Abuse Cases through Rehabilitation with a Restorative Justice Approach⁹ as the Implementation of the Dominus Litis Principle of Prosecutors.

The imposition of penalties on narcotics abusers through rehabilitation, based on a restorative justice approach, can be optimized to resolve narcotics abuse cases. With these Guidelines, there is an opportunity for Law Number 35 of 2009 concerning Narcotics to adopt and reformulate the application of Restorative Justice in handling narcotics abusers. These issues serve as the backdrop for the author's writing on the Reformulation of the Application of Restorative Justice to Narcotics Abusers in Connection with Guideline Number 18 of 2021 on the Resolution of Narcotics Abuse Offenses through Rehabilitation.

² Novalinda Nadya Putri, Somawijaya Somawijaya, dan Agus Takariawan., 2021, *The Correctional Institution Recommendation As Judge's Consideration In Making A Decision Against Child Narcotics Abuser*. Jurnal Ilmiah Galuh Justisi, Volume 9, no. 2, hlm. 241-259.

³ Bakhtiar, Handar Subhandi, Andi Muhammad Sofyan, and Haeranah Haeranah. "Criminal Justice System of Children in Indonesia." *IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 24* (2019): 01-07.

⁴ Susilowati, Diah, and Beniharmoni Harefa. "Criminal Liability of Juvenile Narcotics Users." *International Journal of Multicultural and Multireligious Understanding* 9, no. 1 (2022): 316-324.

⁵ Haposan Sahala Raja Sinaga, 2021, *Penerapan Restorative Justice Dalam Perkara Narkotika di Indonesia*. Jurnal Hukum Lex Generalis, Volume 2 No. 7, hlm. 528-541.

⁶ Hatarto Pakpahan, 2015, *Restorative justice terhadap pengguna narkoba dan obat-obatan berbahaya*. Jurnal Cakrawala Hukum, Volume 6, No. 2.

⁷ Devanti Vidiyari, 2023, *ANALISIS KAJIAN ONTOLOGI DALAM PENERAPAN RESTORATIVE JUSTICE BAGI PENYALAHGUNA NARKOTIKA DI INDONESIA*. Transparansi Hukum, Volume 6, No. 2, hlm. 67-69.

⁸ Irvan Maulana, dan Mario Agusta. 2021. *Konsep Dan Implementasi Restorative Justice Di Indonesia*. Datin law jurnal, Volume 2, No. 11, hlm. 46-70.

⁹ Gemilang, Herdino Fajar, and Rosalia Dika Agustanti. "Penggunaan Plea Bargaining dalam Sistem Peradilan Pidana: Menyeimbangkan Efisiensi dan Keadilan." *Jurnal Interpretasi Hukum* 4, no. 3 (2023): 422-431.

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RESEARCH QUESTIONS

1. What is the urgency of reformulating the application of Restorative Justice for narcotics abusers through rehabilitation?
2. How does the reformulation of the application of Restorative Justice for narcotics abusers through rehabilitation within the legal enforcement system in Indonesia?

DISCUSSION

A. Urgency of Reformulating the Application of Restorative Justice for Narcotics Abusers Through Rehabilitation

The phenomenon of narcotics abuse for personal use represents a serious issue governed by the Narcotics Law. Although the law does not explicitly define personal narcotics abuse, it employs the term "user" to describe an individual who uses narcotics unlawfully or without authorization. This term can be interpreted as referring to a person who consumes narcotics without legitimate authorization from the relevant authorities or without a valid prescription from a licensed medical practitioner.¹⁰ This term refers to the illegal use of narcotics, conducted outside the limitations set forth by the applicable legal regulations.

Pursuant to Law No. 35 of 2009 on Narcotics, narcotics are defined as substances or drugs derived from plants or non-plants, either synthetic or semi-synthetic, that can cause decreased or altered consciousness, loss of sensation, reduced or eliminated pain, and can lead to addiction. These substances are categorized into different classifications as detailed in the annex to the Law.¹¹ In this context, it is clear that the misuse of narcotics poses significant risks to both physical and mental health. Excessive or overdose use can result in fatal consequences. It is critical to emphasize that narcotics misuse entails consuming narcotics illegally or without legitimate medical guidance, which can damage health and hinder the productivity of the user's life.¹²

The use of narcotics without medical supervision is hazardous to the user, as narcotics typically contain toxic substances that can lead to dependence or addiction. Narcotics abuse can damage bodily organs, impair cognitive function, cause irrational thinking, and even result in permanent brain damage leading to death. Despite these substantial risks, narcotics remain sought after by certain individuals.¹³

Narcotics abuse, along with the misuse of psychotropic substances, addictive substances, and other harmful drugs, is not confined to the realm of pharmaceuticals but has permeated society at large. Narcotics abuse is a pathological behavior often exhibited by individuals with vulnerable or high-risk personalities. This behavioral pattern involves the illegal or non-medical use of narcotics, which can harm the user's health and disrupt their productive life. Various narcotics that are prone to abuse include tobacco, alcohol, illicit drugs, and substances that can cause poisoning.¹⁴

Narcotics abuse can result in addiction, and when users cease usage, they may experience withdrawal symptoms. To address narcotics abuse or addiction, a multifaceted approach is necessary, particularly involving psychiatry, psychology, and counseling. When narcotics dependence occurs, the primary responsibility lies with the field of psychiatry, as the mental and behavioral disorders caused by narcotics disrupt neurotransmitter systems in the brain. These disruptions affect cognitive, affective, and psychomotor functions and lead to medical complications affecting organs such as the lungs, liver, heart, kidneys, pancreas, and other physical systems.¹⁵

The unauthorized or unlawful use of narcotics can occur in various contexts, such as when individuals use narcotics without a prescription for legitimate medical purposes or when narcotics are used recreationally or in quantities prohibited by law. Such acts contravene the legal provisions governing narcotics use, which are generally designed to protect public health and welfare and to prevent the misuse and illegal trafficking of narcotics.

In many jurisdictions, the unauthorized or unlawful use of narcotics constitutes a serious offense and may be subject to criminal sanctions under the applicable laws. These sanctions may include fines, imprisonment, or other penalties, depending on the severity of the offense and the sanctions provided under the law, as specified in Article 127 of Law No. 35 of 2009 on Narcotics, which states:

1. Any user: a. Narcotics of Group I for personal use shall be punished with imprisonment for a maximum of 4 (four) years; b. Narcotics of Group II for personal use shall be punished with imprisonment for a maximum of 2 (two) years; and c. Narcotics of Group III for personal use shall be punished with imprisonment for a maximum of 1 (one) year.
2. In adjudicating cases as referred to in paragraph (1), judges must take into consideration the provisions set forth in Articles 54, 55, and 103.
3. In the event that the user as referred to in paragraph (1) is proven or can be proven to be a victim of narcotics abuse, the user shall be required to undergo medical and social rehabilitation.

¹⁰ Pasal 1 Angka (15) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika

¹¹ Pasal 1 Angka (1) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika

¹² Herinda Mardin, Hariana Hariana, And Trifandi Lasalewo. "Sosialisasi Bahaya Penyalahgunaan Narkotika Bagi Peserta Didik Smp Negeri 4 Kwandang Kabupaten Gorontalo Utara." *Lamahu: Jurnal Pengabdian Masyarakat Terintegrasi* 1, No. 1 (2022): 9-15.

¹³ July Esther And Herlina Manullang. "Aspek Hukum Pidana Dampak Penyalahgunaan Narkotika Bagi Remaja." *Jurnal Visi Pengabdian Kepada Masyarakat* 2, No. 2 (2021): P. 79-80.

¹⁴ Ibid. P. 80.

¹⁵ Ibid. P. 80.

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In legal terms, personal narcotics abuse is subject to criminal sanctions in accordance with the applicable provisions, with the penalties stipulated in Article 127, paragraph (1). However, a holistic and integrated approach is necessary to address the issue of narcotics abuse, including prevention efforts, treatment, rehabilitation, and social reintegration for individuals involved, in accordance with established guidelines and procedures.¹⁶

Despite the possibility of rehabilitation for narcotics users, many narcotics abusers continue to face criminal punishment, as highlighted in research conducted by the Indonesia Judicial Research Society (IJRS) during the 2016-2020 period. Of 745 defendants in narcotics abuse cases in Indonesia, 92.3% were sentenced to imprisonment, while only 3.2% were sentenced to rehabilitation, and 3.1% were imprisoned while also being rehabilitated. The remaining 1.3% were sentenced to other forms of punishment, such as being returned to their parents in the case of juvenile offenders.¹⁷

This data indicates that imprisonment remains the most frequently applied punishment for narcotics users in Indonesia. This has drawn criticism from various parties, including IJRS, who argue that viewing addicts and victims of narcotics abuse as criminals deserving of imprisonment is a misguided perspective. According to IJRS, addicts and victims of narcotics abuse should not be considered criminals, as they do not possess the culpable element required for criminal punishment. Instead, they should be treated as individuals in need of assistance and rehabilitation.¹⁸

IJRS further found that 38.6% of narcotics abuse cases resulted in sentences of less than one year. IJRS argues that imprisonment for less than one year should be replaced with conditional sentences.¹⁹ For example, an individual sentenced to nine months in prison could be given a conditional sentence or probation for two years. Under a conditional sentence, imprisonment is suspended and will only be enforced if the defendant violates the conditions set by the judge during the two-year probationary period.

IJRS believes that conditional sentencing should be applied to reduce the number of narcotics inmates in Indonesia's overcrowded prisons. Conditional sentencing allows narcotics users to undergo rehabilitation and social reintegration without suffering the negative effects of incarceration.²⁰ Additionally, given the nature of narcotics abuse as a victimless crime, conditional sentencing is considered more appropriate and humane.

In this context, it is essential to review the criminal law policies related to narcotics abuse in Indonesia. A more rehabilitation-focused and recovery-oriented approach, rather than imprisonment, could yield greater benefits for individuals involved and society at large. Reforming laws to prioritize restorative justice and conditional sentencing could help alleviate the burden on Indonesia's overcrowded prisons and provide narcotics users with the opportunity to recover and reintegrate as productive members of society.²¹

Narcotics users should not be imprisoned but instead undergo rehabilitation in accordance with the mandate of Law No. 35 of 2009 on Narcotics, particularly Article 54, which stipulates that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. However, the Director of Narcotics Crime of the National Police Headquarters, Brigadier General Krisno H. Siregar, stated that the law contains ambiguous provisions, leading to frequent misapplication by law enforcement officers.²²

Often, when an individual is arrested with narcotics exceeding the minimum threshold set by the Supreme Court Circular (SEMA) — for example, 1 gram for methamphetamine and 5 grams for marijuana — investigators tend to apply Article 112. This article states that "Any person who unlawfully or illegally possesses, stores, controls, or provides Group I Narcotics not derived from plants shall be punished with imprisonment for a minimum of 4 years and a maximum of 12 years." Conversely, Article 127, paragraph 1, states that "Any person who abuses Group I narcotics for personal use shall be punished with imprisonment for a maximum of 4 years."

According to Krisno Siregar,²³ in practice, many investigators apply Article 112 with a minimum sentence of 4 years, contributing to the overcrowding of correctional facilities (Lapas) in Indonesia. Often, the Supreme Court's appellate panels uphold the district court's decision to impose a sentence based solely on Article 127, resulting in a prison term of 1 year and 10 months. The panel affirms that narcotics users should not always be charged under Article 112, and the intent or purpose of possessing or controlling narcotics must be considered.

In addition to the ambiguous provisions, Krisno also noted that not all districts or cities have rehabilitation centers. This presents challenges for investigators in rehabilitating narcotics users who have been arrested. Even if private rehabilitation centers

¹⁶ Wulandari, Sri. "Rehabilitasi Sebagai Upaya Pemerintah Dalam Penanggulangan Penyalahgunaan Narkotika." *Spektrum Hukum* 14, No. 2 (2019): 291-308.

¹⁷ <https://Databoks.Katadata.Co.Id/Datapublish/2022/08/11/Penyalahgunaan-Narkoba-Di-Ri-Umumnya-Dipenjara-Bukan-Diobati>

¹⁸ Ibid.

¹⁹ Cipta, Lisensi Hak. "Mendorong Kebijakan Non-Pemidanaan Bagi Penggunaan Narkotika: Perbaikan Tata Kelola Narkotika Indonesia Penulis."

²⁰ <https://Ijrs.Or.Id/Wp-Content/Uploads/2024/06/2024.05.29-Asesmen-Penerapan-Pedoman.Pdf>

²¹ Salsabila, Salsabila, and Slamet Tri Wahyudi. "Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice." *Masalah-Masalah Hukum* 51, no. 1 (2022): 61-70.

²² <https://News.Detik.Com/Berita/D-5726803/Tiga-Alasan-Penggunaan-Narkoba-Banyak-Dijebloskan-Ke-Penjara>

²³ Ibid.

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are available, the costs are much higher. Krisno added that the rehabilitation cost for a narcotics user ranges between IDR 3-4 million per month, far exceeding the cost of feeding an inmate in a correctional facility, which is less than IDR 15,000 per day.

Krisno emphasized the urgent need for revisions to the Narcotics Law to provide clear legal frameworks for the rehabilitation of narcotics abusers.²⁴ For several years, there has been an agreement among seven ministries and institutions that narcotics users can be rehabilitated at any stage of the legal process, from investigation and prosecution to sentencing. However, to date, no budget has been allocated for rehabilitation, while investigators are only provided funding for investigations and prosecutions of criminal offenses.

As such, reforms in Indonesia's narcotics legal system are critically needed. Rehabilitating narcotics users, rather than imprisoning them, would not only alleviate the strain on the country's overcrowded correctional facilities but also provide users with an opportunity to recover and reintegrate as productive members of society.

Narcotics abuse is a complex, multidimensional social issue that has widespread effects on individuals, families, and society at large.²⁵ The misuse of narcotics, particularly in illegal, non-medical contexts, can have dire consequences, including addiction, mental and physical health issues, social disintegration, and legal repercussions. As such, the current legal framework in Indonesia, particularly Law No. 35 of 2009 on Narcotics, must be reviewed and reformed to prioritize rehabilitation and restorative justice over retributive punishment. Additionally, efforts to improve access to rehabilitation facilities and funding for rehabilitation programs should be prioritized, as rehabilitation offers the best opportunity for narcotics users to recover and reintegrate into society as productive and responsible citizens.

The misuse of narcotics often leads to severe physical harm. Narcotics have a damaging effect on various organs of the body, including the brain, heart, liver, and nervous system.²⁶ When a narcotics abuser is incarcerated, their health condition may deteriorate for several reasons. Firstly, access to adequate medical care within prisons is often limited. Although some prisons provide healthcare services, the quality and availability of such services are frequently insufficient to address the complex health issues stemming from narcotics misuse.

Secondly, overcrowded and unhygienic prison conditions may exacerbate the physical health of inmates. Prisons often become breeding grounds for infectious diseases such as tuberculosis, hepatitis, and HIV.²⁷ Narcotics abusers, whose immune systems are already weakened due to drug use, are particularly vulnerable to these diseases. Furthermore, the lack of access to proper nutrition and clean living environments in prison can worsen their health conditions.

Incarceration also has a profound psychological impact on narcotics abusers. The harsh and stressful conditions of prison life can worsen existing mental health issues or even trigger new mental disorders. Many narcotics abusers suffer from mental health disorders such as depression, anxiety, and post-traumatic stress disorder (PTSD).²⁸ Prisons are environments filled with stress and conflict, which can aggravate these conditions.

The social isolation experienced during imprisonment can also have severe psychological effects.²⁹ Being separated from family and friends, combined with the lack of emotional support, can lead to feelings of loneliness and despair. Many inmates endure extreme mental pressure due to the harsh realities of prison life, including violence between inmates, abuse by prison staff, and uncertainty about their future. All of these factors can further deteriorate the mental health of narcotics abusers, ultimately hindering their recovery process.

The social impact of incarcerating narcotics abusers is also significant. When an individual is imprisoned, their relationships with family and friends are often severed or severely disrupted.³⁰ The social stigma attached to former narcotics inmates makes it difficult for them to reintegrate and be accepted back into their social environments upon release. Many families feel ashamed or do not know how to support a family member returning from prison, resulting in strained or even broken family relationships.

²⁴ Ibid.

²⁵ Helviza, Ira, Zulihar Mukmin, And Amirullah Amirullah. "Kendala-Kendala Badan Narkotika Nasional (Bnn) Dalam Penanggulangan Penyalahgunaan Narkotika Di Kota Banda Aceh." *Jurnal Ilmiah Mahasiswa Pendidikan Kewarganegaraan* 1, No. 1 (2017).

²⁶ Adam, Sumarlin. "Dampak Narkotika Pada Psikologi Dan Kesehatan Masyarakat." *Jurnal Health And Sport* 5, No. 2 (2012).

²⁷ Pane, Dio Irza Mangantar, And Irvan Sebastian Iskandar. "Pelayanan Kesehatan Bagi Narapidana Dengan Penyakit Menular Hiv/Aids Di Lembaga Pemasarakatan Kelas Ii A Binjai (Healthcare Services For Prisoners With Infectious Disease Hiv/Aids In Correctional Institutions Class Ii A Binjai)." *Jurnal Pendidikan Kewarganegaraan Undiksha* 11, No. 3 (2023): 7-19.

²⁸ Aryani, Luh Nyoman Alit, And Smf Psikiatri Fk Unud. "Kecemasan Pada Penyalahguna Opioid Yang Sedang Menjalani Program Terapi Rumatan Metadon Di Rsup Sanglah."

²⁹ Tololiu, Tinneke A., And Siti Hardiyanty Makalalag. "Hubungan Depresi Dengan Lama Masa Tahanan Narapidana Di Rumah Tahanan Negara Kelas Iia Malendeng Manado." *Jurnal Ilmiah Perawat Manado (Juiperdo)* 4, No. 1 (2015): 14-15.

³⁰ Fauziannisa, Maindra. "Hubungan Antara Strategi Coping Dengan Self-Efficacy Pada Penyalahguna Narkotika Pada Masa Pemulihan." Phd Diss., Universitas Airlangga, 2013.

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In addition, the status of being a former inmate makes it challenging for individuals to reintegrate into society.³¹ They often face discrimination and prejudice from the broader community, which views them as untrustworthy or dangerous. This can result in prolonged feelings of alienation and isolation, impeding their efforts to rebuild a productive life after release from prison.³²

From an economic perspective, the incarceration of narcotics abusers incurs significant losses. While imprisoned, they lose the opportunity to work and earn an income. Upon their release, the stigma of being a former inmate often makes it difficult for them to secure suitable employment.³³ Many companies are reluctant to hire former inmates, particularly those with narcotics-related convictions. As a result, former inmates often find themselves trapped in a cycle of poverty that is difficult to escape.

Poor economic conditions may compel former inmates to return to the narcotics trade as a means of survival, creating a vicious cycle that is hard to break. Without a stable source of income, they may feel they have no choice but to resort to illegal activities, such as selling narcotics, to meet their basic needs.³⁴ This not only harms the individual but also has a negative impact on society at large by increasing crime rates and social instability.

In addition to physical, psychological, social, and economic impacts, the incarceration of narcotics abusers also results in a loss of personal potential. Many narcotics abusers possess remarkable talents and abilities. However, by being imprisoned, they lose the opportunity to develop that potential. Education and training opportunities that might be available outside prison are often unavailable or limited within prison.

As a result, they leave prison without having gained the skills necessary to build a better life. The lack of access to education and training makes it difficult for them to compete in the job market and contribute positively to society. This results in a loss of individual potential that could otherwise benefit both the individual and society as a whole.

The negative impacts of incarcerating narcotics abusers are also felt by their families. When a family member is imprisoned, the emotional and financial burden often falls on the remaining family members.³⁵ Children of incarcerated narcotics abusers often experience trauma and developmental challenges.³⁶ They may face stigma and discrimination from their communities, which can adversely affect their academic performance and mental health.³⁷

Families who lose a primary breadwinner also face serious financial difficulties, which can affect their overall quality of life. The costs of prison visits, legal fees, and lost income often result in significant economic pressure on the family. All of this contributes to a cycle of poverty and hardship that is difficult to overcome, both for the individual in prison and for their families.

Narcotics abusers who are sentenced to imprisonment are likely to seek ways to fulfill their drug needs by any means necessary. Therefore, it is preferable for narcotics abusers to receive rehabilitation and medical treatment rather than being placed in correctional institutions.³⁸ If they are imprisoned, there is concern that they will continue to engage in criminal activity or commit new crimes within the prison. For example, it is common for narcotics abusers to bribe prison staff to smuggle narcotics, engage in violence or abuse against other inmates, or even become part of narcotics trafficking syndicates from within the prison. Therefore, efforts should be made to refer narcotics abusers to rehabilitation centers for treatment.

A more effective approach to addressing narcotics abuse is to focus on rehabilitation and social reintegration rather than incarceration. Comprehensive narcotics rehabilitation can help individuals overcome their addiction and develop the life skills needed to function productively in society. Successful rehabilitation programs often include individual and group therapy, counseling, education, and skills training.

Rehabilitation as a depenalization measure for narcotics abusers is considered to have numerous benefits, beyond the punitive focus on narcotics abusers. Rehabilitation is viewed as effective in addressing the issue of overcapacity in Indonesian correctional institutions, where 50% of the inmates are narcotics offenders. This is also supported by provisions in the Narcotics Law that regulate sanction measures in the form of rehabilitation. These sanction measures aim to protect society and increase the effectiveness of preventing narcotics abuse. The implementation of these sanction measures reflects parity with criminal sanctions, which is the underlying concept of the double track system in resolving narcotics-related issues.³⁹

³¹ Ekawati, Ati. "Hubungan Antara Penerimaan Diri Dan Kecemasan Terhadap Status Mantan Narapidana." *Jurnal Pemikiran Dan Pengembangan Pembelajaran* 2, No. 1 (2020): 27-33.

³² Fristian, Wanda, And S. Sulismadi. "Upaya Penyesuaian Diri Mantan Narapidana Dalam Menanggapi Stigma Negatif Di Kecamatan Klakah, Lumajang." *Adliya: Jurnal Hukum Dan Kemasyarakatan* 14, No. 1 (2020): 101-120.

³³ Adri, Sandy, Syafruddin Karimi, And Indrawari Indrawari. "Pengaruh Faktor Sosial Ekonomi Terhadap Perilaku Kriminalitas (Tinjauan Literatur)." *Jurnal Ilmiah Administrasi Publik* 5, No. 2 (2019): 181-186.

³⁴ Suyanto, Bagong. *Grey Chicken: Di Pusaran Uang Dan Penderitaan*. Airlangga University Press, 2017.

³⁵ Riskiyani, Shanti. "'Feels (Not) Like At Home': Perlakuan Di Lapas, Interaksi Sosial Dan Harapan Pengguna Narkotika Mantan Narapidana." *Etnosia: Jurnal Etnografi Indonesia* 1, No. 1 (2016).

³⁶ Nur, Rafika, and Handar Subhandi Bakhtiar. "The Imposition of Sanctions for Children." *Hasanuddin Law Review* 6, no. 2 (2020): 165-171.

³⁷ Harefa, Beniharmoni. "Perlindungan Hukum Terhadap Anak Sebagai Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Perspektif* 22, no. 3 (2017): 222-230.

³⁸ Nainggolan, Ibrahim. "Lembaga Pemasarakatan Dalam Menjalankan Rehabilitasi Terhadap Narapidana Narkotika." *Edutech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 5, No. 2 (2019).

³⁹ Sholehuddin, M. (2004). *Sistem Sanksi Dalam Hukum Pidana, Ide Dasar Double Track System & Implementasinya*, Raja Garafindo Persada, Hlm 28.

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Through rehabilitation policies, narcotics abusers are not only provided with treatment to help them break their dependency but are also guided toward a better life. This approach is more appropriate than placing narcotics abusers in correctional institutions. The imposition of imprisonment for narcotics abusers has proven ineffective, as the number of narcotics offenders entering prison continues to increase each year, and narcotics-related issues remain the primary cause of overcapacity in Indonesia's correctional institutions.⁴⁰

Rehabilitation policies for narcotics abusers have been implemented in Portugal, Luxembourg, and Thailand,⁴¹ showing success in reducing the prevalence of narcotics abuse. In the United Kingdom, the primary approach to dealing with narcotics issues is through medical treatment. Doctors in the UK are permitted to prescribe drugs to addicts or narcotics abusers under the supervision of the Home Office. The UK Home Office has established rules regarding the conditions that must be met if doctors wish to legally prescribe drugs to narcotics abusers. This system appears to function well in the UK, in contrast to the situation in the United States, which faces thousands of addicts or narcotics abusers. The UK reportedly has a stable population of only three to four hundred addicts or abusers in recent years, with virtually no illegal drug trafficking.⁴²

Through this approach, individuals can recover from their addiction and reduce the risk of returning to drug use. Social reintegration is also a critical component in assisting former drug offenders to rebuild their lives after release.⁴³ Social reintegration programs may include support in finding employment, securing housing, and accessing healthcare services. Additionally, efforts to reduce the stigma against former offenders must be strengthened to ensure they have better opportunities to participate in society.

Support from family, friends, and the community also plays a crucial role in this process. Emotional and practical support from a social network can assist former drug offenders in feeling accepted and supported as they strive to rebuild their lives.⁴⁴ Mentoring programs and peer support can be highly beneficial in providing guidance and motivation to former inmates on their path to recovery and social reintegration.

In order to mitigate the negative impact of imprisonment on drug offenders, changes in drug policy are necessary. A more humane policy focused on public health rather than incarceration can yield more positive outcomes. Decriminalizing drug use and emphasizing treatment and rehabilitation programs over imprisonment can help reduce the number of individuals incarcerated for drug offenses.⁴⁵

This approach has been successfully implemented in several countries,⁴⁶ resulting in significant reductions in drug abuse and overdose rates following changes in their drug policies. Furthermore, improving access to mental health services and addiction treatment is crucial. Many drug users resort to narcotics as a way to cope with underlying mental health issues. By providing better mental health care, we can help individuals address the root causes of their addiction and prevent them from falling into the cycle of drug abuse.

Investing in prevention and education programs is also necessary to reduce the number of people involved in drug abuse from the outset. Education on the dangers of drug use and coping strategies for life's pressures without resorting to harmful substances can help prevent drug abuse. Effective prevention programs can begin in schools and communities to provide accurate information and raise awareness about the risks of drug abuse.⁴⁷

Overall, the imprisonment of drug offenders inflicts significant harm on the individuals involved. From physical and mental damage to the loss of social and economic opportunities, as well as the negative effects on families and communities, the consequences of imprisonment are vast and destructive. Therefore, a more humane approach focused on rehabilitation and social reintegration is a more effective means of addressing drug abuse.⁴⁸

By adopting such policies, we can assist individuals in recovering from their addictions, reduce the burden on the prison system, and create a healthier and more inclusive society. Policies that support rehabilitation and social reintegration, along with investments in mental health services and prevention programs, are key to addressing drug abuse more effectively and sustainably.

⁴⁰ Ibid.

⁴¹ Wahyuono, Firman Tri. "Relevance Of Sanctions Prison Crime Against Narcotics Abuser." *Delictum: Jurnal Hukum Pidana Islam* 2, No. 1 (2023): 12-12.

⁴² William Butler Eldridge. (1963). *Narcotics And The Law: A Critique Of The American Experiment In Narcotic Drug Control*, Harvard Law Review, November, Hlm. 196.

⁴³ Sari, Lovita Nurindah. "Analisis Sosiologis Reintegrasi Sosial Klien Pemasarakatan." *Entita: Jurnal Pendidikan Ilmu Pengetahuan Sosial Dan Ilmu-Ilmu Sosial* 3, No. 1 (2021): 75-92.

⁴⁴ Aztri, Sherly, And Mirra Noor Milla. "Rasa Berharga Dan Pelajaran Hidup Mencegah Kekambuhan Kembali Pada Pecandu Narkoba Studi Kualitatif Fenomenologis." *Jurnal Psikologi* 9, No. 1 (2013): 48-63.

⁴⁵ Skandar, Anang, And S. Ik. *Penegakan Hukum Narkotika (Rehabilitatif Terhadap Penyalah Guna Dan Pecandu, Represif Terhadap Pengegadar)*. Elex Media Komputindo, 2019.

⁴⁶ Hasibuan, Abd Aziz. "Narkoba Dan Penanggulangannya." *Studia Didaktika: Jurnal Ilmiah Bidang Pendidikan* 11, No. 01 (2017): 33-44.

⁴⁷ Tikirik, Wita Oileri, Tenny Tarnoto, Andi Nursanti, Haryanto Haryanto, And Nasrullah Nasrullah. "Increasing The Risk Of Drug Abuse Among Smp Negeri 3 Mamuju Student's." *Community Development Journal: Jurnal Pengabdian Masyarakat* 4, No. 5 (2023): 10550-10555.

⁴⁸ Syafitri, Helen Novelia, Putri Dwi Anugrah, Hazimah Alfiyah Hulwa, Aditya Saputra, And Rafka Kamajaya. "Perlindungan Hukum Bagi Anak Penyalahgunaan Narkotika Pada Sistem Peradilan Pidana Anak Di Indonesia." *Jurnal Review Pendidikan Dan Pengajaran (Jrpp)* 7, No. 2 (2024): 5071-5080.

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With this approach, we can provide the necessary support to individuals struggling with drug addiction and help them rebuild their lives in a positive and productive manner.

The rehabilitation of drug offenders is closely linked to the concept of restorative justice. Restorative justice is an approach that focuses on healing, rehabilitation, and reintegration of individuals into society rather than merely punishing them. In the context of drug abuse, rehabilitation as part of restorative justice aims to address the root causes of drug dependency and prevent the recurrence of harmful behavior.⁴⁹

This relationship can be seen in several aspects. First, rehabilitation offers drug offenders the opportunity to receive medical, psychological, and social care necessary to overcome their addiction. This aligns with the principles of restorative justice, which prioritize the interests of individuals and society in recovery efforts rather than mere punishment.

Second, restorative justice seeks to repair the harm caused by drug abuse, both to the individual and the community.⁵⁰ Rehabilitation helps offenders understand the negative impact of their actions, not only on themselves but also on their families and communities. Thus, the rehabilitation process encourages drug offenders to take responsibility for their actions and work towards positive change.

Third, rehabilitation, as part of restorative justice, focuses on social reintegration. After completing a rehabilitation program, individuals are expected to return to society as productive and responsible members. This contrasts with punitive approaches that often isolate individuals from society without providing support for positive change.

The urgency of implementing rehabilitation for drug offenders through a restorative justice approach is based on several pressing factors,⁵¹ both from a health, social, and criminal policy perspective. This approach offers a more holistic and humane solution compared to the dominant punitive approach of imprisonment. Restorative justice not only focuses on individual recovery but also contributes to public health, social welfare, and a more humane form of justice, which is highly relevant when viewed through the lens of Gustav Radbruch's theory of legal objectives, emphasizing utility, certainty, and justice.

Utility in law aims to provide the greatest benefit to society. Rehabilitation offers a solution that not only helps individuals recover from drug addiction but also contributes to improving public health. By providing medical therapy, counseling, and social support, the risk of spreading drug-related diseases can be minimized, thereby providing broader health benefits to society. Furthermore, rehabilitation is a more cost-effective approach compared to imprisonment. Reducing state expenditures on the penal system provides greater financial benefits while achieving more positive social outcomes.

Legal certainty encompasses consistent and orderly law enforcement. By diverting drug offenders from prison to rehabilitation centers, the legal system can focus more on addressing more serious crimes. This ensures that law enforcement operates efficiently and is not burdened by cases that are better suited to rehabilitation. Thus, legal resources can be more effectively allocated, creating certainty in judicial processes.

The restorative justice approach through rehabilitation emphasizes recovery rather than punishment. This aligns with the goal of justice in law, which not only seeks to punish but also to correct and reintegrate individuals into society constructively. By providing the necessary support to start a new life free from drugs, rehabilitation helps reduce the risk of recidivism. Moreover, community participation in the recovery process helps repair the social damage caused by drug offenses, restore family relationships, and reduce social stigma.

In achieving these three legal objectives, it is important to apply a principle of prioritization that balances utility, certainty, and justice. In this case, the rehabilitation approach can be prioritized because it not only fulfills the aspects of utility and certainty but also offers a fairer and more humane solution for drug offenders. Therefore, the implementation of rehabilitation through restorative justice supports the achievement of comprehensive legal objectives, creating a legal system that is more inclusive and responsive to social needs.

B. The Reformulation of the Application of Restorative Justice for Narcotics Abusers through Rehabilitation within the Legal Enforcement System in Indonesia

According to Ratna WP in her work titled *Aspects of Narcotics Abuse*, rehabilitation is a form of sanction that emphasizes healing or recovery rather than retribution.⁵² Rehabilitation offers several key benefits, including serving as the most effective treatment facility, a means of breaking the chain of narcotics trafficking, an environment isolated from harmful influences, and a form of punishment grounded in humanitarian principles. Every individual involved in narcotics abuse has the potential to suffer from addiction and mental disorders, making them eligible for rehabilitation efforts aimed at restoring and rebuilding their lives. Placement in a rehabilitation institution is within the discretion of investigators, public prosecutors, and judges, as regulated in

⁴⁹ Putri, Novalinda Nadya, Somawijaya Somawijaya, And Agus Takariawan. "The Correctional Institution Recommendation As Judge's Consideration In Making A Decision Against Child Narcotics Abuser." *Jurnal Ilmiah Galuh Justisi* 9, No. 2 (2021): 241-259.

⁵⁰ Yunus, Ahmad Syahril. *Restorative Justice Di Indonesia*. Guepedia, 2021.

⁵¹ Ali, Dr M. Hatta, And Mh Sh. *Peradilan Sederhana Cepat & Biaya Ringan Menuju Keadilan Restoratif*. Penerbit Alumni, 2022.

⁵² Ratna Wp (Pengarang) ; Rina, Kak (Penyunting). *Aspek Pidana Penyalahgunaan Narkotika Berdasar Uu No 35 Tahun 2009 / Ratna Wp; Penyunting, Kak Rina* .2022

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Article 13 of Government Regulation No. 25 of 2011. Specifically, judges hold the absolute authority to determine whether the defendant is guilty and, if so, to order rehabilitation, or to order rehabilitation even if the defendant is found not guilty.

However, the application of this legal provision faces challenges due to varying interpretations in handling narcotics abuse cases. Some law enforcement officials, particularly judges, interpret absolute authority as discretionary, meaning it can be exercised or not based on the judge's conviction. Empirically, judges tend to impose prison sentences on narcotics offenders. Data from the Directorate General of Corrections at the Ministry of Law and Human Rights (Ditjenpas Kemenkumham) shows that by the end of 2023, the majority of narcotics abusers received prison sentences, with a total of 120,042 users and 15,176 traffickers, dealers, receivers, or producers incarcerated for drug-related offenses. In fact, under the law, narcotics abusers should be sentenced to rehabilitation to ensure recovery and prevent relapse.

Periodic narcotics abuse by individuals, typically referred to as self-use abuse, can indicate varying levels of addiction—mild, moderate, or severe. Pursuant to Article 127(1) of Law No. 35 of 2009 on Narcotics, self-use narcotics abusers may be subject to a maximum imprisonment of four years. However, Article 103(1) of the same law mandates that judges impose rehabilitation sentences. If the narcotics abuser is addicted, they can be classified as addicts, who are also obligated to undergo rehabilitation as provided by Article 54 of Law No. 35 of 2009 on Narcotics. A law enforcement process oriented toward rehabilitation is crucial to addressing narcotics abuse through a balanced health and legal approach.⁵³

Should the judge find evidence that the defendant, found in possession of a limited amount of narcotics for personal use, is using them as a commodity for sale, the judge is authorized to impose imprisonment, as this reflects the dual role of the defendant as both an abuser and a dealer. This dual role poses challenges for families, law enforcement agencies, and rehabilitation institutions in their efforts to rehabilitate narcotics abusers.

The investigation and prosecution of narcotics abuse cases are based on the objectives of Law No. 35 of 2009 on Narcotics, which aims to eradicate illicit narcotics trafficking (Article 4(c)) and ensure medical and social rehabilitation for abusers and addicts (Article 4(d)). Therefore, investigators and prosecutors are required to distinguish between the roles of abusers and dealers, given their different objectives. Narcotics abusers cannot be charged alongside dealers. Abusers should only be investigated and prosecuted under Article 127(1) of Law No. 35 of 2009 on Narcotics, thus adopting a rehabilitative approach.

Self-use narcotics abusers may face a maximum prison sentence of four years, but the applicable procedural law does not permit detention (Article 21 of the Criminal Procedure Code). Since Law No. 35 of 2009 on Narcotics guarantees the right of abusers to receive medical and social rehabilitation, law enforcement officials, including investigators, prosecutors, and judges, are empowered to place abusers in rehabilitation institutions during the legal process (Article 13 of Government Regulation No. 25 of 2011).

The details regarding placement in rehabilitation institutions, whether during legal proceedings (Article 13(3) of Government Regulation No. 25 of 2011) or after a verdict of guilt or innocence, are regulated by the Minister of Health. In court, judges must consider the provisions set out in Articles 54, 55, and 103 (Article 127(2)) of Law No. 35 of 2009 on Narcotics. Judges must assess the condition of the offender, whether they are addicted, whether they have reported themselves to a rehabilitation institution, and exercise their absolute authority to impose a rehabilitation sentence according to the offender's condition.

Matters concerning rehabilitation for narcotics abusers are not only regulated under Law No. 35 of 2009 on Narcotics but also in Supreme Court Circular No. 4 of 2010 on the Placement of Narcotics Abusers, Victims of Narcotics Abuse, and Narcotics Addicts in Medical and Social Rehabilitation Institutions. This circular provides guidelines for the judiciary in handling narcotics abuse cases.

First, this circular emphasizes the importance of distinguishing between abusers and dealers during investigations and prosecutions, clarifying that legal handling of narcotics abuse cases must consider medical and social rehabilitation aspects. As stipulated in point 2 of this circular, the imposition of penalties as referred to in Article 103(a) and (b) of Law No. 35 of 2009 on Narcotics may only be imposed for the following categories of offenses:

a. The defendant is caught red-handed by the police or the National Narcotics Agency; b. During the arrest, narcotics evidence for one day's use was found, with the following specifications:⁵⁴

1. For methamphetamine (shabu): 1 gram;
2. For MDMA (ecstasy): 2.4 grams (equivalent to 8 pills);
3. For heroin: 1.8 grams;
4. For cocaine: 1.8 grams;
5. For marijuana: 5 grams;
6. For coca leaves: 5 grams;
7. For mescaline: 5 grams;
8. For psilocybin: 3 grams;

⁵³ Iskandar, Anang. "Penyalahgunaan Narkotika, Dipenjara Atau Direhab." *Hukum Pidana Dan Pembangunan Hukum* 2, No. 1 (2019).

⁵⁴ Angka 2 Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan Dan Pecandu Narkotika Kedalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial

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9. For LSD (lysergic acid diethylamide): 2 grams;
10. For PCP (phencyclidine): 3 grams;
11. For fentanyl: 1 gram;
12. For methadone: 0.5 grams;
13. For morphine: 1.8 grams;
14. For pethidine: 0.96 grams;
15. For codeine: 72 grams;
16. For buprenorphine: 32 mg; c. A positive narcotics laboratory test result based on the investigator's request; d. A certificate from a government psychiatrist or psychologist appointed by the judge; e. No evidence indicating involvement in narcotics trafficking.

Secondly, this circular provides directions regarding procedures for placing individuals involved in narcotics abuse in rehabilitation institutions, aiming to provide appropriate care and rehabilitation based on their condition. Judges are authorized to decide on the placement of individuals in rehabilitation based on relevant medical and social considerations and must coordinate with related agencies to ensure that rehabilitation placement is conducted effectively and efficiently. This emphasizes the critical role of judges in ensuring that narcotics abusers receive appropriate care.

In cases where judges order rehabilitation as a form of legal action, they must clearly specify the nearest rehabilitation institution in their ruling. The rehabilitation institutions in question include:⁵⁵

- a. Medical and social rehabilitation institutions managed and/or supervised by the National Narcotics Agency;
- b. The Drug Dependency Hospital (RSKO) in Cibubur, Jakarta;
- c. Mental hospitals throughout Indonesia (Ministry of Health);
- d. Social rehabilitation centers of the Ministry of Social Affairs and local government units;
- e. Accredited private rehabilitation institutions, at the individual's own expense.

Furthermore, the Supreme Court Circular No. 4 of 2010 also provides guidelines regarding the duration of rehabilitation, requiring judges to carefully consider the defendant's level of addiction, with expert testimony necessary to determine the appropriate standard for therapy and rehabilitation, as follows:⁵⁶

- a. Detoxification and stabilization program: one month;
- b. Primary program: six months;
- c. Re-entry program: six months.

In essence, Supreme Court Circular No. 4 of 2010 provides clear guidelines and directions for the judiciary in handling self-use narcotics cases with a focus on medical and social rehabilitation rather than unjust retribution by imprisoning narcotics abusers.

This is also closely related to Supreme Court Circular No. 3 of 2011 on the Placement of Victims of Narcotics Abuse in Medical and Social Rehabilitation Institutions, which governs the placement of narcotics abuse victims in medical and social rehabilitation centers. The content of this circular includes several key points that serve as a reference for the judiciary in handling cases involving narcotics abuse victims. This circular emphasizes the importance of handling narcotics abuse cases with a rehabilitative approach, focusing on efforts to restore and socially reintegrate narcotics abuse victims into society.

Supreme Court Circular No. 3 of 2011 provides guidance to judges to consider medical and social factors in deciding on the placement of narcotics abuse victims in rehabilitation institutions. This aims to ensure that placement is appropriate to the needs and condition of the individual. It also stresses the importance of coordination between the judiciary and rehabilitation institutions, including providing information and oversight of the rehabilitation process for narcotics abuse victims. Therefore, Supreme Court Circular No. 3 of 2011 provides more detailed guidelines for the judiciary in handling self-use narcotics abuse cases by emphasizing medical and social rehabilitation and strengthening the rehabilitative approach for narcotics abusers.

In accordance with the Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia, and the Head of the National Narcotics Agency, Number: 01/Pb/MA/III/2014, Number: 03 of 2014, Number: 11 of 2014, Number: 03 of 2014, Number: PER-005/A/JA/03/2014, Number: 1 of 2014, Number: PERBER/01/III/2014/BNN, concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, which regulates the procedures and mechanisms for handling narcotics addicts and victims of narcotics abuse in rehabilitation institutions, in alignment with existing regulations. This Joint Regulation aims to provide guidelines and procedures for managing narcotics addicts and victims of narcotics abuse within rehabilitation institutions. Its scope includes the process of placement, recovery, and reintegration of addicts and victims of narcotics abuse into society.

⁵⁵ Angka 3 Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan Dan Pecandu Narkotika Kedalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial

⁵⁶ Angka 4 Surat Edaran Mahkamah Agung Nomor 4 Tahun 2010 Tentang Penempatan Penyalahgunaan, Korban Penyalahgunaan Dan Pecandu Narkotika Kedalam Lembaga Rehabilitasi Medis Dan Rehabilitasi Sosial

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The Joint Regulation details the procedures for placing narcotics addicts and victims of narcotics abuse into rehabilitation institutions, including medical assessments, risk evaluations, and the transfer of cases from legal proceedings to rehabilitation processes. It also sets out the standards of rehabilitation services to be provided within these institutions, including medical, psychological, social, and educational services to facilitate recovery and reintegration. Furthermore, it explicitly grants authority to relevant institutions and agencies, such as the Supreme Court, Ministry of Law and Human Rights, Ministry of Health, Ministry of Social Affairs, the Attorney General, the National Police of the Republic of Indonesia, and the National Narcotics Agency, to implement these handling procedures as stipulated and encourages active cooperation among these institutions and agencies in handling narcotics addicts and victims of narcotics abuse, including the exchange of information, coordination of actions, and provision of holistic and integrated services.

Additionally, the Joint Regulation establishes a monitoring and evaluation mechanism for the implementation of the handling of narcotics addicts and victims of narcotics abuse within rehabilitation institutions, to ensure the effectiveness and compliance with the prescribed provisions. Accordingly, this Joint Regulation is intended to provide a comprehensive and coordinated framework for the handling of narcotics addicts and victims of narcotics abuse in rehabilitation institutions, with a focus on holistic rehabilitation services and sustainable recovery.

The Attorney General's Regulation Number 15 of 2020 concerning the Cessation of Prosecution Based on Restorative Justice (Perja No. 15/2020) can serve as a legal basis for diverting narcotics abusers from the criminal justice process to rehabilitation. This implementation aims to provide a more humane and effective approach to addressing narcotics abuse. Perja No. 15/2020 allows for the cessation of prosecution for narcotics abusers who meet certain criteria.⁵⁷ For instance, a criminal case may be legally closed, and prosecution may be terminated if the following conditions are met: first, the suspect is a first-time offender with no prior criminal record. Second, the offense carries only a fine or imprisonment of no more than five years. Third, the value of the evidence or damage caused by the offense does not exceed Rp 2,500,000.00 (two million five hundred thousand rupiah). By meeting these conditions, the application of restorative justice aims to provide offenders with the opportunity for rehabilitation or other constructive resolutions, rather than undergoing conventional criminal proceedings.

In applying restorative justice, cases of minor narcotics abuse, such as users who are not dealers but victims of addiction, may be considered for cessation of prosecution. This is especially relevant when the case does not result in significant material loss or direct harm to others, as personal narcotics use typically does not have significant economic impacts. Moreover, narcotics abusers who demonstrate remorse and willingness to undergo rehabilitation, and who lack a serious criminal history, are eligible for this process.

The process of cessation of prosecution based on restorative justice begins with the identification of cases by the Public Prosecutor that meet the criteria for such application.⁵⁸ Once an appropriate case is identified, the Public Prosecutor may propose the cessation of prosecution to the Head of the District Prosecutor's Office, with a thorough evaluation of rehabilitation as a more effective alternative solution. Subsequently, a mediation process is conducted, where the prosecutor, narcotics abuser, and related parties, such as family members, may reach an agreement to divert the offender to a rehabilitation center. This agreement includes the offender's commitment to undergo rehabilitation and not to repeat the offense, ensuring that this approach not only provides the offender with an opportunity for recovery but also supports preventive efforts in addressing narcotics abuse in a more humane and constructive manner.

Guideline Number 18 of 2021 on the Resolution of Narcotics Abuse Cases Through Rehabilitation was developed to guide public prosecutors in enhancing the efficiency of handling narcotics abuse cases through a restorative justice approach, in line with the prosecutor's role as *dominus litis*.⁵⁹ The objective of this Guideline is to improve the resolution of narcotics abuse cases through rehabilitation with a restorative justice approach, which also references the prosecutor's role as case controller.

The backdrop to the issuance of this Guideline includes the recognition that the current criminal justice system tends to be punitive, as evidenced by the high number of narcotics-related prisoners contributing to overcrowding in correctional facilities. This overcrowding is a serious concern for both society and the government, as outlined in the National Medium-Term Development Plan for 2020-2024, which focuses on improving the criminal justice system through restorative justice.⁶⁰

As part of the reorientation of law enforcement policy, particularly in the implementation of the Narcotics Law, strategic steps are needed, including the handling of narcotics abuse cases. One such effort is the optimization of rehabilitation institutions as part of the prosecution process, carried out by prosecutors as case controllers. Resolution of cases through rehabilitation is seen as an integral mechanism of the restorative justice approach, aimed at restoring offenders of narcotics abuse. This Guideline

⁵⁷ Pasal 5 Peraturan Jaksa Agung Nomor 15 Tahun 2020

⁵⁸ Kristanto, Andri. "Kajian Peraturan Jaksa Agung Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif." *Lex Renaissance* 7, No. 1 (2022): 180-193.

⁵⁹ <https://Pji.Kejaksaan.Go.Id/Index.Php/Home/Berita/1920> 11 Februari 2024, 08.24

⁶⁰ Herman, Herman, Oheo Kaimuddin Haris, Sabrina Hidayat, Handrawan Handrawan, Guasman Tatawu, And Dian Fris Nalle. "Penghentian Penuntutan Terhadap Penyalahguna Narkotika Berdasarkan Keadilan Restoratif." *Halu Oleo Legal Research* 4, No. 2 (2022): 322-341.

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emphasizes the restorative justice aspect and utility, while upholding the principles of swift, simple, and low-cost justice,⁶¹ and prioritizing offender recovery.

Guideline Number 18 of 2021 consists of nine sections covering various stages, including pre-prosecution, prosecution, supervision, training, and financing of narcotics abuse cases through rehabilitation with a restorative justice approach, in line with the prosecutor's role as case controller. Effective from November 1, 2021, this Guideline serves as a framework for handling narcotics abuse cases not yet submitted to court, particularly those violating Article 127(1) of the Narcotics Law. The Attorney General of the Republic of Indonesia hopes that Guideline Number 18 of 2021 will be implemented by public prosecutors with full responsibility and without engaging in unethical conduct, and has emphasized strict action against prosecutors who attempt to undermine the intent and purpose of this Guideline.

Nevertheless, there are several notes in the Attorney General's Guidelines that must be considered to ensure the optimal, fair, and minimal abuse of efforts to avoid imprisonment for narcotics users.⁶² First, avoiding imprisonment for narcotics users should not be limited to rehabilitation. The Attorney General's Guideline No. 18 of 2021 states that narcotics users can be rehabilitated at the prosecution stage.⁶³ Second, the Guideline also stipulates that suspects can be rehabilitated through legal processes, where the Head of the District Prosecutor's Office or the Head of the Branch Prosecutor's Office issues a rehabilitation order through legal processes. Third, if the suspect fails to undergo rehabilitation through legal processes without a valid reason or does not comply with the order, the public prosecutor may take coercive measures as outlined in Chapter IV, letters E, points 5 and 6. However, there is no clarity on what constitutes a "valid reason" to exempt the rehabilitation process. This lack of clarity may open opportunities for abuse and result in unfair treatment for narcotics users and addicts.

Rehabilitation provides an opportunity for narcotics users to receive the necessary medical and psychological care to overcome their addiction.⁶⁴ Rehabilitation programs are designed to help individuals understand the root causes of their narcotics use and develop healthy coping strategies to avoid future use. This not only improves their physical health but also their mental well-being.

Through rehabilitation, narcotics users are taught life skills that can help them lead more meaningful and productive lives. They may learn to develop healthier relationships, manage stress, and make better decisions.⁶⁵ These skills help them rebuild a more stable and focused life, steering away from the destructive behaviors associated with narcotics abuse.

Rehabilitation programs place emphasis on recovery and rehabilitation rather than punishment. This helps reduce the social stigma often associated with narcotics use. Through this process, individuals are treated more humanely and given the chance to restore their dignity, as well as be recognized as individuals with the potential to change and grow.

Rehabilitation provides support for social and economic reintegration. Narcotics users who undergo rehabilitation may gain job skills and education that help them return to society as productive members.⁶⁶ This not only increases their chances of employment but also reduces the risk of re-engaging in illegal activities or deviant behavior.

The restorative justice approach through rehabilitation helps reduce the risk of recidivism.⁶⁷ By addressing the underlying issues that lead to narcotics abuse and providing ongoing support, individuals are more likely to stay away from narcotics use in the future. This also helps lessen the burden on the criminal justice system and correctional facilities.

As such, the benefits derived from the application of restorative justice through rehabilitation demonstrate significant potential in providing more effective and sustainable solutions for narcotics users. This is reflected in statistical data on the implementation of restorative justice for narcotics users in prosecution offices, showing the application of this policy in various High Prosecutor's Offices across Indonesia.

In 2022, the application of restorative justice to narcotics abuse cases in Indonesia showed significant variation across different High Prosecutor's Offices. Restorative justice, aimed at diverting narcotics abusers from the criminal justice system to rehabilitation, was applied to varying degrees in 34 provinces, with success stories highlighting the positive impacts of this approach.

In regions like Jakarta, where drug-related offenses are prevalent, the High Prosecutor's Office successfully implemented restorative justice in multiple cases, reducing the number of incarcerations and providing opportunities for rehabilitation instead. In

⁶¹ Ali, Dr M. Hatta, And Mh Sh. *Peradilan Sederhana Cepat & Biaya Ringan Menuju Keadilan Restoratif*. Penerbit Alumni, 2022.

⁶² <https://lajr.or.id/Catatan-Terhadap-Hadirnya-Pedoman-Kejaksaan-Nomor-18-Tahun-2021-Tentang-Penyelesaian-Penanganan-Perkara-Tindak-Pidana-Penyalahgunaan-Narkotika-Melalui-Rehabilitasi-Dengan-Pendekatan-Keadilan-Restoratif/> 10 Februari 2024, 08.24

⁶³ Budiya, I. Gusti Ngurah, Anak Agung Sagung Laksmi Dewi, And Ni Made Sukaryati Karma. "Penanganan Tindak Pidana Penyalahgunaan Narkotika Melalui Rehabilitasi Dengan Pendekatan Keadilan Restoratif Sebagai Pelaksanaan Asas Dominus Litis Pada Kejaksaan Negeri Denpasar." *Jurnal Preferensi Hukum* 4, No. 1 (2023): 45-50.

⁶⁴ Nainggolan, Ibrahim. "Lembaga Pemasarakatan Dalam Menjalankan Rehabilitasi Terhadap Narapidana Narkotika." *Edutech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial* 5, No. 2 (2019).

⁶⁵ Santoso, Nurhadi. "Upaya Guru Pendidikan Jasmani Olahraga Dan Kesehatan (Penjasorkes) Dalam Menanggulangi Penyalahgunaan Narkoba Lewat Pendidikan Kesehatan."

⁶⁶ Pangestu, Raden Mas Dimas, And R. Rahaditya. "Urgensi Rehabilitasi Sosial Terhadap Narapidana Pecandu Narkotika Di Lingkungan Lembaga Pemasarakatan." *Unes Law Review* 6, No. 2 (2023): 5802-5808.

⁶⁷ Flora, Henny Saida. "Perbandingan Pendekatan Restorative Justice Dan Sistem Peradilan Konvensional Dalam Penanganan Kasus Pidana." *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam* 5, No. 2 (2023): 1933-1948.

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other provinces, like West Java and East Java, where drug use is also a concern, restorative justice was applied less frequently, leading to ongoing discussions about expanding its use.

Entirely in 2022,⁶⁸ there were a total of 41 cases approved and 4 cases rejected across Indonesia, with varying acceptance rates in different regions. The Central Kalimantan High Prosecutor's Office recorded 1 case rejected without any approvals, while Gorontalo and the Riau Islands reported several approved cases, with the Riau Islands recording 1 rejection.

In 2023,⁶⁹ data on the application of restorative justice showed significant progress. The East Java High Prosecutor's Office again recorded the highest number of approved cases, with 34 cases, an increase from the previous year. The Aceh High Prosecutor's Office reported 15 approved cases without any rejections, which also marked an increase. In West Sumatra, the number of approved cases surged to 41, with only 2 cases rejected.

The application of restorative justice in other regions also showed positive trends. West Java reported 7 approved cases without rejection, while South Sulawesi reported 2 approved cases without rejection. Some other regions, such as West Nusa Tenggara, Central Kalimantan, and Lampung, also recorded the application of restorative justice, though in smaller numbers.

Overall, in 2023, there were 117 approved cases and 5 rejected cases nationwide, reflecting a significant increase compared to 2022, demonstrating the success of this approach across various regions.

In 2024,⁷⁰ the data indicated a decline in the number of approved cases compared to 2023, although it remained higher than in 2022. The East Java High Prosecutor's Office reported 17 approved cases with no rejections, down from 34 cases in 2023, but still higher than in 2022. The Aceh High Prosecutor's Office recorded 4 approved cases, a decrease from 15 cases in 2023, but equal to the 2022 figures.

Different regions exhibited varying dynamics in the application of restorative justice. For instance, West Sumatra recorded 9 approved cases with no rejections in 2024, down from 41 cases in 2023. West Java reported 6 approved cases and 3 rejected cases, indicating more stringent evaluations. In regions such as Lampung and West Nusa Tenggara, the number of approved cases increased compared to 2022, though they saw a slight decline from 2023 levels.

In other regions, such as Central Java and Banten, the application of restorative justice remained consistent, although the number of approved cases was smaller compared to larger regions. Central Java recorded 1 approved case with no rejections in 2024, while Banten recorded 4 approved cases and 1 rejection.

Overall, in 2024, there were 52 approved cases and 6 rejected cases across Indonesia. This represented a decrease from 2023 but remained higher than 2022. The decline could be attributed to policy changes, increased selectivity in the application of restorative justice, or other factors influencing case evaluations.

The dynamic application of restorative justice from 2022 to 2024 reflects a sustained commitment to this approach. Although the number of approved cases decreased in 2024, the data suggests that restorative justice remains an important alternative in handling narcotics abuse cases in Indonesia. Certain regions have shown significant improvements in implementation, while others may still face challenges in execution. Efforts to enhance the application of restorative justice must continue, especially in regions where its implementation has not yet reached its full potential, focusing on rehabilitation and social reintegration for narcotics abusers. This will help ensure that a more humane and rehabilitative approach continues to evolve across Indonesia.

Rehabilitation and restorative justice share the goal of repairing and transforming individuals' behavior in a more humane and sustainable manner.⁷¹ They emphasize recovery, accountability, and the restoration of relationships, both with oneself and with the broader community, as key components in addressing narcotics abuse.

Furthermore, Regulation of the Chief of the Indonesian National Police No. 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice also sets out guidelines and procedures for applying the restorative justice approach in handling criminal cases, including narcotics abuse. This regulation provides a framework for diverting narcotics abusers from the criminal justice system to rehabilitation pathways, focusing on recovery and reintegration into society. The regulation establishes criteria and conditions for the application of restorative justice, which includes cases deemed not overly severe and where rehabilitation is considered more appropriate than criminal punishment.

For narcotics abusers, this regulation can be used to determine whether a case qualifies for rehabilitation based on the severity of the offense and its impact. This is consistent with specific requirements for narcotics offenses, wherein drug addicts and victims of drug abuse who apply for rehabilitation can be addressed through restorative justice.⁷²

⁶⁸ Rekap data penerapan keadilan restoratif (*restorative justice*) terhadap penyalah guna narkoba pada setiap Kejaksaan Tinggi tahun 2022-2024, Didapat dari Direktorat Jaksa Agung Muda Bidang Tindak Pidana Umum tahun 2024.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Mh, Ridwan Syaidi Tarigan Sh. *Reformasi Hukum Tata Negara: Menuju Keadilan Dan Keseimbangan*. Ruang Berkarya, 2024.

⁷² Pasal 9 Peraturan Kapolri Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Keadilan Restoratif:

(1) Pesyaratan Khusus Untuk Tindak Pidana Anrkoba Sebagaimana Dimaksud Dalam Pasal 7 Huruf B, Meliputi:

a. Pecandu Narkoba Dan Korban Penyalahgunaan Natkoba Yang Mengajukan Rehabilitasi;

b. Pada Saat Tertangkap Tangan;

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In line with Article 6 of the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, which opens up opportunities for judges to adjudicate narcotics abusers based on restorative justice when the offense meets one of the special criteria outlined in the relevant article, judges may apply these guidelines if one of the following conditions is met:⁷³ first, the crime committed is classified as a minor offense or the victim's losses do not exceed IDR 2,500,000 or the local minimum wage. Second, the offense is a complaint-based offense. Third, the crime is punishable by a maximum of five years' imprisonment under one of the charges, including offenses under the qanun. Fourth, the crime was committed by a child whose diversion efforts failed. Fifth, traffic offenses that constitute a crime.

Under Article 127 of the Narcotics Law, which stipulates a maximum sentence of four years for narcotics abuse,⁷⁴ Article 6 of the Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice provides a legal framework for applying restorative justice in cases of narcotics abuse. Article 6 of the Supreme Court Regulation sets out several criteria under which judges may consider restorative justice, one of which is if the crime is punishable by a maximum sentence of five years' imprisonment. This criterion encompasses offenses where the penalty falls within this threshold, such as narcotics abuse cases regulated under Article 127 of the Narcotics Law.

With the maximum penalty of four years provided under Article 127 of the Narcotics Law, narcotics abuse meets one of the criteria stipulated in Article 6 of the Supreme Court Regulation. This opens the possibility for judges to apply restorative justice in handling narcotics abuse cases, particularly in the context of rehabilitation. This approach not only aims to reduce criminal penalties but also provides an opportunity for offenders to reform themselves through rehabilitation processes.

Thus, the application of these guidelines allows judges to divert narcotics abusers from the traditional criminal justice system toward a rehabilitation pathway focused on recovery and social reintegration.⁷⁵ This is expected to reduce the burden on the penal system, alleviate the risk of overcrowding in prisons, and assist individuals in overcoming narcotics addiction more effectively. This restorative justice approach, by providing the opportunity for rehabilitation, supports the long-term goals of offender recovery and the prevention of recidivism,⁷⁶ thereby contributing to a fairer and more humane justice system.

The increasing use of restorative justice in handling narcotics abuse cases has yielded significant results across various regions. Based on the Recapitulation of Data on the Application of Restorative Justice to Narcotics Abusers at Each High Prosecutor's Office, data from 2022, 2023, and 2024 show an increasing number of cases approved for restorative justice, although with annual variations. This reflects a shift in the approach to handling narcotics abuse cases, from a purely repressive approach to a more humane and rehabilitative one. As more cases are handled through restorative justice, it is time to consider reformulating Law No. 35 of 2009 on Narcotics, particularly Article 127, so that there are no longer any criminal penalties or imprisonment for self-abusing narcotics.

Article 127 of Law No. 35 of 2009 on Narcotics stipulates that any person who, without rights or contrary to law, uses narcotics of classes I, II, and III may be subject to imprisonment. This article provides the legal basis for law enforcement to criminalize narcotics abusers, even when they use narcotics solely for personal use. This approach has long been criticized as ineffective in comprehensively addressing the narcotics problem. Prisons, which should be places of rehabilitation for offenders, often fail to provide an appropriate solution for narcotics abusers.⁷⁷ Instead, imprisonment can exacerbate their condition, increase the risk of relapse, and expose them to more criminal environments.⁷⁸

The restorative justice approach, which emphasizes restoration and rehabilitation, offers a more humane and effective solution. This approach involves narcotics offenders in a recovery process that includes support from family, the community, and the healthcare system. Through restorative justice, narcotics offenders are given the opportunity to rehabilitate themselves, overcome their addiction, and reintegrate into society without the stigma or label of being a criminal.⁷⁹ Data shows that restorative

1. Ditemukan Barang Bukti Narkoba Pemakaian 1 (Satu) Hari Dengan Penggolongan Narkotika Dan Psikotropika Sesuai Dengan Ketentuan Peraturan Perundang Undangan; Dan

2. Tidak Ditemukan Barang Bukti Tindak Pidana Narkoba, Namun Hasil Tes Urine Menunjukkan Positif Narkoba;

c. Tidak Terlibat Dalam Jaringan Tindak Pidana Narkoba, Pengedar Dan/Atau Bandar;

d. Telah Dilaksanakan Asesmen Oleh Tim Asesmen Terpadu; Dan

e. Pelaku Bersedia Bekerja Sama Dengan Penyidik Polri Untuk Melakukan Penyelidikan Lanjutan.

⁷³ Pasal 6 Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2024 Tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif

⁷⁴ Hariyani, Desi Dwi. "Penerapan Pasal 112 Dan Pasal 127 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dalam Upaya Mewujudkan Kepastian Hukum." Phd Diss., Uns (Sebelas Maret University), 2022.

⁷⁵ Eryansyah, Andi Marwan, And A. Md Ip. *Hakikat Sistem Masyarakat Sebagai Upaya Pemulihan Terhadap Warga Binaan Masyarakat: Perspektif Hak Asasi Manusia-Jejak Pustaka*. Jejak Pustaka, 2021.

⁷⁶ Sudewo, Fajar Ari. *Pendekatan Restorative Justice Bagi Anak Yang Berhadapan Dengan Hukum*. Penerbit Nem, 2021.

⁷⁷ Iskandar, Anang, And S. Ik. *Penegakan Hukum Narkotika (Rehabilitatif Terhadap Penyalah Guna Dan Pecandu, Represif Terhadap Pengedar)*. Elex Media Komputindo, 2019.

⁷⁸ Fitri, Wanda. "Perempuan Dan Perilaku Kriminalitas: Studi Kritis Peran Stigma Sosial Pada Kasus Residivis Perempuan." *Kafaah: Journal Of Gender Studies* 7, No. 1 (2017): 67-78.

⁷⁹ Amri, Sri Rahayu, And Sari Ratna Dewi. *Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana Penyalahgunaan Narkotika*. Penerbit Widina, 2024

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justice programs have successfully reduced recidivism rates and improved the quality of life for narcotics offenders, demonstrating an alternative form of legal enforcement.

Law enforcement itself, as a process to ensure the functioning of legal norms, encompasses both preventive and repressive efforts. Various factors, such as legislation, law enforcement officers, facilities, society, and culture, must work in synergy. According to Soerjono Soekanto's theory of law enforcement, these factors are closely interconnected and form the essence of effective law enforcement. If one factor, such as the law, does not align with social needs, it can disrupt the overall effectiveness of law enforcement. For instance, if the law still imposes imprisonment on narcotics offenders who should be rehabilitated, law enforcement officials will continue to prosecute these individuals, diverting resources from more serious crimes and placing additional burdens on the judicial and correctional systems.

In this context, the reformulation of Article 127 of the Narcotics Law becomes essential. This reform should aim to abolish the threat of imprisonment for personal narcotics use and replace it with comprehensive rehabilitation programs. These rehabilitation programs must include mental health services, social support, and guidance to help offenders overcome their addiction and prevent relapse. The reform of the law should also ensure that narcotics offenders are no longer treated as criminals but as individuals in need of assistance and support for recovery.

This approach has been adopted by many countries with positive results. Portugal, for example, decriminalized personal narcotics use in 2001 and focused on rehabilitation.⁸⁰ As a result, Portugal has seen a significant decline in narcotics use, HIV infections, and overdose deaths. This model demonstrates that decriminalization and rehabilitation can be more effective than criminal prosecution.

Moreover, reforming Article 127 could also help alleviate the burden on the criminal justice system and prisons. The large number of narcotics abuse cases handled by courts and prisons has overloaded these systems, making them inefficient and costly. By diverting narcotics offenders to rehabilitation programs, available resources can be directed toward addressing more serious crimes that require deeper attention.⁸¹

The reform of the law must also be accompanied by improvements in available rehabilitation facilities and programs. The government must ensure that there are enough rehabilitation centers with adequate service quality throughout Indonesia. Additionally, training for healthcare workers and other support staff must be enhanced to ensure they can provide the services needed by narcotics offenders.

Restorative justice approaches must also involve families and communities in the recovery process. Support from families and communities is crucial to the success of rehabilitation. Rehabilitation programs must include education for families and communities on how to support narcotics offenders in their recovery process. This way, offenders can feel accepted and supported in their social environments, which will increase the likelihood of successful rehabilitation.

Furthermore, close cooperation is required between various government agencies, including the Ministry of Health, Ministry of Social Affairs, and law enforcement agencies, to implement this approach effectively. Each institution must play a clear and coordinated role in the rehabilitation efforts for narcotics offenders. The government must also allocate sufficient funds for rehabilitation programs and ensure that these services are accessible to all offenders,⁸² regardless of their social or economic background.

Another crucial aspect of the reform of this law is education and prevention. The government must increase efforts in education and prevention to reduce the number of new narcotics offenders. Education programs on the dangers of narcotics and how to prevent abuse must be enhanced in schools and communities. Public awareness campaigns must also be strengthened to reduce the stigma against narcotics offenders and increase understanding of the importance of rehabilitation.⁸³

The reform of the law must also include mechanisms for evaluating and monitoring rehabilitation programs. The government must ensure that existing rehabilitation programs operate effectively and achieve the desired results. Regular evaluations and monitoring must be conducted to identify issues and find appropriate solutions. In this way, rehabilitation programs can be continuously improved and adjusted to meet the needs of narcotics offenders.

This reform is also part of criminal policy, which is an essential aspect of criminal law enforcement planning. Legislative policy, or the formulation stage, is the initial and foundational step in the law enforcement process, which includes the application and execution stages. In this context, the reformulation of Article 127 is an effort to align legal policy with broader social objectives, namely social welfare. Criminal law policy does not only focus on punishment but also on prevention and rehabilitation, aiming to create a safer and more prosperous society. Therefore, this legal reform is a strategic step toward achieving social welfare and

⁸⁰ Iskandar, Anang, And S. Ik. *Penegakan Hukum Narkotika (Rehabilitatif Terhadap Penyalah Guna Dan Pecandu, Represif Terhadap Pengedar)*. Elex Media Komputindo, 2019.

⁸¹ Fransiska, Asmin, Arif Rachman Iryawan, Alfiana Qisthi, Miko S. Ginting, Totok Yulianto, And Yohan Misero. *Anomali Kebijakan Narkotika*. Penerbit Universitas Katolik Indonesia Atma Jaya, 2020.

⁸² Christianingrum, Ratna, Tio Riyono, And Leo Iskandar. "Kesiapan Indonesia Untuk Melaksanakan Rehabilitasi Bagi Penyalahguna Narkotika Dilihat Dari Perspektif Anggaran." *Jurnal Budget: Isu Dan Masalah Keuangan Negara* 8, No. 2 (2023): 274-292.

⁸³ Prima, Rama Putra Primawardana. "Analisis Upaya Asean Dalam Memberantas Distribusi Narkotika Di Wilayah Asia Tenggara." *Siyar Journal* 4, No. 2 (2024): 99-110.

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aligning with the National Legislative Program (Prolegnas)⁸⁴, while reducing the negative impact of criminalizing narcotics offenders.

Additionally, the reform of Article 127 must include provisions that protect the rights of narcotics offenders. Narcotics offenders must be treated with respect and dignity and protected from discrimination and unfair treatment. Their rights as individuals must be respected throughout the rehabilitation process, and they must be given access to the services they need to recover.

In this reform, the role of the media is also crucial. The media must raise public awareness about the importance of restorative justice and reduce the stigma against narcotics offenders. The media should also report objectively on the successes and challenges in implementing restorative justice, as well as provide accurate information about the dangers of narcotics and the importance of rehabilitation.

Finally, support from civil society and non-governmental organizations (NGOs) is essential for the success of this law reform. NGOs can play a role in providing rehabilitation services, advocating for reform, and supporting government efforts in implementing restorative justice. Collaboration between the government, NGOs, and civil society will ensure that rehabilitation efforts proceed smoothly and yield optimal results.

In summary, the reform of Article 127 of the Narcotics Law No. 35 of 2009 is crucial to ensuring that personal narcotics offenders are no longer subjected to imprisonment but are instead given the opportunity for rehabilitation. The restorative justice approach has proven to be more effective in helping narcotics offenders recover and reintegrate into society. With this reform, Indonesia can take a significant step toward addressing narcotics issues in a more humane, effective, and sustainable manner. This effort requires commitment and cooperation from all parties, including the government, law enforcement agencies, health institutions, families, communities, and civil society. By doing so, we can create an environment that supports the recovery of narcotics offenders and prevents them from falling into cycles of addiction and criminality.

The prison sentence provisions stipulated in Article 127 of the Narcotics Law must be reformed to ensure uniform application of rehabilitation for narcotics users at all stages of judicial examination, and not be limited to internal regulations such as Perkap, Perja, or PERMA. This reform should remove or replace the threat of imprisonment under Article 127 of the Narcotics Law by introducing a mandatory rehabilitation requirement for narcotics users who consume for personal use, with specific conditions. For instance, if the user commits a repeated offense (recidivism), imprisonment may be imposed as an alternative deterrent penalty. A concrete formulation for the reform of Article 127(1) of the Narcotics Law could be: "Every individual who uses Narcotics Group I, Group II, and Group III for personal use shall undergo medical and social rehabilitation, except for repeated offenses, in which case a maximum prison sentence of 4 (four) years may be imposed."

Furthermore, a reform could also be made to Law No. 1 of 2023 concerning the Criminal Code, particularly Article 105(1), which could be formulated as follows: "(1) Rehabilitation measures shall be imposed on a defendant who: (a) uses narcotics for personal use without repeating the offense; (b) is addicted to alcohol, narcotics, psychotropics, and other addictive substances; and/or (c) has a mental disability and/or intellectual disability."

In relation to the reformulation of Article 105(1) of the new Criminal Code, Article 127 of the Narcotics Law can also be incorporated into the new Criminal Code under the Fifth Section on Narcotics Offenses to ensure legal certainty.

This reform is crucial for several key reasons. First, it will ensure that all narcotics users are treated consistently throughout the judicial process in accordance with the principles of restorative justice. By replacing the threat of imprisonment with mandatory rehabilitation, all parties involved—judges, prosecutors, and law enforcement officers—will be bound by a uniform legal standard. This reduces legal uncertainty and prevents discrepancies in the handling of different cases. Such legal certainty will also prevent disparities in sentencing by judges in practice.

Another important reason for this reform is to prevent the arbitrary imposition of imprisonment. By replacing the prison sentence threat with unconditional rehabilitation, the potential for manipulation or "gamesmanship" in the application of the law is minimized. This reduces the risk of legal irregularities, which often occur when the option to impose a prison sentence exists. Additionally, it prevents the misuse of the law that leads to inappropriate criminal penalties that contradict the objectives of rehabilitation. With this reform, all narcotics users will be directly funneled into rehabilitation programs, thus avoiding the criminal process that may worsen their condition and hinder recovery.

CONCLUSION

The urgency of implementing rehabilitation for narcotics offenders through a restorative justice approach is based on several pressing factors from health, social, and criminal policy perspectives. This approach offers a more humane solution compared to the dominant punitive approach, which primarily focuses on imprisonment. Several key reasons make rehabilitation through restorative justice urgently necessary, including individual recovery and public health, reducing the burden on the judicial and prison systems, preventing recidivism, protecting and restoring social well-being, and cost-effectiveness. Given all these considerations,

⁸⁴ RUU tentang Perubahan atas Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika, diakses melalui <https://www.dpr.go.id/uu/detail/id/356> pada 15 Agustus 2024 pukul 20.48

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the application of rehabilitation through a restorative justice approach for narcotics offenders becomes increasingly pressing. This approach not only focuses on individual recovery but also contributes to public health, social welfare, and a more humane form of justice.

The reformulation of criminal penalties in Article 127 of Law No. 35 of 2009 on Narcotics has become crucial, as it will promote consistency and integrity in the application of the law to narcotics offenders, creating a unified legal standard. This reform will provide all narcotics users with the opportunity for a more structured and guaranteed rehabilitation process. The reform removes or replaces the threat of imprisonment as stipulated in Article 127 of the Narcotics Law by adding a mandatory rehabilitation requirement for narcotics users for personal consumption, with applicable conditions. For instance, if the offender repeats the same crime (becomes a recidivist), imprisonment may be applied as an alternative deterrent penalty. A concrete formulation for the reform of Article 127(1) of the Narcotics Law could be: "Every individual who uses Narcotics Group I, Group II, and Group III for personal use shall undergo medical and social rehabilitation, except for repeated offenses, in which case a maximum prison sentence of 4 (four) years may be imposed." This reform reduces legal uncertainty and prevents discrepancies in the treatment of different cases. In the long term, this reform has the potential to enhance the effectiveness of rehabilitation efforts, reduce recidivism rates, and create a more just and humane judicial system.

SUGGESTION

Based on the conclusion regarding the urgency of implementing rehabilitation for narcotics offenders through a restorative justice approach, several strategic measures must be taken to optimize the implementation of this policy. First, the reformulation of Article 127 of Law No. 35 of 2009 on Narcotics is essential to close the gaps in the inconsistent application of imprisonment. This reform should involve removing or replacing the threat of imprisonment stipulated in Article 127 of the Narcotics Law, by adding a mandatory rehabilitation clause for narcotics users for personal use, with specific conditions. For instance, if the offender commits the same offense (becomes a recidivist), imprisonment may be applied as an alternative deterrent, ensuring that every case is handled consistently and fairly.

Second, it is crucial to integrate the restorative justice approach at all stages of legal proceedings, rather than limiting it to internal regulations such as those found in the Chief of Police Regulations (Perkap), Prosecutor's Regulations (Perja), or Supreme Court Regulations (PERMA). This requires harmonizing legal policies, providing training to law enforcement officials, and educating the public on the importance of rehabilitation over criminal punishment. Clear policies and mechanisms must be established to monitor and assess the effectiveness of rehabilitation programs and to make necessary adjustments based on evaluation results. This is essential to ensure that rehabilitation is genuinely effective in reducing narcotic dependence and preventing recidivism.

By implementing these recommendations, the judicial system is expected to achieve a balance between law enforcement and human rights protection, creating a more just, efficient, and humane system for handling narcotics offenders.

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