

RECONSTRUCTION OF THE SETTLEMENT OF MISDEMEANOR CRIMES BY THE PROSECUTOR'S OFFICE THROUGH RESTORATIVE JUSTICE

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Abstract

Narcotics abuse remains a major challenge within Indonesia's criminal justice system, where a punitive approach emphasizing imprisonment still dominates over rehabilitation strategies. Although Restorative Justice offers a more humane alternative by prioritizing recovery and social reintegration, its implementation faces various obstacles, including regulatory inconsistencies, lack of rehabilitation facilities, limited understanding among law enforcement officials, and persistent social stigma against abusers. This study aims to analyze the effectiveness of Restorative Justice in narcotics abuse cases and propose regulatory reconstruction to strengthen rehabilitation-oriented resolutions. Employing a normative juridical method combined with an empirical approach, the research examines relevant legislation, court decisions, and field practices. The findings reveal a gap between regulatory frameworks, such as Law No. 35/2009, and progressive policies like Attorney General Regulation No. 18/2021, resulting in uneven application of Restorative Justice. Furthermore, limited infrastructure and social perceptions hamper recovery efforts. This study recommends harmonizing narcotics regulations, enhancing coordination among law enforcement agencies, expanding rehabilitation facilities, providing specialized training on restorative approaches, and promoting public education to reduce stigma. With comprehensive reforms, Indonesia's criminal justice system can become more effective, balancing legal certainty with the principles of substantive justice, and offering a humane solution to narcotics abuse through a recovery-oriented model.

Keywords: Restorative Justice; Narcotics Abuse; Rehabilitation; Legal Certainty; Regulatory Reform; Substantive Justice

Introduction

Narcotics abuse is an increasingly complex social problem in Indonesia (Amanda et al., 2017; Purbanto & Hidayat, 2023; Zahara et al., 2021). Every year, the number of cases of narcotics abuse continues to increase, both among teenagers, workers, and marginalized groups. Based on a report by the National Narcotics Agency (BNN), narcotics abuse in 2023 shows that the prevalence rate is 1.73% or equivalent to 3.3 million Indonesian people aged 15-64 years, with most of them recreational users and addicts in need of rehabilitation (BNN Public Relations, 2024). This phenomenon shows that despite the various efforts made by the government to reduce the number of narcotics abuse, a more effective approach in dealing with this problem is still needed.

On the other hand, the existing criminal justice system actually places more narcotics abusers in correctional institutions than provides rehabilitative solutions (Iskandar, 2021). This contributes to overcrowding in prisons, where data from the Ministry of Law and Human Rights (Kemenkumham) shows that more than 50% of

inmates in Indonesia are perpetrators of narcotics crimes, including abusers who should receive rehabilitation. As a result, correctional institutions no longer carry out their rehabilitative functions optimally, but instead become a place that actually worsens the psychosocial condition of narcotics abusers.

This phenomenon also has a chain impact on the criminal justice system. Many imprisoned abusers actually return to commit offenses after their release, showing the high recidivism rate among former narcotics inmates. This proves that the existing punishment system has not been fully effective in reducing the number of narcotics abuse. In this context, Restorative Justice (RJ) emerged as an alternative solution that was more humanistic and based on social recovery.

Restorative Justice in narcotics abuse cases aims to balance aspects of justice, legal certainty, and legal benefits by prioritizing rehabilitation for abusers who meet certain criteria (Sinaga, 2021). Through this mechanism, the perpetrator is not only punished, but also given the opportunity to recover his physical and psychological condition through medical and social rehabilitation programs. Some countries such as Portugal, the Netherlands, and Switzerland have successfully implemented this approach by reducing the number of narcotics abuse and reducing the number of narcotics-related crimes.

However, in Indonesia, the implementation of Restorative Justice in narcotics abuse cases still faces many obstacles. One of them is the inconsistency in regulations, where Law Number 35 of 2009 concerning Narcotics still emphasizes a retributive approach, while the RJ policy has not been fully accommodated in the criminal justice system (Nugraha, 2019). In addition, there is still a social stigma against drug abusers, where people often see them as criminals who should be punished severely, rather than as individuals who need help to recover.

This phenomenon is further exacerbated by the lack of adequate rehabilitation infrastructure in Indonesia. Currently, there are only 30 rehabilitation institutions operated by the government, while the demand for rehabilitation services is much higher. As a result, many abusers end up serving prison sentences, even though they are eligible for rehabilitation programs.

Based on these conditions, this study aims to analyze the effectiveness of the implementation of Restorative Justice in narcotics abuse cases in Indonesia, identify obstacles in its implementation, and formulate recommendations so that the criminal justice system can be more oriented towards restorative justice and legal certainty. With this approach, it is hoped that a more comprehensive solution can be found in dealing with narcotics abuse without always having to rely on the conventional penal system.

Indonesia's approach to narcotics abuse through its criminal justice system remains largely punitive, emphasizing imprisonment over rehabilitation. Despite the rising number of narcotics abuse cases, the system has not evolved sufficiently to prioritize social recovery or individual rehabilitation. The strong reliance on incarceration has exacerbated prison overcrowding, failed to address the root causes of addiction, and contributed to high recidivism rates among narcotics offenders.

Moreover, while restorative justice offers a promising alternative focused on recovery and reconciliation, its integration into narcotics cases remains inconsistent. Legal frameworks such as Law No. 35 of 2009 focus predominantly on retributive justice, and although the Attorney General's Regulation No. 18 of 2021 introduces restorative options, real-world implementation is sporadic and hindered by legal, social, and infrastructural barriers.

The urgent need to reform Indonesia's narcotics justice system is evident from the escalating rates of narcotics abuse and prison overcrowding. Implementing restorative justice practices that emphasize rehabilitation could alleviate systemic burdens while fostering substantive justice. Without immediate reconstruction of legal regulations and coordinated efforts among law enforcement, Indonesia risks perpetuating an ineffective cycle of punishment without recovery.

Amanda et al. (2017) and Zahara et al. (2021) documented the increasing prevalence of narcotics abuse among Indonesian youth, highlighting systemic failures in rehabilitation-focused approaches. Their findings underscore the inadequacy of punitive responses in addressing substance abuse as a health and social issue.

Sinaga (2021) explored the conceptual framework of Restorative Justice in narcotics cases, arguing that recovery-oriented models provide better long-term outcomes for offenders and society. His study emphasized the necessity of multi-stakeholder collaboration and legislative synchronization to realize restorative principles effectively.

Nugraha (2019) critically examined inconsistencies in the Indonesian legal system regarding restorative justice application, especially in narcotics-related offenses. He pointed out the gap between progressive policies at the Attorney General's Office and their limited enforcement across police, prosecutors, and courts, due mainly to entrenched punitive mindsets and lack of socialization.

While previous studies discuss restorative justice conceptually and highlight regulatory inconsistencies, little empirical analysis addresses the specific barriers faced by law enforcement agencies in applying restorative justice to narcotics cases in Indonesia. This study fills that gap by combining normative juridical analysis with field observations to provide a deeper understanding of regulatory, infrastructural, and sociocultural challenges in operationalizing restorative justice.

This study introduces an integrative reconstruction model that not only suggests aligning legal regulations with restorative justice principles but also advocates for capacity building among law enforcement officials and public education campaigns to shift societal perceptions. The combined normative and empirical methodology offers a fresh, comprehensive framework for rethinking narcotics justice in Indonesia.

The main objective of this research is to analyze the effectiveness of the implementation of Restorative Justice for narcotics abuse cases in Indonesia, identify key obstacles to its application, and propose a model for reconstructing legal and policy frameworks to support rehabilitation-based resolutions over punitive measures.

The findings of this study offer actionable recommendations for policymakers to harmonize narcotics legislation with restorative justice ideals, reduce prison overcrowding, and enhance rehabilitation efforts. Additionally, this research supports broader societal efforts to de-stigmatize narcotics abusers and promote social reintegration, ultimately contributing to a more humane and effective criminal justice system.

Research Method

This study uses a normative juridical method with an empirical approach to analyze the implementation of Restorative Justice in resolving narcotics abuse crimes (Zainab Ompu Jainah1, 2022). The normative juridical approach is carried out by examining various relevant laws and regulations, such as Law Number 35 of 2009 concerning Narcotics, Attorney General Regulation Number 18 of 2021, and other regulations related to rehabilitation policies for narcotics abusers. In addition, this study

also uses an empirical approach by observing how the Restorative Justice mechanism is applied in criminal justice practice in Indonesia, as well as identifying challenges that arise in its implementation.

In this study, several additional approaches were used, such as the case approach carried out by reviewing several court decisions and prosecutor's policies related to Restorative Justice in narcotics abuse. Conceptual approaches are also used to understand relevant legal theories, such as Gustav Radbruch's Theory of Legal Certainty, Howard J. Zehr's Theory of Restorative Justice, and Barda Nawawi Arief's Double Track System Theory.

The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, court decisions, and guidelines from the Attorney General's Office. Secondary legal materials are in the form of the results of previous research, scientific journals, and books that discuss Restorative Justice and the criminal justice system in Indonesia. Meanwhile, tertiary legal materials are used to support the understanding of concepts in research, such as legal dictionaries and encyclopedias.

The analysis technique used in this study is qualitative normative analysis, where the collected data will be studied based on applicable legal principles and compared with implementation practices in the field. The analysis is carried out by identifying weaknesses in applicable regulations and policies, as well as evaluating the extent to which the concept of Restorative Justice can be applied optimally in resolving narcotics abuse cases. Based on the results of the analysis, this study will provide recommendations to improve the criminal justice system so that it is more oriented towards rehabilitation, legal certainty, and substantive justice.

Result and Discussion

Implementation of Restorative Justice in Solving Narcotics Abuse Crimes

Restorative Justice in the Indonesian criminal justice system is beginning to develop as an alternative approach to solving criminal acts, including in cases of narcotics abuse (Akbar, 2022; Hasan, 2013; Muhammad, 2018; Probosiwi, 2017; Rado & Badillah, 2019; Syahrin, 2018). This concept aims to divert narcotics abusers from conventional criminal pathways to rehabilitation mechanisms, taking into account humanitarian factors and the effectiveness of long-term treatment. Although there are still many obstacles in practice, several policies have been implemented to accommodate the concept of Restorative Justice in narcotics cases.

According to Law Number 35 of 2009 concerning Narcotics, narcotics abusers who are proven to be addicts or victims of abuse have the right to rehabilitation, both medical and social (Aliyah, 2023; Ayu, 2019; Fajar, 2022; Firdaus et al., 2022; Gani, 2015; Suratman & Shanty, 2021). However, these regulations are often implemented inconsistently in the field. In many cases, abusers are still processed through the conventional penal system and sentenced to prison, which is not in line with the principles of Restorative Justice. This shows that there is a gap between regulation and implementation practices in the justice system.

In its development, the Attorney General's Office has issued Attorney General Regulation Number 18 of 2021 which allows the termination of prosecutions based on the principles of Restorative Justice (Ginting et al., 2023). This regulation is the basis for prosecutors to consider resolving narcotics abuse cases outside the judicial channels,

noting that the perpetrator meets certain criteria, such as not a dealer or dealer, not a recidivist, and has strong evidence that he is an addict who deserves rehabilitation.

However, in its implementation, there are several obstacles that cause the implementation of Restorative Justice to not run optimally. Some of them are:

1. Regulation Inconsistency

Although the Narcotics Law provides rehabilitation rights for abusers, the criminal justice system still applies more repressive approaches.

- o Absence of a clear mechanism in coordinating the decisions of prosecutors, police, and courts in cases that deserve to be resolved with Restorative Justice.

2. Lack of Rehabilitation Facilities and Infrastructure

- o The number of rehabilitation centers managed by the government is very limited, so many cases end up being processed through conventional criminal channels.
- o Lack of professionals in rehabilitation, such as psychologists and medical personnel trained in dealing with narcotics addicts.

3. Lack of Understanding of Law Enforcement Officials on the Concept of Restorative Justice

- o There are still many law enforcement officials who are oriented towards punishment, so it is difficult to accept the concept of rehabilitation as part of resolving narcotics cases.
- o Some investigators and prosecutors still have an understanding that RJ can only be applied to minor crimes, not to narcotics abuse cases.

4. Social Stigma against Narcotics Abusers

- o The public still has the assumption that every perpetrator of narcotics abuse is a criminal who must be severely punished, not an individual who needs recovery.
- o Lack of campaign and socialization regarding the importance of rehabilitation in handling narcotics cases.

From the various problems above, it can be concluded that even though the Restorative Justice policy has been introduced in the criminal justice system, its implementation is still not optimal. This is caused by various factors, both from regulatory aspects, infrastructure, to the perception of law enforcement officials and the public. Therefore, improvements are needed in the legal system and rehabilitation policies, so that narcotics abusers can be treated with a fairer and more effective approach, in accordance with the principles of restorative justice.

Obstacles in the Implementation of Restorative Justice in Narcotics Abuse

Although the concept of Restorative Justice has been introduced in the criminal justice system in Indonesia, its implementation in narcotics abuse cases still faces various obstacles that hinder the effectiveness of this approach. These barriers include regulation, law enforcement, rehabilitation infrastructure, and social stigma.

1. Inconsistencies in Law Enforcement Regulations and Policies

One of the main obstacles to implementing Restorative Justice is the inconsistency between existing regulations. Law Number 35 of 2009 concerning Narcotics still focuses on a retributive approach with the threat of severe criminal punishment for abusers. Attorney General Regulation Number 18 of 2021 has opened up opportunities for extrajudicial case settlement for perpetrators who meet rehabilitation requirements.

However, in practice, many investigators and prosecutors still choose the criminal path compared to the rehabilitation mechanism.

This happens because existing regulations have not provided a clear mechanism on how to coordinate between the Police, the Prosecutor's Office, BNN, and judicial institutions in determining whether a person is entitled to rehabilitation or must be criminally processed. As a result, there are often differences in the legal treatment of similar cases, depending on the interpretation of law enforcement officials.

In addition, the criminal justice system in Indonesia is still very fragmented in handling narcotics abuse cases. At the investigation stage, many abusers are immediately made suspects without considering rehabilitation options first. Meanwhile, at the prosecution level, prosecutors are often more oriented towards imposing criminal sentences as a form of legal certainty. However, policy-makers have been given the authority to use the Restorative Justice approach.

2. Lack of Rehabilitation Facilities and Infrastructure

The next obstacle is the limited rehabilitation facilities for narcotics abusers in Indonesia. Based on data from the National Narcotics Agency (BNN), the number of rehabilitation centers managed by the government is still very limited compared to the number of narcotics abusers who need these services. Many areas don't even have adequate rehabilitation centers, making rehabilitation options difficult to implement.

In addition, the limitation of medical personnel and professionals in rehabilitation is also a big obstacle. An effective rehabilitation program requires the support of psychologists, drug dependency specialists, and social workers who can help addicts in the recovery process. However, many rehabilitation institutions in Indonesia still lack these professionals, so the services provided are not always effective in helping abusers to fully recover.

Another factor is the relatively high cost of rehabilitation, especially for abusers who do not get rehabilitation facilities from the government. Although the state subsidizes several rehabilitation programs, many abusers end up unable to access rehabilitation services due to economic factors. As a result, they prefer to undergo judicial proceedings that lead to prison sentences, even though in fact they need more medical and psychosocial care.

3. Lack of Understanding of Law Enforcement Officials on Restorative Justice

The application of restorative justice in narcotics abuse still faces challenges from the lack of understanding of law enforcement officials, such as police, prosecutors, and judges, to the concept of restorative justice. Many of them are still oriented towards the conventional approach that emphasizes punishment as a form of criminal responsibility.

For example, many officials still consider that Restorative Justice only applies to minor crimes. In contrast, cases of narcotics abuse are considered serious criminal acts and must receive severe criminal penalties. Based on the principle of Restorative Justice, narcotics abusers who are not dealers can be considered for rehabilitation as a more effective form of punishment compared to imprisonment.

In addition, in some cases, law enforcement officials still see rehabilitation as a form of policy that is too lenient for drug abusers. This shows that there is still resistance to the Restorative Justice approach, which is considered incompatible with the concept of criminality applied in the Indonesian legal system.

4. Social Stigma Against Narcotics Abusers

One of the biggest obstacles in the implementation of Restorative Justice is the social stigma against narcotics abusers. In many cases, society still considers narcotics abusers as criminals who should be punished severely, rather than as individuals in need of rehabilitation.

This stigma leads to a lack of public support for rehabilitation policies, so many law enforcement officials are hesitant to implement Restorative Justice, for fear of pressure from the public. In addition, abusers who have undergone rehabilitation often have difficulty returning to society, as they remain viewed negatively and find it difficult to get jobs or other social opportunities.

The lack of campaigns and socialization about the benefits of rehabilitation and restorative justice also contributes to the low public understanding of this approach. If this stigma is not immediately addressed, it will be increasingly difficult to implement Restorative Justice effectively in resolving narcotics abuse cases.

5. Weak Supervision of the Implementation of Restorative Justice

Although the Restorative Justice policy has been accommodated in several regulations, there are still weaknesses in the oversight of its implementation. Until now, there has been no system that effectively monitors the extent to which prosecutors and judges apply the principles of restorative justice in handling narcotics abuse cases.

The absence of a clear supervisory mechanism makes the implementation of Restorative Justice not uniform in various regions. Some regions may be more active in implementing this approach, while in others, similar cases are still resolved through criminal channels without considering rehabilitation options.

To overcome these obstacles, a stricter supervision system is needed, both from within the prosecutor's office and from independent institutions, to ensure that Restorative Justice is truly implemented in accordance with established policies. In addition, there needs to be standardization of procedures in the implementation of Restorative Justice, so that there are no significant differences in legal treatment between regions.

Conclusion

Based on the research findings, it can be concluded that the application of Restorative Justice in resolving narcotics abuse cases in Indonesia still encounters significant challenges. Although this approach offers a more humane alternative by prioritizing rehabilitation over criminalization, practical implementation remains hampered by regulatory inconsistencies and policy gaps. Law Number 35 of 2009 concerning Narcotics continues to emphasize a repressive approach, while more progressive policies such as the Attorney General's Regulation Number 18 of 2021 have not been fully or evenly adopted across law enforcement agencies. Other obstacles include limited rehabilitation facilities, insufficient understanding of Restorative Justice principles among law enforcement personnel, and the persistent social stigma that views abusers as criminals rather than individuals in need of treatment, which hinders effective reintegration after rehabilitation.

To overcome these barriers, a comprehensive reconstruction of regulations and legal policies is urgently needed to strengthen the legal foundation for rehabilitation as a genuine alternative to punishment. Harmonization between various laws, improved coordination among law enforcement agencies, expansion of rehabilitation services, and specialized training for law enforcement on Restorative Justice principles are essential

steps forward. Furthermore, public education campaigns should be intensified to reduce stigma and build broader support for rehabilitation-focused policies. With these reforms, the criminal justice system in Indonesia can move toward a more recovery-oriented, humane, and substantively fair model that better addresses the complex realities of narcotics abuse.

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