

# Politics of Criminal Law in Implementing Restorative Justice Against Narcotics Addicts in the Criminal Justice System

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**Abstract.** Narcotics cases are cases of crime that are out of control (Extraordinary Crime), which emphasizes the attention of the whole world because narcotics can damage the nation's generation of a country. Once it comes to narcotics crimes, the judicial system transforms into a rule of law that may be applied to narcotics cases. However, what happened was that the criminal justice system was not in line with the criminal procedure law. As one of the sub-systems of criminal justice, correctional institutions are responsible for fostering prisoners and disciplinary students through correctional-based education, rehabilitation, and reintegration. This sort of study is normative and legal in nature. The process of obtaining the adherence to the law, foundations of law, and foundations of justice to solve current legal concerns is known as norms research. Restorative justice is a method of reducing or eliminating punishment in the criminal court system. Crimes place a premium on justice for victims and offenders of criminal activities, as well as alternative punishments like as social labor. This regulation is to realize cooperation and coordination in reducing drugs casualties through resolving drugs issues abuse and narcotics addicts by establishing treatment, care, and recovery programs to handle this. The accused or inmate can also undergo medical or social rehabilitation.

**Keywords:** Narcotics; Restorative Justice; Criminal Law

## 1 Introduction

Narcotics, a component of drugs made from scientific or semi-synthetic bodies, can make people lose consciousness, fantasize or hallucinate and increase excitability. In the health sector, drugs are beneficial for health services but can also cause dependence for people who consume them without instructions from a doctor. In 1971, the Convention controlled worldwide collaboration on the regulation, distribution, and oversight of production to eradicate narcotics and psychotropic misuse in the interests of medicine and science. That's the gov't's endeavor to arrange international cooperation in order to regulate, distribute, and abuse psychotropic and narcotic substances, and it gives guidance on penal legal concepts and repatriation laws.

This international convention can guarantee justice and national legal certainty in the efforts to enforce narcotics and psychotropic laws carried out across national territorial borders. Because these narcotics can damage the nation's generation from a country, the case has become a worldwide concern and is included in an extraordinary crime or called a remarkable crime. During the Corona Virus Disease pandemic or commonly abbreviated as the COVID-19 acronym, which hit the entire world, including Indonesia, it did not only impact the health sector

of humankind, resulting in the deaths of millions of people. The illicit circulation of narcotics could be a new chapter in the Covid-19 Pandemic.

BNN revealed data from the UNODC World Drug Report in 2020: "It is recorded that around 269 million people worldwide abuse drugs (study in 2018). In 2009 there were more than 35 million addicts. In 2020 an increase of 30%. UNODC reported the addition of new substances of more than 950 species, which became a global phenomenon until December 2019. In PERMENKES no. 22 of 2020, there were 73 NPS entered, but based on the BNN laboratory, there were 83 New Psychoactive Substances (NPS) detected [1]. The National Narcotics Agency has successfully uncovered Eighty-eight drug syndicate networks throughout 2020, 14 of them are international syndicate scales, and 27 prison establishments are involved in controlling narcotics.[1]

The institution of criminal law is a court order that can deal with narcotics cases. The institution of criminal law is not in line with the institution of criminal law. As one of the sub-systems of penal system, correctional institutions are responsible for fostering prisoners and disciplinary students through correctional-based education, rehabilitation, and reintegration. Law Number 12 of 1995 in relation to Adjustments states that the penitentiary mechanism is expected to take shape correctional inmates to reach complete capacity, realize errors, improve themselves, and not doing illegal behavior again to be accepted again by the community. Overcapacity or excess capacity is a significant problem in prisons/remand centers, so the training is not optimal.

Several policies have been taken to overcome overcapacity, such as increasing the capacity of building construction. The addition of the building has been unable to resolve this issue, and the high crime rate makes the inmates grow. The existence of narcotics in prisons becomes even more significant when prisons experience overcrowding. Efforts to enforce the law by applying a restorative justice approach can be called Restorative Justice for narcotics cases. This effort is helpful for those who are addicts, victims of abuse provide criminal sanctions to addicts, abusers, or victims of drug abuse.

The essence of Rehabilitating Criminals is the notion of allowing offenders, sufferers, and civic groups to engage to together settle incidents or criminal acts. Culprits, survivors, and the community are referred to as "Stakeholders" who work together to create a fair solution for all parties. Restoration Judge's implementation in the Indonesian legal system isn't flawless since it's still strewn over multiple legal tools, and its rules haven't been fully applied in the country's justice system. Another problem in adopting the notion of restorative justice is the lack of a legislation that controls the use of restorative justice in alternative ADR in criminal cases.

Based on the reasons mentioned above, the author wishes to conduct research entitled: "Politics of Criminal Law in Implementing Restorative Justice against Narcotics Addicts in the Criminal Justice System.

## **2 Research Methods**

This sort of study is moral and legal in nature. The process of obtaining the adherence to the rules, foundations of law, and legal doctrines to solve current legal concerns is known as norm research. The author uses it to solve a problem related to Narcotics; obstacles in implementing the criminal accountability system for dealers against narcotics abuse victims; and the concept of criminal liability of dealers against victims of narcotics abuse will be applied in the future.

### **3 Results and Discussion**

#### **3.1 General Overview of Narcotics**

##### **Definition of Narcotics**

Narcotics etymologically come from the English language narcos or narcosis, which means sleeping and anesthetizing. The term drugs derives from the Greek word market, which meaning "not feeling" or "heavily sedated." The pharmacological term used is the word drug, which is a type of substance that will bring certain effects and influences on the wearer's body, such as affecting consciousness and providing calm, stimulating, and causing hallucinations. "Substances or medications produced either from crops or from ou pas, both moderately and artificial, which may cause awareness reduce, relieve pain or even eradicate, and induce dependency, which is separated into categories as linked in the legislation," according to Article 1 point 1 of Act Number 35 of 2009.

#### **3.2 Restorative Justice Overview**

Restorative justice is a criminal act, allowing victims, perpetrators, or their families with someone's representatives to settle losses or criminal cases.

##### **Basic Principles of Restorative Justice**

Restorative justice helps restore good relations between perpetrators of crimes and victims, thereby eliminating grudges against both of them. Perpetrators provide restitution or compensation to victims so that victims can be helped. Both material and psychological losses due to the crime. If the perpetrator cannot offer payment, the state is obliged to provide the rights of the victim of the offense through a judge's determination

##### **Legal Politics on the Concept of Restorative Justice in Renewing Indonesian Criminal Law Criminal Code Bill**

Article 2, Article 12, Article 54, Article 145 letter d regulates the Penal Mediation process. Article 55

(1) Sentencing aims to:

- a. deter unlawful conduct through upholding legal rules for the sake of society's safety;
- b. educate the inmates by providing coaching so that they may grow into wonderful and valued citizens;
- c. address problems created by criminal acts, balance community, and reestablish a sense of peace; and
- d. The criminal's guilt should be released.

(2) The purpose of punishment is not to cause pain or to diminish human dignity.

The 2008 Criminal Code Bill regulates the fall of prosecution authority because the settlement is out of the process (Article 145 letters d, e, and f);

Draft Criminal Procedure Code, Article 111

1. Investigators are authorized to stop because there is not enough evidence or the incident does not represent a crime, or the investigation is terminated for for sake of laws;
2. The termination of the inquiry, as referred to in paragraph (1), may also be carried out based on:
  - a. the decision of the pretrial judge based on the request of the victim/rapporteur;
  - b. the achievement of a mediation settlement between the victim/rapporteur and the suspect;
- 3) Criminal acts that can be resolved through mediation, as referred to in paragraph (2) letter b, consist of:

- a. The crime committed is light;
- b. The offence done is punished by up to four years in jail.
- c. Only a fine can be imposed for the criminal offense.
- d. The age of the suspect at the moment when the offense was committed is over 70 years old;

### **3.3 Application of Restorative Justice to Narcotics Users in Criminal Justice**

In the case of narcotics cases, Chapter 54 of the Drugs Control Law No. 35 of 2009 mandates:

"Drugs abusers and drugs abuse survivors are obligated to medical examination interpersonal reintegration and healing, and judges in deciding cases of narcotics abusers must observe the provisions of Article 127 Paragraph (2) and Paragraph (3)."

Then there's the reality that the number of drugs users and sufferers of drugs misuse as suspects, defendants, or inmates in heroin crime is on the rise, and therapy and treatment attempts haven't kept pace. In reality, it is mentioned in the explanation of Article 21 paragraph (4) Letter b of the Criminal Code (KUHP) that the suspect or offender is a narcotics addict who is imprisoned in a specified location that is also a treatment facility.

Based on this, the state has begun to think about how to take steps that can restore and develop the somatic, Suspects' mental and social development, accused, or prisoners in narcotics cases carried out with Treatment that is both comprehensive and synchronized, care, and recovery programs by issuing Regulations. Along with the Chairman Supreme court justice, the Parliamentarian of Law and Humanitarian, the Minister of Health, the Minister of Social Affairs, the Solicitor General, the Chief of Police, and the Director of the National Narcotics Agency, Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A JA/03/2014, Number 1 of 2014, Number Berber/01/111/2014/BNN concerning the Treatment of Drugs Drug users and Person (abbreviated as "Joint Regulations" shall come into force on 11 March 2014).

The Joint Regulation aims to achieve ideal cooperation and coordination in addressing drugs issues care is necessary to reduce the number of narcotics abusers and sufferers of drugs misuse. care, and recovery programs, as well as the ability to handle of drugs addicted people and survivors of narcotics abuse as accused persons, accused persons, or inmates, while continuing to enforce the elimination of drug smuggling. In addition, it is also intended to be a technical guideline when it comes to treating narcotics addicts and victims of narcotics misuse as suspects, defendants, or inmates who need health and social rehabilitation.

Then, it is believed that the procedure of health and psychosocial healing may be conducted out in a synergy and coordinated way at the levels of investigation, prosecution, trial, and sentence. However, standard rules alone are not enough. On December 22, 2020, the Supreme Court issued Decision No. 1691/DJU/SK/PS.00/12/2020 of the Filmmaker of the Basic Judicial branch Agency of the Regarding the Implementation of Program of action of Restorative Practices by the Judicial Branch of the Republic of Indonesia in the General Courts of Justice (abbreviated as "Decision"). The most important choices are:

- a. Restitution must be used in an orderly and responsible way by all state judges; and
- b. The Chief Justice of the Top Court is responsible for overseeing, monitoring, evaluating, and reporting about the use of transitional justice in the High Legal decision.

The decision is refreshing as a solution to the problem of the offender, the sufferer, the family, and additional individuals or organizations. To find a decision to settle cases fairly and provide good relations to both parties, both victims and perpetrators. Restorative application to change the criminal justice system, which still prioritizes imprisonment

This system renewal aims to make it easier for courts in the General Court to understand and implement the Supreme Court's regulations; the decision regulates the deployment and encourages rehabilitative judgment. To uphold the values of speedy, straightforward, and reduced law.

All district courts in Indonesia must enforce and apply Restoration Discipline, particularly in cases of minor offenses, cases involving a child, cases involving women, and crimes involving drugs. Just junkies, drugs abusers, abusers' orphans, and narcotics for one-day use are eligible for the Reintegration strategy in drugs situations. It is in accordance with Article 1 of the Joint Regulation of the Chairperson of the Supreme Court, Menkumham, Menkes, Social Minister, Attorney General, National Police Chief, and Chief of the BNN on the Treatment of Drugs Addicted people and Survivors of Drugs Abuse in Rehab Centers.

Restitution can be used in drugs cases if it fits the standards. When Polri detectives and BNN investigators were caught red-handed, they discovered proof of one-day usage in the form of:

- a. Maximum 1 gram of methamphetamine.
- b. Top 8 points of Ecstasy.
- c. Heroin full 1.8 grams.
- d. Cocaine maximum 1.8 grams.
- e. Cannabis has a maximum of 5 grams.
- f. Maximum 5 grams of coca leaves.
- g. Mescaline maximum 5 grams.
- h. The leading psilocybin group is 3 grams.
- i. The LSD group is a maximum of 2 grams.
- j. The PCP group is a maximum of 3 grams.
- k. The maximum fentanyl group is 1 gram.
- l. The ultimate methadone group is 0.5 grams.
- m. The leading morphine group is 1.8 grams.
- n. Pethidine group complete 0.96 grams.
- o. Codeine group maximum 72 grams.
- p. The Buprenorphine group completed 32 grams.

The County clerk shall guarantee that the Integrative Theoretical Team's assessment results are attached to each transference of case records charged under Article 103 paragraph (1) and Article 127 of the Narcotics Law. Courts can make/decide God has provided us with a sense, and the state is controlled by legislation Number 48 of 2009 concerning Judicial Power.

The application of restorative justice in narcotics crimes, namely as follows:[2]

- a. Regulations to encourage the implementation of restorative justice are more complete (Regulation of the National Police Chief Number 8 of 2021 regarding the handling of criminal acts of restorative justice. Regulation of the Attorney General's Office No. 15 of 2020 concerning termination of prosecution based on restorative justice. Guidelines of the Attorney General's Office Number 18 of 2021 concerning the completion of the handling of criminal cases of narcotics abuse through rehabilitation with a restorative justice approach as the implementation of the dominus litis principle of the 2014 Joint Regulations Concerns about how drugs users and patients of drugs addiction are treated in treatment centers.
- b. Information regarding restorative justice regarding rehabilitation services for law enforcement is getting better, and the public increasingly understands the right to be rehabilitated by regulations.

- c. TAT was formed in 34 BNNP and 202 Regency/City BNN, which has been running since 2014

### **3.4 Implementation of Criminal Law Politics in Restorative Justice against Narcotics Users in the future**

In the case of drugs or drug abuse, Politics continues to prioritize punishment and imprisonment. Correctional overcrowded conditions reached 186%. The prison's capacity is only available for 135,704 people, but the number of inmates is 252,384. More than 50% of residents are related to drug cases. RPJMN 2020-2024 improving the criminal law system through a restorative justice approach. It encourages the renewal of law enforcement policies and the implementation of Law Number 35 of 2009 concerning narcotics. Human rights must be in line with legal developments, and a sense of justice must exist in society. Narcotics addicts and victims of narcotics abuse cannot be seen as perpetrators of criminal acts but also as victims, where rehabilitation is a significant part of alternative punishments.

The implementation of restorative justice is to look for alternatives to punishment by not prioritizing imprisonment. Drugs users and sufferers of drugs usage are obligated to undertake health and psychosocial rehabilitation, according to Section 54 of Law Number 35 of 2009. The guarantee for narcotics abuse cases that are consumed is limited to one day of use is contained in SEMA no. 4 of 2010. Prosecutor's decision to investigate to determine as a guide or a dealer.

RI Attorney General's Office Number 18 of 2021. Reorienting narcotics policies that should not impose imprisonment for narcotics users. It encourages optimization of the use of rehabilitation rather than incarceration. Regulation of the Indonesian Attorney General's Office Number 18 of 2021 states that narcotics abusers can be rehabilitated at the prosecution stage (see Chapter IV letter B point 4).

Rehabilitation is a program of recovery and treatment from narcotics addiction, and not all users are addicts. By the Prosecutor's Office guideline 11 of 2021, non-dependent narcotics users can be subject to a conditional criminal charge or trial.

The suspect is rehabilitated through a legal process according to the regulation of the Indonesian Attorney General's Office number 18 of 2021 (vide CHAPTER IV letter c point 3). Therefore, the Head of the District Attorney issues a rehabilitation determination through a legal process. Preparation for the application of restorative justice in narcotics crimes, including:

- a. Prepare the BNN Rehabilitation Center to optimize the capacity of rehabilitation services for narcotics abusers related to law
- b. Prepare BNNP/BNNK IPWL Clinics for rehabilitation services for narcotics abusers related to law
- c. Improve the capacity of rehabilitation institutions (HR and institutions), from hospitals and IPWL (Ministry of Health, Ministry of Social Affairs, Regional Government) to provide rehabilitation services for narcotics abuse related to law.
- d. Provide research on narcotics victims to determine whether or not rehabilitation is the task of TAT
- e. TAT improves performance and competition to understand the sociological and philosophical foundations so that they do not only have a juridical understanding of the implementation of rehabilitation.

## 4 Conclusion

Retribution is a change in the criminal court system's penalty. Alternative fields such as social work and others are used in criminal justice to deliver Victims and perpetrators of criminal acts are both entitled to punishment actions. On December 22, 2020, the Director-General of the General Judiciary Agency of the Supreme Court of the Republic of Indonesia issued Decision No. 1691/DJU/SK/PS.00/12/2020 concerning the Enforcement of Guidelines for the Implementation of Restorative Justice (Restorative Justice) in General Courts (abbreviated as "Decision"), which orders all district court judges to apply restorative justice in an orderly and responsible manner. Each Chief Justice of the High Court is responsible for monitoring, supervising, evaluating, and reporting on the implementation of restorative justice in the high court's jurisdiction. This regulation is to realize cooperation and coordination in solving narcotics problems to reduce victims of narcotics abuse and narcotics addicts by establishing treatment, care, and recovery programs to handle this. The accused or inmate can also undergo medical or social rehabilitation.

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