

Challenges and the Overcoming Strategies in Implementation of Attorney General's Guidelines Number 18 of 2021

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Abstract

The application of non-prison sentences is very minimally carried out by Law Enforcement Officer so that the number of prison/detention center residents exceeds capacity (*overcrowding*). The Prosecutor's Office of the Republic of Indonesia through the reorientation of law enforcement policies in the implementation of The Republic of Indonesia Law Number 35 of 2009 concerning Narcotics has issued Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the *Dominus Litis* Principle of Prosecutors which is a reference for Public Prosecutors in handling Narcotics cases so that prioritizing Rehabilitation at the Prosecution Stage which is inseparable from restorative justice. However, in its implementation, it is very possible to face challenges that can be an obstacle to the realization of these guidelines, so steps are needed that can be taken to overcome the challenges in the application of this Guideline so that it can be implemented effectively. The research uses normative research methods that use secondary data in the form of scientific journals, literature, and news websites about the problem, as well as analysis based on conditions that are likely to develop about this problem. Steps that can be taken to overcome challenges in implementing the Guidelines are the need to integrate the rules for resolving cases of narcotics crimes with a Restorative Justice approach between law enforcement officers, especially Police Investigators and the Prosecutor's Office, rules that are in line with the internal rules of each law enforcement agency.

Keywords: prosecutor; narcotics; restorative justice; dominus litis, challenge.

Abstrak

Penerapan pidana non lapas sangat minim dilakukan oleh Aparat Penegak Hukum sehingga jumlah penghuni lapas/rutan melebihi kapasitas. Kejaksaan Republik Indonesia melalui reorientasi kebijakan penegakan hukum dalam pelaksanaan UU No. 35 Tahun 2009 tentang Narkotika telah menerbitkan Pedoman Nomor 18 Tahun 2021 tentang Penyelesaian Perkara Tindak Pidana Penyalahgunaan Narkotika Melalui Rehabilitasi dengan Pendekatan Restorative Justice sebagai Implementasi Asas Dominus Litis Kejaksaan yang menjadi acuan bagi Jaksa Penuntut Umum dalam menangani perkara Narkotika sehingga mengutamakan Rehabilitasi pada Tahap Penuntutan yang tidak terlepas dari restorative justice. Namun dalam pelaksanaannya sangat mungkin menghadapi tantangan yang dapat menjadi penghambat terwujudnya pedoman tersebut, sehingga diperlukan langkah-langkah yang dapat dilakukan untuk mengatasi tantangan dalam penerapan Pedoman tersebut sehingga dapat dilaksanakan secara efektif. Penelitian ini menggunakan metode penelitian normatif yang menggunakan data sekunder berupa jurnal ilmiah, literatur, dan website berita tentang masalah, serta analisis berdasarkan kondisi yang mungkin berkembang tentang masalah ini. Langkah yang dapat ditempuh untuk mengatasi tantangan dalam pelaksanaan Pedoman tersebut adalah perlunya mengintegrasikan aturan penyelesaian perkara tindak pidana Narkotika dengan pendekatan Restorative Justice antara Penyidik Polri dan Kejaksaan, aturan yang selaras dengan aturan internal masing-masing lembaga penegak hukum.

Kata Kunci: Jaksa; narkotika; restorative justice; dominus litis; tantangan.

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Introduction

Recently, the settlement of criminal cases has caused dissatisfaction in society. This is because the criminal law enforcement process tends not to provide a sense of justice for small communities so it can be said that not all criminal cases must be resolved through the courts and not all criminals must be imprisoned. The desire to realize a just settlement of criminal cases does not only come from the parties but from law enforcement officials who are progressive in flow, and hope that certain criminal cases do not need to be resolved through mechanisms such as the Code of Criminal Procedure (hereinafter abbreviated as KUHAP) which takes a very long time so that alternative dispute resolution arises outside the court, namely the application of non-prison law which is carried out lawfully based on the consensus of the relevant parties (Briliantari and Darmadi, 2019).

Faced with such a situation, we need progressive thinking, which according to Rahardjo (2009), Progressive law enforcement is to carry out the law not just the black-and-white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of statutes or laws. Law enforcement is not only intellectual intelligence but rather spiritual intelligence. In other words, law enforcement is carried out with determination, empathy, dedication, and commitment to the suffering of the nation and accompanied by the courage to seek other ways than is usually done.

Currently, Restorative Justice is needed in solving various kinds of criminal acts, especially certain criminal acts which if handled retributively do not provide meaningful benefits, but on the contrary, it causes a new loss, both for victims and to the state including narcotics crimes, especially abusers who are not dealers. *Restorative Justice* is needed at this time least because it is caused by 4 factors, namely (Kaligis, 2012):

1. The sentencing brings further problems to the families of the perpetrators of crimes;
2. The conviction of the perpetrator of the crime does not relieve or cure the victim;
3. The formal process of the criminal justice system is too long, expensive, and uncertain;
4. Correctional as a continuation of the sentence also has the potential to contribute nothing to the future of the prisoner and the relationship with the victim.

Restorative Justice is a model approach that arises in efforts to resolve criminal cases. In contrast to the approach used in the conventional justice system which focuses more on the deterrent effect for criminals, this approach focuses more on the direct participation of the perpetrator, victim, and also the community in the process of resolving criminal cases. Rufinus Hutauruk stated that *Restorative Justice* focuses on the process of direct criminal responsibility from the perpetrator to the victim and the community. If the perpetrator, the victim, and the community who have violated their rights feel that justice has been achieved through joint deliberation efforts, then punishment can be avoided. This shows that the perpetrator is not the main object of the *Restorative Justice* approach, but rather a sense of justice and conflict recovery itself that is the main object (Hutauruk, 2013).

The application of non-prison sentences is still very minimally carried out by law enforcement officials, which is one of the factors *causing the overcrowding* (overcapacity)

of residents of prisons or state detention centers. *Overcrowding* occurs because of the Criminal Justice System which currently tends to be Punitive which has the meaning of giving sanctions solely to give a prison sentence to someone, and it turns out that most of the prison/detention center residents are prisoners of Narcotics Crimes.

In the Press Release at the End of 2020, BNN revealed data from the UNODC World Drug Report 2020: "there are around 269 million people in the world abusing drugs (2018 research). That's 30% more than in 2009 with more than 35 million drug addicts. UNODC also released a global phenomenon whereas of December 2019 there have been reported findings of more than 950 new substances. Meanwhile, in Indonesia, based on data from the BNN Laboratory Center to date as many as 83 New Psychoactive Substances (NPS) have been successfully detected, of which 73 NPS have been included in the Regulation of the Minister of Health of the Republic of Indonesia Number 22 of 2020. The level exceeded the capacity (*Overcrowding*) conveyed by Erasmus Abraham Todo Napitupulu as the Executive Committee at the Webinar entitled "The Death Penalty for Corruptors... Is it implemented?!" which reached 99% (ninety-nine percent) with a total capacity of 135,675 people with a total population of 270,466 people and the majority of 52.6% were narcotics dealers/users with a total of 142,523 people (Sinaga, 2021).

Seeing this condition, the Prosecutor's Office of the Republic of Indonesia through the reorientation of law enforcement policies in the implementation of The Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics has issued Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of *the Principle of Dominus Litis* Prosecutor, who is a reference for the Public Prosecutor in handling Narcotics cases to prioritize Rehabilitation at the Prosecution stage. This approach is a mechanism that cannot be separated from the implementation of restorative justice with the spirit to restore the situation to return to the way it was before the crime occurred, namely recovery by rehabilitation for perpetrators of victimless drug crimes.

Guideline Number 18 of 2021 issued by the Attorney General on November 1, 2021, has been in effect for approximately 7 months, but until now there has not been a single Narcotics case resolved at the Stage of Prosecution by the Public Prosecutor based on restorative justice as regulated in Guideline Number 18 of 2021. This shows that there is a challenge faced by the public prosecutor in implementing Guideline Number 18 of 2021 so it cannot be implemented effectively. This condition is inversely proportional to the implementation of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 dated July 21, 2020, concerning the Termination of Prosecution Based on Restorative Justice, which can be directly applied by the Public Prosecutor shortly after its publication.

The absence of Narcotics cases resolved by Guideline Number 18 of 2021 concerning The Completion of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the *Dominus Litis* Principle of Prosecutors causes that until now there have been no scientific studies that discuss the

obstacles, obstacles, or effectiveness of the implementation of Guideline Number 18 of 2021. Therefore, the author tries to analyze the challenges faced by the Public Prosecutor in the implementation of Guideline Number 18 of 2021, which has never been done before, to find out the challenges and steps to overcome them so that Guideline Number 18 of 2021 can be implemented effectively.

Research Problems

The writing of this article limits the scope of certain problems that focus on: *first*, what are the challenges in implementing Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of *the Dominus Litis* Principle of Prosecutors?; and *second*, what steps can be taken to overcome the challenges in the implementation of Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle of Prosecutors, so that it can be implemented effectively?

Research Methods

Research Methods in this journal use a qualitative approach using a phenomenological perspective in accordance with the opinions of Denzin and Lincoln who say that qualitative research is research that uses a natural background, to interpret phenomena that occur and is carried out by involving various existing methods to explore or build a proposition or explaining the meaning behind reality.

Discussion

The increase in narcotics crimes is generally caused by 2 (two) things, namely: First, dealers promise large profits while users promise peace and tranquility in life so that the psychic burden experienced can be eliminated. Second, the promise given by narcotics causes the fear of the risk of being caught to be reduced, and vice versa will cause a sense of courage, even economic conditions can influence a person to abuse narcotics. Therefore, the problem of narcotics abuse is serious in Indonesia. President Joko Widodo declared Indonesia a Narcotics emergency and called for a major war on all forms of narcotics-related crimes so that narcotics are extraordinary crimes that need extraordinary handling.

The pattern of handling narcotics cases continues to develop so that the law enforcement process has 3 (three) main strategies in overcoming narcotics crimes, namely *Demand Reduction* (reducing demand), *Harm Reduction* (reducing adverse impacts), and *Supply Reduction* (breaking the network) (Handayani, 2015). Efforts to cut off the network have been carried out for a long time but have not stopped the number of illicit narcotics circulations that occurs in Indonesia. Therefore, the Government of Indonesia emphasizes more on the *Demand Reduction* aspect, namely reducing demand. According to Agus

Raharjo, the provision of crimes to criminals is not just suffering as introduced by retributive theory but as an effort to protect the interests of society as expressed by relative theory so that punishment must be able to make a great contribution to criminals to realize their mistakes, change behavior, or cultivate consciousness as a creature of God who has dignity and dignity, or can control himself.

Rehabilitation and criminal conviction are often seen as two opposites. Proponents of rehabilitation have always put forward several reasons why rehabilitation is much better than imprisonment and vice versa. An article titled *Punishment Fails, Rehabilitation Works*, written by James Gilligan, professor at New York University, illustrates how prison sentences are no longer effective in the United States. Even rehabilitation, which has not been accepted for decades as a theory of punishment, has been promoted by the Supreme Court in the United States in the *Graham v Florida* case in 2010 (Hidayatun and Widowati, 2020).

Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics adheres to the *Double Track System*, namely in the form of Criminal Sanctions and Action Sanctions so Rehabilitation is a form of Action Sanctions. Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics in Article 103 states that judges in deciding or appointing Narcotic Addicts to undergo treatment and/or treatment that can be considered as a period of criminal service. The establishment of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics to ensure arrangements for social rehabilitation which is an integrated process of recovery activities, both physical, mental, and social. Furthermore, medical rehabilitation is a process where addicts stop drug abuse by giving medicines and doctor supervision for Narcotics Addicts but until now the narcotics rehabilitation program in prisons/detention centers is still not running optimally.

Observing developments in several countries, a new paradigm has emerged in looking at drug users/addicts who are no longer seen as malicious (criminal) behavior but as people with chronic diseases who must get treatment and recovery gradually. This paradigm further creates a new policy of dealing with victims of drug users who are no longer legally processed but directly take users/addicts to rehabilitation centers. In other words, this paradigm leads to decriminalization efforts for drug users. The application of the criminal law in the form of imprisonment for victims of drug users has proven unsuccessful, which happens that every year the number of victims of drug users who are sentenced to prison the number is increasing. This is what needs to be reviewed regarding the purpose and function of applying criminal law to victims of narcotics users. The most important factor in efforts to combat narcotics abuse, which is often overlooked, especially by law enforcement officials in Indonesia, is rehabilitation efforts. The model of punishment of victims of drug users until now still places perpetrators of criminal acts (criminal), so that rehabilitative efforts are often neglected (Hidayatun and Widowati, 2020).

Rehabilitation is a form of sanctioned action as stated in Article 103 paragraph (1) letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which affirms that the judge who examines the case of a Narcotics Addict may decide to order the person concerned (Narcotic Addict) to undergo Treatment and/or Treatment through Rehabilitation if the Narcotics Addict is found guilty of committing a Narcotics Crime. In the practice in the field that prosecutors are more likely to sue with criminal sanctions while judges are more likely to impose criminal charges than rehabilitation charges or decisions, the settlement of handling criminal cases of drug abuse is not in accordance with what has been mandated by Article 103 paragraph (1) letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. The settlement of cases of misuse of Narcotics by Addicts through rehabilitation is carried out to prioritize restorative justice and expediency (*doelmatigheid*), as well as considering the principle of fast, simple, and low-cost trial. This criminal principle is the last resort (*ultimum remedium*), *cost and benefit analysis*, and recovery of perpetrators so that restorative justice is one of the efforts that can be made by the Prosecutor's Office of the Republic of Indonesia in functioning the *Dominus Litis* Principle.

Referring to the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, the definition of restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator, or the victim's family and other related parties to jointly seek a fair settlement by emphasizing recovery back to the original situation and not retaliation. Restoring the original situation for Addicts and Narcotics Abusers through rehabilitation for narcotics crime cases is a much more appropriate option than imposing a prison sentence that proves ineffective and can eliminate addiction to addictive substances for Addicts and Drug Abusers.

The steps are taken in dealing with the Handling of Drug Addicts and Abusers who prioritize restorative justice, one of which is as carried out by Attorney General Sanitiar Burhanudin, namely by issuing Guideline Number 18 of 2021 concerning Settlement of Handling Cases of Narcotics Abuse Crimes through Rehabilitation with a Restorative Justice Approach as an Implementation of *the Principle of Dominus Litis* Prosecutors who entered into force on November 01, 2021. The principle of *dominus litis*, affirms that no other body has the right to prosecute other than the Public Prosecutor because the Public Prosecutor is the only institution that owns and monopolizes the prosecution and settlement of criminal cases. This principle automatically places the Public Prosecutor as the controller of the case. In short, whether a prosecution can be carried out on a criminal case resulting from an investigation (by the Investigator) is the authority of the Public Prosecutor. Similarly, the Public Prosecutor can stop the prosecution because there is not enough evidence, the event is not a criminal offense, and the case is closed in favor of the law (Mantovani, 2019).

It is hoped that the issuance of these Guidelines for Public Prosecutors throughout Indonesia can facilitate the Settlement of Narcotics Crime Cases, prioritizing

Rehabilitation at the Prosecution Stage which is an inseparable mechanism from the implementation of restorative justice with the spirit to restore the original situation, namely drug offenders who are *victimless crimes*.

Head of the Legal Information Center of the Attorney General's Office of the Republic of Indonesia, Leonard Eben Ezer Simanjuntak said that at the Prosecution Stage, prosecutors have the option to rehabilitate drug users instead of demanding prison sanctions. Background to the issuance of Guidelines Number 18 of 2021 concerning the Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as the Implementation of the *Dominus Litis* Principle of Prosecutors, namely the Criminal Justice System which currently tends to be Punitive which has the meaning of giving sanctions solely to provide punishment to someone to result in the number of prison/detention center residents exceeding capacity (*Overcrowding*) with most in prisons/detention centers being inmates of Narcotics Crimes. As a result of *overcrowding*, it has an impact on the poor health condition and psychological atmosphere of prisoners, the ease of conflict between prison/detention center residents, coaching is not optimal and does not run according to the provisions and there is a budget overrun due to increased consumption of water, electricity, and foodstuffs. The more *overcrowding* capacity of prisoners in prisons/detention centers, the greater the narcotics market in the prisons/detention centers (Martiar, 2021).

A man who is a victim of drug abuse is in a difficult situation. What's more, those who were caught with evidence for being framed, harassed, and forced to use narcotics. This kind of case is rife these days, especially among young people. Therefore, people who are in this kind of condition need to be given careful attention and handling. Do not let the person become a victim a second time because they must be in prison (Huda, et.al., 2020).

Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle Prosecutors view Narcotics Abusers as Victims in line with the provisions of Article 127 paragraph (3) of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics which reads: "*If the Abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the Abuser must undergo medical rehabilitation and social rehabilitation*". In addition, according to various studies basically, Addicts and Abusers of Narcotics are "sick people" which according to the National Narcotics Agency (hereinafter abbreviated as BNN) often campaigns for the phrase "Addicts and Abusers of Narcotics are Victims". Therefore, it is appropriate to treat the sick by being cured instead of imprisonment and it would be very ineffective if Addicts, Abusers, and Victims of Narcotics Abuse were placed in prison to undergo the coaching process.

The medical perspective has the view that narcotics abusers are victims of syndicates or links in the illicit circulation of narcotics that are difficult to escape from dependence, even though the drug users want to escape from the narcotics entanglements they

experience, but because the nerves are already addicted to addictive substances, it is difficult to do so. Therefore, Narcotics Abusers require different treatment from other patients in general (Simanungkalit, 2013).

It is undeniable that guideline Number 18 of 2021 issued by the Attorney General on November 1, 2021, has been in effect for approximately 7 months, but until now there has not been a single Narcotics case resolved at the Prosecution stage by the Public Prosecutor based on restorative justice as stipulated in Guideline Number 18 of 2021. This shows that there is a challenge faced by the public prosecutor in implementing Guideline Number 18 of 2021 so it cannot be implemented effectively. This condition is inversely proportional to the implementation of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 dated July 21, 2020, concerning the Termination of Prosecution Based on Restorative Justice, which can be directly applied by the Public Prosecutor shortly after its publication.

The absence of Narcotics cases resolved by Guideline Number 18 of 2021 concerning The Completion of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Principle of *Dominus Litis* Prosecutors is inseparable from several requirements that must be met relating to the evidence obtained at the investigation stage of a suspect so that it can be categorized as an Addict, Abusers, and Victims of Narcotics Abuse.

For suspects who are Addicts, Abusers, and Victims of Narcotics Abuse, as referred to in Article 1 number 13 (definition of Narcotics Addicts), Article 1 number 15 (definition of Abusers), and Explanation of article 54 of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (Definition of Victims of Narcotics Abuse), several conditions must be met by the suspect to be rehabilitated based on the provisions of Guideline Number 18 of 2021, that is:

- a. Evidence of narcotics crimes that do not exceed the amount of use for 1 (one) day.
- b. Qualifications of the suspect (have never performed rehabilitation or have been rehabilitated no more than twice);
- c. Qualification of criminal acts referring to Article 127 paragraph (1) of Law Number 35 of 2009 concerning Narcotics;
- d. The element of guilt (*mens rea*) in the suspect (the suspect as an *end-user* or suspect has nothing to do with the illicit circulation network of Narcotics);
- e. Recommendations from an integrated assessment that qualify suspects as Narcotics addicts, victims of drug abusers, or drug abusers; (Especially for victims of drug abusers and drug addicts do not require this requirement);
- f. The existence of the results of forensic laboratory examinations of suspects with positive conclusions about using narcotics;
- g. Affidavit of the suspect wanting to undergo rehabilitation through the legal process;
- h. The suspect's bail letter will undergo rehabilitation through legal proceedings from his family or guardian.

The requirements mentioned above are cumulative so if they cannot be met, the suspect of narcotics crime cannot get rehabilitation. To prove the suspect's guilt, the Public Prosecutor can provide instructions to the Police Investigator to check whether the suspect is the last user (*end user*) and check the suspect's profile is related to financial transactions and the suspect's way of life (*know your suspect*) but if the narcotics evidence found does not exceed the amount of use for 1 (one) day, the suspect must be carried out a forensic laboratory examination to knowing the qualifications of the suspect.

The existence of a requirement in the form of a recommendation for the results of an integrated assessment that qualifies suspects as Narcotics addicts, victims of narcotics abusers, or drug abusers is an unavoidable challenge, considering that not all Narcotics addicts, victims of narcotics abusers or drug abusers can get their right to be assessed by the Integrated Assessment Team, due to the limited state budget to conduct assessments. If the request for an integrated assessment of the suspect exceeds the available budget, it is feared that it will cause misappropriation to determine which suspects will get the assessment, and it may be that only those suspects who can disclose to the investigator or the public prosecutor will only be assessed.

For this reason, greater budgetary support is needed that can meet the cost needed to conduct an integrated assessment for suspected Narcotics addicts, victims of drug abusers, or drug abusers. In addition, it is necessary to improve morale for public prosecutors who handle narcotics cases so that they are not tempted to commit misappropriation by utilizing the settlement of handling criminal cases of drug abuse through this rehabilitation transactionally. Stricter supervision of superiors by considering objective legal facts in the minutes of the examination of the case file which describes the role of the suspect whether he is a Narcotics addict, victim of narcotics abuser, or drug abuser who is eligible for rehabilitation, as well as the provision of severe punishment for the Adhyaksa corps who are proven to abuse its authority can be done to prevent misappropriation in handling criminal cases of drug abuse through rehabilitation.

That the absence of integrated assessment results that qualify suspects as Narcotics addicts, victims of narcotics abusers or drug abusers as described above is one of the main causes of the inability to apply restorative justice by the Public Prosecutor based on Guideline Number 18 of 2021 concerning Settlement of Handling Cases of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Principal *Dominus Litis* Prosecutor. This also makes it up to at least 7 months since the issuance of Guidelines Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as an Implementation of the *Dominus Litis* Principle of Prosecutors, no narcotics cases have been resolved in restorative justice based on Guideline Number 18 of 2021 because if the case has been carried out an integrated assessment, the Police Investigator may have carried out restorative justice on the case.

Based on 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 Police of the Republic of Indonesia, the Head of the National Narcotics Agency of the Republic of Indonesia Number 01/PB/MA/III/2014, Number 03 of 2014, No. 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 into the Rehabilitation Institution, an Integrated Assessment Team was formed located at the central level, provincial level, district/city level consisting of a team of doctors and legal teams in charge of carrying out an analysis of the role of suspects arrested at the request of investigators related to the illicit circulation of narcotics, especially for addicts. The team then carried out the legal analysis, medical analysis, and psychosocial analysis and made a rehabilitation plan containing how long rehabilitation was needed. The results of the assessment as the completeness of the case file serve as information such as *visum et repertum* (Astutuk, 2022).

With an integrated assessment that can only be requested by the Investigator, it becomes a challenge for the implementation of Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle, because if a case of drug abuse is not attached to the results of an integrated assessment, then the Public Prosecutor cannot resolve the case this is with restorative justice considering the non-fulfillment of one of the conditions contained in Guideline Number 18 of 2021, namely recommendations for the results of an integrated assessment, except for victims of abusers and drug addicts. In addition, the Public Prosecutor also cannot request an integrated Assessment if the case file has been declared complete (P-21) because the integrated assessment can only be requested by the investigator. Based on Guideline Number 18 of 2021, the authority of the Public Prosecutor to resolve criminal cases of drug abuse through rehabilitation with a Restorative Justice approach can only be done if the case is the same at the Prosecution stage.

The application of restorative justice to cases that qualify their suspects as Narcotics addicts, victims of drug abusers, or drug abusers based on Guideline Number 18 of 2021 concerning Settlement of Handling Cases of Narcotics Abuse Crimes through Rehabilitation With a Restorative Justice Approach as an Implementation of *the Dominus Litis* Principle Prosecutors who are still nil is inversely proportional to the application of restorative justice in other general criminal cases based on the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 dated July 21, 2020, concerning the Termination of Prosecution Based on Restorative Justice, which can be directly applied by the Public Prosecutor shortly after it is published. Even the Young Attorney General for General Crimes Fadil Zumhana said, as of early May 2022, the Prosecutor's Office has stopped at least 1,070 (one thousand and seventy) cases, using a restorative justice approach. This indicates that Guideline Number 18 of 2021 cannot be implemented, one of

which is due to the absence of integrated assessment results that qualify suspects as Narcotics addicts, victims of narcotics abusers, or drug abusers.

Not long after Guideline Number 18 of 2021 concerning The Settlement of Handling Cases of Narcotics Abuse Crimes Through Rehabilitation With a Restorative Justice Approach as the Implementation of the *Dominus Litis* Principle was published, there is a note submitted by the *Institute for Criminal Justice Reform* (hereinafter abbreviated as ICJR) in its article dated November 8, 2021, against Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as the Implementation of the Prosecutor's *Dominus Litis* Principle issued by Attorney General Sanitiar Burhanudin, namely:

1. Not all drug users are addicts or dependents who need rehabilitation;
2. There is uncertainty as to the legal product of the determination issued for rehabilitation and whether with the issuance of the determination, the status of the suspect will no longer be able to be prosecuted in the same case;
3. There is the vagueness of the arrangements regarding the conditions for carrying out rehabilitation, if the suspect does not undergo rehabilitation without a valid reason or undergoes rehabilitation is not in accordance with the determination (Farihah and Rahmawati, 2021).

That the record submitted by the ICJR is not to be worried about because there is the following explanation:

1. That the mandate of Article 4 letter d of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics aims to ensure the regulation of medical and social rehabilitation efforts for Abusers and Narcotics Addicts so that what is regulated in Guideline Number 18 of 2021 concerning Settlement of Handling of Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as an Implementation of the Principle of *Dominus Litis* Prosecutor is to carry out the mandate, especially from the provisions of Article 4 letter d of the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, regarding the type and duration of rehabilitation actions that will be imposed on Narcotics Users, of course, it will be adjusted to the needs and the implementation of their rehabilitation will comply with the provisions as stated in the Recommendations for integrated assessment results.
2. That the background to the issuance of Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice Approach as the Implementation of the *Dominus Litis* Principle of Prosecutors to anticipate *overcrowding* the number of prison/detention center residents so that a breakthrough was made by implementing restorative justice by implementing rehabilitation for Users, Addicts, and Victims of Narcotic Abusers, thus there is no need to worry about the emergence of *double jeopardy* for Users, Addicts and Victims of Narcotic Abusers who have undergone a rehabilitation program because it is based on Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation With a Restorative Justice

Approach as the Implementation of *the Dominus Litis* Principle of Prosecutors Chapter IV concerning Prosecution letter E number 8 already guarantees that the Public Prosecutor does not prosecute suspects who have finished undergoing rehabilitation through legal process.

3. Regarding the legal product determination issued by the Head of the District Attorney's Office or the Head of the District Attorney's Branch, this is not a new thing, so far, the Prosecutor's Office has the authority to stop prosecutions based on Article 14 letter h of the Criminal Procedure Code Jo. Article 140 paragraph (2) of the Criminal Procedure Code whose legal product form is as stated in the Attorney General's Decree Number: KEP-518/A/J.A/11/2001 concerning Amendments to the Attorney General's Decision Number: KEP-132/A/J.A/11/1994 concerning the Administration of Criminal Cases is in the form of a Decree.

Regarding the coercive attempts by the Public Prosecutor against suspects who do not undergo rehabilitation through legal proceedings without a valid reason or undergo rehabilitation through legal proceedings but are not in accordance with the determination, this is a consequence of the restorative justice efforts that the Public Prosecutor offers against the suspects, where The spirit of restorative justice in Guideline number 18 of 2021 is to restore the original situation carried out by restoring the perpetrators of drug abuse crimes that are *victimless*, if the suspect does not want to undergo rehabilitation through the legal process without a valid reason or undergo rehabilitation through the legal process but not in accordance with the determination, the process of restoring the situation of all/ restoring the state of the suspect becomes not is achieved and if this is due to the refusal of the suspect himself, then it is a consequence for the suspect to be prosecuted.

The principle in the Criminal Procedure Code adheres to functional differentiation which can be said to be the root of the problem of frequent frictions between the investigating institutions (Police and Prosecutors) regarding views on the handling of narcotics cases or when applying articles that will be applied to prisoners of narcotics cases. According to the author, several things need to be considered in the implementation of Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle of prosecutors, namely:

1. Police Investigators currently have regulations for handling criminal acts based on restorative justice, so it is possible for Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of *the Dominus Litis* Principle of Prosecutors cannot be carried out by the Prosecutor as the Public Prosecutor, because Narcotics cases that are eligible for rehabilitation application may have been "*exhausted*" resolved by Restorative Justice at the investigation level.
For example, the application of the provisions of Article 9 (1) of the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, which also regulates the Handling of Crimes

based on Restorative Justice for Narcotics crimes by Police Investigators, then prosecutors will not have the opportunity to apply Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle of Prosecutors, so that these guidelines become rules that cannot be applied.

2. If in a narcotics case evidence is found that does not exceed the amount of use of 1 (one) day, but the investigator is not carried out a forensic laboratory examination (urine test) on the suspect and when the case file is sent to the Investigating Attorney then given instructions so that the suspect is carried out a forensic laboratory examination, then the results of the forensic laboratory examination become inaccurate (negative Narcotics), because there is a fairly long time lag between the last time the suspect consumed Narcotics and the time for the forensic laboratory examination was carried out, even though in the provisions of Chapter IV letter B number 4.a Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse Through Rehabilitation With a Restorative Justice Approach as the Implementation of the Principle of *Dominus Litis* Prosecutor, it is stated " *based on the results of the forensic laboratory examination, the positive suspect used narcotics*", which means that the results of the forensic laboratory examination of the positive suspect using narcotics are a condition for the application of the guidelines.
3. When the Police investigator is unwilling or unable to meet the prosecutor's instructions to meet the rehabilitation requirements for suspects as stipulated in Chapter III of Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse Through Rehabilitation With a Restorative Justice Approach as an Implementation of the Prosecutor's *Dominus Litis* Principle, then the Prosecutor cannot carry out Rehabilitation with a restorative justice approach to the suspect so that the implementation of Rehabilitation with a restorative justice approach by the Prosecutor will depend heavily on the performance of the Investigator who handles the case.

The dynamics as outlined above are a challenge in the application of Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle of Prosecutors and threatening the existence of these guidelines can even make these guidelines difficult to implement, which can result in goals that are not achieved.

With the challenges outlined above, it does not mean that Guideline Number 18 of 2021 concerning The Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of *the Dominus Litis* Principle of Prosecutors issued by Attorney General Sanitiar Burhanudin became a redundant regulation. The Attorney General's Guidelines still have hopes to be implemented effectively to achieve predetermined goals, one of which is to reduce

overcrowding in prisons/detention centers with most of the existing inmates with a background in Narcotics cases. Good coordination and overriding sectoral egos between law enforcement are the absolute keys in efforts to implement Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an optimal Implementation of *the Dominus Litis* Principle of Prosecutors.

The Integrated Criminal Justice System is the main means to refract the boundaries between law enforcement and one another, with the spirit to achieve the goal of law enforcement, namely protecting the interests of the community. *The Integrated Criminal Justice System*, which has always seemed to be suspended in animation, can be revived with solid coordination, communication, and consolidation between law enforcement, especially police investigators and public prosecutors in this case the Indonesian Prosecutor's Office so that these challenges can be resolved and do not become obstacles to the implementation of *Restorative Justice* in Narcotics cases, as regulated in Guideline Number 18 of 2021 concerning Settlement of Handling Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of *the Dominus Litis* Principle of Prosecutors so that this guideline can be effectively implemented.

Conclusion

1. Guideline Number 18 of 2021 concerning The Settlement of Handling Cases of Narcotics Abuse Crimes Through Rehabilitation With a Restorative Justice Approach as an Implementation of *the Dominus Litis* Principle of Prosecutors, until now it has not been able to be applied because it faces challenges in the form of similar rules applied by Police Investigators, so that if there are cases of drug abuse that are eligible to be resolved with restorative justice, then it has been carried out by the Investigator so that the case does not reach the Prosecution stage where the Public Prosecutor is authorized to apply restorative justice based on Guideline Number 18 of 2021.
2. The existence of a similar regulation on The Settlement of Handling Criminal Cases of Narcotics Abuse Through Rehabilitation With a Restorative Justice Approach in two law enforcement institutions, namely Investigators and Public Prosecutors, can be overcome by creating synergy between law enforcement agencies through coordination, consultation, and consolidation responsibly so that sectoral egos in the context of resolving narcotics abuse cases with a fairness approach restorative can be eliminated and can be carried out in accordance with their respective authorities.

Suggestion

It is necessary to integrate the rules regarding the settlement of Narcotics criminal cases with a Restorative Justice approach between law enforcement, especially police investigators and public prosecutors or the Prosecutor's Office of the Republic of

Indonesia, in a joint rule that is aligned with the internal rules of each law enforcement agency so that each law enforcement agency does not make its own rules by prioritizing sectoral egos which ultimately make the implementation of Justice Restorative for Narcotics crimes becomes ineffective, so that what allows Restorative Justice can be carried out with full responsibility to achieve the goal of law enforcement, namely protecting the interests of the community.

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