

## Law Enforcement in The Eradication of Narcotics Crimes Against Drug Addicts and Abusers

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### Abstract

Law enforcement for narcotics addicts and abusers mostly applies prison sentences as in the Indonesian criminal justice system. It makes the prison to overcrowding. On the other hand, other law enforcement alternatives are deemed proven to be able to eradicate narcotics addicts and abusers and provide great benefits for all parties without applying penalties in the form of criminal sanctions. It is the application of a restorative justice approach in law enforcement for narcotics addicts and abusers. This research is focused on discussing the background of the problem: how to implement restorative justice in law enforcement for addicts and drug abusers. This study uses empirical normative research methods. The study's findings led law enforcement to adopt a restorative justice approach when dealing with narcotics addicts and abusers. It is accomplished by offering treatment in the form of medical or social rehabilitation. The spirit of restorative justice is essentially embodied in Article 54 of Narcotics Law Number 35 of 2009, which orders addicts and abusers to be treated medically or socially. However, it has not been implemented optimally and comprehensively. There is still a discrepancy in how law enforcement handles narcotics addicts and abusers. Restorative justice, including the provision of medical or social rehabilitation, should be implemented at all stages of law enforcement: investigation, prosecution, and even court appearances. However, until today, medical or social rehabilitation has only been provided by a judge's order following a court trial.

**Keywords:** law enforcement; narcotics crime; restorative justice.

### Abstrak

*Penegakan hukum bagi pecandu narkoba dan pelaku sebagian besar menerapkan hukuman penjara seperti dalam sistem peradilan pidana Indonesia. Itu membuat penjara menjadi penuh sesak. Di sisi lain, alternatif penegakan hukum lainnya dinilai terbukti mampu memberantas pecandu dan pelaku narkoba serta memberikan manfaat yang besar bagi semua pihak tanpa menerapkan hukuman berupa sanksi pidana. Ini adalah penerapan pendekatan keadilan restoratif dalam penegakan hukum bagi pecandu narkoba dan pelaku kekerasan. Penelitian ini difokuskan untuk membahas latar belakang masalah: bagaimana menerapkan keadilan restoratif dalam penegakan hukum bagi pecandu dan penyalahguna narkoba. Penelitian ini menggunakan metode penelitian normatif empiris. Temuan studi ini membuat penegak hukum mengadopsi pendekatan keadilan restoratif ketika berhadapan dengan pecandu narkoba dan pelaku kekerasan. Hal ini dilakukan dengan menawarkan perawatan dalam bentuk rehabilitasi medis atau sosial. Semangat restorative justice pada dasarnya diwujudkan dalam Pasal 54 UU Narkotika Nomor 35 Tahun 2009, yang memerintahkan pecandu dan pelaku untuk diperlakukan secara medis maupun sosial. Namun, belum dilaksanakan secara optimal dan komprehensif. Masih ada perbedaan dalam cara penegak hukum menangani pecandu narkoba dan pelaku kekerasan. Keadilan restoratif, termasuk penyediaan rehabilitasi medis atau sosial, harus dilaksanakan di semua tahap penegakan hukum: penyelidikan, penuntutan, dan bahkan penampilan pengadilan. Namun, hingga saat ini, rehabilitasi medis atau sosial hanya diberikan oleh perintah hakim setelah persidangan pengadilan.*

**Kata kunci:** law enforcement; narcotics crime; restorative justice.

## Introduction

Even in this day where knowledge and technology are advancing quickly, crimes still happen frequently. Crime related to drugs or narcotics is one of the crimes that are on the rise right now. Narcotics crime is a sort of extraordinary crime since it involves big dealers from all sectors of society in the distribution of narcotics. They have entered the circle of drug trafficking and abuse, ranging from civil society to law enforcement officers to government officials.

The National Narcotics Board of the Republic of Indonesia (Badan Narkotika Nasional/BNN) was established as an Indonesian Non-Ministerial Government Institution (Lembaga Pemerintah Non Kementerian/LPNK) to carry out government activities related to the prevention, eradication, and illicit trafficking of narcotics, psychotropic substances, precursors, and addictive substances for tobacco and alcohol. The BNN is led by a leader who reports to the president directly. The BNN released a statement in a press release titled "*Sikap BNN Tegas, Wujudkan Indonesia Bebas Dari Narkoba*" (BNN's Attitude Is Determined: Make Indonesia Free From Drugs) on 22<sup>nd</sup> December 2020.

The BNN published data from the 2020 UNODC (United Nations Office Drug and Crime) World Drug Report in a press release: "It is estimated that around 269 (two hundred and sixty-nine) million persons worldwide consume drugs (study in 2018). This figure is 30% (thirty percent) more than in 2009, when the number of drug users was estimated to reach more than 35 (thirty-five) million. The UNODC also revealed a global phenomenon in which there had been reports of the inclusion of more than 950 (nine hundred and fifty) different categories of new compounds as of December 2019. As of now, 83 (eighty-three) New Psychoactive Substances (NPS) have been found in Indonesia, according to data from the Laboratory of the National Narcotics Board of the Republic of Indonesia, of which 73 (seventy-three) NPS have been included in the Regulation of the Minister of Health of the Republic of Indonesia Number 22 Year 2020." Furthermore, the BNN claimed, "Throughout 2020, the BNN was successful in mapping 92 narcotics syndicate networks. There have been 88 successful syndicate networks discovered, 14 of which are international syndicate networks, and at least 27 prisoners from across Indonesia are actively engaging in drug control from within the prison." (BNN, 2020).

The rise in the number of drugs users produces a variety of societal phenomena. The modernization process has the potential to bring about rapid social change, which could lead to social unrest and tension. The rapid shift in the value system necessitates the creation of new social standards (Muladi, 1997). In such cases, a law that is adaptable to the development and dynamics of society in the age of globalization is required. Modernization and globalization are not choice phenomena; they must be faced (change is not optional) and cannot be avoided. Both are natural phenomena that emerge as a social problem as a result of the invention of modern technical tools due to the complexity and heterogeneity of human relations. According to a study conducted by Kiki Rizqi Andini, one of the reasons for the rising circulation of narcotics in Indonesia is the

globalization aspect of the use of technology. It is similar to the internet and a variety of other tools that make it simple for drug dealers to reach their target market (Andini, 2015).

The criminal justice system is currently deemed ineffective for narcotics law enforcement. It is because the majority of drug abusers and addicts were condemned to prison by the court. Due to the high proportion of drug-related crimes compared to other types of crimes, drug abusers and addicts typically make up the majority of inmates at Correctional Institution (Lembaga Pemasyarakata/LAPAS) and Detention Center (Rumah Tahanan Negara/RUTAN). That is what causes prisons or detention centers to be overcrowded. According to data from the Directorate General of Corrections at the Ministry of Law and Human Rights of the Republic of Indonesia, the total number of prisoners and inmates in Indonesian prisons and detention centers as of March 31st, 2020 was 270,351. This amount substantially exceeds the overall ideal capacity of prisons and detention institutions, which is only 131,931 people”.

Some of the consequences of overcrowding involve poor health conditions and psychological atmosphere of inmates and prisoners, prone to conflict between prison residents, controlling that is not optimal and does not run according to regulations, and budget swelling due to increased consumption of water, electricity, and food. Even worse, there are incidents of riots and escapes of inmates and prisoners as a result of insufficient security due to an imbalance in the number of prison guards or correctional officials compared to inmates. Not to mention the inevitable reality that drugs are controlled within prisons. The more overcrowding of prisoners and inmates in jails, the more widespread the narcotics market in prisons.

Increases in the capacity of jails and detention facilities are just one measure taken to address the issue of overcrowding. However, it can be started from the beginning of law enforcement with the use of a rehabilitative approach or what is known as Restorative Justice for narcotics cases. This approach primarily targets addicts, abusers, or victims of abuse by emphasizing rehabilitation rather criminal prosecution.

Many studies have been conducted on legal actions for addicts and abusers, one of which was conducted by Athallah and Lewoleba. According to the findings of the study, law enforcement for drug addicts and abusers must pursue medical or social rehabilitation measures. The need to care for and foster narcotics addicts is also emphasized in Article 54 of Drugs Law Number 35 of 2009, which states that "Narcotics addicts and victims of narcotics abuse must undertake medical rehabilitation and social rehabilitation." However, there are some issues that have arisen as a result of this law. It also contains articles that provide for the imprisonment of a narcotics abuser, particularly Articles 111, 115, and 127 paragraph (1) of Law Number 35 of 2009 (Athallah and Lewoleba, 2020).

The researcher considers that what is mentioned in Article 54 of Law Number 35 of 2009 concerning Narcotics is essentially the spirit of Restorative Justice, which stresses action/treatment initiatives over punishment in law enforcement. The Restorative Justice approach to law enforcement for addicts and abusers should be a strategy to break the chain of narcotics trafficking. However, as a result of the situation, there is an imbalance

between the articles in the narcotics law. Additionally, there are still inconsistencies in law enforcement's application of a Restorative Justice strategy to addicts and abusers. This is because different judges still reach different conclusions in cases. Furthermore, the author contends that applying the Restorative Justice approach in law enforcement has the potential to be carried effectively from the investigation stage. At this stage, it is accomplished through resolving issues outside of court, such as diversion activities for children. However, no significant action has been done by law enforcement agencies in this regard as of yet.

## **Research Problems**

In this study, the researcher focuses on the topic based on the problem's background: How is the implementation of restorative justice in law enforcement for addicts and narcotics abusers?

## **Research Methods**

This research employs qualitative methods with a normative - empirical approach. According to Bogdan and Taylor, qualitative research provides descriptive data in the form of written and spoken words from people as well as observed behavior (Ibrahim, 2004). Normative research is research that employs library materials as research material. In this kind of legal research, the concept of law is frequently understood to be what is written within the laws and regulations (law in books), or it is understood to be a rule or norm that serves as a standard for acceptable human behavior (Amiruddin and Asikin, 2006).

The problems studied in this research influenced the employment of this method. This is strongly related to the distinction between law in books and law in action. Law is viewed not only as a formal rule, or as law in books, but also as law in actions that evaluate how the law is applied. The purpose of this research is to provide an explanation of the problems studied and the results acquired both from a legal standpoint and from the reality of its implementation in the field.

## **Discussion**

### **Implementation of Restorative Justice in Law Enforcement for Addicts and Narcotics Abusers**

Narcotics addicts are those who use or abuse narcotics and are physically and psychologically dependent on them (Article 1, number 13 Law Number 35 of 2009). Furthermore, narcotics abusers are persons who take narcotics without consent or in violation of the law (Article 1, number 15). People can get addicted to narcotics if their desire and physical state are already addicted. The addiction is a disorder characterized by the need to use narcotics in increasing dosages in order to have the same effect (Article 1, number 14). If its use is abruptly reduced or discontinued, it will create distinct physical

and psychological effects. In a positive legal sense, addicts and abusers are criminals; however, in terms of victimology, addicts and abusers can be classified as victims as long as they do not double as dealers or traffickers. Drug addicts and abusers are considered victims since they are the ones who suffer the most. As a result, in addition to being criminals, they are also victims of narcotics trafficking.

There are two approaches to dealing with narcotics abuse. The first is punishment-free prevention by mandatory addict reporting, and the second is the adoption of rehabilitation law enforcement with a restorative justice approach. Rehabilitation, often known as restoration justice, is a new way to resolving criminal cases. Restorative justice is a strategy or concept that emphasizes on the participation or direct engagement of criminals, victims, and the community in the process of resolving criminal cases. As a result, this approach is more commonly known as the "non-state justice system," in which the involvement of the state in the resolution of criminal cases is reduced or even eliminated (Azhar, 2019). The goal of restorative justice is to seek alternatives to punishment rather than emphasizing imprisonment. Restorative justice is based on Article 54 of Law Number 35 of 2009, which provides that narcotics addicts and victims of narcotics abuse must undertake medical and social rehabilitation.

Law enforcement should be a progressive legal breakthrough in eradicating narcotics crimes for addicts and abusers through the mechanism of a restorative justice approach. Umbreit and Tony Marshall are two of the many great international law scholars who helped create the concept of restorative justice. According to Umbreit's writings, "Restorative justice is a "victim-centered response to crime that allows the victim, the offender, their families, and representatives of community to address the harm caused by the crime (Lanier and Henry, 2004)."

According to Marshall (1999), who shared Umbreit's viewpoint, "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future". Restorative justice is a procedure in which all parties with an interest in a specific violation problem come together to solve collectively and collaboratively how to address and resolve the consequences of violations and its future implications (Susetyo and Tim Kerja Pengkajian Hukum, 2012).

It is clear from the two expert perspectives above that the restorative justice approach's goal is to resolve a criminal case using a family model that, to the greatest extent feasible, rejects the concept of punishment, which intends to solely inflict grief or suffering as a deterrent impact on criminals. Instead, the idea of restorative justice promotes the improvement of the circumstance as a result of a crime, with the ultimate aim of looking out for the interests of all parties concerned.

The adoption of the case settlement model for addicts and abusers through a restorative justice approach might begin with the police investigative procedure. This can be accomplished by employing Rehabilitation Investigation techniques. One of the elements of law enforcement that can be used to recover and settle narcotics cases is

rehabilitative investigation. However, its implementation in Indonesia is still lacking. The implementation of existing legislation is also a crucial element in the persistence of narcotics consumption. Especially when the problem of trailing rules is combined with the social dynamics that occur in people's lives in Indonesia. As a result, legal practitioners are also overwhelmed when dealing with cases of abuse of new types of narcotics that are not clearly regulated in narcotics law.

Regulations against narcotics abuse, in practice, have no deterring effect on criminal perpetrators. This is supported by data from the United Nations Office on Drugs and Crime (UNODC) cited in the 2019 World Drugs Report. According to data, there are at least 271 million people worldwide, accounting for 5.5 percent of the global population. At least one person in the age range of 15 to 64 years has used drugs, and at least one person has used narcotics in 2017. Based on Law no. 35 of 2009 concerning Narcotics which is special, the duties and obligations of investigators are only to arrest perpetrators of illicit narcotics trafficking. Meanwhile, drug abusers are optional, which implies that they may or may not be arrested.

Why is it optional to have the authority to arrest criminals? that's because the Law No. 35 of 2009 Concerning Narcotics uses the model of choice to address the issue of drug abuse, and law enforcement likewise uses the model of choice to pursue criminals. The authority of the investigator to arrest is mandatory only for sellers, whereas the authority to arrest narcotics abusers is optional. Narcotics addicts are not arrested and pose no legal issues. This is due to the fact that there is a more appropriate option that is subject to mandatory reporting in order to acquire treatment or recovery. In the event of an arrest, the investigation, charging, and trial processes will be constructive.

To receive rehabilitation and recovery, drug abusers must be forced to report to the Compulsory Reporting Recipient Institution (IPWL), which is the first option from the prevention model selection. As a form of "prevention without punishment," this is done using compensation rather than prosecution. The second approach is to utilize "criminal law application" through the rehabilitation judicial system to recover or restore. It runs the risk of causing the state to spend more on law enforcement expenses and community harm from law enforcement. Special powers are granted to public prosecutor investigators and judges while employing the "criminal law application" approach. That is the authority to place narcotics addicts in government-owned hospitals or rehabilitation facilities (Article 13 of Government Regulation number 25 of 2011), not imprisonment due to illness. The Narcotics Law gives judges special authority to "be able" decide or determine that the prisoner undertakes mandatory rehabilitation (Article 103 of the Narcotics Law).

Both the general public and law enforcement need to be aware of this legal interpretation. The government therefore implores the authority to oversee investigators, public prosecutors, and judges in exercising their jurisdiction under the Narcotics Law and to re-socialize the significance of "prevention without punishment," which is the flagship program of the mandatory reporting of addicts to IPWL. If investigators arrest narcotics abusers and use a restorative justice process to enforce a sentence in the form of

rehabilitation, the state will be disadvantaged by expending significant law enforcement costs.

If investigators make arrests and then the offenders of narcotics abuse are sentenced to prison, the state will bear "extremely substantial" costs. The expenses come in the form of costs for the investigation, prosecution, and trial. Furthermore, it covers rehabilitation costs for judges' decisions as well as expenditures for the risk of narcotics abusers being imprisoned, such as the occurrence of prison anomalies, fires or riots caused by addicts' behavior in prison, and recidivism of narcotics addiction. Arrests, prosecutions, and convictions of narcotics abusers are conducted carefully, with the goal of revealing who the dealer is and arresting criminals who are members of narcotics illicit trafficking syndicates. As the coordinator of P4GN (Prevention, Eradication, Abuse, and Illicit Trafficking in Narcotics), BNN must prioritize the socialization of mandatory reporting of addicts over law enforcement against narcotics abusers. The addict is being rehabilitated, while the dealer is being imprisoned. There is also the fact that law enforcement in Indonesia, using the criminal justice system in place, is still unable to overcome and suppress narcotics awareness and use. Of course, this was unintentional, since it is well known that law system in Indonesia is still based on the law and order approach, often known as law enforcement.

The essential idea of restorative justice is that those who have suffered as a result of crime can recover, perpetrators can participate in restoring the situation (restoration), the court's function is to protect public order, and the community can play a role in sustaining a just peace. Furthermore, the Narcotics Law includes the principle or principle of a universal minimum/specific minimum, which means that the lowest (minimum) punishment is universal (universal). This applies to each instance with its own sort of punishment. The imposition of the highest (maximum) punishment that is special (special) for each, different statutory provision or the maximum has been determined is the definition of "special maximum." These principles serve as a foundation for the guarantee of legal certainty in the application of various criminal law offense categories. That is, this approach "binds the judges to the lowest and maximum limits of punishment" that will be inflicted on addicts and drug users. According to the punishment principle, the judge may neither impose a sentence that is less than the minimum limit, nor may the judge impose a sentence that is greater than the maximum limit of punishment established by law. As J.P. Plamenatz put it, "giving every man his due, and the setting, either by compensating the victim of wrong or by punishing the doer of it" a just law must, of course, treat everyone equally.

The goal of the restorative justice principle is to change Indonesia's criminal justice system, which has been growing and developing throughout time. In terms of punishment, the criminal justice system is thought to have fallen behind. Aside from the fact that the criminal system is still built on the *primum remedium* concept, it also makes imprisonment the main option. However, in the current context, the criminal justice system has shifted from relying on the offender to causing alignment between the offender and the victim in

a criminal case. Restorative justice principles are at least separated into 3 (three) major points, which include:

1. Hold the violator accountable for the loss caused by his mistake;
2. Provide opportunities for violators to demonstrate their capacity and quality in addition to dealing with guilt constructively, involving victims, parents, extended family, school, and peers;
3. Create a forum for problem-solving collaboration, establishing a direct and real relationship between mistakes and formal social reactions.

Through the judiciary, restorative justice sanctions are applied in the form of rehabilitation for addicts and narcotics abusers. Furthermore, it is still not fully and optimally applied, and there is still a gap between the judge's decisions in some criminal cases involving narcotics addicts. For narcotics addicts, certain judges may impose a sentence of imprisonment. However, there are judges who issue decisions in the form of rehabilitation sentences in specific circumstances. What is especially concerning is that rehabilitation sentences are frequently handed down to suspected public figures or celebrities (Iskandar, 2019). The author takes the example of a narcotics abuse case involving several well-known public figures. For example, Ello was sentenced to nine months of rehabilitation. A case involving Restu Sinaga also resulted in six months of rehabilitation. Another case in point is the case of Ridho Rhoma, which resulted in rehabilitation for six months and ten days based on Decision Number 1104/Pid.Sus/2017/PN.Jkt.Brt, which was later strengthened by Decision Number 309/PID.SUS/2017/PT. DKI. These cases involved narcotics abuse, but the judge sentenced them to rehabilitation. Consider Decision Number 848/Pid.Sus/2018/PN JKT.SEL, in which the defendant was charged with articles that were extremely burdensome for the defendant, resulting in the imposition of a prison sentence.

When reviewing the Joint Regulations of the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Head of the Police, the Head 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 Perber/01/111/2014/BNN concerning the Handling of Narcotics. Indeed, the placement of addicts and narcotics abusers in rehabilitation institutes can be carried out not only through court decisions, but also at all stages of legal action, such as investigation, prosecution, and examination in court. That is, if there is adequate evidence that the criminal is a drug addict and abuser. The author also believes that in narcotics crimes, law enforcement through a case settlement mechanism with a restorative justice perspective has significant potential to be applied at all stages of law enforcement. It begins with police inquiry, continues with prosecution by the prosecutor's office, and concludes with examination in court by the Panel of Judges. The National Police Chief Regulation Number 8 of 2021, which addresses the processing of criminal acts of restorative justice, is in the police investigation stage. There is also Prosecutor's Regulation Number 15 of 2020, which addresses the termination



of prosecution based on restorative justice. Furthermore, there is the Prosecutor's Guide Number 18 of 2021 addressing the completion of the handling of criminal cases of drugs abuse through rehabilitation with a restorative justice approach as the implementation of the *dominus litis* principle. There is also a 2014 Joint Regulation that governs the treatment of narcotics addicts and victims of narcotics abuse in rehabilitation facilities. Social rehabilitation, however, may only now be put into practice by judicial judgements.

## Conclusion

Based on the description provided above, the authors conclude that law enforcement using a restorative justice method is a manifestation of Article 54 of Law Number 35 of 2009. Every addict and abuser is required to be rehabilitated under this clause. However, the narcotics law gives addicts and narcotics abusers the option of rehabilitation or harsh punishment in the form of imprisonment. This is the source of law enforcement inconsistency and the variance between law enforcers in eradicating narcotics among addicts and narcotics abusers. The number of addicts and abusers has not been reduced by the concept of law enforcement in the existing criminal justice system. This is due to the fact that a drug abuser or addict should suffer as a result of illegal drug trafficking. Furthermore, addicts and narcotics abusers are sick persons who suffer from addiction to narcotic substances, thus what is required is rehabilitation efforts rather than prison sanctions. Restorative justice for addicts and abusers has the legal ability to be carried out at every stage of law enforcement, beginning with investigation, prosecution, and case evaluation in court. However, so far, rehabilitation measures have only been offered by a judge's decision.

## Suggestion

The author's suggestions for the issues raised in this study relate to the implementation of Law No. 35 of 2009 Concerning Narcotics. It is vital to prevent narcotics crime in order to be more effective. It is vital to increase the availability of drugs counseling through mass media outlets such as newspapers, magazines, the internet, social networks (Facebook, Twitter), and others. So that community members are informed of the significant dangers of narcotics and every household can conduct internal preventative measures. The most crucial endeavor in combating drug trafficking and abuse is family defense. Law enforcement officials do not cooperate with drug cartels and refuse all compromises. Law enforcement officers must also have high morals, so as not to become victims of narcotics abuse itself. It is very dangerous and worrying if law enforcement officers who are supposed to enforce the law instead use narcotics themselves. Law enforcement officers who are uncompromising and firm will be one of the keys to success in eradicating narcotics abuse in Indonesia.

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