

ENHANCEMENT OF GUIDELINES FOR ADJUDICATING CRIMINAL CASES THROUGH RESTORATIVE JUSTICE IN COURT INSTITUTION

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Abstract

This research aims to analyze guidelines for adjudicating criminal cases through restorative justice in offenses affecting victims, the categorization of drug offenses suitable for restorative justice adjudication, and verdict forms not yet covered in Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This research employs normative legal analysis through conceptual, legislative, and case methodologies. The analysis concludes that the rule has not established criteria for adjudicating narcotics offenses. The principle of restorative justice pertains not just to crimes with discernible victims but also to victimless acts, such as drug-related crimes. Individuals impacted by substance abuse are entitled to medical and social rehabilitation, which may reinstate their autonomy from narcotics, in alignment with the ideals of restorative justice. The author also suggests including several types of verdicts, such as imposing penalties, mandating restitution to parents, granting exemptions from punishment, absolving individuals of all legal rights, and enforcing compliance with peace accords. The diversity of verdicts assists judges in selecting the appropriate form when administering a sentence to the defendant within the context of restorative justice.

Keywords: *Restorative, Justice, Court, Verdict.*

INTRODUCTION

Restorative justice provides an alternative to traditional justice for criminals, victims, and the community. This approach invites victims to participate in problem-solving and lets perpetrators take responsibility for their acts. This acknowledges that criminal action harms people and society. Restorative justice is an idea and a process, say experts. Restorative justice involves offender, victim, and community discussion to rectify sins and offenses.¹ Tony F. Marshall defines restorative justice as a procedure in which all parties affected by a transgression meet to discuss the ramifications and future implications of that offense.²

Marlina explained that restorative justice comprises victim-perpetrator discussions to address legal infractions. Restorative justice supports self-determination for victims of crime. According to John Braithwaite, restorative justice is based on empowerment.³ Mr. Hatta Ali states that restorative justice is a powerful dialogical process, but the offender's lack of genuine admission of guilt hinders its implementation. A fair resolution requires voluntary rights relinquishment before recovery.⁴

Supreme Court Regulation Number 1 of 2024, "Guidelines for Adjudicating Criminal Cases Based on Restorative Justice," was released on May 2, 2024 ("SC Regulation No. 1 of 2024"). SC Regulation No. 1 of 2024 removes restorative justice procedures for victimless offenses, including narcotics, for addicts and victims of narcotics abuse. Narcotics users and victims must undergo medical and social rehabilitation under Article 54 of Law

¹ Muladi and Diah Sulistyani, *Kompleksitas Perkembangan Tindak Pidana dan Kebijakan Kriminal* (Bandung: Alumni, 2016), p. 100.

² Topo Santoso, *Hukum Pidana: Suatu Pengantar* (Depok: Raja Grafindo Persada, 2020), p. 45.

³ John Braithwaite, *The Fundamentals of Restorative Justice* (Australia: ANU EPress, 2010), p. 30.

⁴ M. Hatta Ali, *Peradilan Sederhana, Cepat & Biaya Ringan Menuju Keadilan Restoratif* (Bandung: Alumni, 2012), p. 30.

Number 35 of 2009 on Narcotics ("Law No. 35 of 2009"). Medical and social rehabilitations are restorative justice principles, hence drug offenses should be regulated by SC Regulation No. 1 of 2024.

SC Regulation No. 1 of 2024 also governs prosecution dismissal/not accepted, reduced prison sentence, and conditional/supervised verdicts. Restorative justice can also be used to impose fines, return juvenile offenders to parental custody, exonerate them from all legal charges, enforce peace agreements, and eliminate penalties. SC Regulation No. 1 of 2024 should include the defined judgment categories to help judges in restorative justice criminal case verdicts. This research will examine (a) the criteria for restorative justice adjudication of criminal cases affecting victims, (b) the suggested framework for drug offenses (victimless crimes), and (c) the categories of decisions not covered in SC Regulation No. 1 of 2024.

LITERATURE REVIEW

Academics and legal observers have not conducted much research on optimising the Restorative Justice Perma by applying restorative justice to drug crime victims or addicts. However, this research is not entirely novel because it is closely related to other research on the same topic or research target, so to determine the originality of this research, a search was conducted on published research by tracing the results of previous research (library review). Several legal papers pertinent to this research issue were successfully acquired as comparative material when preparing this thesis proposal, as shown in the table below:

No	Name of the researcher and the original institution	Title (Research Year)	Key Issues	Results and Discussions
1	Randa Wahyu Ramadhan and Islam Sultan Agung University	Analysis of Drug Crime Investigations against Minors in the Restorative Justice Dimension (2024)	<ol style="list-style-type: none"> How does the investigation of drug crimes, particularly those perpetrated by children, fit into the restorative justice framework? What are the challenges in conducting investigations for drug crimes, particularly against children as perpetrators, within the context of restorative justice, and what are the solutions? 	<ol style="list-style-type: none"> Restorative justice is implemented at the investigation level through deliberation between investigators as initiators, followed by deliberations between the perpetrator's and victim's families with the investigator acting as a facilitator, and finally deliberations involving the community. Of course, this approach is only applied to criminal activities that result in a term of less than 7 years and do not involve a repeat of the crime. The problems faced include inadequate implementing regulations for investigators, investigators' awareness of the limitations of minimal and maximum danger offenses in investigations, a lack of manpower, and the paradigm of retributive justice, which is still very powerful.
2	Bagus Irianto and Darul Ulum Islamic	Handling of Narcotics Crimes Based on Restorative	1. How does the Semarang Police Narcotics	1. The Semarang Police Investigation Unit's jurisdiction stems from the Narcotics Investigation Unit's purpose of investigating and prosecuting narcotics misuse crimes, as well as offering

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Dedi Putra and I Nyoman Nurjaya

	Centre Sudirman Guppi University	Justice at the Semarang Police Narcotics Research Unit (2023)	<p>Investigation Unit handle drug cases using Restorative Justice principles?</p> <p>2. What are the challenges in handling drug cases using Restorative Justice in the Semarang Police Narcotics Investigation Unit?</p> <p>3. How does the Semarang Police Narcotics Investigation Unit handle drug cases using Restorative Justice?</p>	<p>guidance and counseling to victims in order to prevent and rehabilitate them.</p> <p>2. Obstacles to its implementation include the lack of a law that specifically regulates restorative justice and can only be applied to perpetrators who admit their actions, a low level of legal knowledge, limited investigator personnel, hidden or disconnected narcotics trafficking networks, and new drug dealer marketing strategies.</p> <p>3. Handling solutions include increased understanding from law enforcement officers, specifically the police, more widespread socialization, increasing the number of investigator personnel, implementing restorative justice for drug abusers without discrimination, using the justice collaborator method to invite suspects to tell the truth, and forming a special cyber team to track narcotics transaction networks.</p>
3	Agus Sugiyarso and Medan Area Medan University	112 / 5,000 Optimizing Restorative Justice for Drug Abusers in the Jurisdiction of the Deli Serdang Police (2024)	<p>1. How effective are the Indonesian National Police's efforts to optimize restorative justice for drug users in Deli Serdang Police's jurisdiction?</p> <p>2. How does the implementation of police rules affect the efficiency of restorative justice for drug users within the authority of the Deli Serdang Police (Case Study of the Deli Serdang Police Narcotics Crime Unit)?</p>	<p>1. Drug addicts who are resolved through a restorative justice approach are governed by the Criminal Procedure Code, Law Number 2 of 2002 concerning the Republic of Indonesia Police, Law Number 35 of 2009 concerning Narcotics, and Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts based on Restorative Justice.</p> <p>2. The mechanism for implementing restorative justice must meet both general and specialized standards.</p> <p>3. There are two types of barriers that the Deli Serdang Police Narcotics Criminal Investigation Unit faces when implementing restorative justice for drug misuse addicts in their jurisdiction: internal and external. Internal impediments include a lack of finance, insufficient facilities and infrastructure, and a lack of investigator competency. External obstacles include a lack of community empowerment, anti-drug observer institutions, community leaders, religious leaders, academics, related regional apparatus organizations such as the Social Service, Health Service, Kesbangpol, and cross-sectoral government apparatus organizations, among others. Restorative justice is being optimized at the Deli Serdang Police Narcotics Crime Investigation Unit.</p>

			3. What challenges arise during the implementation of restorative justice for drug users in the jurisdiction of the Deli Serdang Police (Case Study of the Deli Serdang Police Narcotics Crime Unit)?	
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METHOD

This study utilizes normative legal research, examining existing library resources through conceptual, legislative, and case techniques. The legal materials obtained by library research comprise primary legal sources sourced from books, studies, or scholarly papers that directly pertain to the subject topic. This research primarily relies on SC Regulation No. 1 of 2024 and Law No. 35 of 2009 as its principal legal sources. Secondly, secondary legal materials are sources originating from doctrines and scholarly opinions that subsequently underpin a legal argument. Tertiary legal resources clarify main and secondary legal components, including SC Regulation No. 1 of 2024 and Law No. 35 of 2009.

This research entails the aggregation of legal materials via note-taking methodologies, encompassing quoting, summarizing, and reviewing the collected legal documents to formulate a cohesive narrative that underpins the investigation into the optimization of SC Regulation No. 1 of 2024. The qualitative study of legal materials include the gathering of primary and secondary sources, which are then processed and scrutinized through legal arguments. This is succeeded by a detailed presentation that outlines the principal concerns to be addressed.

RESULTS AND DISCUSSION

1. Criminal Case Adjudication Guidelines Working with Restorative Justice for Victimization Crimes

The author initially defines restorative justice-suitable criminal instances before stating the concepts.

1.1 Criminal Offense Standards a Restorative Justice Framework

Article 6 of SC Regulation No. 1 of 2024 requires courts to use restorative justice guidelines when any of the identified offenses is relevant:

- The offense is minor, with the victim's loss not exceeding IDR 2,500,000.00 (two million five hundred thousand rupiah) or the local minimum wage;
- The offense is subject to complaint;
- One of the charges, including jinayat offenses as stipulated by qanun, carries a maximum penalty of five years' imprisonment;
- The offense involves a juvenile offender for whom diversion efforts have failed; or
- The offense involves traff.

The court lacks jurisdiction to establish restorative justice rules for criminal matters if the victim or defendant refuses reconciliation, a power imbalance exists, or the defendant repeats similar behavior within three years of the final court decision.

1.2 Judge Test

After the public prosecutor presents the examination minutes, indictment notes, or indictment letter and the defendant confirms understanding, the judge allows the defendant to concede or contest the charges on the first day of trial if the case falls under one of the specified categories and the judge has jurisdiction. The defendant's admission

of all charges and lack of protest speed up the restorative justice trial. If the defendant denies, partially recognizes, or fights the charges, procedural law will apply.⁵

The judge asked the prosecutor about the victim's trial attendance. If the victim is present during the trial, the judge first questions the victim about the chronology of the crime, the victim's injuries and/or needs, any reconciliation between the defendant and the victim before the trial, and any agreement or settlement resulting from the reconciliation. The court will postpone the trial for up to seven days and order the public prosecutor to present the victim and further evidence at the next trial if the victim is absent. If the victim dies, their heirs represent them in court.⁶

The victim's heirs must consent to representation. Restorative justice applies to cases like an irresponsible driver's traffic accident that kills the victim. Since the victim died, focusing on the offender's incarceration for their incompetence is pointless. Legal protection for surviving family members, especially heirs, is needed. Thus, the consenting heirs might represent the victim to communicate their desires, allowing the perpetrator to comply and restore equilibrium. Article 9 of SC Regulation No. 1 of 2024 allows the judge to review the offender-victim reconciliation agreement if the victim alleges it occurred before the trial. If the defendant and victim or their heirs reconcile before trial and all agreements are met, the court may incorporate this in the verdict and continue the examination. The judge may ask the defendant why they broke the agreement. If the defendant claims incapacity, the judge may ask if the victim is willing to make a fresh agreement the defendant can complete. With victim participation, the new arrangement can be made.⁷

In criminal cases, either the culprit or the victim may be disabled. Disabilities include mental, intellectual, physical, and sensory limitations. Etiquette must be considered in their rehabilitation to suit each disabled person. Same with court cases. On request, defendants or victims with physical, intellectual, mental, or sensory disabilities who may be legally responsible based on expert testimony have the right to be accompanied by family members or disability companions under SC Regulation No. 1 of 2024, Article 11.

1.3 Creative Peace Deal Recent Peace Deal

The judge collected the following information for the revised agreement.⁸ The judge may consider the victim's impact, financial losses, and other disadvantages, medical and psychological treatment costs, the defendant's ability to comply with the agreement, the availability of services to help the victim and defendant recover, and any other relevant information. Furthermore, the judge is empowered to:

- facilitate an opportunity for the defendant and the victim to articulate their concerns and requirements;
- promote constructive dialogue between the defendant and the victim to aid in the restoration of their relationship;
- dispense counsel to both the defendant and the victim;
- permit the attendance of religious, community, and/or customary leaders upon the request or consent of the parties involved;
- endeavor to convince both the defendant and the victim to arrive to a mutually acceptable agreement that the defendant can satisfy, addressing the defendant's obligations and the victim's interests and/or needs for recovery;
- direct that all statements from the defendant and the victim be documented in the trial minutes; - direct the victim and the criminal to provide copies of the peace agreement to the public prosecutor and/or legal counsel;
- recommend that the public prosecutor take into account the agreement between the defendant and the victim in the indictment; and/or advise the legal counsel to regard the agreement between the defendant and the victim in the defense memorandum.

Any new agreement will be considered by the Judge. The Judge concludes from both sides' evidence that the peace settlement was reached without lying, coercion, or fraud.⁹ Article 14 of SC Regulation No. 1 of 2024 states that in cases of complaint offenses, the agreement may involve the perpetrator either taking or abstaining from an action and the victim withdrawing their complaint, subject to the legally prescribed deadline. The peace agreement's commitment to retract the complaint is legally considered fulfilled upon its endorsement before the judge, empowering the judge to declare. If the victim claims no reconciliation with the perpetrator, the judge recommends both parties to reach a reconciliation agreement. If defendant and victim reconcile, the court will follow Article 12

⁵ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 7 of SC Regulation No. 1 (2024).

⁶ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 8 of SC Regulation No. 1 (2024).

⁷ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 10 of SC Regulation No. 1 (2024).

⁸ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 12 of SC Regulation No. 1 (2024).

⁹ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 13 of SC Regulation No. 1 (2024).

of SC Regulation No. 1 of 2024.¹⁰ This restorative justice case resolution approach can be used before criminal charges. The panel of judges should carefully plan the court based on the defendant's custody conditions to improve case resolution. For minor defendants, juvenile detention laws take precedence. To run two trials in a week, the trial timetable may be delayed by two to three days if the trial delay usually takes a week. The court must follow to Supreme Court Circular Letter Number 2 of 2014 concerning Case settlement in First Instance and Appeal Courts throughout the Four Judicial.¹¹

1.4 Judgment Categories and Prohibited Settlement Agreements

Article 18 of Supreme Court Regulation No. 1 of 2024 allows the settlement agreement to include the defendant's damages, performance, or forbearance. The agreement must eliminate characteristics that contravene law, public order, and/or decency, breach human rights as defined by relevant human rights legislation, injure third parties, or are unenforceable. Peace agreements and the defendant's willingness to accept responsibility for the victim's losses and needs are mitigating factors for sentencing and legal probation or supervision.¹² After imposing probation or supervision, the judge may set general and/or particular requirements to enforce alternative sanctions instead of incarceration for the criminal, guarantee adherence to the defendant-victim agreement, and compensate the victim.

Conditional sentences or court monitoring are available when the offense qualifies and the perpetrator has fulfilled all responsibilities or established an arrangement with the victim. When the defendant has negotiated with the victim but has not fully adhered to the agreement or when reconciliation is impossible, certain requirements may be imposed. General conditions last three years max. The judge may use any or all of the offender's unfulfilled agreement terms to impose special probation or supervision. Based on the previous explanation, SC Regulation No. 1 of 2024's decision framework includes restorative justice-based sentence reduction, prosecution-free or dismissal for a complaint offense that has been retracted within the legally prescribed period, and supervised or conditional criminal sentences.

2. The Concept of Narcotics Offenses as Cases Amenable to Resolution via a Restorative Justice Framework

SC Regulation No. 1 of 2024 only regulates criminal cases, including restorative justice for victim-related offenses, but not victimless ones. The Author advocates for restorative justice for crimes without identifiable victims, such as drug charges involving addicts or substance abusers. Drug addicts and users must participate in medical and social rehabilitation programs under Article 54 of Law No. 35 of 2009. Drug abuse victims unintentionally use drugs owing to persuasion, deception, coercion, or intimidation.¹³ Medical and social rehabilitation programs implement restorative justice for drug users and victims.¹⁴ Law No. 35 of 2009 and Supreme Court Circular Letter No. 4 of 2010 regulate medical and social rehabilitation for abusers, victims, and drug addicts.¹⁵

Rehabilitation stresses physical and mental healing for substance abusers.¹⁶ Drug addicts deserve rehabilitation.¹⁷ Given the rising prevalence of drug addiction in children and adolescents, drug addiction rehabilitation is essential. Rehabilitation is vital for drug sufferers because it's hard to overcome substance dependence alone. Drug users and addicts play victims while committing crimes.¹⁸ Rehabilitative sentencing

¹⁰ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 15 of SC Regulation No. 1 (2024).

¹¹ "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 16-17 of SC Regulation No. 1 (2024).

¹² "Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif," Article 19 of SC Regulation No. 1 (2024).

¹³ "Narkotika," Explanation Article 54 of Law No. 35 (2009).

¹⁴ Lindarda Panggalo S and Yulianus M. Rombeallo, "Rehabilitasi Sebagai Pemenuhan Restorative Justice Terhadap Penyalahgunaan Narkotika Di BNN Kabupaten Tana Toraja," *Unes Law Review* 6, no. 3 (2024), p. 9230.

¹⁵ Saragih Rayani, Maria Ferba, and Editnya Simanjuntak, "Penegakan Hukum Terhadap Penyalahgunaan Narkotika Di Indonesia," *Journal of Education Humaniora and Social Sciences (JEHSS)* 4, no. 1 (2021), pp. 98-105

¹⁶ Intan sari Permata, I Gusti Bagus Surwayan, and I Nyoman Sudjana, "Penegakan Hukum Terhadap Pecandu Narkotika," *Jurnal Analogi Hukum* 1, no. 1 (2019), pp. 11-15.

¹⁷ Gilang Fajar Shadiq, "Penegakan Hukum Terhadap Tindak Pidana Narkotika New Psychoactive Substances Berdasarkan Undang Undang Nomor 35 Tahun 2009 Tentang Narkotika," *Wawasan Yuridika* 1, no. 1 (2017), pp. 35-53.

¹⁸ Dina Novitasari, "Rehabilitas Terhadap Anak Korban Penyalahgunaan Narkotika," *Jurnal Hukum Khaira Ummah* 14, no. 4 (2019), p. 49.

prioritizes therapy and punishment over offender behavior.¹⁹ For drug users accused of crimes to receive legal aid.²⁰ Drug usage is no longer a crime under the new paradigm. The management should include drug user rehabilitation and drug maker, distributor, and trafficker jail time.²¹ In Eka Fitri's writings, Albert Eglash argues that criminal justice includes retributive justice, which punishes offenders, and distributive justice, which rehabilitates inmates.²² Thus, addicts or victims of abuse must be diagnosed and assessed as drug abusers.²³

Drug crime assessment encompasses legal and medical concerns.²⁴ In health, substance abusers are like chronic junkies who need rehabilitation, but in law, they are criminals who must be punished for breaking Law No. 35 of 2009. Thus, Law No. 35 of 2009 on Narcotics integrates these two approaches through rehabilitative penalties for drug usage instances.²⁵ Decision Letter of the Directorate General of Courts for General Jurisdiction Number 1691/DJU/SK/PS.00/12/2020 ("DL No. 1691 of 2020") about Restorative Justice Guidelines governs restorative justice drug offense resolution. Restorative Justice. The previous rule describes how restorative justice for drug offenses is implemented:

- a. According to Article 1 of the Joint Regulation issued by the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights, the Minister of Health, the Minister of Social Affairs, the Attorney General, the Chief of the National Police, and the Head of the National Narcotics Agency, restorative justice is only for addicts, abusers, victims of abuse, drug dependents, and occasional drug users.²⁶
- b. Restorative justice in narcotics cases is possible under certain conditions
 - (1) The Indonesian National Police and National Narcotics Agency found evidence of one day of use, as shown in the table below:

Table 1.
Details of Narcotics Evidence

No	Category	Weight
1	<i>Metamphetamine</i> (crystal meth)	1 gram
2	MDMA (Ecstasy)	2,4 gram 8 butir
3	Heroin	1,8 gram
4	Cocaine	1,8 gram
5	Cannabis	5 gram
6	Coca Leaf	5 gram
7	Mescaline	5 gram
8	Psilocybin	3 gram
9	LSD (<i>d-lysergic acid diethylamide</i>)	3 gram
10	Phencyclidine (PCP)	2 gram
11	Fentanyl	1 gram
12	Methadone	0,5 gram
13	Morphine	0,8 gram
14	Pethidine	0,96 gram
15	Codeine	72 gram

¹⁹ Yuliana Yuli W and Atik Winanti, "Upaya Rehabilitas Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana," Jurnal Hukum 10, no. 1 (2019), p. 78.

²⁰ Muhammad Hairul and Desi Anisah, "Tinjauan Yuridis Pasal 54 UU Narkotika: Rehabilitas Sebagai Solusi Bagi Pecandu Dan Korban Penyalagunaan Narkotika," Jurnal Ilmu Pertahanan, Politik, Dan Hukum Indonesia 1, no. 4 (2024), p. 106.

²¹ Rospita Adelina Siregar and Lila Pitri Widi Hastuti, "Restorative Justice Bagi Terpidana Pemakai Narkotika Golongan 1," Jurnal Hukum Kesehatan Indonesia 1, no. 1 (2021), p. 250.

²² Eka Fitri Andriyanti, "Urgensitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia," Jurnal Education and Development 8, no. 4 (2020), p. 315.

²³ Agung Firmansyah, "Peran Lembaga Assesmen Terpadu Dalam Penyelesaian Kasus Penyalahgunaan Narkotika Melalui Pendekatan Restorative Justice," IBLAM Law Review 2, no. 2 (2022), p. 77.

²⁴ Yusuf Saefudin Raharjo and Budiono, "Urgency Of Integrated Assessment on Drugs Crime (A Study in Purbalingga Regency)," Jurnal Dinamika Hukum 17, no. 1 (2017), p. 50.

²⁵ Wahyu Hariyadi and Teguh Anindito, "Pelaksanaan Assesmen Terhadap Pelaku Penyalahgunaan Narkotika Ditinjau Dari Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika," Jurnal Pendidikan Kewarganegaraan Undiksha 9, no. 2 (2021), p. 29.

²⁶ Haposan Sahala Raja Sinaga, "Penerapan Restorative Justice Dalam Perkara Narkotika Di Indonesia," Jurnal Hukum Lex Generalis 2, no. 7 (2021), p. 99.

16	Buprenorphine	32 gram
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- (2) The clerk certifies that the Prosecutor has included Integrated Evaluation Team evaluation results in each case file submission as required by Article 103 paragraph (1) and Article 127 of Law No. 35 of 2009.
- (3) When the case file is submitted without results, the court may instruct the prosecutor to provide Integrated Assessment Team results at trial.
- (4) The judge may order the defendant to call family members and relevant parties as mitigating witnesses in restorative justice.
- (5) The trial courts may order drug addicts and substance abusers to receive treatment and rehabilitation in medical and social facilities.
- c. In collaboration with the National Narcotics Agency, the court must list medical or social rehabilitation services. Restorative justice should apply to drug offenders. Medical and social rehabilitation represent restorative justice, notably for drug addicts and substance abusers. Thus, under Article 103 of Law No. 35 of 2009, judges presiding over drug cases can:
 - a. order treatment and/or rehabilitation if the drug addict is convicted²⁷; or
 - b. decide whether to order treatment and/or rehabilitation if the addict is acquitted²⁸

Substance users complete their sentence through therapy or rehabilitation. Thus, SC Regulation No. 1 of 2024 should include restorative justice for victimless offenses, such as narcotics, especially for addicts and substance abusers.

3. Verdict Types Not covered under SC Regulation 1 of 2024

SC Regulation No. 1 of 2024 only applies to three verdict categories: restorative justice for reduced sentencing, dismissal or rejection of prosecution, and conditional or supervised penalties. Several possibilities show how restorative justice can resolve criminal cases. SC Regulation No. 1 of 2024 should also control these decision types in addition to the three previously mentioned categories. Restorative justice verdicts include the following:

3.1 Restorative Justice as the Basis for Levying Fines

In case 39/Pid.Sus/2016/PN.Mjn, the Majene District Court refused the prosecutor's request for an eight-month prison sentence, violating Article 44 paragraph (1) of Law Number 23 of 2004 regarding the Elimination of Domestic Violence ("Law No. 23 of 2004"). The judges imposed a fine that comes with three months in prison if not paid. The judge's verdict reasoning integrates legal, social, philosophical, and victimological elements for restorative justice. The judge considered legal, social, and moral justice in sentence. Legal, social, and moral justice are evident in the idea that incarceration deters the Defendant from their duties as a husband and father to interact with their wife and kid. It is said "criminal law has not yet formulated regulations for resolving cases extrajudicially, thereby requiring a mechanism within the criminal justice system to enable case resolution, one of which is the restorative justice approach."

Restorative justice holds that crimes are not only violations of state and public interest but also disturbances or potential fractures in human relationships. Judges must help parties resolve disputes efficiently. According to the editorial, "the restoration of amicable relations between the victim witness and the defendant, alongside evidence of conflict resolution involving the defendant, the victim witness, and their families, is consistent with the principles of restorative justice," and "the evidence of conflict resolution among the defendant, the victim witness, and their respective families ultimately achieves the objective of Article 4 letter d of Law No. 23 of 2004, which aims to sustain a harmonious and prosperous household".

3.2 Restorative Justice as the Basis for Parental Reunification

The courts in case 41/Pid.Sus/2013/PN.Spg ordered the child's return to the parents. Carl von Savigny's maxim, states that law develops with society and that the judge's deliberation depends on penalties that respect justice, legal certainty, and utility. This agrees with Bagir Manan's claim that Indonesian law enforcement is "communis opinio doctorum," meaning it hasn't fulfilled legal goals. Thus, socio-cultural restorative justice is implemented. Restorative justice stresses criminal, victim, and community needs in law enforcement. The offender's acts also restore the community's condition, boosting legal recognition (revitalizing laws).

The judge's ratio decidendi is based on these factors:

²⁷ "Narkotika," Article 103 paragraph (1) letter a Law No. 35 (2009).

²⁸ "Narkotika," Article 103 paragraph (1) letter a Law No. 35 (2009).

- Restorative justice uses restorative discourse between the victim, perpetrator, their family, and community leaders to explain the crime and offender's background. Local community support to resolve issues outside the juvenile justice system is supposed to promote a non-punitive resolution that prioritizes the juvenile offender, victim, and community.
- Restorative justice embodies the Indonesian culture of resolving disputes through communication in a family-like manner to reach accord.
- A Peace Declaration dated April 19, 2013 recorded the Defendant's reconciliation and apology to the Victim and her family. This proclamation, signed by the Head of Pulau Mandangin Village, states that the Defendant will stop repeating his actions and that Imamul Muttaqin and his family will resolve the situation peacefully.

The Sampang District Court Decision Number: 41/Pid.Sus/2013/PN.Spg. sentence is "return to the parents." According to Article 82 of Law Number 11 of 2012, restorative justice allows the *judex facti* in the current case to administer "actions" more proportionately.²⁹

3.3 Restorative Justice as the Basis for a Ruling of Exoneration from All Legal Claims

According to the indictment, the public prosecutor sought a two-week prison sentence, one-month probation, the return of a gold bracelet and ring to the victim, and court fees for violating Article 315 of the Criminal Code. Despite the defendant's legal and persuasive conviction on the major, subsidiary, or additional accusations, the judge deemed the case peacefully settled, eliminating its status as a penal crime or offense. Judge acquitted defendant of all allegations.

The ratio decidendi of the judge's deliberations in the North-East Jakarta District Court Decision Number 46/PID/78/UT/WANITA is as follows:³⁰

- That the essence of justice in the judiciary is to restore the "gaps" (discrepancies) in relationships among members of society that have been disturbed, both generally and specifically due to someone's actions;
- That in this case, as evident in the statements and acceptance of apologies, as well as agreements on compensation or willingness to compensate between the parties, the actions have been restored, therefore there is no very principled reason to apply the law literally to the proven actions, even the imposition of such a punishment would cause, at the very least, a psychological scar that is no longer necessary among the parties;
- That in resolving cases amicably, whether before or during the trial, the court should consider this based on the explanation of Article 14 paragraph (1) of Law Number 14 of 1970, namely as a wise judge, based on the consideration of good relations between the parties, stating that the proven actions are no longer actions that can be punished."

As stated in Article 191 paragraph (2) of the Criminal Procedure Code (KUHP), an acquittal means the Public Prosecutor's allegations against the defendant are legally and convincingly supported. However, the culprit cannot be punished because the behavior is not unlawful. The expression "not a criminal offense" generally refers to action governed by legal areas other than criminal law, which civil, customary, and commercial courts have jurisdiction over.³¹

3.4 Restorative Justice as the Basis for the Verdict to Eliminate Criminal Punishment

In case Number 2/Pid.Sus-Child/2021/PN Rgt, the public prosecutor charged the minor with a crime under Article 363 paragraph (1) sub-paragraph 3 of the Criminal Code and Article 1 number 1 of Law Number 11 of 2012, recommending a three-month sentence. The court used restorative justice in accordance with DL No. 1691 of 2020 and Article 70 of Law Number 11 of 2020, not penalizing the juvenile for his small infraction. This is judicial pardon.

²⁹ From the standpoint of Child Criminal Justice System Law, the aspect of returning to parents via a "Diversion Agreement" employs the phrase "return to parents/guardians" as outlined in Article 10 paragraph (2) letter c, Article 11 letter a, and Article 21 paragraph (1) letter a, applicable in instances where a child under the age of twelve is suspected of criminal activity by Investigators, Community Supervisors, Professional Social Workers, and judges, as specified in Article 82 paragraph (1) letter an of Law No. 11 of 2012).

³⁰ Budi Suhariyanto, "Kedudukan Perdamaian Sebagai Penghapus Pemidanaan Guna Mewujudkan Keadilan Dalam Pembaruan Hukum Pidana," *Jurnal Rechts Vinding Media Pembinaan Hukum Nasional* 6, no. 1 (2017), pp. 113-114.

³¹ Lilik Mulyadi, *Hukum Acara Pidana Indonesia: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, Dan Putusan Peradilan* (Bandung: PT Citra Aditya Bhakti, 2012), p. 147.

Nico Keizer said this idea is justified because some perpetrators have met the burden of proof, yet punishing them would violate justice. Sentencing may conflict with legal clarity and justice.³²

Overly punitive sanctions affect jail occupancy rates, requiring a solution. Punishment is more complicated than thought. Judges decide the punishment, its execution, and its severity, thus this presumption is justified. This liberty does not mean judges can punish "according to personal preference" without standards. This shows that defining the type of criminal sanction (*strafsoort*), determining its duration (*strafmaat*), and executing it (*strafmodus*) are "territories" and "jurisdictions" that intersect with judicial independence in case adjudication.

3.5 Restorative Justice as the Basis for Penalizing Offenders to Comply with the Provisions of Peace Agreements

The application of restorative justice as a basis for sanctioning the offender in alignment with the agreement is demonstrated in the Record of Decision of the Rengat District Court Number 1/Pid.C/2021/PN Rgt, the Record of Decision of the Muko-Muko District Court Number 1/Pid.C/2021/PN Mkm, and the Record of Decision of the Luwuk District Court Number 9/Pid.C/2021/PN Lwk. The defendant received a swift examination about the accusation of violating Article 364 of the Criminal Code. The legal foundation for the judge's ruling on restorative justice is based on DL No. 1691 of 2020.

The establishment and implementation of the *ratio decidendi* of restorative justice underpin the judge's reasoning, articulated as follows:³³

- The judge regards the peace agreement as a manifestation of justice for the victim, the defendant, and society as a whole;
- This decade has witnessed a transformation in the criminal justice system, which now prioritizes not only the defendant and retribution but also the rights of victims and restorative penalties aimed at reinstating the original state, known as the restorative justice approach.
- In this approach, all parties, including the victim, the defendant, and relevant stakeholders, collaborate to achieve a fair resolution that emphasizes restoration over vengeance;
- Considering the severity of the defendant's actions and the tenets of restorative justice, legal efficacy, and societal justice, the judge supports the peace agreement established between the defendant and the victim. This is to enable the defendant's recognition of their misconduct, encourage personal rehabilitation, avert future criminal activity, restore the victim's rights, and bolster the victim's sense of safety;
- Consequently, the judge requires the defendant to comply with the peace agreement;

From the perspective of values and the punishment framework, the rationale of restorative justice asserts that the reconciliation process between the offender and the victim represents and actualizes justice for the victim, the offender, and society, ultimately serving as a model of punishment. Furthermore, the judge views restorative justice as occurring inside the sentence framework, but still acknowledging the committed offense. In the penal framework, the court imposes sanctions to uphold a peace agreement, representing a fusion of restorative justice between the perpetrator and the victim.³⁴

The adoption of restorative justice fosters a positive environment in the criminal justice system, prompting judicial decisions to prioritize substantive justice above procedural justice. Moreover, it will propose that the phrasing of the judge's ruling will yield a delicacy of legal certainty (*rechts-zekerheids*) as a juridical basis, justice (*gerechtigheit*) as a philosophical basis, and usefulness (*zweckmassigkeit*) as a sociological basis. The amalgamation of these three concepts will produce the facets of moral justice, social justice, and legal justice. The ideological divergence apparent in the *ratio decidendi* of the ruling indicates that judges are progressively abandoning the philosophy of retributive justice in favor of victimology and criminology, emphasizing victims' rights and aiming to restore the original state through punitive measures (*restitutio in integrum*).

³² Adery Ardhan Saputro, "Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP," *Jurnal Mimbar Hukum* 28, no. 1 (2016), p. 63.

³³ Budi Suhariyanto, dkk, *Kedudukan Perdamaian sebagai Penghapus Pemidanaan...*, p. 120.

³⁴ The peace agreement outlined in Decision Record Number 1/Pid.C/2021/PN Rgt has four articles.

Article 1: The defendant admits his conduct, conveys remorse, and pledges non-recurrence.

Article 2: The victim pardons the defendant's conduct and is amenable to reconciliation, provided that the offender refrains from repeating his crimes and does not seek any recompense;

Article 3: The full execution of this agreement shall commence upon the date of its signing;

Article 4: This agreement is established by the parties devoid of any elements of coercion, error, or dishonesty from any party;

CONCLUSION

The author asserts that SC Regulation No. 1 of 2024 is inadequate as it solely regulates standards for adjudicating criminal cases with victims. On the first day of the trial, once the indictment is read, the judge will permit the defendant to admit or dispute the charges, contingent upon the absence of any exceptions to the indictment. Subsequently, the judge will evaluate the victim to see if reconciliation has been achieved. A new agreement may alternatively be made by considering the provisions specified in SC Regulation No. 1 of 2024.

The author contends that victimless crimes, such as drug offenses, necessitate control under SC control No. 1 of 2024. Individuals afflicted by drug addiction are legally required to engage in medical and social rehabilitation as outlined in Article 54 of Law No. 35 of 2009. The incorporation of medical and social rehabilitation is essential to restorative justice, which seeks to reinstate the original condition. In conclusion, sanctioning drug users or individuals suffering from substance addiction provides no benefits. Imposing medical and social rehabilitation on the offender requires a recommendation from the designated assessment team, as mandated by Article 103 of Law No. 35 of 2009.

Furthermore, the Author contends that the three decision categories specified in SC Regulation No. 1 of 2024 are insufficient in providing judges with acceptable alternatives. The author suggests that supplementary decision-making processes might be regulated, encompassing the imposition of fines, actions against minors, the elimination of penalties, the issue of releases from all legal claims, and the execution of punishments to comply with peace agreements. Integrating various forms of verdicts will furnish judges with more options to choose the most relevant verdict concerning the offense within a restorative justice framework.

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