



## JURIDICAL ANALYSIS OF THE APPLICATION OF RESTORATIVE JUSTICE IN CASE OF NARCOTICS ABUSE IN THE DIRECTORATE OF DRUGS, POLDA KEPRI

Darsono Sitanggang<sup>1</sup>, Lagat Parroha Patar Siadari<sup>2</sup>, Dahlan<sup>3</sup>

<sup>1,2,3</sup>Master of Law, Faculty of Law, Universitas Batam

Email: <sup>1)</sup>[sitanggang.darsono1989@gmail.com](mailto:sitanggang.darsono1989@gmail.com), <sup>2)</sup>[lagut\\_siadari@yahoo.com](mailto:lagut_siadari@yahoo.com), <sup>3)</sup>[dahlan\\_ts@yahoo.com](mailto:dahlan_ts@yahoo.com)

### Abstract

*The construction of the journal topic above is: "Juridical Analysis of the Application of Restorative Justice in Narcotics Abuse Cases at the Directorate of Narcotics of the Riau Islands Police", with the formulation of the problem: What is the Legal Arrangement, Implementation and Supervision of the Application of Restorative Justice in Narcotics Abuse Cases at the Directorate of Narcotics of the Riau Islands Police? The type of writing is normative legal, using legal research methodology, supported by secondary data, and using a qualitative approach, and to obtain secondary data obtained through library research (library research), and to obtain primary data obtained through field research at the Directorate of Narcotics of the Riau Islands Police. For grand theory using the legal theory of policy by James E. Anderson, middle theory uses implementation law theory by Van Meter and Va Horn and applied theory uses Robert J. Mockler's supervisory law theory. The results of the analysis concluded that the legal arrangements for applying the concept of restorative justice to narcotics abusers committed by the Indonesian National Police have been regulated in Indonesian National Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice and SEMA Number 4 of 2010 concerning Placement of Victim Abuse Narcotics Abuse and Addicts into Medical and Social Rehabilitation Institutions. The application of restorative justice is very good for enforcing the law of narcotics abusers with the aim of returning to the original condition of the health of narcotics abusers.*

**Keywords :** *Narcotics abusers, Restorative Justice and Rehabilitation*

### 1. INTRODUCTION

Users or users of Narcotics apart from being perpetrators of criminal acts, are also victims of the crime itself, which in the view of victimology is often referred to as self-victimization or victimless crime. Theoretically, sentencing has several objectives that can be classified based on theories about sentencing. The theory of treatment is an integrated process of treatment activities to free abusers from dependence. This is in accordance with the punishment intended by the stream of treatment theory, namely, to provide treatment and rehabilitation to the perpetrators of criminal acts as a substitute for punishment. The perpetrator of the crime is a sick person who needs treatment and improvement.

To achieve healing for victims of narcotics abuse from dependence, the punishment that should be given to them is coaching and rehabilitation. The policy to restore the condition of narcotics users or users in the form of punishments for coaching and rehabilitation has been regulated in Article 54 and Article 103 of Law Number 35 of 2009 concerning Narcotics. It is also regulated in SEMA Number 7 of 2009 regarding the placement of narcotics users in therapy and rehabilitation homes, as well as SEMA Number 4 of 2010 regarding the Placement of Victims of Abuse and Narcotics Addicts in Institutions for Medical Rehabilitation and Social Rehabilitation.

Then in SEMA Number 4 of 2010 appealed to judges examining cases of narcotics addicts to apply the provisions of Article 47 of Law Number 35 of 2009 concerning narcotics which contains rehabilitation measures ordered to be carried out by narcotics addicts. This is based on the consideration that most convicts and detainees in drug cases fall into the category of users or even as victims, when viewed from a health perspective, they are actually sick people. Therefore,

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imprisoning the person concerned is not the right step because it has ignored the interests of care and treatment.

In dealing with narcotics abusers and addicts, law enforcement officials must be oriented towards action sanctions in the form of rehabilitation in order to save the future of narcotics users. To be able to function the role of judges in deciding or determining rehabilitation, it needs support from other law enforcement officials. Of course, this must be based on mutual understanding and agreement that narcotics abuse is a serious problem for the nation and an enemy of the nation. The government and law enforcement officials must unite and equate the vision and mission to tackle narcotics abusers and addicts in order to realize the noble ideals of the nation to create a healthy nation's generation.

Understanding and agreement from the government and law enforcement officials in tackling narcotics crimes is realized through joint regulations of the Chief Justice of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of Police Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia regarding the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions, hereinafter referred to as joint regulations. Thus, narcotics abusers and addicts no longer lead to criminal sanctions in prison but lead to rehabilitation.

Based on the joint regulation, an Integrated Assessment Team was formed which was based at the central level, provincial level, district/city level consisting of a team of doctors and a legal team whose task was to carry out an analysis of the role of suspects who were arrested at the request of investigators related to the illicit trafficking of narcotics, especially addicts. The team then carried out legal analysis, medical analysis and psychosocial analysis and made a rehabilitation plan that included how long rehabilitation would take. The results of the assessment as completeness of the case file function as information such as visum et repertum. The results of the analysis will sort out the roles of suspects as abusers, abusers who are also dealers or dealers.

However, in reality the implementation of rehabilitation policies for narcotics users for themselves has not met expectations. Judges generally decide on prison sentences for narcotics users for themselves as perpetrators of criminal acts of narcotics dealers. This means that in the field there has been a gap phenomenon between *das sollen* (what should be according to the laws and regulations) and *das sein* (the reality is not in accordance with what exists and is found in the field). This can be seen from the condition of Correctional Institutions based on data from the Directorate General of Corrections for 2019 which are already over capacity with around 50,000 (fifty thousand) abusers imprisoned.

One of the reasons for the implementation of imprisonment for narcotics users for themselves as perpetrators of narcotics traffickers is the lack of clear boundaries between dealers, users/addicts and narcotics victims. Law Number 35 of 2009 concerning Narcotics does not provide sufficient limits on who is a dealer and who is an addict, and also that narcotics abusers are given room for imprisonment as referred to in Article 127 paragraph 1 letter a provides criminal sanctions maximum imprisonment of 4 (four) years for class I (one) narcotics abusers for themselves, so that narcotics abusers can be imprisoned and can be rehabilitated.

One of the policies pursued by the Indonesian National Police in handling criminal acts is to enact Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice. This Police Regulation was enacted with the consideration that the National Police of the Republic of Indonesia needs to realize the settlement of criminal acts by prioritizing restorative justice which emphasizes restoration to its original state and balancing the protection and interests of victims and perpetrators of criminal acts that are not oriented towards punishment is a legal requirement of society.

Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the handling of criminal acts of restorative justice adopts a policy of carrying out direct rehabilitation



of narcotics victims and abusers without submitting them to prosecution and/or to court first. This is the policy of the Chief of Police of the Republic of Indonesia Listyo Sigit Prabowo to realize the vision before replacing the National Police Chief Idham Azis with the concept of the idea of "precision" namely predictive, responsive, transparent and fair.

In addition to the investigation stage carried out by the Police, in the pre-prosecution stage the Attorney also makes a policy to carry out rehabilitation for narcotics abusers, this is in accordance with the Guidelines issued by the Attorney General of the Republic of Indonesia Number 18 of 2021 dated 1 November 2021 concerning the settlement of handling cases of criminal acts crime of narcotics abuse through rehabilitation with a restorative justice approach as the implementation of the prosecutor's dominus litis principle. With cases of criminal acts of narcotics abuse that are not being rehabilitated by police investigators, the prosecutor's office also makes a policy to carry out direct rehabilitation of victims and narcotics abusers without bringing them to justice.

Based on this description, the application of Restorative Justice carried out by the Police and the Attorney General's Office in narcotics abuse cases is a policy that has not been regulated in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, especially in the handling of victims of narcotics abuse. This requires a study for problem solving in order to obtain input as material for consideration in carrying out the policy of implementing Restorative justice in narcotics abuse cases in accordance with the expected goals. Based on this, this study wishes to further discuss the application of restorative justice to cases of narcotics abusers with the title: JURIDICAL ANALYSIS OF APPLICATION OF RESTORATIVE JUSTICE IN CASE OF NARCOTICS ABUSE IN THE DIRECTORATE OF DRUGS, POLDA KEPRI.

## 2. LITERATURE REVIEW

In this section, we will explain the guidelines as a source of literature. Related to this, and adjusted for the variables as set out in the central theme of this journal, in essence the source of literature that will be used as one of the materials to analyze the construction of the problem formulation is to rely on literature sources originating from secondary data and supported by secondary data. primary.

Related to what has been mentioned in the section above, that the use of literature sources from secondary data, in its manifestation is based on several types of secondary data literature, which in essence secondary data consists of primary legal materials, secondary legal materials and legal materials. tertiary law, all of which were obtained through library research. And on primary data conducted interviews with investigators from the Directorate of Narcotics of the Riau Islands Police.

## 3. METHODOLOGY AND THEORETICAL FOUNDATION

Specifically regarding the type of writing, methodology and theoretical basis, in principle it will be adjusted to the construction, variables as set out in this journal, and in line with the intended matter also adjusted to several key matters as described in the background section as mentioned above. Therefore, this type of journal writing is normative in nature, which is supported by sociological/empirical writing. Related to this in the section above, matters relating to the methodology are carried out legally research, and by using interviews with investigators from the Directorate of Narcotics of the Riau Islands Police. For the theoretical basis, namely by using the legal theory of policy by James E. Anderson as a grand theory.

### Discussion

Henceforth in this section an analysis/discussion will be carried out on the construction of the problem formulation as described in the section above. In the context of carrying out the analysis, it will be carried out in two stages and/or divided into two groups, the analysis/discussion of which is as presented in the section below.

#### 1. Construction of legal arrangements for the application of restorative justice in

**narcotics abuse cases at the Riau Islands Police Narcotics Directorate.**

Now, the time has come to carry out an analysis/discussion of the construction of the problem formulation presented in this journal. For this reason, in this first part an analysis/discussion of content relating to the construction of legal arrangements for the application of restorative justice in narcotics abuse cases at the Directorate of Narcotics of the Riau Islands Police will be carried out. In this regard, previously an explanation will be given regarding the meaning and nature of the essence of the legal regulation itself. What is meant by legal arrangements, especially in the perspective of legal science, actually means statutory regulations in written form. Related to this, in the context of the repertoire of legal science, the legislation,

In line with the things that have been mentioned in the section above, and in relation to the content that will be analyzed in this section, it will be interpreted in advance regarding the meaning and meaning of investigating narcotics crimes, investigating narcotics crimes, enforcing narcotics abuse laws and continuing with regulations the law on the application of the concept of restorative justice to cases of narcotics abusers at the investigative level, as will be explained in the section below.

1) Narcotics Crime Investigation

The content that will be analyzed in this section is substantially related to the investigation of narcotics crimes. The process of investigating a criminal act is carried out after it is known that an event that occurred is a criminal act, and an event that occurs which constitutes a criminal act is known because there is a report or complaint from someone, both written and verbal, which is written and recorded by the investigator or assistant investigator or investigator, then it is put in a Police report signed by the complainant or complainant and the investigator or auxiliary investigator or investigator,

2) Narcotics Abuse Crime

Narcotics abuse is actually a criminal act so that it is appropriate for the perpetrators to carry out the legal process as is appropriate for law enforcement in other criminal cases. Based on Law Number 35 of 2009 concerning Narcotics, narcotics abuse should be a criminal act which has implications for imposing criminal sanctions on the perpetrators. However, specifically for the problem of narcotics abuse, a criminal law policy is needed that positions narcotics abusers as victims, not perpetrators of crimes. Law Number 35 of 2009 concerning Narcotics, judges have the authority to pass a sentence on someone who is proven to be a narcotics addict for rehabilitation. Implicitly, this authority recognizes that drug addicts,

3) Legal Position of Restorative Justice

Law enforcement in Indonesia cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure Code because it refers to the implementation of formal law. With law enforcement, the concretization form is criminal imposition or sanctions. In this regard, there are three basic meanings in criminal law, namely unlawful nature, guilt and punishment. And apart from being synonymous with formal law, enforcement must also be based on the rules it makes. With regard to the making of these regulations, there is one stream and one theory, namely the Utilitarianism School with its character Jeremy Bentham, which basically states that every regulation made must have a use value for society.

Indonesian law enforcement, especially criminal acts against victims of narcotics abusers, can be said to be "communis opinio doctorum", which means that law enforcement is now deemed to have failed in achieving the goals required by the law. Therefore, an alternative law enforcement is permitted, namely the Restorative Justice System, where the approach used is a sociocultural approach and not a normative approach.

**2. Implementation and supervision of the application of restorative justice in cases of narcotics abusers**

Paying attention to the content that will be analyzed in this section, substantially there are three contents that must be analyzed, namely regarding Implementation, then the constraints and



solutions related to efforts to protect Indigenous Peoples' Land Rights, of course in the dimension of sustainable constitutionalism, as further The analysis is presented in the section below.

- 1) Implementation of the Implementation of Restorative Justice in cases of narcotics abusers at the Directorate of Narcotics of the Riau Islands Police.

Related to implementation In carrying out case resolution by stopping investigations for the sake of law through Restorative justice at the Narcotics Directorate of the Riau Islands Police that narcotics crimes that can be stopped by investigations are only criminal acts of narcotics abusers who are suspected of only consuming or using class I narcotics, not being involved in the network to distributes narcotics, and is also not a recidivist. This must be determined by the investigator in the early stages in accordance with the results of the investigation. Furthermore, the perpetrators can be submitted for assessment at the Riau Islands Province National Narcotics Agency. In the implementation of the Assessment it was also reviewed that the perpetrator was included in the category for outpatient or inpatient rehabilitation or did not meet the requirements for rehabilitation.

- 2) Supervision of investigators

Police investigators may take discretionary actions as long as they are within the path determined by the law itself. Investigators can take other actions during the investigation other than those stated in the statutory rules and as long as it is in the interest of police duties, even though the police have been given the authority by law to take other actions, still the police must be able to be held accountable for all actions and decisions that have been taken in carrying out their duties. This is intended so that the police do not abuse their authority, bearing in mind that the authority to take other actions by the police during the investigation is so broad.

#### 4. CONCLUSION

In this concluding section, the time has come to present conclusions and at the same time suggestions from all analytical and/or explanatory constructs as presented by the author in the section above, which further conclusions are presented in the section below.

1. The regulation of restorative justice in narcotics abuse cases has been regulated in the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice and SEMA Number 4 of 2010 concerning Placement of Victims of Abuse and Narcotics Addicts into Institutions for Medical Rehabilitation and Social Rehabilitation. Thus the legal basis for implementing restorative justice is sufficient enough to be applied in the process of law enforcement for narcotics abusers.
2. Implementation of the application of the Restorative justice concept carried out by police investigators must meet the material requirements and special requirements by placing the perpetrators of the crime of Narcotics Abuse in a rehabilitation center for inpatient or outpatient rehabilitation with the aim of restoring the original condition of narcotics abusers so that they can be accepted in a free society narcotics. Supervision of police investigators in carrying out the application of restorative justice in narcotics abuse cases is carried out by internal supervisors of the Directorate General of Narcotics and Drug Administration, Bidkum, Irwasda and Bidpropam. and also external supervisors consisting of Commission III DPR RI, Kompolnas, Ombusman RI and Komnas HAM.

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