

LEGAL CERTAINTY OF TERMINATION OF INVESTIGATIONS ON DRUG ABUSERS THROUGH RESTORATIVE JUSTICE BASED ON SUPREME COURT CIRCULAR LETTER NUMBER 1 OF 2026 CONCERNING GUIDELINES FOR IMPLEMENTATION OF THE 2023 CRIMINAL CODE AND THE 2025 CRIMINAL PROCEDURES

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Received: 05/09/2026 | Revised : 12/09/2026 | Accepted: 30/09/2026 | Published 16/10/2026

Abstract

Termination of investigations against drug abusers through a restorative justice approach is a new paradigm in the Indonesian criminal justice system after the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code and Supreme Court Circular Letter Number 1 of 2026 concerning Guidelines for the Implementation of the 2023 Criminal Code and the 2025 Criminal Procedure Code. However, its implementation still faces various legal certainty issues, starting from the clarity of the qualification categories of abusers based on Law Number 35 of 2009 concerning Narcotics and Supreme Court Circular Letter Number 4 of 2010, the accountability of the Integrated Assessment Team (TAT) when evidence exceeds the quantitative provisions in the SEMA a quo, the position of Joint Regulation Number 01/PB/MA/III/2014 as a reference material after the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code, the relationship between SEMA Number 1 of 2026 and existing implementing regulations for restorative justice (Perpol, Perja, and Perma), to the impact of the SEMA a quo on the determination of the Head of the District Court on the request to terminate the investigation. This study aims to analyze the legal certainty of terminating the investigation of drug abusers through restorative justice based on these provisions. The study uses a normative legal research method with a statutory, conceptual, and case approach, supported by empirical data through interviews with law enforcement officers. The analysis was conducted qualitatively using the Theory of Legal Certainty, Theory of Restorative Justice, Theory of Accountability, and Theory of the Legal System. The results of the study indicate that the existing regulations have not fully provided legal certainty because the parameters for qualifying drug abusers have not been consistently integrated between the Narcotics Law, SEMA 4/2010, and the work results of the TAT; there is no accountability standard for the TAT in conditions of deviation from SEMA 4/2010; the position of the 2014 Joint Regulation and other RJ implementing regulations after the new Criminal Code/Criminal Procedure Code is unclear; and the limits of the authority of the Head of the District Court in determining the termination of the investigation are not yet clear. Therefore, it is necessary to improve regulations through more comprehensive arrangements, harmonization of implementing regulations, and strengthening institutional accountability in order to realize legal certainty in the application of restorative justice to drug abusers.

Keywords: legal certainty, qualifications of abusers, Integrated Assessment Team, restorative justice, termination of investigation.

INTRODUCTION

Indonesia is one of the countries that demonstrates a strong commitment to tackling drug crimes, which have a widespread impact on people's lives. These efforts are carried out through a continuous preventive and repressive approach. The preventive approach is aimed at preventing crimes before they occur, including through education on the dangers of drug abuse, public education, and a national campaign to build awareness and an anti-narcotics attitude. Meanwhile, the repressive approach is realized through law enforcement by imposing criminal sanctions on all perpetrators of drug crimes in accordance with applicable laws and regulations.

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The development of narcotics use shows a shift in function over time. Initially, narcotics were used as part of religious rituals and for medicinal purposes. With advances in science and healthcare, narcotics continue to play a vital role as substances used in medicine for specific therapeutic purposes. However, drug abuse beyond medical purposes can lead to various negative impacts, particularly dependence, which negatively impacts the physical, mental, and social health of users.

Drug abuse remains a complex legal issue in Indonesia, as it encompasses not only law enforcement but also health, social, and human rights dimensions. For years, drug abuse has been handled primarily through a repressive, criminal-oriented approach. This approach has not been entirely effective in suppressing drug abuse or reducing recidivism rates, and has even contributed to the increase in prison inmates, the majority of whom are convicted of drug offenses. This situation demonstrates that criminalization alone is not an effective solution for dealing with drug abusers, both as perpetrators and as victims of addiction.

The starting point of this problem actually lies at the very first stage, namely determining the qualification category of a person as a Narcotics Abuser. Law Number 35 of 2009 concerning Narcotics clearly distinguishes between Abusers, Addicts, Victims of Abuse, and narcotics dealers/dealers, with different legal consequences, where Abusers for themselves are entitled to medical and/or social rehabilitation. This provision was then operationalized through Supreme Court Circular Letter Number 4 of 2010 which contains categories of the amount and type of narcotics evidence that can be considered as one day's use for oneself, as an initial indicator to distinguish abusers from dealers. The determination of this qualification is formally established through the recommendations of the Integrated Assessment Team (TAT), which works based on Joint Regulation Number 01/PB/MA/III/2014 jo. Regulation of the Head of the National Narcotics Agency Number 11 of 2014, through stages of medical assessment and legal assessment to recommend the status of a suspect as a drug abuser and his/her eligibility to undergo medical and/or social rehabilitation.

Problems arise when the weight or amount of evidence found on a suspect exceeds the threshold as stipulated in SEMA Number 4 of 2010, but the TAT still recommends the person concerned as an abuser based on other considerations, such as urine test results, history of use, or psychosocial conditions. In such conditions, the accountability of the TAT becomes crucial to ensure, considering that the recommendation has the potential to be misused if it is not accompanied by a transparent and testable basis for consideration, while on the other hand, too rigid application of the quantitative parameters of the SEMA a quo also risks ignoring the real clinical condition of an abuser.

The issue is complicated by major changes in the national criminal procedure framework with the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) and Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP 2025). Joint Regulation Number 01/PB/MA/III/2014 was drafted based on the old criminal procedure framework, raising questions about whether the regulation is still relevant as a reference for the implementation of assessment and rehabilitation, or whether it needs to be reviewed to align with the new mechanisms in the 2025 KUHAP, including the authority of the Chief Justice of the District Court to determine the termination of investigations based on restorative justice. Similar questions also apply to other implementing regulations for restorative justice that were enacted before the 2023 Criminal Code and the 2025 Criminal Procedure Code, namely the Republic of Indonesia National Police Regulation Number 8 of 2021, the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, and the Supreme Court Regulation Number 1 of 2024, whose positions need to be clarified following the issuance of Supreme Court Circular Letter Number 1 of 2026 as a guideline for the implementation of these two laws.

The problem is further complicated by the Supreme Court Circular Letter Number 1 of 2026 concerning Guidelines for the Implementation of the 2023 Criminal Code and the 2025 Criminal Procedure Code not yet explicitly regulating the mechanism for resolving narcotics evidence in cases terminated through restorative justice. On the one hand, narcotics evidence is an object that, according to statutory provisions, must be destroyed based on a valid determination. On the other hand, when the Chief Justice of the District Court has issued a decision authorizing the termination of a case, there is no clear regulation regarding whether the decision also covers the status of the evidence or requires a separate legal mechanism. This gap has the potential to create legal uncertainty in the implementation of case termination, especially if the application is not accompanied by documents or information regarding the status of the seized narcotics.

Furthermore, the Chief Justice's decision to authorize the termination of a case carries significant legal consequences because there is no pretrial mechanism to review the decision. Consequently, if it is later discovered

that the requirements for case termination have not been fully met, there is no clear mechanism to return the case to the investigation or prosecution process. This situation demonstrates the existence of legal certainty and accountability issues in the implementation of case termination based on Supreme Court Circular Letter Number 1 of 2026.

More specifically, criticism of legal certainty in the implementation of the termination of investigations against drug abusers through restorative justice based on Supreme Court Circular Letter Number 1 of 2026 can be identified into five main aspects. First, the clarity of the qualification categories of drug abusers based on Law Number 35 of 2009 and Supreme Court Circular Letter Number 4 of 2010, as well as how the Integrated Assessment Team works in recommending drug abuser status and rehabilitation eligibility. Second, the accountability of the Integrated Assessment Team if the Suspect is still recommended as a drug abuser even though the evidence found exceeds the provisions of SEMA Number 4 of 2010. Third, the position of Joint Regulation Number 01/PB/MA/III/2014 as a reference for implementing rehabilitation after the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code, including whether or not the regulation needs to be reviewed. Fourth, the status of existing restorative justice implementing regulations, namely the Police Regulation, the Prosecutor's Office Regulation, and the Supreme Court Regulation, after the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code. Fifth, the impact of Supreme Court Circular Letter Number 1 of 2026 on the implementation of restorative justice and on the authority of the Chief Justice of the District Court to determine requests for termination of investigations. These five aspects are the main starting point of this research.

Repressive countermeasures in Indonesia are implemented by the government through various law enforcement agencies, including the National Narcotics Agency (BNN), based on the provisions of Law Number 35 of 2009 concerning Narcotics. In addition to law enforcement, the BNN also provides rehabilitation programs for drug addicts and abusers as part of its recovery efforts, encompassing medical services, social rehabilitation, mental health development, education, and religious guidance.

In addition to legal certainty, accountability in case termination is also a crucial concern. The authority to terminate cases granted to law enforcement officers must be implemented based on the principles of transparency, professionalism, objectivity, and accountability. Without adequate oversight mechanisms, case termination policies have the potential to lead to abuse of authority, unequal treatment, and even corrupt practices that can undermine public trust in the criminal justice system. Therefore, strengthening the accountability system is a crucial prerequisite for the implementation of restorative justice.

These issues demonstrate the close relationship between legal certainty and accountability in the implementation of the termination of drug abuse cases, from the qualification determination stage to the decision by the Chief Justice of the District Court. These two aspects are the foundation for realizing restorative justice that not only benefits the perpetrator but also safeguards the interests of society and the integrity of the criminal justice system.

From an academic perspective, research on restorative justice-based drug abuse case termination is still dominated by discussions on the effectiveness of rehabilitation and the implementation of restorative justice during the investigation and prosecution stages. Research specifically examining the relationship between the qualifications of drug abusers, the accountability of the TAT, the status of the 2014 Joint Regulation, and the relationship between SEMA Number 1 of 2026 and other implementing regulations for restorative justice following the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code is still relatively limited. This situation indicates a research gap that is important to examine in more depth through the five aspects of legal certainty criticism as described above.

LITERATURE REVIEW

Legal Certainty in the Criminal Justice System

Legal certainty is one of the primary objectives of law, requiring clarity regarding norms, the subjects subject to the norms, the authority of the institutions enforcing the norms, and the legal consequences arising from the application of a provision. In the context of criminal law and criminal procedure, legal certainty is even more important because every action by law enforcement officers is directly related to the restriction of an individual's rights and freedoms. Therefore, investigations, suspect determination, detention, termination of investigations, and resolution of cases through restorative justice mechanisms must have a clear, predictable, and accountable legal basis.

Legal certainty does not merely mean that a provision has been set out in written regulations. Legal certainty also requires consistency between one norm and another and uniformity in their application. If multiple regulations govern the same object but have different parameters, procedures, or legal consequences, uncertainty can arise in practice. This condition is relevant in handling drug abuse because a person's qualification as an abuser is not determined solely by a single legal instrument, but involves the Narcotics Law, Supreme Court policies, integrated assessment mechanisms, and technical provisions issued by each law enforcement institution.

From this research perspective, legal certainty is used to examine whether the mechanism for terminating investigations of drug abusers through restorative justice provides clear parameters from the suspect identification stage to the issuance of a decision to terminate the investigation. This certainty includes certainty regarding who can be categorized as an abuser, the requirements that must be met, the institution authorized to conduct the assessment, the procedures that must be followed, and the legal consequences of the decision to terminate the investigation.

The Concept of Drug Abuse and Rehabilitation

Law Number 35 of 2009 concerning Narcotics establishes a legal framework that distinguishes between abusers, addicts, victims of abuse, and those involved in the illicit trafficking of narcotics. This distinction has distinct legal consequences. Narcotics abusers themselves are essentially placed within a framework that allows for the implementation of medical and/or social rehabilitation as part of the case resolution.

This construction demonstrates that the treatment of drug abusers cannot be entirely equated with that of dealers or dealers. Drug abusers can be both criminals and individuals in need of health intervention. Therefore, law enforcement processes for drug abusers must balance the interests of law enforcement with the need for rehabilitation.

Supreme Court Circular Letter No. 4 of 2010 plays a crucial role in practice, providing guidelines for the placement of drug abusers, victims of abuse, and addicts in rehabilitation institutions. One element frequently used in practice is the parameter of the type and quantity of narcotics that can be considered daily use. This quantitative parameter is intended to help distinguish between self-reported users and those suspected of involvement in drug trafficking.

However, quantitative parameters do not always fully describe a person's condition. A person's status as a substance abuser can also be related to their history of use, level of dependence, medical examination results, psychological condition, and other factors identified during the assessment process. Therefore, there is a need to reconcile normative parameters with individual assessment results to ensure that the determination of substance abuse status is not based solely on a single indicator.

The problem becomes more complex when the amount of evidence exceeds the limits stipulated in SEMA Number 4 of 2010, while the assessment results still conclude that an individual is a drug abuser and requires rehabilitation. In such situations, clear standards are needed regarding the relationship between quantitative parameters, medical assessment results, legal assessments, and law enforcement decisions. This unclear relationship can impact legal certainty in determining whether a case should be dismissed through restorative justice mechanisms.

Integrated Assessment Team and Its Accountability

The Integrated Assessment Team is a crucial instrument in the drug abuse management system because it integrates medical and legal dimensions in determining the condition and making recommendations for suspects. This approach essentially represents a paradigm shift from one solely focused on punishment to one that considers the need for rehabilitation.

A medical assessment is necessary to determine a person's dependency status and rehabilitation needs, while a legal assessment is needed to determine the suspect's legal standing based on the facts and circumstances of the case. Therefore, the TAT recommendation serves a strategic purpose because it can serve as a basis for law enforcement officials in determining the form of case resolution.

However, this strategic position also raises the demand for accountability. TAT recommendations must be traceable, supported by adequate audit data, and based on verifiable procedures. Accountability becomes even more crucial when TAT recommendations differ from indicators contained in previous guidelines, for example, when the amount of evidence exceeds the quantitative limits stipulated in SEMA Number 4 of 2010.

In such circumstances, a mechanism is needed to explain the professional and legal rationale behind TAT recommendations. Recommendations that differ from normative parameters do not necessarily indicate wrongdoing,

as individual circumstances for abusers can vary. However, deviations from established parameters must be accompanied by transparent and verifiable arguments. Therefore, TAT accountability relates not only to the outcome of the recommendations, but also to the process and rationale behind them.

In this study, accountability theory is used to analyze whether the assessment implementation has adequate accountability mechanisms, particularly in situations where the assessment results form the basis for terminating an investigation through restorative justice. This accountability encompasses aspects of authority, procedures, documentation, rationale for decisions, oversight, and the possibility of evaluating recommendations.

Restorative Justice in Criminal Case Resolution

Restorative justice is an approach to resolving criminal cases that prioritizes restoration. Unlike the retributive paradigm, which emphasizes retribution through punishment, restorative justice seeks to reconcile the interests of the perpetrator, victim, community, and justice system to produce a more proportionate and restorative resolution.

In the development of Indonesian criminal law, the principle of restorative justice has begun to be incorporated into various law enforcement policy instruments. At the police, prosecutors, and court levels, instruments exist that provide space for resolving certain cases based on restorative justice principles. This development demonstrates a tendency to expand case resolution beyond conventional court mechanisms, provided they meet specified requirements.

In drug abuse cases, the restorative justice approach has unique characteristics. Abusers are not always positioned solely as perpetrators who must be punished; they can also be individuals in need of rehabilitation. Therefore, recovery through rehabilitation can be seen as a more appropriate solution to the characteristics of drug abuse than imprisonment in certain circumstances.

However, the implementation of restorative justice must remain within the framework of legality and legal certainty. Restorative justice should not be a basis for ignoring legal requirements or providing differential treatment without justifiable grounds. Therefore, the flexibility characteristic of restorative justice must be balanced with clear procedural standards.

This issue became crucial following the amendments to the national criminal code through the 2023 Criminal Code and the 2025 Criminal Procedure Code. The new legal framework requires that all existing implementing regulations and institutional policies be read in harmony with the new provisions. Supreme Court Circular Letter No. 1 of 2026 is crucial in the context of this research because it serves as a guideline for implementing these changes, including the application of case resolution based on the principles of restorative justice.

Harmonization of Regulations in the Implementation of Restorative Justice

The implementation of restorative justice for drug abusers involves various institutions and legal instruments. This situation makes regulatory harmonization an indispensable necessity. Regulations issued by the police, prosecutors, and the Supreme Court in the period before the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code need to be reviewed for their alignment with the new legal framework.

Indonesian National Police Regulation Number 8 of 2021, Prosecutor's Office Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 are part of the development of restorative justice policies in the Indonesian criminal justice system. Each of these instruments has a distinct scope and institutional character. Legal issues can arise if older provisions are still used after the enactment of new legal provisions, but there is no clarity regarding which norms should be maintained, adjusted, or declared irrelevant.

Joint Regulation No. 01/PB/MA/III/2014 also holds a crucial position in the context of drug abuse management. This instrument was created to strengthen inter-agency coordination in the management of drug addicts, victims of abuse, and abusers through assessment and rehabilitation mechanisms. However, changes in the criminal justice system and criminal procedure require a reassessment of its position within the new legal system.

From a legal harmonization perspective, the validity of a regulation is determined not only by whether it has not been formally revoked, but also by its alignment with higher norms and the development of the legal system that underpins its formation. Therefore, an assessment of the substance of the 2014 Joint Regulation and various implementing regulations for restorative justice is necessary to ensure there are no normative conflicts, legal gaps, or overlapping authorities.

The Authority of the Chief Justice of the District Court in Terminating Investigations

One important aspect in the development of restorative justice mechanisms is the involvement of the courts in legitimizing case terminations. This involvement demonstrates that case terminations are not solely an internal decision of investigators, but are subject to specific judicial oversight mechanisms.

In the context of this research, the determination of the Chief Justice of the District Court is a crucial issue because it relates to the limits of the court's authority to authorize the termination of an investigation. Legal certainty requires clarity regarding whether the Chief Justice of the District Court only conducts an administrative examination of the application or also has the authority to assess the substance of the requirements for restorative justice.

This authority must be distinguished from the authority to adjudicate the underlying case. If the court is authorized to order the termination of an investigation, clear parameters must be provided regarding the scope of the investigation, the required documents, the form of the decision, and the legal consequences following the decision's issuance.

The issue becomes even more significant if, after the termination decision is issued, it is discovered that there were errors in fulfilling the requirements. Therefore, the legal system needs to provide a proportional correction or oversight mechanism without diminishing the legal certainty of the decision. Clarity regarding the finality of the decision and the possibility of correction is part of the protection of all parties involved in the process.

The Position of Narcotics Evidence in Case Termination

Narcotics evidence has special characteristics because it is an object whose distribution and control are strictly restricted by law. Therefore, terminating an investigation through restorative justice does not automatically resolve the issue of the evidence's status.

In a terminated case, there must be clarity regarding who is responsible for the seized items, their legal status after the case is terminated, and the legal basis for further action against the evidence. Ambiguity regarding these aspects can lead to procedural gaps, particularly if the termination of the investigation does not explicitly address the status of the narcotics evidence.

Certainty regarding the status of evidence is also related to the principle of accountability. All evidence in the possession of law enforcement officials must be traceable, recorded, and processed in accordance with legal provisions. Therefore, mechanisms for terminating cases through restorative justice must be integrated with evidence management mechanisms.

METHOD

1. Research methods

This research uses a normative legal research method supported by empirical data as a complement to obtain an overview of the implementation of the termination of investigations for drug abusers based on restorative justice.

2. Types of research

The type of research used is normative legal research, supported by a limited empirical approach through interviews with law enforcement officers, including members of the Integrated Assessment Team, to obtain information regarding the implementation of legal provisions in practice.

3. Research Approach

The approaches used in this research include:

- a. Statutory Approach, namely an approach carried out by examining laws and regulations related to the termination of investigations of drug abusers, especially Law Number 20 of 2025, Law Number 1 of 2023, Law Number 35 of 2009 concerning Narcotics, Supreme Court Circular Letter Number 4 of 2010, Supreme Court Circular Letter Number 1 of 2026, Joint Regulation Number 01/PB/MA/III/2014, Regulation of the Head of the National Narcotics Agency Number 11 of 2014, Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, Supreme Court Regulation Number 1 of 2024, and other relevant laws and regulations.
- b. Conceptual Approach, namely an approach carried out by examining legal concepts that develop in doctrine and expert opinions regarding legal certainty, restorative justice, accountability, and the qualifications of drug abusers.

- c. Case Approach, namely an approach carried out by analyzing court decisions or rulings as well as the work practices of the Integrated Assessment Team and the termination of investigations into drug abusers that have been implemented by law enforcement officers.

4. Sources and Types of Legal Materials

- a. Primary legal materials, namely statutory regulations, court decisions, and other regulations related to the research object.
- b. Secondary legal materials, namely books, scientific journals, research results, theses, dissertations, scientific articles, and expert opinions that discuss criminal law, criminal procedure law, narcotics, legal certainty, accountability, and restorative justice.
- c. Tertiary legal materials, namely legal dictionaries, legal encyclopedias, and other supporting materials that provide guidance or explanations for primary and secondary legal materials.

5. Legal Material Collection Techniques

The collection of legal materials was carried out through library research, supported by interviews with law enforcement officers who have the authority to terminate investigations into drug abusers, including members of the Integrated Assessment Team.

6. Legal Material Analysis Techniques

The legal materials obtained were analyzed qualitatively using descriptive-analytical methods through legal interpretation, legal reasoning, and legal argumentation to examine the suitability between the provisions of laws and regulations and their implementation in practice.

RESULTS AND DISCUSSION

1. Qualification Categories for Drug Abusers and the Integrated Assessment Team's Recommendation Process

Law Number 35 of 2009 concerning Narcotics clearly differentiates the qualifications of Drug Abusers, Addicts, Victims of Drug Abuse, and Drug Dealers/Distributors, with varying legal consequences. Drug Abusers for themselves, as regulated in Article 127 in conjunction with Article 54 and Article 103, have the right to undergo medical and/or social rehabilitation, so that determining this qualification becomes the initial gateway that determines the direction of the case resolution, whether through criminal proceedings or rehabilitation/restorative justice.

Quantitative parameters for distinguishing abusers from dealers are regulated in Supreme Court Circular Letter No. 4 of 2010, which lists categories of weight/amount of evidence that can be considered a single day's personal use of various types of narcotics. This parameter serves as an initial administrative-quantitative indicator, but it does not stand alone, as formal qualification determination still requires the Integrated Assessment Team (TAT) process.

The TAT, which consists of members from the police, prosecutors, the National Narcotics Agency, medical personnel, and psychosocial workers, works based on Joint Regulation Number 01/PB/MA/III/2014 in conjunction with Regulation of the Head of the National Narcotics Agency Number 11 of 2014, through two main stages, namely a medical assessment (to assess the level of dependency and the need for therapy) and a legal assessment (to assess the role of the suspect based on evidence, witness statements, and other evidence). The results of both assessments are outlined in a written recommendation regarding the legal status of the suspect and his/her eligibility for medical and/or social rehabilitation.

From the perspective of Radbruch's Theory of Legal Certainty, legal certainty regarding the qualification category of new abusers can be achieved if there is a clear integration between three elements: the normative definition in the Narcotics Law, the quantitative parameters in SEMA 4/2010, and the results of the TAT clinical-legal assessment. This study found that this integration has not been fully realized, because SEMA 4/2010 does not explicitly regulate how the TAT assessment results can deviate from or complement its quantitative parameters, so that its application in the field tends to depend on the interpretation of the TAT and investigators in each region.

In practice, conditions are found where the TAT still recommends the status of a drug abuser against a suspect even though the weight or amount of evidence found exceeds the threshold of SEMA Number 4 of 2010. Regulation of the Head of the National Narcotics Agency Number 11 of 2014 basically opens up space for the

TAT to consider other factors beyond the weight of the evidence, such as urine test results, history of use, and the psychosocial condition of the suspect.

This discretionary space, if not balanced with adequate accountability standards, has the potential to create two risks at once: on the one hand, the risk of misusing TAT recommendations to pass perpetrators who actually act as dealers; on the other hand, the risk of TAT being too rigid in quantitative parameters so that it ignores the real clinical conditions of abusers who actually deserve rehabilitation. Viewed from Mark Bovens' Accountability Theory, any deviation from standard parameters such as SEMA 4/2010 must be accompanied by procedural accountability, namely written documentation regarding the basis and reasons for the deviation, which can be tested by the authorities, including the Head of the District Court who will later ratify the decision to terminate the case.

This study recommends that every TAT recommendation that deviates from the parameters of SEMA 4/2010 be accompanied by a written explanation report (reasoned justification), a second opinion mechanism from other TAT members or independent experts, and tiered reporting to the head of the agency from which the TAT member originates, so that horizontal accountability between the TAT and other law enforcement officers, including the Head of the District Court, can be guaranteed.

Joint Regulation Number 01/PB/MA/III/2014 was drafted and enacted in 2014 based on the old criminal procedure legal framework, namely Law Number 8 of 1981 concerning Criminal Procedure Law. The enactment of Law Number 1 of 2023 concerning the Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code brought fundamental changes, including the introduction of the authority of the Chief Justice of the District Court to determine the termination of investigations based on restorative justice, a mechanism that had not been accommodated at all in the 2014 Joint Regulation.

Normatively, based on the principle of *lex posterior derogat legi priori* and the principle of harmonization of laws and regulations, the 2014 Joint Regulation can still be used as a technical reference for the implementation of assessment and rehabilitation as long as its substance does not conflict with the 2023 Criminal Code, the 2025 Criminal Procedure Code, or SEMA Number 1 of 2026. However, considering the ten-year time span since its enactment and fundamental changes in the criminal procedure framework, this study is of the opinion that the 2014 Joint Regulation should be reviewed again, especially to: (a) align the terminology and stages of the assessment with the mechanism for determining the Head of the District Court in the 2025 Criminal Procedure Code; (b) emphasize the relationship between the results of the TAT assessment and the parameters of SEMA 4/2010 as described in the previous section; and (c) explicitly regulate the TAT accountability mechanism in the event of deviation from the quantitative parameters of evidence.

2. The Position of Police Regulations, Prosecutor's Office Regulations, and Supreme Court Regulations on Restorative Justice Post-KUHP 2023 and KUHAP 2025

Before the enactment of the 2023 Criminal Code and the 2025 Criminal Procedure Code, the application of restorative justice at each stage of criminal justice had been regulated through internal policy regulations (*beleidsregel*) of each agency, namely the Republic of Indonesia National Police Regulation Number 8 of 2021 for the investigation stage, the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 for the prosecution stage, and the Supreme Court Regulation Number 1 of 2024 for the examination stage in court.

These three regulations are hierarchically subordinate to the law, so as long as they do not conflict with the 2023 Criminal Code, the 2025 Criminal Procedure Code, and the Supreme Court Circular Letter No. 1 of 2026, they remain in effect as internal technical guidelines for each agency. However, because Supreme Court Circular Letter No. 1 of 2026 was issued specifically as a guideline for the implementation of these two new laws, it has introduced a mechanism for appointing the Chief Justice of the District Court, which is not specifically regulated in the three regulations *a quo*. Prosecutor's Regulation No. 15 of 2020 regulates the termination of prosecution, while the 2025 Criminal Procedure Code and Supreme Court Circular Letter No. 1/2026 prioritize termination at the investigation stage through a court order.

Viewed from Friedman's Legal System Theory, this condition shows that the legal substance (KUHP 2023, KUHAP 2025, SEMA 1/2026) has changed faster than the legal structure (internal technical regulations of the police, prosecutors, and courts), so that adjustments or revisions are needed to Perpol 8/2021, Perja 15/2020, and Perma 1/2024 in order to create harmony between the legal structure and the new legal substance, in order to avoid overlapping authority between agencies in the application of restorative justice to drug abusers.

3. The Impact of SEMA Number 1 of 2026 on the Implementation of Restorative Justice and the Appointment of the Chief Justice of the District Court

Supreme Court Circular Letter Number 1 of 2026 has a significant impact because for the first time it formally accommodates the authority of investigators to submit a request for a determination of termination of investigation based on restorative justice to the Head of the District Court, as mandated by the 2025 Criminal Procedure Code. This mechanism differs from previous practices that relied on the discretionary authority of investigators or public prosecutors through SP3 or a letter of determination to terminate prosecution, because it now involves judicial legalization by the Head of the District Court.

On the one hand, the involvement of the Chief Justice of the District Court has the potential to strengthen the objectivity and accountability of the investigation termination process compared to a purely discretionary mechanism. However, on the other hand, as explained in the background section, the a quo SEMA does not specify the objective parameters that must be met before the application is submitted, does not confirm the link between the determination and the status of the evidence, and no less importantly, there is no pretrial mechanism to review the determination of the Chief Justice of the District Court if it is later discovered that the requirements for termination are not fully met.

This situation indicates that the impact of SEMA Number 1 of 2026 is ambivalent: it strengthens procedural certainty at the submission stage (because there is now a judicial forum that validates it), but at the same time weakens legal certainty at the post-determination stage, because there is no room for correction. Therefore, the need to strengthen the rules and implementation of the SEMA a quo through additional technical instructions that regulate application parameters, the relationship to the status of evidence, and corrective mechanisms is an urgent need so that restorative justice for drug abusers truly provides legal certainty for all parties.

Overall, the five aspects of the discussion above, the category of qualifications for drug abusers and the TAT process, the accountability of TAT in conditions of deviation from SEMA 4/2010, the position of the 2014 Joint Regulation, the position of the Perpol/Perja/Perma on restorative justice, and the impact of SEMA Number 1 of 2026 on the determination of the Chief Justice of the District Court, show an interrelated and inseparable relationship. These findings indicate that SEMA Number 1 of 2026, although it has brought a more humane policy direction through a restorative justice approach, has not fully provided legal certainty and complete accountability in the implementation of the termination of investigations against drug abusers.

CLOSING

Based on the results of the discussion that has been described, the following conclusions can be drawn:

1. The qualification categories for Narcotics Abusers based on Law Number 35 of 2009 and Supreme Court Circular Letter Number 4 of 2010 have not been fully integrated with the Integrated Assessment Team's work process, because there are no explicit regulations regarding how the results of the TAT medical and legal assessments interact with the quantitative parameters of evidence in the SEMA a quo. The accountability of the Integrated Assessment Team has not been guaranteed in conditions where the evidence exceeds the provisions of SEMA Number 4 of 2010, because there are no standard standards regarding the obligation to document the reasons for deviations, second opinion mechanisms, or tiered reporting on TAT recommendations that deviate from these quantitative parameters. Joint Regulation Number 01/PB/MA/III/2014 can still be used normatively as a reference for the implementation of rehabilitation as long as it does not conflict with the 2023 Criminal Code and the 2025 Criminal Procedure Code, but its substance is no longer fully relevant to the restorative justice mechanism for requests for determination of case termination to the Head of the District Court, so it needs to be reviewed and harmonized.
2. Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 concerning restorative justice remain hierarchically valid after the 2023 Criminal Code and the 2025 Criminal Procedure Code as long as they do not conflict, but have the potential for disharmony with SEMA Number 1 of 2026 so that adjustments are needed, especially regarding the case termination stage which has now shifted to emphasizing the determination of the Chief Justice of the District Court regarding the request to terminate the investigation.
3. SEMA Number 1 of 2026 has the impact of strengthening procedural certainty at the stage of submitting a request for termination of investigation through the involvement of the Head of the District Court, but weakens legal

certainty at the post-determination stage because there are no objective parameters for the application or a correction mechanism for the determination that has been issued.

Suggestion

Based on the above conclusions, the following are recommended:

1. For the Supreme Court, the National Narcotics Agency, the Police, and the Prosecutor's Office, it is necessary to prepare additional technical instructions that explicitly link the parameters of SEMA Number 4 of 2010 with the results of the medical and legal assessment of the Integrated Assessment Team, so that the qualification categories of drug abusers have a unified basis and are not open to multiple interpretations.
2. For the Integrated Assessment Team, accountability standards need to be implemented in the form of mandatory written documentation, a second opinion mechanism, and tiered reporting every time a recommendation deviates from the quantitative parameters of SEMA Number 4 of 2010.
3. For the seven agencies drafting Joint Regulation Number 01/PB/MA/III/2014, it is necessary to immediately review and harmonize the regulation so that it is in line with the 2023 Criminal Code, the 2025 Criminal Procedure Code, and SEMA Number 1 of 2026, especially regarding the mechanism for appointing the Chief Justice of the District Court.
4. For the Police, the Prosecutor's Office, and the Supreme Court, adjustments need to be made to Police Regulation Number 8 of 2021, Prosecutor's Office Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 to ensure they are aligned, particularly regarding the mechanism for terminating cases through the determination of the Chief Justice of the District Court.
5. For the Supreme Court as a policy maker, it is necessary to provide regulations regarding the objective parameters of requests to stop investigations, the relationship between the determination of the Chief Justice of the District Court and the status of evidence, and the availability of corrective legal remedies for determinations that have been issued.
6. For academics, it is recommended that further empirical research be conducted in various legal areas to test the consistency of the implementation of SEMA Number 1 of 2026 in practice, particularly regarding the work of the Integrated Assessment Team and the appointment of the Chief Justice of the District Court.
7. For the community, especially the families of drug abusers, it is recommended to play an active role in monitoring and supporting the implementation of rehabilitation in a real way, so that the goal of restorative justice in the form of recovery for drug abusers can be achieved optimally and sustainably.

REFERENCES

A. Buku

- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Jakarta: Kencana, 2016.
- Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana, 2018.
- Atmasasmita, Romli. *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana, 2013.
- Bovens, Mark. *The Oxford Handbook of Public Accountability*. Oxford: Oxford University Press, 2014.
- Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, 1975.
- Fajar, Mukti, dan Achmad, Yulianto. *Dualisme Penelitian Hukum Normatif dan Empiris*. Yogyakarta: Pustaka Pelajar, 2017.
- Hamzah, Andi. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, 2019.
- Ibrahim, Johnny. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, 2013.
- Kelsen, Hans. *General Theory of Law and State*. Cambridge: Harvard University Press, 1945.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2021.
- Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 2019.
- Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 2014.
- Radbruch, Gustav. *Legal Philosophy*. Massachusetts: Harvard University Press, 1950.
- Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Pers, 2019.

LEGAL CERTAINTY OF TERMINATION OF INVESTIGATIONS ONDRUG ABUSERS THROUGH RESTORATIVE JUSTICE BASED ON SUPREME COURT CIRCULAR LETTER NUMBER 1 OF 2026 CONCERNING GUIDELINES FOR IMPLEMENTATION OF THE 2023 CRIMINAL CODE AND THE 2025 CRIMINAL PROCEDURES

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Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers, 2021.

Zehr, Howard. *The Little Book of Restorative Justice*. New York: Good Books, 2015.

B. Jurnal Ilmiah

Alwani, A., Buluaro, R. F., Lubis, M. M., Nasution, A. R., & Ramadani, S. (2025). Peran Pengadilan Tinggi Medan dalam Upaya Pemeriksaan Banding Tindak Pidana Narkotika. *Innovative: Journal Of Social Science Research*, 5(1), 2545-2556.

FEMI ZULFA, N. U. R. K. H. E. L. I. Z. A. (2026). PERAN RUMAH RESTORATIVE JUSTICE DALAM PENYELESAIAN PERKARA PIDANA (Studi di Kejaksaan Negeri Pesawaran).

Hasibuan, A. A. PERAN KEPOLISIAN DALAM PELAYANAN DAN PERLINDUNGAN KHUSUS KEPADA ANAK BAIK SEBAGAI PELAKU MAUPUN KORBAN TINDAK PIDANA (Studi Penelitian Di Satreskrim Polres Binjai).

Lubis, M. A. S., Ismaidar, I., & Lubis, S. (2022). Pemberdayaan Pemerintah dalam Upaya Pencegahan Peredaran Narkoba pada Masyarakat Desa Klambir Lima Kebun Kecamatan Hamparan Perak Kabupaten Deli Serdang. *Cermin: Jurnal Penelitian*, 6(1), 207-222.

Lubis, M. A. S., Ismaidar, I., & Lubis, S. (2022, October). Upaya Pencegahan Bahaya Narkoba Berbasis Pemerintah Desa Klambir Lima Kebun Kecamatan Hamparan Perak. In *Seminar Nasional Hukum, Sosial dan Ekonomi* (Vol. 1, No. 1, pp. 602-617).

Nasution, N. S., & Rahmayanti, R. (2025). Pertanggungjawaban Terhadap Anggota Tentara Nasional Indonesia Yang Memakai Narkotika Jenis Sabu (Studi Kasus Di Dilmil I-02 Medan). *Jurnal Multidisiplin Dehasen (MUDE)*, 4(4), 723-732.

Rezky, K. B., Ramatillah, D. L., & Widyaningrum, T. (2026). Reformulasi Rehabilitasi Narkotika Berbasis Melatonin dalam Sistem Hukum Kesehatan Indonesia. *JURNAL USM LAW REVIEW*, 9(3), 2039-2059.

Siregar, R. F., Siregar, M. A., & Ramadani, S. (2025, June). Application of Supreme Court Circular Letter by Judges to Narcotics Abuse for Themselves. In *International Conference Epicentrum of Economic Global Framework* (pp. 687-692).

Sinambela, L., Ismaidar, I., & Ramadani, S. (2025). EVALUASI PEMIDANAAN TERHADAP PENYALAH GUNA NARKOTIKA YANG MEMPENGARUHI OVER KAPASITAS RUTAN KELAS I LABUHAN DELI. *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan*, 4(10), 3421-3434.

Siombing, Y. M., & Ismaidar, I. (2023). Politik Hukum Dalam Penegakan Hukuman Mati Terhadap Pelaku Peredaran Narkotika di Indonesia. *Innovative: Journal Of Social Science Research*, 3(6), 9810-9820.

SIHOMBING, D. H. PERAN LEMBAGA REHABILITASI NARKOBA DALAM MELAKUKAN PEMBINAAN DAN PENYEMBUHAN TERHADAP PECANDU NARKOBA (Studi Penelitian di Panti Rehabilitasi Narkoba Al-Kamal sibolangit Centre).

NOORYONO, A. Q. (2025). *Efektivitas Restorative Justice Dalam Penyelesaian Perkara Pidana Di Wilayah Hukum Polres Jayawijaya Pendekatan Kolaboratif Antara Hukum Negara Dan Hukum Adat Papua* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

C. Peraturan Perundang-undangan

Surat Edaran Mahkamah Agung Nomor 1 Tahun 2026 tentang Pedoman Penerapan Keadilan Restoratif.

SEMA Nomor 1 Tahun 2026 tentang Pedoman dan Implementasi KUHP 2023 dan KUHP 2025.

Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana.

Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

Peraturan Mahkamah Agung Nomor 1 Tahun 2024 tentang Pedoman Mengadili Perkara Pidana Berdasarkan Keadilan Restoratif.

Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika.

Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif.

Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.