



## Sociological Analysis of Restorative Justice in Rehabilitative Law Enforcement for Drug Abuse Cases

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<p><b>Keywords:</b></p> <p>Narcotics, Rehabilitation, Restorative Justice.</p> <p><b>DOI :</b></p> <p><a href="https://doi.org/10.25041/ip.v5i1.3283">https://doi.org/10.25041/ip.v5i1.3283</a></p>	<p><i>The escalating trend in drug abuse, particularly among the youth, necessitates a unified approach from all law enforcement entities to address this shift in paradigm. It is essential to view drug addicts and victims of drug abuse not only as perpetrators but also as victims, warranting the incorporation of rehabilitation as an alternative form of punishment. The severity of narcotics crime in Indonesia poses a profound threat not only to individual health both physical and mental but also to societal well-being and national development, potentially compromising state security and sovereignty. This paper explores the enforcement of narcotics law in Indonesia as dictated by Law Number 35 of 2009 and examines the application of restorative justice, a concept often referred to in criminal law enforcement, which emphasizes recovery and atonement for the perpetrator or their family towards the victim, facilitating out-of-court reconciliatory efforts. By examining the legal sociological perspective, this research advocates for resolving narcotics-related criminal cases through means that prioritize restoration over retribution. It argues for a restorative justice approach, where the focus shifts from imprisonment to alternatives like medical and social rehabilitation, aiming for a resolution that restores harmony and agreement between involved parties, thereby aligning legal outcomes with societal values and needs.</i></p>

### A. Introduction

The concept of Pancasila, as outlined in Article 1, Paragraph (3) of the Constitution of the Republic of Indonesia, establishes Indonesia as a rule of law state (*rechtsstaat*). This principle asserts that the law should serve as a judicious tool for achieving national justice. Such an



objective is deeply connected to legal policies aimed at establishing a robust and comprehensive legal system. To ensure order and legal certainty within society, effective law enforcement is essential. As a guardian of human rights, law enforcement must operate consistently and adapt to both legal progress and shifts in societal paradigms.<sup>1</sup> Professor Wijono Prodjodikoro notes that law evolves from societal values, emphasizing that legal frameworks should foster morally sound human actions aligned with societal norms. If the populace disregards the rule of law, it effectively becomes ineffectual.<sup>2</sup>

In criminal law enforcement, the concept of Restorative Justice is increasingly recognized. Known in Indonesian as "*keadilan restoratif*," this approach is gaining traction globally for addressing crimes in a holistic and effective manner.<sup>3</sup> Restorative Justice focuses on empowering all stakeholders—including victims, offenders, their families, and the broader community—to collectively address and rectify the consequences of unlawful acts. It emphasizes healing and mutual understanding to enhance social cohesion. Furthermore, Restorative Justice involves reconciliatory efforts outside the courtroom, aiming for legal resolutions through consensus and reconciliation among the involved parties, thereby restoring peace and order effectively.<sup>4</sup>

Restorative Justice is a collaborative approach where all parties involved in a criminal offense work together to address the aftermath and prevent future occurrences.<sup>5</sup> This model emphasizes the healing of victims, accountability for offenders, and the involvement of the community. The core tenet of Restorative Justice involves active participation from both victims and offenders, with community members serving as facilitators in the resolution process, ensuring that harmony within the community is restored and maintained.<sup>6</sup>

Wirjono Prodjodikoro articulated that unlawful acts disrupt societal balance, creating an anomaly referred to as "*evenwichtsverstoring*." This disturbance provokes a collective need to restore equilibrium, thereby correcting the societal imbalance.<sup>7</sup> Furthermore, the state, as a guardian of public welfare, is tasked with shielding its citizens from the perils of dangerous substances such as narcotics, which pose significant risks when misused.<sup>8</sup> Narcotics, particularly addictive substances, can be fatal to users, particularly in cases of overdose, underscoring the state's role in preventing such dangers and fostering a healthy society where unlawful drug use is recognized as both harmful and potentially lethal.<sup>9</sup>

Narcotics addicts, as defined by the Supreme Court Circular Letter (*SEMA*) Number 4 of 2010 concerning the Placement of Narcotics Abusers, Victims of Abuse, and Addicts into Medical and Social Rehabilitation Institutions, are individuals who have developed a dependency on narcotics, both physically and psychologically. This dependency categorizes

<sup>1</sup> Irawati, Arista Candra. "Politik Hukum Dalam Pembaharuan Hukum Pidana (RUU KUHP Asas Legalitas)." *ADIL Indonesia Journal* 1, no. 2 (2019).

<sup>2</sup> R. Wirjono Prodjodikoro, *Asas-asas Hukum Perdata*, Bandung: Sumur Bandung, (1988), p. 154.

<sup>3</sup> D.S., Dewi dan Fatahilah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*, Depok: Indie-Publishing, (2011), p. 4.

<sup>4</sup> Irabiah, Irabiah, Beni Suswanto, and Muhammad Ali Alala Mafing. "Penerapan Restorative Justice Pada Tingkat Penuntutan (Studi Kasus Di Kejaksaan Negeri Kotamobagu)." *Perspektif* 27, no. 2 (2022): 131-138.

<sup>5</sup> Hambali, Azwad Rachmat. "Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana." *Kalabbirang Law Journal* 2, no. 1 (2020): 69-77.

<sup>6</sup> Apong Herlina dkk, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum*, Jakarta: PT. Raja Grafindo Persada, (2004).

<sup>7</sup> Wijaya, Andika dan Dida Peace Ananta, *Darurat Kejahatan Seksual*, Jakarta: Sinar Grafika, (2016), p. 125-126.

<sup>8</sup> Sa'adillah, Muhammad Hanif, and Otto Yudianto. "Kedudukan Jaksa Sebagai Dominus Litis Dalam Melakukan Keadilan Restoratif Terhadap Tindak Pidana Penyalahgunaan Narkotika." *Journal Evidence Of Law* 2, no. 3 (2023): 125-134.

<sup>9</sup> Rustam Dahar Karnadi Appolo Harahap, *Hukuman Mati bagi Pengedar Narkotika*, Semarang: Penerbit Walisongo, (2015), p. 4-5.

them as victims of drug crimes who require placement into medical and social rehabilitation programs.

The methodology employed in this research utilizes a sociological juridical legal approach, which is intended to evaluate the interaction between legal frameworks and societal elements in the application of law. This type of sociological or empirical legal research aims to assess the effectiveness of specific laws and regulations, allowing for the extraction of operational definitions directly from these legal standards.<sup>10</sup>

Additionally, this research incorporates normative legal research, or doctrinal research, which is fundamentally library-based. This method focuses on the thorough examination of primary and secondary legal materials to develop new legal theories, arguments, or concepts. The goal is to provide well-founded solutions to current legal issues, determining whether existing laws are appropriate, inadequate, or incorrect.<sup>11</sup>

This research is grounded in legal norms and rules, applicable laws and regulations, legal theories and doctrines, jurisprudence, and other relevant literature materials pertinent to the research topic. The collection of legal materials is conducted through a literature review that includes an examination of regulations governing restorative justice and various other sources related to the research subject. The methodology employed in this research is a juridical approach, focusing on analyzing the implementation of the principle of restorative justice within the Indonesian criminal justice system.

This article introduces a novel perspective by examining restorative justice in cases of drug abuse, specifically through the lens of rehabilitation combined with a restorative justice approach, applying the *dominus litis* principle. This concept involves mediation between the offender and the victim to reach a mutually agreed-upon resolution. Given this context, there is a compelling need to analyze the legal sociology concerning the application of restorative justice in the enforcement of rehabilitation laws for drug abuse cases. To this end, the research involves a comprehensive literature review, gathering data and insights on restorative justice and rehabilitation in criminal cases of drug abuse from journals, books, publications from relevant institutions, and news articles. These sources are then critically examined from the perspective of legal sociology.

## **B. Discussion**

### **1. Law Enforcement for Narcotics Abuse from the Perspective of Legal Sociology**

Law enforcement, as a mechanism for the state's protection of human rights, must be executed with consistency, keeping pace with legal evolutions and societal shifts in values and paradigms. It should always uphold a sense of justice. Criminalization, the process through which a judge imposes punishment on a convicted individual, aims to foster a deterrent effect.<sup>12</sup>

Max Weber, a prominent sociologist, described law as a coercive order, fundamentally underpinned by the state's coercive power. He categorized legal systems based on their levels of substantive and formal rationality.<sup>13</sup> According to Weber, a legal system exhibits substantive rationality when its laws consist of general rules that are uniformly applied to various concrete cases by a competent judiciary. In contrast, a legal system lacks substantive rationality when cases are decided based on unique political or ethical considerations, or even through emotional responses that do not align with any objective, general rules. Furthermore, Weber argued that a legal system could be described as formally irrational when its laws are derived from non-

<sup>10</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Pers, (2010), p. 53.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenamedia Group, (2014), p. 34-35.

<sup>12</sup> DP, Sapto Handoyo. "Pelaksanaan pidana bersyarat dalam sistem pemidanaan di Indonesia." *PALAR (Pakuan Law Review)* 4, no. 1 (2018).

<sup>13</sup> Arliman, Laurensius. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi* 11, no. 1 (2019): 1-20.

rational sources, such as divine inspiration or the decrees of a charismatic leader, whose truths cannot be objectively verified.<sup>14</sup>

Criminalization thus serves multiple purposes: it is a punitive measure, a deterrent, a pedagogical tool for convicts, and, controversially, a means for victims to seek retribution.<sup>15</sup> Each of these roles emphasizes different aspects of the law's function in society and reflects varying degrees of rationality as defined by Weber. This complex interplay highlights the ongoing challenge of aligning law enforcement with the evolving demands of justice and human rights protection in a modern legal framework.

Criminalization is a process of carrying out punishment and learning for convicts to assure that they do not repeat their criminal acts. The main purpose of criminal sanctions is to prevent convicts who have been legally proven in court from committing criminal acts thereby wider community will be reluctant to commit similar criminal acts. In addition, criminal sanctions are also a means of revenge against the convicted person by the victim for the actions committed by the convicted person.<sup>16</sup>

The rising trend of drug abuse poses increasing dangers, particularly affecting children, adolescents, and the youth, thereby necessitating a unified commitment and synergy among law enforcement, relevant stakeholders, and the community. This shift in perspective requires viewing drug addicts and victims not merely as perpetrators but also as victims themselves, emphasizing rehabilitation as a viable alternative to punishment. Countries worldwide are grappling with the severe challenges posed by the eradication of drug abuse. The menace of narcotics threatens national stability and security, and significantly undermines the future of our youth.

In legal terms, a drug abuse case typically involves the consumption of drugs with only a limited quantity of drugs possessed for personal use, as classified under *SEMA* number 4 of 2010. It is imperative for investigators and prosecutors to rigorously determine whether an individual is purely an addict or also a dealer, utilizing scientific methods. Furthermore, there are additional criteria for managing criminal offenses through restorative justice specifically for drug-related offenses as follows.

- a. Drug addicts and victims of drug abuse who apply for rehabilitation.
- b. At the time of arrest, evidence of narcotics use of 1 (one) day with the classification of narcotics and psychotropic drugs in accordance with statutory provisions, and no evidence of drug crime is found but the urine test results show positive drugs
- c. Not involved in a network of drug crimes, dealers, and/or bookies.
- d. Have been assessed by an integrated assessment team.
- e. The perpetrator is willing to cooperate with police investigators to conduct investigation.

The potential for applying restorative justice in drug-related offenses is growing, supported by several regulations that encourage its broader implementation. These include the National Police Chief Regulation Number 8 of 2021 on the handling of crimes through restorative justice, the Prosecutor's Regulation Number 15 of 2020 on terminating prosecutions based on restorative justice, and the Prosecutor's Guideline Number 18 of 2021 on resolving drug abuse criminal cases through rehabilitation using a restorative justice approach. This aligns with the *dominus litis* principle and is further supported by the Joint Regulation of 2014, which focuses on directing drug addicts and victims of drug abuse into rehabilitation institutions. With increased knowledge and awareness among law enforcement officials and the public about the

<sup>14</sup> Soetandyo Wignjosoebroto, *Hukum dalam Masyarakat*, Malang: Bayumedia Publishing, (2008), p. 36 -37.

<sup>15</sup> Situmeang, Sahat Maruli Tua. "Politik Hukum Pidana terhadap Kebijakan Kriminalisasi dan Dekriminalisasi dalam Sistem Hukum Indonesia." *Res Nullius Law Journal* 4, no. 2 (2022): 201-210.

<sup>16</sup> Dikdik M. Arief dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan*, Jakarta: PT. Raja Grafindo Persada, (2013), p. 101.

availability and rights to rehabilitation services under these regulations, there is a stronger push towards implementing restorative justice measures.

Restorative justice primarily aims to restore balance for the victims of crimes by facilitating reconciliation and compensation processes.<sup>17</sup> Moreover, it offers an opportunity to commute the traditional punishments of offenders, such as replacing them with community service. According to Tony Marshall, restorative justice involves all parties connected to a crime working together to address the immediate consequences and consider the long-term impact of the offense.

In Indonesia, law enforcement agencies are increasingly adopting restorative justice to handle criminal cases, notably those involving drug offenses. Given that a significant portion of criminal cases in Indonesia are drug-related, contributing to over 60% of the prison and detention center population, the implementation of restorative justice is particularly crucial. The overcrowded conditions in these facilities lead to suboptimal guidance for inmates, deteriorating health conditions, and a disturbed psychological atmosphere, all of which heighten the potential for internal conflicts. By applying restorative justice principles, there is an opportunity to alleviate these issues by focusing on rehabilitation and community-based resolutions, thereby reducing recidivism and promoting a healthier social reintegration for offenders.

To address the issue of overcrowding in prisons and detention centers due to drug-related cases, a differentiated approach in sentencing drug dealers, users, and abusers is necessary. For drug abusers, a more beneficial approach involves medical and social rehabilitation instead of incarceration. For dealers, particularly those driven by economic factors, the state bears a responsibility to provide support and address their economic challenges. The principle of "*ultimum remedium*" suggests that punitive measures should be a last resort. Rehabilitation offers a more effective solution than imprisonment for drug abusers, improving recovery prospects and reducing the risk of relapse.

The Indonesian legal system employs a double track approach where drug abuse cases are managed through rehabilitation programs outside of prison settings. The objective of such rehabilitation is to restore drug addicts physically and mentally, enabling their reintegration into society.

This approach to rehabilitation is mandated by Article 54 of Law No. 35/2009 on Narcotics, which requires that drug addicts and victims of drug abuse undergo medical and social rehabilitation. Article 103 further authorizes judges to impose rehabilitation instead of prison sentences on drug addicts if they are convicted of drug-related offenses. Moreover, the Indonesian Police Regulation No. 8 of 2021 on Handling Crimes Based on Restorative Justice allows for drug abusers to receive immediate rehabilitation treatment and care during the police investigation stage, potentially bypassing the need for a trial.

This model of immediate rehabilitation offers significant potential to effectively treat drug addicts and facilitate their return to normal life. Adopting a consistent restorative justice approach is crucial, as it is believed to reduce the numbers of drug addicts and dependents significantly. Given the destructive nature of drug-related crimes, handling such cases requires a holistic, integrated, and systematic approach. Restorative justice in drug abuse cases is critical and could serve as a strategic solution to reduce overcrowding in Indonesian prisons and detention centers. This approach should be expanded and widely implemented to achieve these goals.

The framework of criminal punishment in Indonesia today primarily aims to protect citizens, safeguard public and state interests, and uphold human rights against criminal acts or

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<sup>17</sup> Flora, Henny Saida. "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia." *University Of Bengkulu Law Journal* 3, no. 2 (2018): 142-158.

abuses that may harm individuals, community members, state interests, and prevent authoritarian actions by power holders against individuals and citizens. However, when ordinary people seek justice and retribution through the judicial system for criminal offenses, they often encounter significant hurdles. These include the complexities of formal and material criminal law, the underpinning philosophy of criminal law, and the existing criminal sanctions that do not embrace the concept of responsive law, which is designed to meet societal needs more effectively.<sup>18</sup>

Moreover, the approach to handling drug abuse in Indonesia employs two primary methods: prevention without punishment through mandatory reporting of addicts and the enforcement of rehabilitation laws with a restorative justice approach. Restorative justice is a model for resolving criminal cases that involves all concerned parties coming together to seek a fair resolution, emphasizing restitution and rehabilitation over retribution. This model seeks alternatives to conventional punishment, notably de-emphasizing incarceration. According to Article 54 of Law Number 35 of 2009, drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation.

Legal change in societal contexts is an undeniable reality resulting from human efforts to shape their lives. Such changes can manifest as evolution, transformation, or even revolution, depending on the dynamics involved. These changes might be gradual or radical, but they inevitably impact the fabric of society, responding to both external and internal stimuli. As these legal frameworks evolve, they can exert both positive and negative influences on human life.

Legal development goes beyond mere changes within the legal framework, encompassing comprehensive reforms aimed at improving societal conditions through the application of legal science. This is termed as legal development, which involves strategic engineering of the legal system to enhance social order, thus allowing individuals to live in a manner that aligns more closely with their dignity.<sup>19</sup>

The philosophical foundations of restorative justice and rehabilitation share common goals: restoring both perpetrators and victims not just to health but also to societal reintegration as productive, non-offending members. This philosophy is particularly significant in handling cases of drug abuse, emphasizing rehabilitation over punishment. It positions rehabilitation as a state obligation to restore those who are paradoxically both the perpetrators and victims of their actions.

From a sociological perspective, drug abuse challenges the function of law as a form of social control, which is intended to distinguish acceptable from unacceptable behaviors and impose sanctions for deviations. The law's role extends beyond enforcement to actively participating in social control alongside other societal institutions. According to Roscoe Pound, the sociology of law adds essential social psychological elements to the application of legal norms, emphasizing that without these psychological insights, legal frameworks may falter in effectively addressing and adapting to societal changes and challenges.<sup>20</sup>

In Indonesia, the application of restorative justice in law enforcement has been gaining commendable traction. The Indonesian Police have introduced Police Regulation No. 8 of 2021 on Handling Crimes Based on Restorative Justice, complemented by the Prosecutor's Office with Prosecutor's Regulation No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice. Additionally, the Directorate General of the Judiciary has issued Decree

<sup>18</sup> Agus Rahardjo, "Mediasi Sebagai Basis Dalam Penyelesaian Perkara Pidana", *Mimbar Hukum*, Volume 20, (2008).

<sup>19</sup> Lawrence M. Friedman, *The Legal System: A Society Science Perspective*, New York: Russel Sage Foundation, (1975), p. 23.

<sup>20</sup> Roscoe Pound, *The Task of Law (Tugas Hukum)*, terjemahan Muhammad Radjab, Jakarta: Bhratara, (1965), p. 66.

No. 1691/DJU/SK/PS.00/12/2020, providing guidelines for applying restorative justice within the general court system. These regulations underscore a robust commitment from various law enforcement sectors to resolve cases through dialogue and mediation, aiming to rehabilitate the victim's condition and reintegrate offenders into society.

Despite these positive steps, the implementation of restorative justice faces significant challenges. One major issue is the lack of a unified legal framework across the criminal justice system, leading to a sectoral approach where each agency operates under its internal guidelines. This often results in ambiguity and hesitancy among law enforcement officials, particularly in offering restorative justice solutions in sensitive cases like drug offenses. There is a prevailing fear of potential misinterpretation or backlash from the offender's family and the community. Establishing a comprehensive law dedicated to restorative justice could streamline these processes, making it clearer and more accessible for law enforcement to apply these principles consistently. The existing facilities are insufficient to handle the current demand from drug offenders needing rehabilitation, with many centers lacking the necessary resources and capacity to effectively run rehabilitation programs.<sup>21</sup>

In addition to infrastructural limitations, financial barriers also pose a significant challenge in the rehabilitation of drug users. Many drug abusers hesitate to seek treatment due to the steep expenses involved. As per data provided by BNN experts in 2020, private rehabilitation centers can cost between IDR 30 million to IDR 150 million monthly, while government-subsidized rates range from IDR 3 million to IDR 4 million. Such high costs are particularly daunting for individuals from lower economic backgrounds, who constitute a large portion of drug users. This financial burden represents a significant hurdle in executing effective drug rehabilitation programs, rendering them inaccessible for those who cannot afford them.

Moreover, rehabilitation initiatives for drug addicts in Indonesia continue to struggle with less than optimal effectiveness. Community support is limited, with minimal proactive efforts to educate about these programs. A higher number of addicts choose against rehabilitation than those who opt for it, citing various reasons. This reluctance is a major barrier in the pursuit of restorative justice. Ideally, the pursuit of self-recovery should initiate the restorative justice process. Without community backing and active involvement, the realization of restorative justice faces impediments. According to Soerjono Soekanto's theory on the role of law in society, five key factors influence its efficacy: laws and regulations, law enforcement officials, public awareness, infrastructure, and financial resources. For the law to function effectively, these elements must mutually reinforce each other. However, any deficiency in one or more of these elements can impede legal performance and, by extension, the smooth execution of restorative justice if these essential components are lacking or inadequate.

The restorative justice approach in handling drug abuse cases reflects a new paradigm in the legal system that prioritizes recovery and social reintegration over punishment. In the sociological aspect, this approach understands that drug abuse is often a manifestation of complex social problems such as poverty, inadequate education, and social isolation. Therefore, restorative justice offers a more holistic solution by involving the community, family, and offender in the recovery process. This is in contrast to retributive approaches that tend to focus only on punishment and often ignore the underlying causes of drug abuse.

Restorative justice programs seek to create dialogue between the offender, the victim (if applicable), and the wider community, with the aim of understanding the impact of drug abuse and finding constructive solutions. Through mediation processes and community meetings, offenders are given the opportunity to take responsibility for their actions, understand the social

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<sup>21</sup> Afandi, Aswan, Hambali Thalib, and Abdul Agis. "Efektivitas Penanggulangan Peredaran & Penyalahgunaan Narkotika Oleh Badan Nasional Narkotika Sulawesi Selatan." *Journal of Lex Philosophy (JLP)* 1, no. 2 (2020): 99-121.

consequences of their behavior, and work towards recovery. The sociological aspect of this approach emphasizes the importance of social support in offender rehabilitation, which includes counselling, skills training, and access to mental health services. This not only helps offenders to break away from drug dependence but also strengthens their social networks, which is important to prevent relapse.

As a legal novelty, restorative justice offers a significant shift from the traditional paradigm of criminal law towards a more humanistic and recovery-oriented approach. It recognizes that a purely retributive law enforcement system often fails to address root causes and instead exacerbates the social marginalization of offenders. By making space for restorative processes, the law can play a more proactive role in creating a more inclusive and supportive society. This approach also encourages more progressive drug policy reform, which focuses on public health and social welfare, and paves the way for innovation in more effective and humane responses to drug abuse

## **2. Rehabilitation as an Implementation of Restorative Justice for People Who Abuse Drugs**

According to Bagir Manan, Indonesian law enforcement is described as "*communis opinio doctorum*," indicating a consensus among experts that the current system has failed to meet its legal objectives. This perceived failure has opened the door for alternative methods, such as the Restorative Justice System, which adopts a sociocultural rather than a normative approach to law enforcement.<sup>22</sup>

Restorative justice emphasizes the active participation of all parties involved in a conflict in both resolving the issue and addressing its adverse effects. This approach also encourages returning decision-making to local communities and structures, underscoring a commitment to peaceful conflict resolution, fostering tolerance, inclusiveness, and a respect for diversity, and promoting responsible practices within communities.<sup>23</sup>

John Braithwaite further expands on the concept, noting that while restorative justice is often discussed in the context of criminal justice, it is also applicable and effective in non-criminal settings such as schools and workplaces.<sup>24</sup>

Restorative Justice is a concept focused on empowering all parties affected by a crime—victims, offenders, their families, and the broader community—to collectively heal and rebuild following an unlawful act. This approach is grounded in the belief that awareness and genuine remorse are key to improving societal cohesion and enhancing social life. It centers on restoring the losses incurred due to criminal acts and is also known in some circles as "reparative justice."<sup>25</sup>

This method of justice goes beyond mere legal compliance and punishment. It involves victims and encourages offenders to actively accept responsibility for their actions. Offenders are prompted to make amends through various means such as issuing apologies, reimbursing stolen funds, or engaging in community service, hence fostering a sense of personal accountability and social repair.

In Indonesia, the legal framework regarding narcotics is outlined in the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics. This law defines narcotics as substances or drugs, whether derived from plants, synthetic, or semisynthetic, that can alter consciousness,

<sup>22</sup> Rudi Rizky (ed), *Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir)*, Jakarta: Perum Percetakan Negara Indonesia, (2008), p. 4.

<sup>23</sup> UNODC, *Handbook on Restorative Justice Programmes*, UN New York, Vienna: Criminal Justice Handbook Series, (2006), p. 5.

<sup>24</sup> John Braithwaite, *Restorative Justice & Responsive Regulation*, England: Oxford University Press, (2002), p. 3.

<sup>25</sup> Nikmah Rosidah, *Budaya Hukum Hakim Anak di Indonesia*, Semarang: Pustaka Magister, (2014), p. 103.



reduce sensation, diminish pain, and potentially lead to dependence. These substances are categorized as per the provisions attached to the law.

Furthermore, Article 1 Point 15 of the Narcotics Law clarifies that narcotics abuse refers to the unauthorized or illegal use of narcotics. The law distinguishes between different types of narcotics use: self-abuse, which is the unauthorized consumption of narcotics without the intent to sell, and unreported drug addiction, among others.

Narcotics addicts are those who use or abuse narcotics and have developed a dependency on these substances, both physically and psychologically, as defined under Article 1 Number 13 and Article 134 of the Narcotics Law. Victims of narcotics abuse are identified as individuals who inadvertently consume narcotics due to being persuaded, deceived, coerced, or threatened, as detailed in the explanation of Article 54 of the Narcotics Law. Rehabilitation is thus designated specifically for confirmed addicts and victims of narcotics abuse. However, rehabilitation is only applicable to those who possess or control narcotics. The paradox lies in the fact that those who abuse narcotics often are also in possession or control of them, creating a dilemma for law enforcement in applying the appropriate legal provisions.

Based on the axiological aspect, restorative justice emphasizes the realization of four things, namely:<sup>26</sup>

- a. Putting criminal law back to its nature as the *ultimum remedium* (last remedy), if other legal remedies and peace mechanisms do not materialize.
- b. Emphasize the responsibility of the perpetrators of criminal acts directly to the victims of the criminal acts committed.
- c. Pay attention to the interests and protection of victims of criminal acts.
- d. Establish a harmonious relationship between the victim and the perpetrator.

In the epistemological context, the restorative justice approach primarily aims to achieve the concept of deliberation and participation comprehensively, facilitating the best resolution for crimes. This approach not only addresses the interests of the victims but also ensures the accountability of the perpetrators and mends the relationship between victims and perpetrators. Unlike the punitive approach, which focuses on retributive justice and the resocialization of the offender, restorative justice seeks to revert conditions to those before the crime occurred.

According to Article 54 of the Narcotics Law, individuals identified as narcotics addicts and victims of narcotics abuse are mandated to undergo both medical and social rehabilitation. However, this mandated rehabilitation does not entirely align with the principles of restorative justice. Article 103 of the Narcotics Law allows judges the discretion to either order rehabilitation or impose imprisonment as per Article 134, integrating rehabilitation into a dual-track system within the legal framework, which includes both punitive measures and rehabilitative care.

The criminal law system in Indonesia is evolving towards a more humanistic approach rather than solely correctional. This shift is marked by the adoption of restorative justice principles, aiming for a form of justice that is achieved through deliberation and dialogue, and that incorporates local wisdom within a legal framework that is alive within the community. This approach is termed "progressive law." Satjipto Rahardjo describes progressive law as one that is liberating in thought and action, enabling the law to naturally evolve to better serve humanity.<sup>27</sup>

The role of the state is crucial in cultivating this progressive law, particularly in addressing inhumanities within the legal system and adapting to societal changes. Laws must be structured to resonate harmoniously across all societal levels, ensuring broad acceptance and compliance.

<sup>26</sup> Leo, Kardi, Fitri Meliani, Nurwadjah Ahmad, and Andewi Suhartini. "Pendidikan Multikultural Berdasarkan Perspektif Teologi Islam." *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 2 (2022): 460-469.

<sup>27</sup> Puri, Widhiana Hestining. "Pluralisme Hukum sebagai Strategi Pembangunan Hukum Progresif di Bidang Agraria di Indonesia." *Bhumi Jurnal Agraria dan Pertanahan Vol. 3 No. 1* (2017): 67-81.

Specifically, in the realm of criminal law concerning drug-related offenses, it is essential to avoid a one-size-fits-all approach. Distinctions must be clearly made between dealers, users, and abusers, allowing for responses tailored according to the principles of restorative justice and progressive legal justice.

From a legal perspective, the Law of the Republic of Indonesia Number 35 of 2009 on Narcotics categorizes drug abuse as a criminal offense. Yet, the reality is that individuals who abuse drugs, whether for personal use or otherwise, are often victims of their circumstances. Typically, these individuals engage in drug use or abuse for reasons that are rooted in personal challenges or vulnerabilities, thereby positioning them as victims rather than perpetrators of criminal activity. This scenario is often described as self-victimization, where individuals become victims through their own criminal behavior, creating a dual identity where the victim and the perpetrator are the same person. Romli Atmasasmita refers to this as a dual situation, emphasizing the blurred line between victim and perpetrator in cases where the perpetrator is a drug user.

The criminalization of individuals who abuse drugs for personal use tends to label them as criminals, which can lead to societal stigma. This stigmatization can isolate drug abusers, making it more challenging for them to receive community or governmental support, which is crucial for their recovery and the mitigation of drug abuse's negative impacts. According to labeling theory in criminology, criminal behavior is not an intrinsic attribute of individuals but rather the result of societal labeling and stigmatization of specific actions.<sup>28</sup>

Moreover, criminalizing drug abuse for personal use contradicts the core objectives of criminal law, which are to protect the interests of individuals and society while safeguarding human rights. Effective criminal law should maintain a balanced approach, aiming to address criminal behavior while protecting individuals from undue punitive measures by the state.

Indonesia's criminal justice system is currently evolving towards a more humanistic approach, beyond mere correctional tactics. This shift is exemplified by the integration of restorative justice principles aimed at fostering a form of justice that is progressive and law-based. Restorative justice is gaining acceptance across all sectors due to its foundation on deliberative dialogue and its incorporation of local wisdom, guided by what is known as progressive law. Satjipto Rahardjo describes progressive law as liberating in thought and action, allowing the law to evolve naturally to better serve human and humane needs.<sup>29</sup> The state plays a crucial role in enacting this progressive law, particularly by addressing any inhumanity within the legal framework and adapting to the evolving dynamics of societal life. A more harmonious rule of law structure is essential for wider societal acceptance. In criminal law, particularly regarding drug offenses, it is critical to apply a nuanced approach that differentiates between dealers, users, and addicts, tailoring interventions to restorative justice principles aligned with progressive legal ideals.

From a legal standpoint, the 2009 Law of the Republic of Indonesia Number 35 on Narcotics defines drug abuse as a criminal act. In fact, drug abusers, whether consuming for personal use or otherwise, are often victims of their own circumstances. These individuals typically engage in drug use or abuse for personal reasons and should be viewed more as victims than criminals subject to penal actions. This perspective recognizes individuals who self-administer drugs as victims of their own choices, a concept sometimes termed as self-victimizing victims. According to Romli Atmasasmita, this creates a dual situation where the line between victim and offender blurs, meaning the offender is also a victim, particularly in cases of drug use or abuse.

<sup>28</sup> Estiyantara, Nvidia Febiola, Riska Putri Wardani, and Riska Andi Fitrono. "Faktor Kriminolog Penyebab Terjadinya Kejahatan Perompakan Kapal Laut." *Gema Keadilan* 8, no. 3 (2021): 372-385.

<sup>29</sup> Nuryadi, H. Deni, and M. H. Sh. "Teori Hukum Progresif Dan Penerapannya Di Indonesia." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 394-408.

The criminalization of individuals who use drugs personally often results in their being labeled as criminals, subjecting them to societal stigmatization. This stigma can isolate drug abusers, whether as individuals or in groups, complicating their ability to obtain community or governmental support for recovery and for mitigating the adverse effects of drug use. According to labeling theory in criminology, criminal behavior is not an inherent attribute of an individual; rather, it emerges from societal reactions and stigmas attached to specific behaviors or violations.

Furthermore, treating personal drug abuse as a criminal offense runs counter to the fundamental objectives of criminal law, which are to safeguard the interests and rights of individuals and society at large. Ideally, criminal law should maintain a balance between addressing crime effectively and protecting individuals from overreach by the authorities..

### **C. Conclusion**

The application of restorative justice in drug abuse cases has a significant positive impact on the social recovery and reintegration of offenders into the community. This approach focuses not only on punishment but also on understanding and solving the social problems underlying drug abuse behavior. By involving the offender, the victim (if applicable), and the community in a process of dialogue and mediation, restorative justice helps offenders to understand the impact of their actions, take responsibility for their behaviour, and repair damaged social relationships. Community support, counseling, and comprehensive rehabilitation programs also help reduce the risk of relapse and promote sustainable positive change.

Restorative justice introduces a more holistic approach to dealing with drug abuse, effectively addressing the complexity of social problems often associated with drug dependence. It recognizes that drug dependence is often influenced by factors such as poverty, lack of education, and social isolation. As such, restorative justice offers a legal novelty that focuses on the well-being of individuals and society as a whole. Through programs that support rehabilitation, skills training, and mental health services, restorative justice not only helps offenders to recover but also strengthens social networks and improves community health. This suggests that the implementation of restorative justice can be an effective strategy for creating a more inclusive, just and healthy society.

### **References**

#### **A. Book:**

- Apong Herlina dkk, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum*, Jakarta: PT. Raja Grafindo Persada, (2004).
- D.S., Dewi dan Fatahilah A. Syukur, *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*, Depok: Indie-Publishing, (2011), p. 4.
- Dikdik M. Arief dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan*, Jakarta: PT. Raja Grafindo Persada, (2013), p. 101
- Braithwaite, John. *Restorative Justice & Responsive Regulation*, England: Oxford University Press, (2002), p. 3.
- M. Friedman, Lawrance. *The Legal System: A Society Science Perspective*, New York: Russel Sage Foundation, (1975), p. 23.
- Rosidah, Nikmah. *Budaya Hukum Hakim Anak di Indonesia*, SEMarang: Pustaka Magister, (2014), p. 103.
- Mahmud Marzuki, Peter. *Penelitian Hukum*, Jakarta: Prenamedia Group, (2014), p. 34-35.
- R. Wirjono Prodjodikoro, *Asas-asas Hukum Perdata*, Bandung: Sumur Bandung, (1988), p. 154.

- Pound, Roscoe. *The Task of Law (Tugas Hukum)*, terjemahan Muhammad Radjab, Jakarta: Bhratara, (1965), p. 66.
- Rudi Rizky (ed), *Refleksi Dinamika Hukum (Rangkaian Pemikiran dalam Dekade Terakhir)*, Jakarta: Perum Percetakan Negara Indonesia, (2008), p. 4.
- Dahar Karnadi Appolo Harahap, Rustam. *Hukuman Mati bagi Pengedar Narkotika, SEMArang*: Penerbit Walisongo, (2015), p. 4-5.
- Soekanto, Soerjono. *Pengantar Penelitian Hukum*, Jakarta: UI Pers, (2010), p. 53.
- Wignjosoebroto, Soetandyo. *Hukum dalam Masyarakat*, Malang: Bayumedia Publishing, (2008), p. 36 -37.
- UNODC, *Handbook on Restorative Justice Programmes*, UN New York, Vienna: Criminal Justice Handbook Series, (2006), p. 5.
- Wijaya, Andika dan Dida Peace Ananta, *Darurat Kejahatan Seksual*, Jakarta: Sinar Grafika, (2016), p. 125-126

## B. Journal:

- Afandi, Aswan, Hambali Thalib, and Abdul Agis. "Efektivitas Penanggulangan Peredaran & Penyalahgunaan Narkotika Oleh Badan Nasional Narkotika Sulawesi Selatan." *Journal of Lex Philosophy (JLP)* 1, no. 2 (2020): 99-121.
- Rahardjo, Agus. "Mediasi Sebagai Basis Dalam Penyelesaian Perkara Pidana", *Mimbar Hukum*, Volume 20, (2008).
- Arliman, Laurensius. "Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia." *Dialogia Iuridicia: Jurnal Hukum Bisnis dan Investasi* 11, no. 1 (2019): 1-20.
- DP, Sapto Handoyo. "Pelaksanaan pidana bersyarat dalam sistem pemidanaan di Indonesia." *PALAR (Pakuan Law Review)* 4, no. 1 (2018).
- Estiyantara, Nvidia Febiola, Riska Putri Wardani, and Riska Andi Fitriono. "Faktor Kriminolog Penyebab Terjadinya Kejahatan Perompakan Kapal Laut." *Gema Keadilan* 8, no. 3 (2021): 372-385.
- Flora, Henny Saida. "Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana Di Indonesia." *University Of Bengkulu Law Journal* 3, no. 2 (2018): 142-158.
- Hambali, Azwad Rachmat. "Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana." *Kalabbirang Law Journal* 2, no. 1 (2020): 69-77.
- Irabiah, Irabiah, Beni Suswanto, and Muhammad Ali Alala Mafing. "Penerapan Restorative Justice Pada Tingkat Penuntutan (Studi Kasus Di Kejaksaan Negeri Kotamobagu)." *Perspektif* 27, no. 2 (2022): 131-138.
- Irawati, Arista Candra. "Politik Hukum Dalam Pembaharuan Hukum Pidana (RUU KUHP Asas Legalitas)." *ADIL Indonesia Journal* 1, no. 2 (2019).
- Leo, Kardi, Fitri Meliani, Nurwadjah Ahmad, and Andewi Suhartini. "Pendidikan Multikultural Berdasarkan Perspektif Teologi Islam." *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 2 (2022): 460-469.
- Nuryadi, H. Deni, and M. H. Sh. "Teori Hukum Progresif Dan Penerapannya Di Indonesia." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 1, no. 2 (2016): 394-408.

- Puri, Widhiana Hestining. "Pluralisme Hukum sebagai Strategi Pembangunan Hukum Progresif di Bidang Agraria di Indonesia." *Bhumi Jurnal Agraria dan Pertanahan* Vol. 3 No. 1 (2017): 67-81.
- Sa'adillah, Muhammad Hanif, and Otto Yudianto. "Kedudukan Jaksa Sebagai Dominus Litis Dalam Melakukan Keadilan Restoratif Terhadap Tindak Pidana Penyalahgunaan Narkotika." *Journal Evidence Of Law* 2, no. 3 (2023): 125-134.
- Situmeang, Sahat Maruli Tua. "Politik Hukum Pidana terhadap Kebijakan Kriminalisasi dan Dekriminalisasi dalam Sistem Hukum Indonesia." *Res Nullius Law Journal* 4, no. 2 (2022): 201-210.
- Warsito, Dafit Supriyanto Daris. "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahguna Narkotika." *Jurnal Daulat Hukum* 1, no. 1 (2018).

