

## Implementation of Sanctions against Addictive and Narcotic Abuse Perspective Restorative Justice

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### **Abstract:**

*Even though there is a law Number 35 Year 2009 about Narcotics, application of sanctions against addicts and abusers narcotics felt not fulfilling the principle of justice. So it is necessary to solve the problem using Restorative justice . The purpose of writing this article is to look at other solutions to imposing sanctions on addicts and abusers narcotics for the sake of creating a sense of justice. The method used is normative legal research using a conceptual approach and legislation. Then the formulation of the problem that the author can raise first is how to apply sanctions to addicts and abuse narcotics in Indonesia. second , how is the application of Restorative Justice in case narcotics in Indonesia. The results of this study indicate that in Indonesia the application of sanctions against addicts and abuse narcotics Not yet in accordance with the principle of justice and efforts to apply sanctions for addicts and abusers narcotics use perspective Restorative Justice exists but has not worked as expected.*

### **Keywords:**

*narcotics; addicts and abusers; restorative justice*

## **I. Introduction**

Existence Narcotics in the world of science and health is an effort utilization function narcotics For interest health and science knowledge as well as technology . Legislation that existed before held Convention Tungkal Narcotics 1961 only regulates trade and use laws narcotics , meanwhile about the provision of health services for efforts to cure addicts was not regulated in the Laws at that time.

After the presence of Law Number 35 of 2009 concerning Narcotics explicitly supports the concept of a double track system against addicts and abusers' narcotics. This is because the imposition of criminal sanctions is not the only way handle addict and abuser To use narcotics , will but Still there are sanctions rehabilitation in in the regulations. Efforts to impose rehabilitation sanctions for addicts and abusers to use narcotics the more supported with the formation of Government Regulation Number 25 of 2011 concerning Implementation of Compulsory Reporting of Narcotics Addicts, then a Court Circular Letter Great Number 7 Year 2009 And Letter Circular Court great Number 4 2010 which regulates the criteria and placement of addicts and abusers to use narcotics to in institution rehabilitation medical and rehabilitation social.

Existence thinking And regulation Which support about draft providing rehabilitation sanctions for addicts and abusers To use narcotics , on in fact it does not guarantee that all addict or narcotic abuser Can get penalty rehabilitation as an alternative from imprisonment.

In Article 127 Paragraph 1 of Law Number 35 of 2009 concerning Narcotics arrange every abuser narcotics Group I for himself shall be punished with imprisonment for a maximum of 4 ( four ) years , narcotics Group II for himself shall be punished with imprisonment for a maximum of 2 ( two ) years , and narcotics Group III for himself shall be punished with imprisonment for a maximum of 1 (one) year. This is what becomes a fear for every addict and abuser To use narcotics . Apart from being punished prison, the abusers also get subject to fines.

If it is based on the principles of criminal law, sanctions criminal is ultimate remedium Where Criminal sanctions should be the last resort in law enforcement. Rehabilitation can also be used as alternative for prisons to be assessed those who are no longer able to accommodate convicts can be put into a rehabilitation institution and this policy is considered to be quite effective in resolving it problem related abuse and circulation dark narcotics in Indonesia. Based on Article 127 Paragraph 3 of the Law Narcotics, abusers can impose sanction of medical rehabilitation and social rehabilitation if it is proven or can be proven as a victim of abuse narcotics.

According to the Joint Regulation of the Chief Justice of the Supreme Court of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Health of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Head of the National Police of the Republic of Indonesia, Head of the National Narcotics Agency of the Republic of Indonesia concerning the Handling of Narcotics Addicts and Narcotics Abuse Victims Into Rehabilitation Institutions , abusers narcotics can sentenced to criminal sanctions in the form of rehabilitation. The application of rehabilitation sanctions can be carried out if tools are found at the time of being caught red-handed proof form narcotics with heavy some do n't exceed amount certain based on applicable regulations. To be placed in an institution rehabilitation medical / or rehabilitation social with authority institution respectively, suspects or the Defendant must also be completed letter results assessment from team Integrated assessment.

This is the background at the start of the problem in this writing where many are found addicts and abusers narcotics When caught red-handed by the police, then subject to Article 112 paragraph 1 of Law Number 35 of 2009 concerning Narcotics. This raises something no sure law that is strict punishment on the one hand and the existence of rehabilitation facilities on the other. The provisions in Article 112 paragraph 1 are felt to be broad so that anyone who is related with narcotics Good That dealer narcotics or abuser narcotics can be imposed by this article.

Restorative justice according to Rufinus Hutauruk focuses on the criminal responsibility process directly from the perpetrator to the victim and the community. If the perpetrators and victims and the people whose rights have been violated feel that justice has been achieved through joint deliberation efforts, then it is hoped that the implementation of sentencing can be avoided. This shows that the perpetrator is not the main object of the Restorative Justice approach, but rather a sense of justice and conflict recovery itself which is the main object. It is hoped that by implementing Restorative Justice in settlement case narcotics will creates a sense of justice for addicts and abusers narcotics .

Based on description from thoughts on background behind Which As stated above, the formulation of the problem that can be raised is first, how to apply sanctions to addicts

and abusers narcotics in Indonesia? second , how is the application of Restorative Justice in case narcotics in Indonesia?

## II. Research Methods

The research method used in writing this article is normative legal *research* and the principles used in the discipline of law. According to Peter Mahmud Marzuki (2018) "Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand", the data used in this research is data in the form of analysis using approaches such as conceptual (conceptual). *approach*) and statutory approach (statute *approach*). There are 2 (two) sources of legal materials in this study, namely primary legal materials and secondary legal materials. The type of research used in this research is *Doctrinal Research*. (Suteki, 2018) This type of research is used to analyze the applicable laws and regulations (positive law) to find the truth in a formal juridical way. Primary legal material in study This Constitution Number 35 of 2009 concerning Narcotics.

## III. Discussion

### 3.1 Application of Sanctions Against Addicts and Abusers Narcotics in Indonesia

According to Law Number 35 Year 2009 about Narcotics, addicts' narcotics is people Which use or abuse narcotics and in circumstances dependency on narcotics, Good in a manner physique nor psychic. abuser is the one using it narcotics without right or against the law. Victim abuser narcotics is somebody Which No on purpose use narcotics Because persuaded , tricked , cheated, forced to, and/or threatened For use narcotics . Ex addict narcotics is person Which has healed from dependency to markotika in a manner physique nor psychic.

Diversity term blame to use narcotics the raises ambiguity in the formulation of the law. This can confuse enforcement officials' law in practice. One of the problems that may arise as a result the large number of terms is a confusion of arrangements, where in Article 4 letter d of the Law No. 35 Year 2009 said "Act *Narcotics aims: Ensure arrangement medical and social rehabilitation efforts for abusers and addicts narcotics*", but in Chapter 54 Constitution the mentioned "addict *narcotics and victim blame to use narcotics must undergo medical rehabilitation and social rehabilitation*". Based on Article 54, the right of the abuser to receive rehabilitation becomes null and void acknowledged.

On case abuser narcotics in Indonesia, the victim of abuse to use captured narcotics \_ use narcotics direct entered to a state detention house (remand center) or a police cell. Then to develop the investigation, the victim is still in the detention center. When in process investigation Already collected evidence Which strengthen, then the investigator will send the Examination Procedure File (BAP) to the Prosecutor's Office for then the prosecutor to form a public prosecutor who then makes indictment and submitted to the district court. During this process, the victim is the victim To use narcotics moved from police detention center to the prosecutor's detention center, or detention center on Institution Correctional (LP). Chairman Court Which has received an indictment from the prosecutor's office, then formed a Panel of Judges who tasked with summoning the accused. The case was then heard in court Country, and victims of abuse to use narcotics that have status as a convict direct undergo punishment in Correctional Institution.

Penal system as explained on, with method me n four at k a n \_ victim a n p e ny ala h To use narcotics in prisoner ( even though \_ \_ in terms of obtaining the right to

treatment/care) will actually make it difficult for the victim blame To use narcotics For can recover from addiction. Especially conditions Institution Correctional Which No support will impact negative And further exacerbate the mental and health conditions suffered by inmates blame To use narcotics.

Implementation must rehabilitation for abuser narcotics Not yet held in a manner maximum by enforcer law. Action investigator Which give chance For rehabilitate addict based on Regulation Together with Article 3 paragraph (1) and Article 4 paragraph (1), paragraph (2), and paragraph (3) and Letter Telegram Head Police Country Republic Indonesia (Police chief) Number: STR/701/VII/2014 Dated 22 August 2014 . In this case the Police Investigator only provide rehabilitation opportunities for suspects addict possession of narcotics evidence and limits on the use of a maximum of 5 grams. If the evidence carried by the suspect of more than 5 grams, the investigator did not provide a recommendation for assessment test is carried out.

This provision refers to the Circular Letter of the Court great Republic Indonesia Number 04 Year 2010 about Placement Abuse, Abuse Victims and Narcotics Addicts into Institutions Medical Rehabilitation and Social Rehabilitation (hereinafter referred to SMA Number 4 Years \_ 2010). S e b e n a r it S E MA is intended as a guide to judges when they are about to make a decision in the form of rehabilitation measures for addicts, victims caught red-handed or with evidence usage in One day 5 grams max.

Letter Telegram Police Chief Number 701 Year 2014, determined that Rehabilitation requests for addicts with suspect status must be filed online written by the suspect or family or legal adviser to the investigator. However, according to the statement from the Polres, the actions of the investigators to carry out rehabilitation to para addict the based on initiative from investigator, temporary application from suspect or power law Not yet Once There is. Actually, what was done by the police drug investigators with the initiative for rehabilitating addicts \_ narcotics Already in accordance mandate from Government Regulation Number 25 of 2011 and Joint Regulation so that there is no need to wait for the petition from the suspect because it is not necessarily the rules Which give chance rehabilitation for addict the is known by public.

No medical rehabilitation or rehabilitation was implemented social to abuser narcotics raises problem against over capacity prison / remand center . Based on these conditions, the authors assess the need for a change in paradigm handling case narcotics which can no longer focus on punishment to user narcotics . Required synergy between fellow Law enforcers are related to the commitment to implementing medical rehabilitation and social rehabilitation to avoid accumulation or over capacity of correctional institutions in Indonesia.

### **3.2 Application of *Restorative Justice* in case narcotics in Indonesia**

People's sense of justice is often disturbed because of the way the law is enforced very formalistic. Where in law enforcement practice put procedure become base legality For enforce justice, even more important than justice itself. Even though now people feel enforcement apparatus law need operate enforcement law criminal with do selection case like follow criminal light, case child And Woman Which face to face with law, as well as case addicts and abuse narcotics Which often inviting reaction society by wide.

Then, exists fact that amount addicts and abuse narcotics and victim abuse narcotics as suspects , defendants , or convicts within follow criminal narcotics the more increase as well as effort treatment and/ or care Not yet done in a manner optimal And integrated.

Chairman Joint Regulations Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister Social, prosecutor Great, Head Police, Head Body Narcotics National Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014 2014, Number 03 Year 2014, Number Per 005/A/JA/03/2014, Number 1 Year 2014, Number Perber /01/111/2014/BNN concerning Handling Narcotics Addict And Victim Abuse Narcotics to In Institution Rehabilitation (abbreviated "Regulation Together" start valid since date March 11th 2014).

The Joint Regulations are aimed at realizing coordination and optimal cooperation problem narcotics in framework lower amount addict narcotics and victim abuse narcotics through program treatment, maintenance, and recovery in handling addict narcotics and victim abuse narcotics as suspect, accused or convict, while continuing to carry out eradication circulation dark narcotics. In addition, it is also intended to be a technical guide in handling addict narcotics and victim abuse narcotics as suspects, defendants, or convicts to undergo medical rehabilitation and/or social rehabilitation. Then it is also hoped that the process can be carried out rehabilitation medical And rehabilitation social in level investigation, prosecution, the judge and punishment in a manner synergistic and integrated (Ali, 2013).

But, regulation together That just no Enough. Court great deems it necessary to apply *Restorative Justice* to several cases which is one of them is case necessary narcotics \_ carried out by all the district court judge and the head of the high court through a Director's Decree General of the General Courts of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 about Enactment Guidelines Application Justice restorative ( *Restorative justice* ) in Environment Justice General (abbreviated "Decision") on December 22 2020. Principal decision That is:

- a. Instruct to whole judge court country for implement guidelines application justice restorative in a manner orderly and responsible answer; And
- b. The Head of the High Court is obliged to supervise, monitor and evaluation, as well as report implementation justice restorative in region law High Court Which concerned.

This decision interprets *Restorative Justice* as a settlement action crime involving perpetrators, victims, families of perpetrators/victims, and other parties concerned, to jointly seek a fair solution by emphasizing restoration to its original state, not retaliation (prison sentence). In the attachment to this Decision mentioned justice restorative in settlement Cases can be used as instruments for the restoration of justice and have been implemented by the Supreme Court in the form of policy enforcement (PERMA and SEMA). But during This implementation in justice system criminal Still not optimal.

Based on matter the, it turns out country start think about How take steps to recover and/or develop physique, mental, and social suspect, defendant, or prisoner in case narcotics carried out with treatment, care and recovery programs in an integrated manner. It's just that the process is there in the field No realized well, of course this is homework that must be completed by the government.

## IV. Conclusion

### 4.1 Conclusion

1. There needs to be a fundamental change related to the criminal provisions regarding the boundaries between blame to use narcotics with perpetrator follow criminal narcotics for avoid misinterpretation of law enforcement in apply provision

punishment to perpetrator blame to use narcotics and offenders follow criminal narcotics matter This aims to avoid overstaying existing inmates institutionalized penitentiary.

2. *Restorative Justice* must apply and be implemented by all district courts in Indonesia Indonesia, especially in terms of settlement of cases in minor crimes, cases of children, women who are dealing with the law and cases narcotics. Application *restorative justice* in case narcotics Can done during can categorized as as addict, abuser, victim abuse, dependency narcotics, & narcotics usage One day as.

#### 4.2 Suggestion

With the alternative settlement of cases through *restorative This justice* can realize the principles of a fast, simple and costly trial light with justice balanced. in the future only stay wait on implementation level from the scope of law enforcement officials to better understand and can implement *Restorative Justice efforts* in the criminal justice system as a solution to solving *overcrowding problems* in institutions penitentiary (Lapas ) and become alternative settlement of criminal cases during this is too characteristic formalistic and positivistic .

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