

# Rehabilitation of Narcotic Addictives: An Overview of Implementation and The Effort by Restorative Justice

Tofik Yanuar Chandra<sup>1</sup>, Joko Sriwidodo<sup>2</sup>, M.S. Tumanggor<sup>3</sup>

<sup>1</sup>Universitas Jayabaya

<sup>23</sup>Universitas Bhayangkara Jakarta Raya

Email: [tyc.jayabaya@gmail.com](mailto:tyc.jayabaya@gmail.com), [jokosriwidodo@ymail.com](mailto:jokosriwidodo@ymail.com), [tumanggor@dsn.ubharajaya.ac.id](mailto:tumanggor@dsn.ubharajaya.ac.id)

\*Corresponding author

## Article info

Received: Jun 8, 2023

Revised: Oct 17, 2023

Accepted: Nov 2, 2023

DOI: <https://doi.org/10.31599/krtha.v17i3.2427>

**Abstract :** *The progress of narcotics addictives is very concerning today and certainly requires comprehensive, integrated and continuous handling. However, in several cases, judges did not consider Article 103 of the Narcotics Law to provide rehabilitation for addicts and victims of narcotics abuse. Based on the background above, the problems that will be discussed in this study are: how is the implementation of the rehabilitation process for addicts and victims of narcotics abuse in Indonesia? And how does restorative justice apply to narcotics addicts through the rehabilitation process? This research is normative legal research with descriptive nature. The research results show that the implementation of rehabilitation for addicts and victims of narcotics abuse in Indonesia can be seen from the data for 2021 and 2022. It shows that the punishment for most narcotics addicts is imprisonment. So that efforts are needed from law enforcement officials prioritising rehabilitation for narcotics addicts to enforce restorative justice law. One of the efforts of restorative justice from law enforcement officials against narcotics addicts is the establishment of the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Handling Cases of Crime of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle.*

**Keywords :** *Narcotics, Rehabilitation, Addicts, Attorney*

**Abstrak :** Perkembangan penyalahgunaan narkoba yang sangat memprihatinkan dewasa ini tentunya membutuhkan penanganan secara komprehensif, terpadu dan berkesinambungan. Akan tetapi, dalam beberapa kasus yang terjadi, hakim tidak mempertimbangkan Pasal 103 UU Narkotika untuk memberikan rehabilitasi kepada pecandu dan korban penyalahgunaan narkoba. Berdasarkan latar belakang di atas, maka permasalahan yang akan dibahas dalam penelitian ini yaitu bagaimana implementasi dalam proses rehabilitasi bagi pecandu dan korban penyalahgunaan narkoba di Indonesia? dan 2) bagaimana penerapan restorative justice terhadap pecandu narkoba melalui proses rehabilitasi? Penelitian ini dilihat dari jenisnya merupakan penelitian hukum normatif. Hasil penelitian menunjukkan bahwa Implementasi rehabilitasi bagi pecandu dan korban penyalahgunaan narkoba di Indonesia dapat terlihat dari data tahun 2021 dan 2022 yang menunjukkan bahwa pemidanaan terhadap kebanyakan pecandu narkoba adalah penjara. Sehingga diperlukan adanya upaya dari aparat penegak hukum yang mengedepankan rehabilitasi bagi pecandu narkoba sebagai upaya penegakan hukum restorative justice. Adapun salah satu upaya restorative justice dari aparat penegak hukum



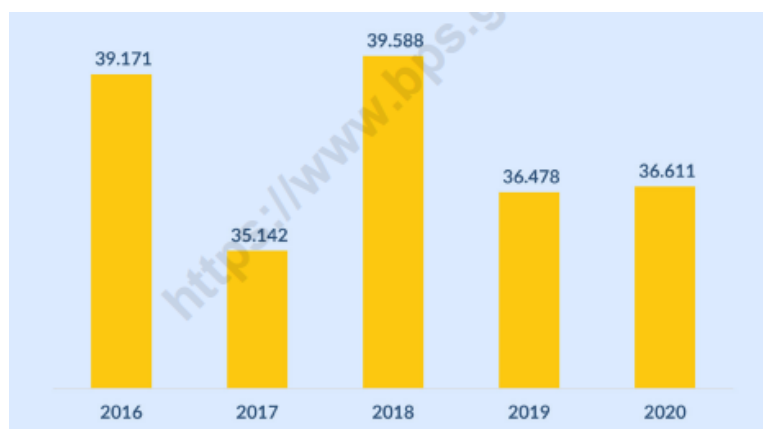
terhadap pecandu narkoba dengan terbentuknya Pedoman Jaksa Agung Nomor 18 Tahun 2021 tentang Penyelesaian Penanganan Perkara Tindak Pidana Penyalahgunaan Narkoba Melalui Rehabilitasi Dengan Pendekatan Keadilan Restoratif Sebagai Pelaksanaan Asas Dominus Litis Jaksa.

**Kata kunci :** Narkoba, Rehabilitasi, Pecandu, Kejaksaan

## I. INTRODUCTION

The recent abuse of narcotics and dangerous drugs in Indonesia has become a serious problem and a matter of concern, so it has become a national problem. Victims of drug abuse have spread in such a way that it has penetrated all social statuses, ages, genders and even among students, not only in urban areas but also in rural areas and beyond national boundaries. The consequences of narcotics addiction are very detrimental to society and the country, especially the younger generation.<sup>1</sup> According to Chris W Green, there are 3.1 million narcotics addicts in Indonesia spread across all provinces. Still, the concentration is in big cities such as Jakarta, Surabaya, Semarang, Medan, Denpasar and others. 90% of addicts are men aged 16-24, generally still junior and high school students. That number from year to year increased sharply in terms of quality and quantity.<sup>2</sup> Narcotics users in Indonesia continue to increase based on data compiled by the National Narcotics Agency or BNN from 2016 to 2021. This can be seen in Figure 1 below:<sup>3</sup>

Figure 1. Number of narcotics addicts in Indonesia



From the data above, it can be seen that narcotics abuse in Indonesia is worrying and claimed many victims.<sup>4</sup> The increase in the number of narcotics addicts was also influenced by the large supply of narcotics that entered Indonesia, 90% of which were by

<sup>1</sup> Taufik Makarao, Suhasril, dan Zakky A.S, *Tindak Pidana Narkoba*, Jakarta: Ghalia Indonesia, 2003, pp. 17-19.

<sup>2</sup> Soekedy, *Menyirambara Narkoba Semakin Tabu Akibatnya Semakin Siap Menolaknya*, Mapeksi, Jakarta, 2002, pp. 80-81.

<sup>3</sup> Direktorat Statistik Ketahanan Sosial, *Statistik Kriminal 2021*, Jakarta: Badan Pusat Statistik, 2021, p. 27.

<sup>4</sup> Badana Narkoba Nasional, *Journal Data BNN Tahun 2018*, Jakarta, p. 15

sea.<sup>5</sup> In medicine, narcotics are drugs or materials useful in medicine or public health services and also useful for developing science. But on the other hand, narcotics also cause dependence, which is detrimental to the user if misused without expert advice and strict supervision and care.<sup>6</sup> Narcotics become very dangerous if they are misused. Abusing narcotics will damage the order of life in the community, family, and school and damage generations for the future of the Indonesian nation. The destruction of the order of life is a real threat to the future of the State of Indonesia, especially the lives of its next generation. Thus, it is necessary to take a real policy to eradicate the circulation.

Drugs often use associated with crime. Drugs are considered to have a negative influence and cause users to commit crimes. Crime is a relative formula. Mustafa said that what is called a crime as a social phenomenon is not merely an act that is prohibited by law, an action that is a biological disorder or a psychological disorder. Still, these actions are detrimental and violate public sentiment.<sup>7</sup> Data from the National Narcotics Agency states that the trend of narcotics abuse has decreased significantly; in 2021, there were 766 cases of narcotics abuse with 1,184 suspects. This number decreased by 8.04% compared to the previous year of 833 cases with a total of 1,307 suspects people. As we know, most of those who become addicted to narcotics are teenagers aged between 16 to 25 years who are also the pillars of hope for the future of Indonesia. The prevention of narcotics abuse must be comprehensive and multi-disciplinary, involving various professions, including addiction doctors, psychiatrists, psychologists, social workers, clergy, and nurses.<sup>8</sup>

Through the use of narcotics, mental disorders occur for users, namely mental and behavioural disorders caused because we become drug abusers. As a result, the behaviour and souls of addicts become dysfunctional in society's social life and usually display maladaptive behaviour. Not good social functioning, work or school, inability to control oneself, and the inability to stop using narcotics can cause withdrawal symptoms when narcotics use is stopped. The problem of drug abuse is not only addictive, but it is straightforward to obtain narcotics nowadays.<sup>9</sup>

It is almost certain that the spread of narcotics abuse will not be prevented because almost the entire earth can easily obtain narcotics from irresponsible persons. It makes worry all parents, the community, community organizations and the government as policymakers.<sup>10</sup> The government has carried out narcotics crime in various ways to eradicate crime. One of them is in the regulation field marked by the promulgation of Law Number 22 of 1997 concerning Narcotics. Along with the development of narcotics

---

<sup>5</sup> Petrus Reinhard Golose, KABNN, dalam jumpa pers [https:// www. voaindonesia. com/a/sepanjang-2021-bnn-ungkap-760-kasus-tindak-pidana-narkoba-/6375450.html#](https://www.voaindonesia.com/a/sepanjang-2021-bnn-ungkap-760-kasus-tindak-pidana-narkoba-/6375450.html#), accessed on 10 June 2021.

<sup>6</sup> Ruslan Renggon, *Hukum Pidana khusus*, Jakarta: Kencana, 2017, p. 121.

<sup>7</sup> Muhammad Mustafa, *Krimonologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum*, Jakarta, FISIP UI Press, 2007, p.17.

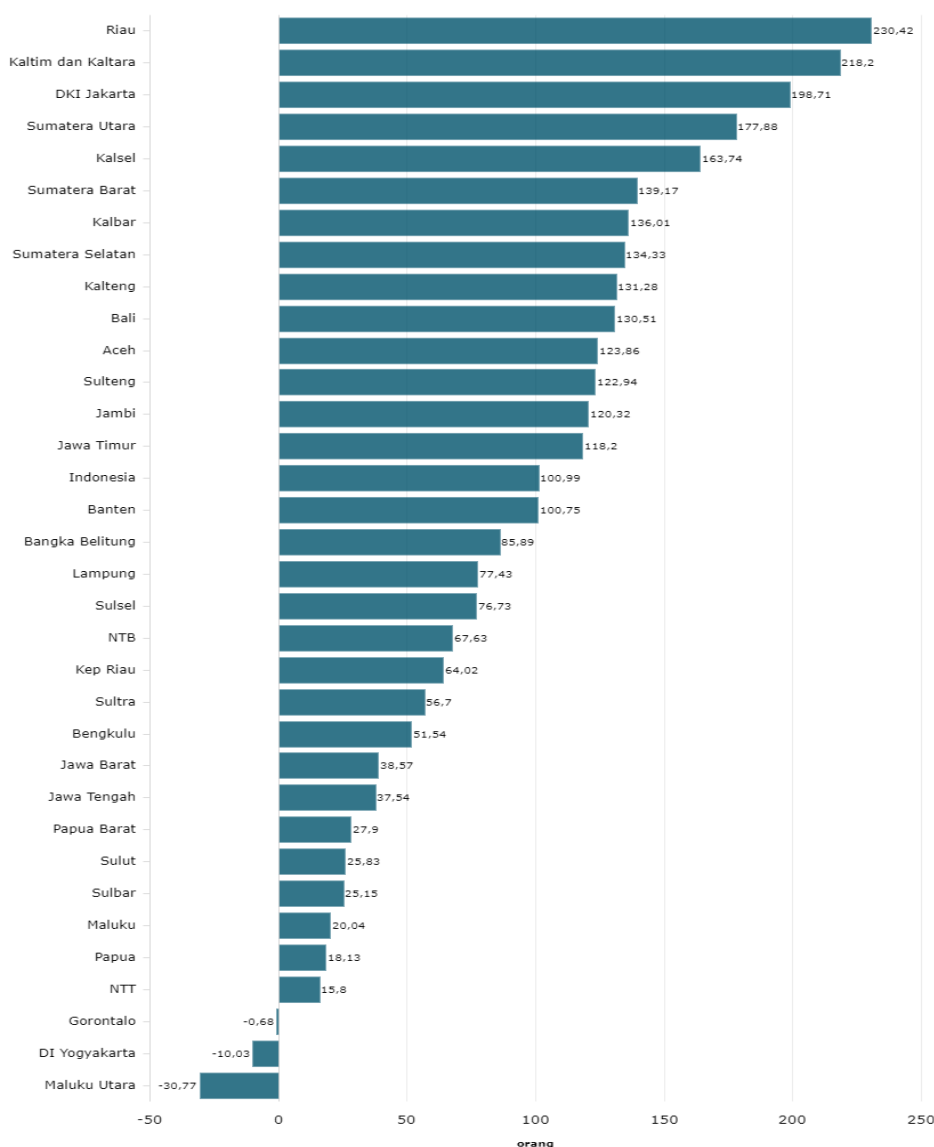
<sup>8</sup> Sumiati, *Asuhan Keperawatan Pada Klien Penyalahgunaan & Ketergantungan Napza*, Jakarta: Trans Info Media, 2016, pp. 2-3.

<sup>9</sup> Dadang Hawari, *Penyalahgunaan dan Ketergantungan Narkotika*, Jakarta: Fakultas Kedokteran Universitas Indonesia, 2012, pp. 12-13.

<sup>10</sup> Julianan Lisa FR dan Nengah Sutrisna W, *Narkoba, Psikotropika dan Gangguan Jiwa*, Yogyakarta: Nuha Medika, 2018, p. v.

crimes, that law was deemed no longer sufficient, so Law Number 35 of 2009 concerning Narcotics or the Narcotics Law was issued. Law enforcement for narcotics addicts and abusers mostly applies prison sentences, as in the Indonesian criminal justice system, making prisons full and overcrowded. This can be seen in Figure 2 below:

Figure 2: Indonesian Prison Overcapacity Graph 2021



Source: Data from Ministry of Law and Human Rights 2021

The data above states that the total number of prison inmates throughout Indonesia reached 265,915 people as of September 10, 2021. This number is almost double the capacity of 135,561 people.<sup>11</sup> This happens because there is no difference between narcotics abusers, both narcotics abusers without rights and against the law, addicts and victims of narcotics abuse so many addicts and victims of narcotics abuse should receive rehabilitation therapy but are not carried out by law enforcement. On the other hand,

<sup>11</sup> Dimas Jarot Bayu, dalam artikel <https://katadata.co.id/ariayudhistira/analisisdata/61404dc0656ef/lapas-di-indonesia-menanggung-beban-berat>, accessed on 03 April 2022.

alternatives to law enforcement are considered proven capable of eradicating narcotics addicts and abusers. This law enforcement also provides great benefits for all parties without imposing penalties in the form of criminal sanctions. The law enforcement alternative is more humane by using a restorative justice approach, namely by sending them to a rehabilitation institution to undergo rehabilitation.<sup>12</sup>

The progress of narcotics additives is very concerning today, so it requires comprehensive, integrated and continuous handling. One of the rehabilitation therapy programs for narcotics addicts has been implemented is the Integrated Therapy Program (one-stop centre) which combines medical therapy services and social rehabilitation.<sup>13</sup> The government's implementation of rehabilitation is one of the efforts to tackle drug abuse. This is done as an alternative to criminal imposition. The perpetrators of narcotics abuse, in this case, "users/consumers", are seen as victims who are addicted to narcotics and need treatment or care to recover from narcotics addiction. The process of treatment and care can be done through the rehabilitation process.<sup>14</sup>

However, in several cases, judges did not consider Article 103 of the Narcotics Law to provide rehabilitation for addicts and victims of narcotics abuse. As happened in the narcotics crime case with decision Number: 788/Pid.Sus/2019/PN Bpp against the defendant Hasan, in which the judge sentenced the defendant to imprisonment for 3 (three) years instead of rehabilitation even though the defendant was a victim of narcotics abuse. Meanwhile, based on Article 103 of the Narcotics Law, judges are given guidelines to place narcotics addicts in rehabilitation institutions, whether proven or not. In this case, the judge must implement and consider article by article in the Narcotics Law.<sup>15</sup> Based on the background above, the problem to be discussed in this study is: how to rehabilitate addicts and victims of narcotics abuse in Indonesia? And how does restorative justice apply to narcotics addicts through the rehabilitation process?

## II. METHODS

This research is normative legal research, and while seen from its nature, it is descriptive. The object of this research is related to rehabilitation for narcotics addicts. The data used in this study is only in the form of secondary data. Data analysis in this study was carried out qualitatively. The method of concluding this study was carried out deductively, drawing conclusions from general to specific provisions.

---

<sup>12</sup> Achmad Yuliandi Erria Putra, Mirawaty Nurhamidin, Dede Cairul, Law Enforcement in The Eradication of Narcotics Crimes Against Drug Addicts and Abusers, *Jurnal Dinamika Hukum*, Vol. 22 No. 1 Tahun 2022. DOI: <http://dx.doi.org/10.20884/1.jdh.2022.22.1.3244>

<sup>13</sup> M. Amir P., Ali Imran Duse, dkk, *Narkoba Ancaman Generasi Muda*, Yogyakarta, Pustaka Timur, 2007, p. 26.

<sup>14</sup> Mikha Dewiyanti Putri, Prih Utami, Teddy Cipta Lesmana, The Implementation of Rehabilitation Assessment As Legal Protection For Narcotics Abusers in Indonesia, *Jurnal Dinamika Hukum*, Vol. 22 No. 1, 2022, DOI: <http://dx.doi.org/10.20884/1.jdh.2022.22.1.3245>

<sup>15</sup> Suhadi, Rosdiana, Ries Fitri Amalia, Analisis Hukum Penerapan Pasal 103 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terhadap Pecandu Narkotika Dalam Putusan No: 788/Pid.Sus/2019/PN Bpp, *Jurnal De Jure*, Vol. 12, No. 2, 2020.

### III. DISCUSSION

#### Overview of the Implementation of Rehabilitation for Addicts and Victims of Narcotics Abuse in Indonesia

As known, almost all levels of society, both adults, children and adolescents, have been heavily contaminated by narcotics. Bearing in mind the average age of first abusing narcotics is at the age of 12-15 years. The rate of narcotics abuse among students for those who have ever used it is 7.5 per cent, and for users in a year is 4.5 per cent. The rate of narcotics abuse also differs according to gender, age and level of education. The rate of narcotics abuse in the group of men is higher than in women. The higher the level of education, the greater the incidence of drug abuse.<sup>16</sup> The factor of narcotics abuse by children also cannot be seen as a contemporary phenomenon, and law enforcement must be carried out to minimize cases of narcotics abuse.<sup>17</sup>

Abuse of narcotics and psychotropics is the use without rights and against the law, which is not carried out for treatment, but because you want to enjoy the effects in excess, less regularly, and lasts long enough, causing physical, mental and social health problems.<sup>18</sup> Drug users who have experienced addiction will not easily escape from the trap of these goods. A quick step is needed, one of which is by contacting the BNN. At this official government institution, rehabilitation registration can be done online.

Rehabilitation obligations for narcotics addicts are regulated in Article 54 of Law No. 35 of 2009 concerning Narcotics. With its implementation referring to the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts and Victims of Narcotics Abuse into Rehabilitation Institutions (PERKAP BNN No.11 of 2014), Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning Implementation of Mandatory Reporting of Narcotics Addicts, and Joint Regulations 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 Republic Number: 01/PB/MA/III/2014, Number: 03 of 2014, Number: 11/2014, Number: 03 of 2014, Number: Per-005/A/Ja/03/2014, Number: 1 year 2014, Number: PERBER/01/III/2014/BNN Concerning the Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions.

As mentioned above, the rehabilitation responsibility has been explained in Article 54 of Law No. 35 of 2009 concerning Narcotics (Narcotics Law). This then goes on to Article 127, paragraph (3) of the Narcotics Law, which states that abusers can be proven

---

<sup>16</sup> Novi Novitasi, Nur Rochaeti, Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3, No. 1, 2021, p. 97.

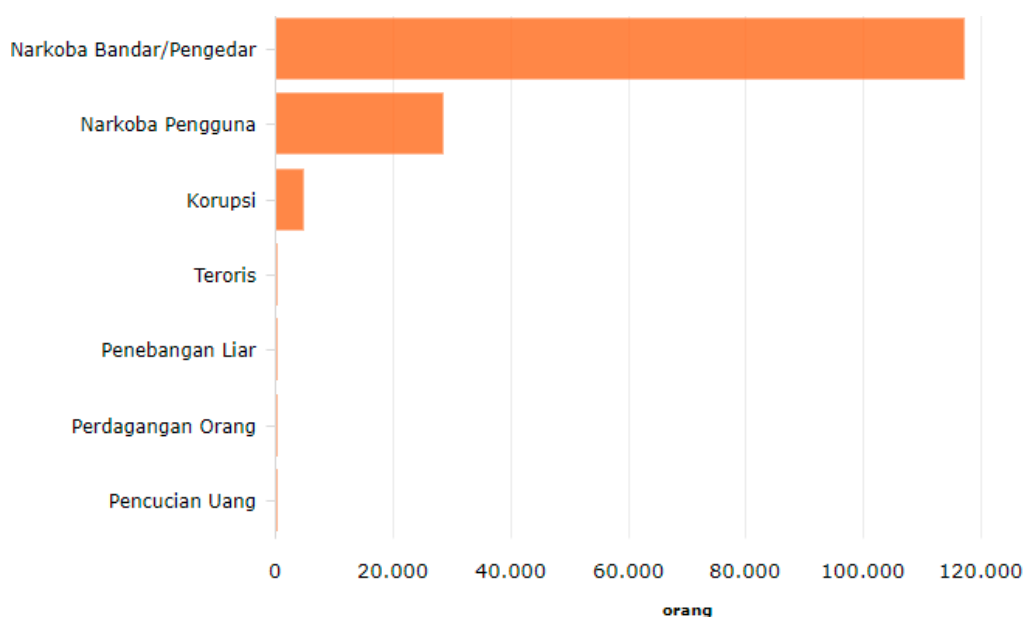
<sup>17</sup> D. Moore, Contemporary Drug Problems, *Sage Journals*, Vol. 47, No. 3, 2020, p.167-189.

<sup>18</sup> Badan Narkotika Nasional, *Pencegahan Penyalahgunaan Narkotika Sejak Dini*, Jakarta, BNN, 2009, p. 36.

to be victims of narcotics abuse. These abusers are required to undergo medical rehabilitation and social rehabilitation.<sup>19</sup> Narcotics rehabilitation is an effort to approach health for addicts or victims of narcotics abuse apart from the criminal effort.<sup>20</sup> However, the fact is that most drug addicts are imprisoned and not rehabilitated.

The Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham) noted that the number of inmates in correctional institutions (Lapas) with special crimes was 151,303 people as of August 2021. Of that number, 145,413 people or 96%, were convicts of drug cases. A total of 116,930 convicts in drug cases are categorized as dealers. Meanwhile, 28,483 other inmates are drug users. This can be seen in Figure 3 below:<sup>21</sup>

Figure 3: Number of Prison Inmates by Type of Special Crime (August 2021)



Source: Ministry of Law and Human Rights, 2021

From Figure 3 above, it can be seen that most prison inmates in Indonesia are narcotics convicts. In other words, most narcotics convicts are sentenced to prison instead of rehabilitation. The number of users, abuse victims, and drug addicts who receive rehabilitation services is 43,320. Meanwhile, in the previous figure, the number of narcotics convicts in prison is nearly 120,000 people. It is certainly very different from the number of rehabilitated drug users. Compared to imprisonment, narcotics convicts,

<sup>19</sup> Riki Afrizal, Upita Anggunsuri, Optimalisasi Proses Asesmen Terhadap Penyalahgunaan Narkotika Dalam Rangka Efektivitas Rehabilitasi Medis dan Sosial Bagi Pecandu Narkotika, *Jurnal Penelitian Hukum De Jure*, Vol. 19 No. 3, September 2019: 259-268. DOI: <http://dx.doi.org/10.30641/dejure.2019.V19.259-268>

<sup>20</sup> Glenn Greenwald, *Drug Decriminalization in Portugal; Lessons for Creating Fair and Successful Drug Policies*, USA: Cato Institute, 2009, p. 2.

<sup>21</sup> <https://databoks.katadata.co.id/datapublish/2021/09/17/narapidana-kasus-narkoba-mendominasi-di-lapas-indonesia>, accessed on 1 August 2022.

especially narcotics addicts, need special guidance in intensive care and recovery through rehabilitation. Apart from that, there are various issues regarding the current prison conditions in Indonesia, which are quite complicated. Various parties have again questioned the effectiveness of imprisonment, which has a deterrent effect.<sup>22</sup>

Rehabilitation and sentencing are often seen as two opposite things. Proponents of rehabilitation always put forward a number of reasons why rehabilitation is far better than imprisonment and vice versa. An article entitled *Punishment Fails, Rehabilitation Works*, written by James Gilligan, a professor from New York University, illustrates how prison sentences are no longer effective in the United States.<sup>23</sup> Even rehabilitation, which has not been accepted as a theory of punishment for decades, has been advocated by the Supreme Court in the United States in the *Graham v Florida* case in 2010.<sup>24</sup> A narcotics addict can undergo treatment through a rehabilitation facility after a judge's ruling or decision. Judges in law enforcement decide that narcotics addicts undergoing rehabilitation must be in accordance with the principles of justice. This decision is based on the family's or the hospital's (doctor's) information. During rehabilitation, supervision and monitoring are carried out until the addict is completely cured and free from narcotic addiction. In this rehabilitation, what is more important is how the victim survives recovery and does not relapse again after returning from the treatment and rehabilitation centre. An addict can undergo medical as well as social rehabilitation.

### **Application of Restorative Justice for Narcotics Addicts through the Rehabilitation Process**

In considering the action of the perpetrator of Narcotics abuse, there must be a statement from a doctor and/or a statement from an expert to prove that the perpetrator of Narcotics abuse is an addict. The ten reasons for the need for rehabilitation for narcotics addicts above are very much in line with efforts to resolve cases through a restorative justice approach and also in line as contained in the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Handling Cases of Crime of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as Implementation the Principle of *Dominus Litis* Prosecutor.

The implementation of rehabilitation for addicts and victims of narcotics abuse is regulated in the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Accused Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (PERKAP BNN No.11 of 2014), especially in Article 3 paragraph (2) which reads: "if a person is a suspect in a narcotics case, rehabilitation can be carried out after receiving a recommendation from the Integrated Assessment Team (TAT)". The assessment process is the first step in which

---

<sup>22</sup> Ilham Panunggal Jati Darwin, "Implikasi Overcapacity Terhadap Lembaga Pemasyarakatan di Indonesia", *Cepalo*, Vol. 3 No. 2, 2019, p. 127.

<sup>23</sup> James Gilligan, 2012, *Punishment Fails, Rehabilitation Works*, 19 December 2012, dalam <http://www.nytimes.com/roomfordebate/2012/12/18/prison-could-be-productive/punishment-fails-rehabilitation-works>, accessed on 10 December 2021

<sup>24</sup> Allegra M. Mcleod, "Decarceration Courts, Possibilities and Perils of a Shifting Criminal Law", *The Georgetown Law Journal*, Vol. 100, No.1587, 2012, p. 1604



addicts and victims of narcotics abuse report to the National Narcotics Agency to request rehabilitation. This process can be used as a benchmark for addicts and victims of narcotics abuse to determine the length of the rehabilitation period.<sup>25</sup>

The assessment aims to enable narcotics addicts and victims of narcotics abuse without rights and against the law who have been designated as Suspects to be able to undergo rehabilitation and arrange the implementation of the placement of Suspects into rehabilitation institutions. So, they can be carried out appropriately, transparently and accountable based on recommendations from the Integrated Assessment Team. Termination of this prosecution needs to pay attention to the interests of victims, avoidance of negative stigma for perpetrators, community response and decency, as well as public order. For the Prosecutor's Office, this correlates with the Prosecutor's function as *dominus litis* or case controller. As happened in the narcotics case in the West Pasaman State Prosecutor's Office, three narcotics case files with suspicions of being a user or addict of class I narcotics, not a methamphetamine type plant violating Article 127 Paragraph 1 letter a of Law No. 35 of 2009 concerning Narcotics, were resolved by a Restorative Justice mechanism, namely by using the Attorney General's Guidelines Number 18 of 2021 concerning Settlement Handling Cases of Crime of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle.<sup>26</sup>

According to the Head of the West Pasaman District Prosecutor's Office, the implementation of restorative justice is based on the Indonesia Attorney General's Guidelines No. 18 of 2021. The three case files meet the criteria of being narcotics addicts, not dealers, not involved in a narcotics network, not recidivists, and have never been convicted. Then, the weight of the narcotics is not more than 1 gram, and the assessment results are narcotics addicts. In the end, the suspects Reski Bin Kambasri, called Eki, Afriman Bin Lukman called Fiman and Muhammad Ikhsan Bin Azmi called Ikhsan, Dheo Yullian Putra Bin Fatyul Ikhsan called Deo and Muhammad Malidul Fitra Bin Muhsin called Fitra, it was decided to undergo the rehabilitation process at HB Saanin Hospital, Padang.

According to the Head of the West Pasaman State Prosecutor's Office, "Regarding the three case files with these suspects, a request for termination of prosecution was first exposed with the West Sumatra Prosecutor's Office and the Indonesian Attorney General's Office. After the exposure, approval was obtained to terminate the prosecution of cases by sending the five suspects to HB Hospital Saanin. The five suspects will rehabilitate for three months to recover and return to their families and the community." After being taken from police custody, the five suspects were immediately sent to Padang for three months of rehabilitation. "Restorative Justice" against the five alleged users or addicts of narcotics is the first time this has been carried out in the West Sumatra jurisdiction, especially at the West Pasaman District Attorney.

---

<sup>25</sup> Simbolon, Laurensius Arliman, Pelaksanaan assessment Oleh Polres Kepulauan Mentawai Sebagai Bentuk Pelaksanaan Rehabilitasi Bagi Pecandu dan Korban Penyalahgunaan Narkotika, *Jurnal Mubakkamah Fakultas Hukum Universitas Nablatul Watban Mataram*, Vol. 5 No. 1, 2020.

<sup>26</sup> <https://m.valoranews.com/berita/20267/tiga-berkas-perkara-tersangka-sabu-diselesaikan-secara-restorative-justice-perdana-di-sumbar.html> accessed on 01 December 2022

In the narcotics case that occurred in the East Java High Court area. The East Java High Court resolved the narcotics case using restorative justice as stipulated in the Attorney General's Guidelines No. 18 of 2021 concerning Completion of Handling Cases of Crime of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle. The East Java High Court provided restorative justice to a suspected narcotics user with the initials PE, a Krajan Hamlet, Gayam Village, Panggul District, Trenggalek Regency, East Java resident. The suspect was arrested for using narcotics. The case even rolled on to P21 stage 2 and is ready to be tried.

However, the High Prosecutor's Office as a prosecutor who has the right to prosecute in court provides relief to the PE suspect by providing a rehabilitation policy as stipulated in the Attorney General's Guidelines No. 18 of 2021 and stops his prosecution based on restorative justice in accordance with Perja No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. The East Java High Court has provided restorative justice to 120 cases of general crimes. However, for narcotics crimes, the High Court of East Java is the first to provide restorative justice to the suspect PE and claimed to be the first and only restorative justice for narcotics cases in East Java.

The PE suspect received rehabilitation at the Menur Hospital in Surabaya. The provision of rehabilitation based on restorative justice to the PE suspect by the East Java High Prosecutor's Office has obtained several elements, including the suspect had never had dealings with the law and using narcotics for himself. Apart from fulfilling these elements, the High Prosecutor's Office has taken a multi-aspect approach to the PE suspect. Not only related to health but also an overall examination of the suspect was carried out by the Prosecutor's Office and Menur Hospital. The provision of rehabilitation to suspects automatically terminates their legal status for the sake of restorative justice. However, the prosecutor's office explained that if the suspect leaves the rehabilitation institution before the rehabilitation deadline has not been completed, then the suspect's case will proceed to court. The East Java High Court's considerations in providing Restorative Justice to the suspect PE as a perpetrator of narcotics crimes are:

- a. Maximum imprisonment of 5 years, not more.
- b. Not a dealer or narcotics courier.
- c. Not a recidivist.
- d. There is no intention to try.
- e. Not a criminal.
- f. Never dealt with legal issues.
- g. The suspect used narcotics for himself.
- h. Not included in the People Search List.
- i. The suspect's parents agree/have permission to carry out rehabilitation.

These considerations are in line with the provisions in Prosecutor's Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which states that the termination of prosecution is carried out by taking into account the following:<sup>27</sup>

- a. Interests of victims and other protected legal interests;
- b. Avoiding negative stigma;
- c. Avoidance of retaliation;
- d. Community response and harmony; And
- e. Decency, morality and public order.

It is also worth considering:<sup>28</sup>

- a. Subject, object, category, and threat of crime;
- b. The background to the occurrence of the crime;
- c. The level of disgrace;
- d. Losses or consequences arising from criminal acts;
- e. Costs and benefits of case handling;
- f. Restoration back to its original state; And
- g. There is peace between the victim and the suspect.

As well as fulfilling the conditions:<sup>29</sup>

- a. The suspect is the first time committed a crime;
- b. Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years; And
- c. The crime is committed with the value of the evidence or the value of the losses incurred due to the crime not exceeding Rp—2,500,000.00 (two million five hundred thousand rupiah).

The termination of the prosecution of the PE case has fulfilled the requirements and considerations as stipulated in Prosecutor's Regulations No. 15 of 2020. This case is in line with what is regulated in Chapter III of the Attorney General's Guidelines No. 18 of 2021, which says that research on formal and material completeness is carried out specifically related to 1). Evidence of criminal acts of narcotics abuse; 2). Qualifications of suspects; 3). Qualification of the crime and conformity with the alleged article; 4). The element of guilt (*mens rea*) in the suspect; 5). Examination of suspects; and 6).

---

<sup>27</sup> Article 4 points (1) Prosecutor's Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

<sup>28</sup> Article 4 point (2) Prosecutor's Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

<sup>29</sup> Article 5 point (1) Prosecutor's Regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

Recommendations on the results of the integrated assessment. So, the prosecution of suspects can be stopped through restorative justice. As also regulated in Perja No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

These cases align with what is regulated in Chapter III of the Attorney General's Guidelines No. 18 of 2021, which says that research on formal and material completeness is carried out specifically related to 1). Evidence of criminal acts of narcotics abuse; 2). Qualifications of suspects; 3). Qualification of the crime and conformity with the alleged article; 4). The element of guilt (*mens rea*) in the suspect; 5). Examination of suspects; and 6). Recommendations on the results of the integrated assessment. So that the prosecution of these suspects can be stopped based on restorative justice, the reasons for granting a termination of prosecution based on restorative justice are given, among others:

- a. A peace process has been carried out where the suspect has apologized, and the victim has offered an apology;
- b. The suspect has never been convicted;
- c. The suspect is the first time to commit a criminal act;
- d. The threat of fine or imprisonment of not more than 5 (five) years;
- e. The suspect promised not to repeat his actions;
- f. The peace process is carried out voluntarily, by deliberation for consensus, without pressure, coercion and intimidation;
- g. The suspect and victim agree not to proceed with the matter in court because it will not bring greater benefits;
- h. Sociological considerations;
- i. Society responds positively.

Furthermore, JAM-Pidum ordered the Heads of the District Attorney to issue a Decision Letter on Termination of Prosecution (SKP2) Based on Restorative Justice by the Republic of Indonesia Attorney Regulation Number 15 of 2020 and JAM-Pidum Circular Letter Number: 01/E/EJP/02/2022 dated February 10, 2022, concerning the Implementation of Termination of Prosecution Based on Restorative Justice as a manifestation of legal certainty.

#### IV. CONCLUSION

The implementation of rehabilitation for addicts and victims of narcotics abuse in Indonesia can be seen from the data for 2021 and 2022, which shows the punishment for most narcotics addicts in prison. Meanwhile, various legal regulations in Indonesia contain rehabilitation obligations for narcotics abusers. Rehabilitation is a necessary form of treatment for narcotics abusers compared to imprisonment, which does not have a deterrent effect. So that efforts are needed from law enforcement officials who prioritize rehabilitation for narcotics addicts as an effort to enforce restorative justice law. One of the efforts of restorative justice from law enforcement officials against narcotics addicts

is the establishment of the Attorney General's Guidelines Number 18 of 2021 concerning the Settlement of Handling Cases of Crime of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as the Implementation of the Prosecutor's *Dominus Litis* Principle. Through rehabilitation, the Attorney General, in carrying out his *dominus litis* function, has the authority to stop the prosecution of narcotics addicts by sending them to rehabilitation institutions for treatment. This guideline is issued to answer the times and follow the trend of settling cases through restorative justice. As in the cases that occurred at the West Pasaman District Prosecutor's Office and the East Java High Court's territory, these cases were resolved using the Attorney General's Guidelines No. 18 of 2021.

## V. SUGGESTION

For the treatment of addicts and victims of narcotics abuse to be more effective and on target, it is necessary to educate judges handling narcotics cases to consider articles regarding rehabilitation so that addicts and victims of narcotics abuse receive treatment as well as the need for socialization to all stakeholders regarding the Attorney General's Guidelines No. 18 of 2021, so that it can be used evenly.

## REFERENCES

- Achmad Yuliandi Erria Putra, Mirawaty Nurhamidin, Dede Cairul, Law Enforcement in The Eradication of Narcotics Crimes Againsts Drug Addicts and Abusers, *Jurnal Dinamika Hukum*, Vol. 22 No. 1 Tahun 2022. DOI: <http://dx.doi.org/10.20884/1.jdh.2022.22.1.3244>
- Allegra M. Mcleod, *Decarceration Courts, Possibilities and Perils of a Shifting Criminal Law*. The Georgetown Law Journal, Vol. 100, No.1587, 2012.
- Badan Narkotika Nasional, *Pencegahan Penyalahgunaan Narkoba Sejak Dini*, Jakarta, BNN, 2009.
- Badana Narkotika Nasional, *Journal Data BNN Tahun 2018*, Jakarta.
- Dadang Hawari, *Penyalahgunaan dan Ketergantungan Narkotika*, Jakarta: Fakultas Kedokteran Universitas Indonesia, 2012.
- <https://m.valoranews.com/berita/20267/tiga-berkas-perkara-tersangka-sabu-diselesaikan-secara-restorative-justice-perdana-di-sumbar.html>, accessed on 01 December 2022
- Dimas Jarot Bayu, dalam artikel <https://katadata.co.id/ariayudhistira/analisisdata/61404dc0656ef/lapas-di-indonesia-menanggung-beban-berat>, accessed on 03 April 2022.
- Direktorat Statistik Ketahanan Sosial, *Statistik Kriminal 2021*, Jakarta: Badan Pusat Statistik, 2021.
- Glenn Greenwald, *Drug Decriminalization in Portugal; Lessons for Creating Fair and Successful Drug Policies*, USA: Cato Institute, 2009.
- <https://databoks.katadata.co.id/datapublish/2021/09/17/narapidana-kasus-narkoba-mendominasi-di-lapas-indonesia>, accessed on 1 August 2022.
- Ilham Panunggal Jati Darwin, “Implikasi Overcapacity Terhadap Lembaga Pemasyarakatan di Indonesia “, *Cepalo*, Vol. 3 No. 2, 2019.
- James Gilligan, 2012, *Punishment Fails, Rehabilitation Works*, December 19 2012, dalam <http://www.nytimes.com/roomfordebate/2012/12/18/prison-could-be-productive/punishment-fails-rehabilitation-works>, accessed on December 10 2021.
- Julianan Lisa FR dan Nengah Sutrisna W, *Narkoba, Psicotropika dan Gangguan Jiwa*, Yogyakarta: Nuha Medika, 2018.
- M. Amir P., Ali Imran Duse, dkk, *Narkoba Ancaman Generasi Muda*, Yogyakarta, Pustaka Timur, 2007.
- Mikha Dewiyanti Putri, Prih Utami, Teddy Cipta Lesmana, The Implementation of Rehabilitation Assessment As Legal Protection For Narcotics Abusers in Indonesia, *Jurnal Dinamika Hukum*, Vol. 22 No. 1 Tahun 2022, DOI: <http://dx.doi.org/10.20884/1.jdh.2022.22.1.3245>
- II. Moore, Contemporary Drug Problems, *Sage Journals*, Vol. 47, No. 3, 2020.
- Muhammad Mustafa, *Krimonologi: Kajian Sosiologi terhadap Kriminalitas, Perilaku menyimpang, dan Pelanggar Hukum*, Jakarta, FISIP UI Press, 2007.

- Novi Novitasi, Nur Rochaeti, Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3, No. 1, 2021.
- Attorney General's Guidelines Number 18 of 2021 concerning Completion of Handling Cases of Crime of Narcotics Abuse Through Rehabilitation Using a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle.
- Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
- Petrus Reinhard Golose, KABNN, dalam jumpa pers [https:// www. voaindonesia. com/a/sepanjang-2021-bnn-ungkap-760-kasus-tindak-pidana-narkoba-6375450.html#](https://www.voaindonesia.com/a/sepanjang-2021-bnn-ungkap-760-kasus-tindak-pidana-narkoba-6375450.html#), accessed on 10 June 2021.
- Riki Afrizal, Upita Anggunsuri, Optimalisasi Proses Asesmen Terhadap Penyalahguna Narkotika Dalam Rangka Efektivitas Rehabilitasi Medis dan Sosial Bagi Pecandu Narkotika, *Jurnal Penelitian Hukum De Jure*, Vol. 19 No. 3, September 2019: 259-268. DOI: <http://dx.doi.org/10.30641/dejure.2019.V19.259-268>.
- Ruslan Renggong, *Hukum Pidana khusus*, Jakarta: Kencana, 2017.
- Simbolon, Laurensius Arliman, Pelaksanaan assessment Oleh Polres Kepulauan Mentawai Sebagai Bentuk Pelaksanaan Rehabilitasi Bagi Pecandu dan Korban Penyalahgunaan Narkotika, *Jurnal Mubakkamah Fakultas Hukum Universitas Nahdlatul Wathan Mataram*, Vol. 5 No. 1, 2020.
- Soekedy, *Menyirambara Narkotika Semakin Tabu Akibatnya Semakin Siap Menolaknya*, Mapeksi, Jakarta, 2002.
- Suhadi, Rosdiana, Ries Fitri Amalia, Analisis Hukum Penerapan Pasal 103 Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Terhadap Pecandu Narkotika Dalam Putusan No: 788/Pid.Sus/2019/PN Bpp, *Jurnal De Jure*, Vol. 12, No. 2, 2020.
- Sumiati, *Asuhan Keperawatan Pada Klien Penyalahgunaan & Ketergantungan Napza*, Jakarta: Trans Info Media, 2016.
- Taufik Makarao, Suhasril, dan Zakky A.S, *Tindak Pidana Narkotika*, Jakarta: Ghalia Indonesia, 2003.

