

Restorative Justice in Drug Abuse Cases: An Effort to Effective Social Rehabilitation

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Abstract: *Indonesia is the 4th most populous country in the world as of September 2020 with a population of 270.20 million as of September 2020, and ranks as the fourth most populous country globally. Due to its substantial population, it has become a target for international drug trafficking. This article explores the context of narcotics through the lens of restorative justice, considering users and couriers who may be involuntarily involved in the trade. This research employs a normative approach, analyzing and interpreting various legal regulations, court decisions, and legal literature. The author gathers data from scholarly sources, identifying and clarifying legal facts, including secondary and primary legal source materials. process of applying restorative justice in narcotics cases involves collaboration among offenders, victims, the community, and other stakeholders, achieved through negotiation, communication, and mediation among all parties. This approach strives to balance the scales of justice by focusing on victim recovery, rehabilitation opportunities, peaceful conflict resolution, and strengthening social reconciliation within society. Achieving this involves educating and raising awareness among the public through effective campaigns, enhancing public understanding of principles of justice, human rights, and the foundational values underpinning legal accessibility and justice in the legal system.*

Keywords: *Restorative Justice, Narcotics Cases, Drug Abusers*

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Abstrak: Indonesia merupakan negara terpadat ke-4 di dunia per September 2020 dengan jumlah penduduk 270,20 juta jiwa per September 2020, dan menduduki peringkat keempat di dunia. Karena jumlah penduduknya yang besar, Indonesia telah menjadi target perdagangan narkoba internasional. Artikel ini mengeksplorasi konteks narkoba melalui lensa keadilan restoratif, dengan mempertimbangkan pengguna dan kurir yang mungkin secara tidak sengaja terlibat dalam perdagangan tersebut. Penelitian ini menggunakan pendekatan normatif, dengan menganalisis dan menginterpretasikan berbagai peraturan hukum, putusan pengadilan, dan literatur hukum. Penulis mengumpulkan data dari sumber-sumber ilmiah, mengidentifikasi dan mengklarifikasi fakta-fakta hukum, termasuk bahan hukum sekunder dan primer. Proses penerapan keadilan restoratif dalam kasus narkoba melibatkan kolaborasi antara pelaku, korban, masyarakat, dan pemangku kepentingan lainnya, yang dicapai melalui negosiasi, komunikasi, dan mediasi di antara semua pihak. Pendekatan ini berusaha untuk menyeimbangkan timbangan keadilan dengan berfokus pada pemulihan korban, kesempatan rehabilitasi, resolusi konflik secara damai, dan memperkuat rekonsiliasi sosial dalam masyarakat. Untuk mencapai hal ini, diperlukan edukasi dan peningkatan kesadaran di kalangan masyarakat

melalui kampanye yang efektif, meningkatkan pemahaman masyarakat tentang prinsip-prinsip keadilan, hak asasi manusia, dan nilai-nilai dasar yang mendukung aksesibilitas hukum dan keadilan dalam sistem hukum.

Kata kunci: Keadilan Restoratif, Kasus Narkotika, Penyalahguna Narkotika

PENDAHULUAN

Indonesia became the 4th most populous country in the world in September 2020, with 270.20 million people.¹ The majority of people are heterogeneous and have varied lifestyles. As such, social norms tend to become more flexible, making social coping less efficient. Under these conditions, people easily fall into certain lifestyles, sometimes even contradicting existing social norms.



Figure 1: Population and Growth Rate of Indonesia, 1961-2020

The target country for the international drug business is Indonesia because of its large population, which has great potential for the drug business. Narcotics enter Indonesia by land, sea and air. The problem of drug abuse is an extraordinary crime in Indonesia. The prevalence of drug abuse consists of ever use and active users, both first use, frequency of use, and what type is used, as well as the reasons for using drugs and involvement in rehabilitation and so on. Factors of drug abuse can be seen from the relationship between risky behaviors, namely drinking, smoking, and nightlife. These factors can come from a community of bad associations ranging from invitations, trial and error or coercion intimidated by certain groups or can also be due to economic conditions. Therefore, the author will examine more deeply the abuse of narcotics, both

¹ Badan Pusat Statistik, "Berita Resmi Statistik," *Bps.Go.Id*, no. 27 (2019): 1–52.

users and dealers who are first-time couriers and are trapped in circumstances that are forced not of their own accord from the point of view of existing law in Indonesia.

Law as a means of developing society in a development process that places law as an important means of maintaining order.² It is clear that legal reform in Indonesia emphasizes legislation or written law. Apart from that, the main purpose of law is to create order in society, in addition to legal certainty because order is the main condition for the creation of an organized and cultured society.³ Conventional laws that focus on criminal penalties are often ineffective in addressing the problem of drug abuse. Punishing offenders with prison sentences alone does not solve the root of the problem or help them recover from drug addiction. In addition, the population of prisoners incarcerated for drug abuse is also increasing significantly, placing a burden on the criminal justice and prison systems, one of which is contained in the penal code.

Criminal law is part of the overall law enforced by a country, including Indonesia, which holds the principles and rules to determine which actions should not be done, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for violators.⁴ Narcotics crime is an Extraordinary Crime case that is a concern in every country, because narcotics can harm a generation of people in a country. Restorative justice in drug abuse cases prioritizes justice for victims and perpetrators. However, in its development, the guidance carried out has not been maximized due to the complexity of the problems that occur in prison, one of which is the problem of overcrowding.⁵ The focus on restorative justice emphasizes healing and reconciliation as an important part of resolving drug abuse cases. By addressing the needs and wellbeing of all parties involved, including offenders, victims and communities, this approach seeks to repair broken relationships and reduce levels of violence.⁶

To strengthen the theoretical basis and understand the broader context, previous research has been conducted on the Restorative Justice Approach. A number of studies have revealed the effectiveness of this approach in reducing recidivism rates, improving the rehabilitation process, and promoting sustainable recovery for people who abuse drugs.⁷ For example, Azwad Rachmat Hambali's research found that as a philosophy of punishment, restorative justice can frame various policies, program ideas and strategies for handling criminal cases so that it is hoped that the results of the process can create justice felt by perpetrators, victims and the community and answer various problems faced by the current criminal justice system.⁸

² Muntaqo and Firman, "Dalam Praktek Berhukum" (2005): 19.

³ Azwad Rachmat Hambali, "Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana," *Kalabbirang Law Journal* 2, no. 1 (2020): 69–77.

⁴ Didik Endro Purwoleksono, 'DIDIK ENDRO PURWOLEKSONO a T', 2012.

⁵ Haposan Sahala Raja Sinaga, "Penerapan Restorative Justice Dalam Perkara Narkotika Di Indonesia," *Jurnal Hukum Lex Generalis* 2, no. 7 (2021): 528–541.

⁶ Raharni et al., "Determinant Factors of Narcotics, Psychotropic, and Addictive Substances Abuse Relapse in a Drug Rehabilitation Centre in Indonesia," *Pharmacy Education* 22, no. 2 (2022): 207–212.

⁷ Wawan Edi Prastiyo, "The Reconstruction of Rehabilitation for Addictives and Drug Abuses in Human Rights Perspective," *International Journal of Research in Business and Social Science (2147- 4478)* 11, no. 1 (2022): 379–389.

⁸ Aswan Afandi, Hambali Thalib, and Abdul Agis, 'Efektivitas Penanggulangan Peredaran & Penyalahgunaan Narkotika Oleh Badan Nasional Narkotika Sulawesi Selatan', *Journal of Lex Philosophy (JLP)*, 1.1 (2020) <<https://doi.org/10.52103/jlp.v1i1.29>>.

Another study conducted by Novitasari N and Rochaeti N found that the factors that influence children to become perpetrators of narcotics abuse are legal substance, legal structure, facilities, legal culture and society. The most influential factor comes from within the child himself.⁹ Although this previous research provides a good initial understanding of the benefits of restorative justice approaches in drug abuse cases, there are still important differences that require further research. One of these differences is the effectiveness of the restorative justice approach in drug abuse cases categorized for all ages and the focus on restoring victims to society.

In Article 54 of Law No. 35/2009 on Narcotics "Narcotics Addicts and Victims of Narcotics Abuse Must undergo Medical Rehabilitation and Social Rehabilitation", article 13 paragraph (4) of PP 25 of 2011 concerning the Enforcement of Reporting Obligations for Narcotics Addicts "Placement in a Medical Hospital and/or social rehabilitation institution as referred to in paragraph (3) is the authority of the investigator, public prosecutor, or judge by the level of examination after receiving a recommendation from a team of doctors".

Prosecutor Guidelines Number 18 of 2021 concerning the Settlement of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle. Law No. 13/2006 on Witness and Victim Protection provides a legal framework to protect witnesses and victims in criminal cases, including drug abuse cases.

Restorative Justice, which contains principles such as building joint participation between offenders, victims, and community groups to resolve an event or crime, places offenders, victims, and communities as "Stakeholders" who work together and directly try to find solutions that are considered fair for all parties. This approach can help change behavior, reduce recidivism, and improve social reintegration by involving the offender in the recovery and reconciliation process.¹⁰ Therefore, it is necessary to enforce the law on drug cases with a restorative justice approach. In addition, it is also necessary to balance the sense of justice and the restoration of drug abusers into society. However, it must be recognized that the restorative justice approach also has limitations and challenges in the context of drug abuse. For example, not all drug abuse cases are suitable for this approach, especially when there are security factors involving organized crime networks. In addition, implementing a restorative justice approach requires strong support from the criminal justice system, adequate resources, and a broad understanding of the parties involved in the process.

RESEARCH METHODS

This research uses normative research, namely by analyzing and interpreting various legal regulations, court decisions, and other legal literature. Data collection carried out by the author is by using library data and identification and clarification of legal facts. The

⁹ Novi Novitasari and Nur Rochaeti, 'Proses Penegakan Hukum Terhadap Tindak Pidana Penyalahgunaan Narkotika Yang Dilakukan Oleh Anak', *Jurnal Pembangunan Hukum Indonesia*, 3.1 (2021) <<https://doi.org/10.14710/jphi.v3i1.96-108>>.

¹⁰ Hambali, "Penegakan Hukum Melalui Pendekatan Restorative Justice Penyelesaian Perkara Tindak Pidana."

literature study is in the form of secondary data, namely primary legal material and secondary legal material. Secondary data is obtained from literature studies or regulatory documents related to the issues studied, including Law Number 35 of 2009 concerning Narcotics, Government Regulation Number 25 of 2011 concerning the Implementation of Mandatory Reporting for Narcotics Addicts, Prosecutor's Regulation Number 18 of 2021 concerning the Settlement of Cases of Criminal Acts of Narcotics Abuse Through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle. After secondary and primary legal materials are obtained in full, they are then analyzed qualitatively.

DISCUSSION

Restorative Justice Approach in Law Enforcement of Drug Abuse Cases

The application of law enforcement through a restorative justice approach in drug abuse cases can be based on several factors and references, including legislation related to the application of restorative justice must be in accordance with the applicable legal framework, such as narcotics laws and other related regulations. Aligning restorative justice practices with applicable legal provisions is important to maintain the legitimacy and sustainability of the process.

Article 54 in Law no. 35 of 2009 concerning Narcotics "Narcotics Addicts and Victims of Narcotics Abuse Must undergo Medical Rehabilitation and Social Rehabilitation", article 13 paragraph (4) of Government Regulation No. 25 of 2011 concerning the Enforcement of Mandatory Reporting for Narcotics Addicts "Placement in a medical and or social rehabilitation institution as referred to in paragraph (3) is the authority of the investigator, public prosecutor, or judge in accordance with the level of examination after obtaining a recommendation from the Medical Team".

Prosecutor Guidelines Number 18 of 2021 concerning the Resolution of Criminal Cases of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle. Article 5 of Law Number 13/2006 on Witness and Victim Protection provides a legal framework to protect witnesses and victims in criminal cases, including drug abuse cases. This law applies to provide protection, assistance, and recovery for witnesses and victims involved in such cases. The Supreme Court has regulations relating to the handling of drug cases at the court level. Supreme Court Regulation No. 2/2012 on the Settlement of Narcotics Crimes with a Rehabilitative Approach and Restorative justice. This regulation provides guidelines for the application of restorative justice in the settlement of drug cases in court.

Practical guidelines for relevant parties such as the prosecutor's office, police, and other relevant institutions can develop practical guidelines for the application of restorative justice in drug abuse cases.¹¹ These guidelines can provide operational guidance on the steps to be followed, the participatory processes involved, and the goals and principles to be upheld in restorative justice. The application of restorative justice in drug

¹¹ Agus Raharjo, Yusuf Saefudin, and Rini Fidiyani, "The Influence of Technology Determinism in Forming Criminal Act of Legislation," *E3S Web of Conferences* 73 (2018): 1–5.

abuse cases requires good collaboration and coordination between relevant institutions, such as the prosecutor's office, police, rehabilitation institutions, and other community institutions. This inter-institutional cooperation is important to ensure alignment of approaches, effective information exchange, and ongoing monitoring and evaluation.

The principles of implementing restorative justice should be based on restoring harm, active participation of all parties involved in reconciliation and social reintegration. Understanding and applying these principles appropriately in the context of drug abuse is key to achieving the goals of restorative justice. Evaluation and reform are important for regular monitoring of the application of restorative justice in drug abuse cases. This can be done to measure success, identify challenges and areas of improvement. Evaluation results can then be used to reform and improve the system.

It is important to note that the application of restorative justice in drug abuse cases must consider the context, needs and characteristics of each case. This will ensure that the restorative justice process runs well and provides optimal benefits for all parties involved. Regarding the concreteness of restorative justice in the resolution of drug abuse cases requires analysis of the following aspects. The application of the restorative justice approach explains the concept and how the approach can be applied in the context of drug abuse case resolution. With this application, it can replace or complement the traditional punitive approach in dealing with drug abuse cases.

The restorative justice process focuses on reconciliation and restoration aimed at restoring the relationship between the offender, the victim and the community. This includes identifying the harm caused, repairing the social and psychological impact, and finding adequate solutions for all parties involved.¹² There are two processes that can be followed to stop using drugs, the first is self-encouragement, where feelings of shame and guilt begin to arise both towards family and the environment, secondly by family or others.¹³

Oversight of the process is important to ensure that restorative justice is implemented fairly, transparently and in accordance with legal principles. Continuous monitoring, evaluation and updates from the authorities are necessary to maintain the integrity and effectiveness of the process.

The goal of restorative justice is transformation for the victim, offender, and their relationship with society, so that forgiveness is truly meaningful and psychologically impactful. This should be accompanied by restorative measures to repair the damage done as far as possible. Identify the objectives of implementing restorative justice in drug abuse cases, such as victim recovery, offender rehabilitation, and social reconciliation.¹⁴ Analyze the relevance of this goal to the context of drug abuse and the expected impact of implementing restorative justice.

¹² Anwar Sutoyo et al., "Career Counseling Urgency: Career Planning Capability of Substance Users in the Rehabilitation Process," *Counselia: Jurnal Bimbingan dan Konseling* 12, no. 2 (2023): 142.

¹³ "Research Report Rec" (2020).

¹⁴ Timothy Pritchard Debrah, "African Journal of Drug and Alcohol Studies Volume 21, Numbers 1 & 2 2022 Journal Homepage: Www.Crisaafrika.Org/Ajdas" 21, no. 2006 (2022): 1–17.

Some of the dynamics that may occur include collaboration between various parties, the restorative justice process involves collaboration between the perpetrator, victim, community, and other stakeholders. The dynamics that may occur are negotiation, communication, and mediation between all parties involved. The dynamics may involve the following stages:

- a. Identification of perpetrators and victims: parties involved in drug abuse cases, including perpetrators and victims, are identified. This may involve law enforcement, drug rehabilitation agencies, or relevant social agencies.
- b. Mediation or restorative meetings: the perpetrator, victim, and related parties such as family or community may be asked to participate in mediation or restorative meetings. The aim of these meetings is to create an open dialogue between the offender and victim and facilitate healing and reconciliation.
- c. Discussion and admission of guilt: in a restorative meeting, the offender may be asked to admit his or her guilt and take responsibility for the act of drug abuse committed. An open and honest discussion can help gain a better understanding of the consequences of the act.
- d. Drafting a restorative agreement: based on the results of the meeting and discussion, a restorative agreement can be drafted. This agreement can include concrete steps the offender must take to make amends, such as attending a rehabilitation program, undergoing regular drug testing, or performing community service.
- e. Supervision and support: once a restorative agreement has been agreed, the offender can be provided with supervision and support in implementing the agreed steps. This may involve monitoring by rehabilitation officers, counselors, or support groups committed to assisting the offender in the recovery process.

Restorative justice processes can provide several benefits, such as better victim recovery, greater rehabilitation opportunities for perpetrators, peaceful conflict resolution, and strengthening social reconciliation in society. Cognitive modular thought processes (motivation, emotion, and arousal) relate to self-regulation, which aims to maintain one's self-integration. An integrated person is expected to achieve his/her goals when facing problems and learn from bad experiences. Therefore, drug rehabilitation can be motivated to build a better future after their successful treatment, as well as to overcome emotions and desires caused by appetite.¹⁵

¹⁵ Chang Jiang Liu, "Development and Validation of the Volitional Components Inventory for Drug Rehabilitation," *Journal of Drug Issues* 50, no. 1 (2020): 89–102.

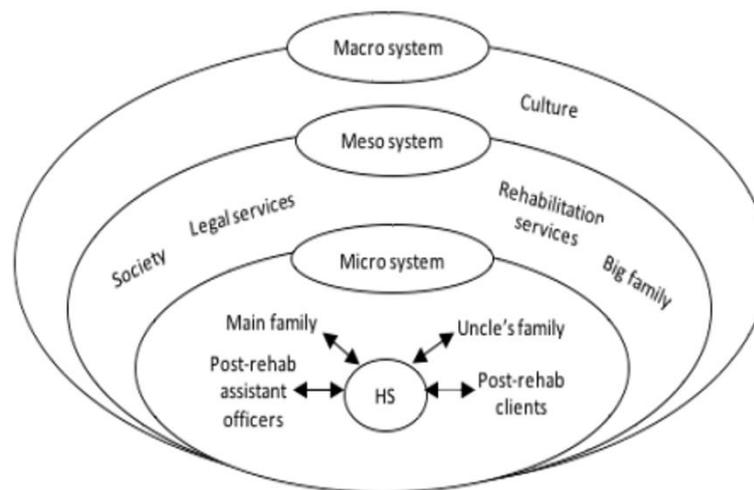


Figure 3: Family Environment External Relationship Scheme

This method provides an overview of how the nuclear family functions in a three-tiered social system relationship. The microsystem is where people interact directly and are members of the close-knit groups that drug abusers belong to. The mesosystem is the larger system, creating group relationships with a very wide range of forms of interaction. Each part is actively involved in upholding the standards and rules of the community. The macrosystem is the last level of the system with the largest environment because it includes the social and cultural structure. Families of people who use drugs also do not structurally have access to social assistance from the local government due to operating needs and are not actively involved in community activities.¹⁶

However, this approach also has challenges and limitations, such as the need for voluntary participation, victim protection, and balanced justice.¹⁷ Restorative justice has been applied in a variety of contexts and cases, including drug abuse, domestic violence, juvenile crime, and community conflict. The aim is to achieve a more just, meaningful, and sustainable resolution for all parties involved in the criminal justice system.

Participation and social reintegration discuss the importance of active participation of all parties involved, including victims, offenders, families, and communities in the restorative justice process. Analyzes how restorative justice can facilitate the social reintegration of drug offenders after the case resolution process. Addressing harm and impact, explaining how restorative justice can provide a more holistic approach to addressing the harm caused by drug abuse, both to victims and offenders.

Restorative justice can address the social and psychological impacts of drug abuse, such as stigma, isolation, and trauma. The solution identifies inhibiting factors that may arise in the application of restorative justice in drug abuse cases, such as community

¹⁶ Kota Banjarbaru et al., "Wacana– Jil. 25, No.1 (2022)" 1, no. 1 (2022): 13–18.

¹⁷ Hanafi Arief and Ningrum Ambarsari, 'PENERAPAN PRINSIP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI INDONESIA', *Al-Adl : Jurnal Hukum*, 10.2 (2018), 173 <<https://doi.org/10.31602/al-adl.v10i2.1362>>.

distrust, security tensions, and limited resources.¹⁸ Solutions that can be taken to overcome these inhibiting factors are to increase public understanding, strengthen inter-agency cooperation, and allocate adequate resources for evaluation and development. Continuous evaluation of the application of restorative justice in drug abuse cases is important to discuss further development steps to improve the effectiveness and efficiency of restorative justice, based on experience and evaluation findings.

Balancing a Sense of Justice and Social Rehabilitation Efforts for Drug Abusers

In order to balance a sense of justice and restoration back to society (social rehabilitation), several steps can be taken, including public education and awareness through effective campaigns, important to increase public understanding of the principles of justice, human rights, and values underlying accessibility and fairness in the legal system. Restorative justice approaches apply when perpetrators, victims and communities are involved in restorative processes. Through dialogue, mediation and collective meetings, offenders can take responsibility for their actions, understand their impact on victims, and repair damaged relationships between offenders and society and community approaches. Transformational recovery plans and moral recovery programs, a 3-phase modular approach are implemented with the overall aim of helping participants understand the healing process restore their previous lifestyle, and live a new life for the future. Self-awareness and personality development, family healing and reconciliation, community integration.¹⁹

Public education and awareness increase public understanding and awareness of the problem of drug addiction, its impact on individuals and society, and the importance of a recovery-focused approach. Through educational campaigns and prevention programs, communities can better understand the complexities of drug addiction and support offenders in their recovery efforts. Comprehensive rehabilitation support and services provide comprehensive rehabilitation services for drug addicts. This includes access to medical treatment, psychosocial therapy, skills programs, and social reintegration. A holistic rehabilitation approach helps offenders gain the skills and resources they need to overcome addiction and reclaim their lives.

Build a support network that includes family, friends, community, and relevant organizations. Strong social support helps drug abusers feel supported and connected to resources that can help them recover. A family and community that provides positive support also reinforces a sense of justice and recovery in the offender's life. Offender participation in community activities encourages and provides opportunities for people who use drugs to participate in positive and constructive community activities. In this context, the offender can repair broken relationships, restore trust, and feel part of society again.

¹⁸ Jasper Joy M. Dumaguing et al., "The Road To Recovery and Role Modeling: The Journey of Persons Undergoing a Community-Based Drug Rehabilitation Program," *Malaysian Journal of Nursing* 13, no. 1 (2021): 23–35.

¹⁹ Generoso N. Mazo, "Transformational Rehabilitation: Community-Based Intervention To End the Drug Menace," *International Journal of Research -GRANTHAALAYAH* 5, no. 12 (2020): 183–190.

So that drug abusers do not feel undermined both legally and in society. Legal theory and legal philosophy focus on the concepts of justice (*gerechteheid*), equality (*gelijkheids*), law enforcement (*bliksheid*), rule of law (rights), good faith (*ie goode tram*), legal awareness (*rechtsbennust*). The study is dominated by legal philosophy, but the understanding is very useful in legal theory studies, such as research that distinguishes between the legitimacy of the rule of law and the legitimacy of the legal system. Ensure the legal system can be accessed fairly and equitably by all citizens, including through the provision of legal aid for those in need. Transparency, accountability, and independence of the justice system are also important to maintain public trust in justice.

Proportional handling of cases is important to maintain a balance between the interests of society and individual rights in handling criminal cases. Considering sanctions that are appropriate to the level of crime committed, as well as considering rehabilitation and social reintegration for criminal offenders. Dialogue involving the community in the decision-making process related to justice, either through public consultation, discussion forums, or participation in restorative justice mechanisms. This can provide space for multiple perspectives and strengthen the sense of justice felt by people who misuse drugs and their reintegration into society.

According to Howard Zehr, restorative justice prioritizes victim recovery, offender rehabilitation, and social reconciliation. He argues that traditional punishment only focuses on revenge and is not effective in preventing crime. In the context of restorative justice, the process of resolving cases involves meetings between victims and offenders, facilitators, and other relevant parties. This meeting aims to facilitate dialogue, address the needs and losses of the victim, acknowledge the impact of the crime, and seek joint solutions that can restore all parties involved.

By combining these elements, we can create a balanced environment between a sense of justice and compensation for drug addicts. In this approach, it is important to ensure fair trials while providing recovery spaces that support and help offenders to recover and become productive members of society.

CONCLUSION

Restorative justice provides a promising alternative in dealing with drug abuse cases. By focusing on recovery, reconciliation, and reintegration, this approach has a positive impact on drug offenders and society. Some steps that can be taken to balance the sense of justice in society include educating and sensitizing the public through effective campaigns, it is important to increase public understanding of the principles of justice, human rights, and the underlying values, accessibility, and fairness in the legal system.

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