

Protection of Victims of Drug Abuse in the Perspective of Restorative Justice

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ABSTRACT

This study critically examines narcotics abuse through a restorative justice lens within the Indonesian legal system. Using a normative juridical method and qualitative analysis, data were collected through documentary research, with secondary sources as the primary reference. Case analysis of Decision No. 29/Pid.Sus/2024/PN Cbn highlights the dominance of retributive justice, which proves inadequate for addressing narcotics abuse. In contrast, Decision No. 272/Pid.Sus/2021/PN Bir demonstrates restorative justice through victim-centered rehabilitation and efficient legal procedures. The findings underscore the need to expand restorative approaches to better protect and rehabilitate victims, offering a more humane and effective alternative to punitive models.

INTRODUCTION

Narcotics are drugs or types of goods that are prohibited from being consumed freely in Indonesia, this is stated in Law Number 35 of 2009 concerning Narcotics. Although its circulation is limited, narcotics abuse continues to grow every year so that this abuse becomes a complex social problem. Narcotics abuse is circulating to various levels of society not only adults, including teenagers and children through promiscuity. Based on data from the National Narcotics Agency (BNN) according to (Feisal & Kliwantoro, 2025) the prevalence of drug abuse among adolescents touched 24-28% which was originally 20% in recent years. The year 2023 shows a figure of 1.73% or equivalent to 3.3 million Indonesians. (PUSLITDATIN, 2019) in the news article ANTARA News also revealed that the age group of 15-64 years is the most vulnerable generation to long-term drug abuse. This data shows a significant increase in drug abuse among the 15-24 age group.

Drug abuse over a long period of time can cause physical health and psychological health to be disrupted and have an impact on social stability. For individuals who use substances according to their effects, consuming certain doses can induce hallucinations. Stimulants, on the other hand, accelerate the functioning of the heart and brain organs, leading to increased happiness and a temporary euphoric state. Depressants, conversely, suppress the central nervous system, reducing the body's functional capabilities. Finally, addictive substances evoke a stronger desire or addiction (Pramesti et al., 2022: 361). In handling the narcotics crime system in Indonesia prioritizes the retributive principle put forward by Immanuel Kant and Hegel, whose ideas tend to impose prison sanctions to create a deterrent effect (Puluhulawa, 2024). In reality, this approach is not effective in tackling narcotics abuse because complex correctional institutions can cause abusers to become more involved because they can interact with other narcotics prisoners who are more experienced, in practice only focusing on providing criminal sanctions so that a new paradigm needs to be resolved to provide rehabilitation space for abusers.

In contrast to the Retributive approach, restorative justice prioritizes an approach in handling criminal cases as an alternative effort by involving several parties such as legal instruments, community leaders, and the victims themselves to restore the rights of victims and not efforts for retaliation. In addition, restorative justice is also a manifestation of a judicial process that prioritizes the principles of brevity, speed, and low cost. In this case, through Law Number 35 of 2009 concerning Narcotics, it can be seen that abusers can be sanctioned in the form of imprisonment. (Rakhman, 2024) also argues that punishment in the form of imprisonment is something that should be reduced, especially for drug abusers and addicts who can still be rehabilitated and alternative solutions such as restorative justice.

This article analyzes the procedure for protecting victims of narcotics abuse as in Article 54 of Law Number 35 of 2009 which should have been rehabilitated as in decision Number 272/Pid.Sus/2021/PN Bir but in practice there are still cases related to victims of narcotics abuse who are sentenced to imprisonment as in decision Number 29/Pid.Sus/2024/PN Cbn of course this

can injure the principle of *Ultimum Remedium*, namely imprisonment is the last resort if there are no other efforts in carrying out the sentence. Drawing from the foregoing exposition, two principal inquiries emerge: firstly, the strategies to enhance the safeguarding of narcotics abuse victims; and secondly, the modalities for operationalizing Restorative Justice as a prospective mechanism for their protection.

LITERATURE REVIEW

Victim Protection

Victim protection in the Criminal Code implicitly emphasizes the importance of fulfilling rights and assistance to provide a sense of security to victims of criminal acts. The Criminal Code regulates detention, prosecution and punishment, and implicitly provides victims with the right to compensation and rehabilitation. Victims of criminal acts are entitled to compensation for the losses they have suffered, both material and immaterial. The Witness and Victim Protection Law articulates that the notion of protection encompasses a comprehensive array of efforts aimed at ensuring the fulfillment of victims' rights and the provision of necessary support to guarantee their sense of safety. This mandate is to be executed by the Witness and Victim Protection Agency or, where appropriate, by alternative institutions operating within the boundaries of the applicable legal framework.

Drug Abuse

Drug abuse is a multifaceted issue that exerts detrimental effects on individuals, families, and society as a whole. It not only impacts the state and society but also extends to the global community and the international community in general. In the effort to overcome it, legal protection is a crucial aspect that should not be ruled out. Drug abusers as individuals have human rights that must be respected and protected where legal protection ensures that they are treated fairly and with dignity in the legal process, including access to a fair trial, legal aid and rehabilitation.

Narcotics

Narcotics, as delineated in Article 1 paragraph (1) of Law Number 35 of 2009, encompass chemical entities – originating from botanical or non-botanical sources, whether crafted synthetically or semi-synthetically – that possess psychoactive properties capable of modulating consciousness, numbing sensory perception, mitigating or extinguishing pain, and engendering a state of dependence. These substances are systematically classified into distinct groups as stipulated in the annex of the aforementioned statute. Resonating with this juridical framing, Jakobus (2005), as cited in Elisabet et al. (2022), characterizes drugs as bioactive agents, either of organic or artificial provenance, whose pharmacodynamic effects include the suppression of sensory function, the alleviation of pain, and the potential to cultivate physiological or psychological addiction. This dual lens – legal and academic – positions narcotics not merely as

chemical compounds, but as agents of altered human experience with significant implications for public health and regulatory governance

Restorative Justice

Restorative justice, within the Indonesian legal corpus, has transcended its conceptual roots and been codified through a series of regulatory frameworks that reorient the trajectory of criminal adjudication from retributive to reparative. Perpol No. 8 Tahun 2021 reconceptualizes justice not as a mere instrument of punishment but as a dialogical space wherein offenders, victims' families, community elders, religious and customary figures, as well as other pertinent actors, converge to orchestrate a resolution grounded in consensus and social reintegration—aimed at reweaving the torn fabric of communal harmony. Complementing this approach, Perja No. 15 Tahun 2020 reframes prosecutorial discretion by authorizing the cessation of legal proceedings when parties, through inclusive negotiation, achieve a just restoration of the status quo ante, eschewing retaliatory impulses. In a further juridical evolution, the Decree of the Director General of Badilum MA No. 1691/DJU/SK/PS.00/12/2020 positions restorative justice as an antithesis to punitive orthodoxy, privileging deliberative processes and mutual agreement as the locus of justice. Echoing this ethos, Braithwaite envisions restorative justice as a praxis of healing—one that transcends the boundaries of legal formalism by engaging stakeholders in a collective endeavor to redress harm and reconstitute social equilibrium through cooperative engagement rather than coercive judgment.

METHODOLOGY

This research adopts a doctrinal (normative) legal research approach, which focuses on the analysis of legal norms, statutory regulations, and legal principles as contained in authoritative legal sources. The main objective of this approach is to examine and interpret the law through a systematic study of written legal documents and court decisions. The data used in this research primarily consist of secondary legal materials as the main source, including legislation, legal theories, and judicial rulings. This study specifically examines four court decisions, namely Decision Number 29/Pid.Sus/PN Cbn, Decision Number 18/Pid.Sus/2021/PN Tmt, Decision Number 110/Pid.Sus/2021/PN Slk, and Decision Number 272/Pid.Sus/2021/PN Bir. These decisions are analyzed to understand judicial interpretation and the application of criminal law provisions in specific case contexts.

The data collection techniques employed in this study include documentary research and library study, utilizing a wide range of credible sources such as statutory regulations, peer-reviewed academic articles, legal textbooks (in both print and digital formats), and reputable websites. These sources provide both the normative foundation and contextual understanding of the cases under analysis. In addition, primary data in the form of legal documents and relevant empirical observations are also used as supporting data, although the focus remains primarily on secondary sources.

All collected data are analyzed using a qualitative approach, allowing for a descriptive and interpretative examination of the legal materials. This analysis

aims to identify patterns, consistencies, or divergences in legal reasoning and court verdicts. Accordingly, the research seeks to draw normative conclusions regarding the application of law and the consistency of judicial practices in similar legal contexts.

RESULT AND DISCUSSION

Protection of Victims of Drug Abuse

Punishment constitutes the philosophical and structural backbone of criminal law; absent the articulation of penal consequences, a legal provision ceases to operate within the domain of criminal jurisprudence. Norms devoid of accompanying sanctions function merely as ethical declarations rather than enforceable imperatives within the criminal justice architecture. Thus, the essence of criminal law is not solely in prescribing behavioral standards, but in embedding within those prescriptions a calibrated threat of penal retribution that underscores the law's coercive authority. Although not the main thing, the nature of punishment is a grievous suffering. Criminal sanctions imposed for those who are considered guilty are a suffering that must be carried out, however, criminal sanctions in criminal law are not merely to provide a sense of suffering (Ninie Suparni, 2007) in (Afriansyah & Tarmizi, 2017). In some criminal law experts use different terms in mentioning the theory of punishment, but in general, the theory of punishment known so far can be grouped into four major theories, namely retributive theory, deterrence, disablement, and rehabilitation (Effendi Mukhtar, 2008).

When viewed from decision Number 29/Pid.sus/2024/PN Cbn the defendant was arrested with evidence in the form of 5 packs of plastic clips containing crystal methamphetamine with a net weight of 0.4710 grams with the verdict being legally and convincingly proven guilty of committing a narcotics crime "Misuser of Class I Narcotics for yourself and sentenced to imprisonment of 1 (One) year 2 (Two) months" in this case is an example of the retributive principle still being applied in judicial practice against narcotics abuse, Echoing Johanes Andenaes' perspective, punitive measures function as instruments for the actualization of justice, wherein equity for the victim is achieved through the imposition of proportionate sanctions upon the offender (Rivanie et al., 2014), 2022:179), while the purpose of Law No. 35/2009 on Narcotics is explicitly stated in article 4 letter d that "guarantees the arrangement of medical and social rehabilitation efforts for Narcotics Abusers and Addicts."

Based on the information stated by Ade M Friadi as the Kuningan Regency National Narcotics Agency, in the interview, he provided a classification of victims of abuse, abusers and addicts. The victim of abuse in narcotics crime is someone who does not have an element of intent in using narcotics but there is an element of force or deception so that the victim is unlawfully. Narcotics users when conducted urine tests show positive results of consuming narcotics. A person can be said to be a misuser if a person consumes narcotics with full awareness without rights or against the law with evidence found more than 1 gram. In accordance with the provisions of Supreme Court Circular Letter Number 4 of 2010. An addict is someone who uses narcotics to cause a sense of

dependence both physically and psychologically with the side effect of feeling uncomfortable if the use is stopped. Purchasing in quantities below the provisions there are stages of buying or selling can be said to be a courier, and people who buy for themselves as the last person in the drug trafficking network. In line with what was stated by Waluyadi that the purpose of the law is to protect human interests through law, human interests must be protected (Waluyadi et al., 2024).

As a comparison of the following decisions, court decisions ordering rehabilitation for abuse are quoted in three decisions, such as in decision Number 18/Pid.Sus/2021/PN Tmt, where the defendant was sentenced to imprisonment for 3 (three) months with evidence in the form of 1 (one) small cassette containing crystal-shaped granules of class I narcotics of the type of methamphetamine weighing 0.06336 grams and the judge ordered the defendant to undergo treatment and care through medical and social rehabilitation for 6 (six) months, as well as decision Number 110/Pid.Sus/2021/PN Slk whose verdict was "Sentencing the defendant to medical outpatient rehabilitation at the Mohammad Nasir Regional General Hospital, Solok City for 3 (three) months", continued in verdict Number 272/Pid.Sus/2021/PN Bir The defendant was legally and convincingly proven guilty of committing the crime of "Misuse of Narcotics Group I for oneself with evidence in the form of 1 (one) used pyrex glass containing white crystal residue with a gross weight of 1.3 grams, the verdict reads "Sentencing the defendant therefore to imprisonment for 1 (one) year and 8 (eight) months and ordering the defendant to undergo treatment and care through the rehabilitation of the North Sumatra BNN, with the address Jalan Karya Jasa Lubuk Pakam-Kab. Deli Serdang, North Sumatra for 1 (one) year and 1 (one) month which is calculated with the period of imposed punishment"

Based on Supreme Court Circular Letter No. 4/2010, a person is called a drug abuser if at the time of arrest evidence of use is found for 1 (one) day with details in table 1 as follows:

Table 1. Drug Group

Drug Category	The lot
Methamphetamine (shabu) group	1 gram
MDMA (ecstasy) group	2.4 grams = 8 grains
Heroin Group	1.8 grams
Cocaine Group	1.8 grams
Cannabis Group	5 grams
Koka Leaf	5 grams
Meskalin	5 grams
Psilocybin Group	3 grams
LSD (d-lysergic acid diethyl- Lamide) group	2 grams
PCP (Phencyclidine) group	3 grams
Fentanyl Group	1 gram
Methadone Group	0.5 grams
Morphine Group	1.8 grams
Petidin Group	0.98 grams

Codeine Group	72 grams
<i>Buprenorphine</i> Group	32 grams

In relation to decision Number 29/Pid.sus/2024/PN Cbn the defendant was caught with evidence in the form of 5 packs of plastic clips containing crystal methamphetamine with a net weight of 0.4710 grams, therefore the defendant meets the above criteria so that the sentence given should not be punishment or imprisonment but rather enough with medical rehabilitation and social rehabilitation in order to restore the health and personality concerned so that they can live a normal life, abusers if only proven to buy for themselves and caught with evidence under sema can be said to be victims of narcotics abusers, in line with the opinion of Anang Iskandar that abusers in victimology are considered victims because they bear material losses and addiction, while according to the legislation this is a criminal offense, said so because as a form of prevention of abuse (Iskandar, 2019). Therefore, the first effort should be made before criminalization, namely (*Primum Remedium*).

Restorative Justice is a new paradigm in crime management that focuses on restoring relationships between offenders, victims, and society. This approach not only sees the offender as someone who must be punished, but also as an individual who needs to be given the opportunity to improve himself, admit mistakes, and be morally responsible. Marshall (1999) in (Baihaky & Isnawati, 2024) articulates that the philosophical nucleus of Restorative Justice lies in its multidimensional commitment to addressing the material, financial, emotional, and social repercussions experienced by victims. Concurrently, it seeks to interrupt the cyclical nature of criminality by compelling offenders to internalize accountability for their transgressions. Beyond the individual level, this paradigm aspires to reweave the torn fabric of society – cultivating an ecosystem that is conducive to the reintegration and healing of both perpetrators and victims. Moreover, it serves as a counter-narrative to the procedural inertia and economic inflation often associated with conventional penal mechanisms, offering instead a swifter, more sustainable alternative to justice. Restorative Justice can also be seen as a concept of justice that has different values from ordinary justice because it emphasizes recovery so that Restorative Justice can restore the situation to its original state by involving victims. Criminalization is not just imprisoning someone who has committed a criminal offense or requiring someone to pay a fine, but criminalization certainly includes philosophical, sociological, and criminological issues.

The restorative justice construct, as envisioned by abolitionist theorists, arises as a counter-hegemonic critique of the entrenched punitive architecture of the criminal justice system. Abolitionists contend that the system is not merely malfunctioning at the operational level, but is intrinsically flawed in its structural DNA – thus necessitating a paradigmatic overhaul rather than incremental reform. Within the discourse of penal policy, their philosophical stance retains epistemic legitimacy by illuminating the urgent need to devise alternative sanctions that transcend carceral orthodoxy and deliver outcomes that are socially integrative and normatively sound (, 1996) in (Nursyamsudin & Samud,

2022). In this schema, restorative justice becomes more than a procedural alternative; it emerges as an ideological rupture from the coercive logic of punishment. As articulated by Muladi (2002) s cited in (Awaludin, 2025), the abolitionist model seeks to dismantle repressive judicial mechanisms—eschewing the language of force and litigation—and replace them with dialogical, non-penal interventions that foreground restitution, community healing, and the reparation of fractured social bonds (Ariyanti, 2017) argues that in narcotics cases, there are 2 (two) main components that cause or result in someone becoming a victim, namely narcotics producers, especially illegal ones, and dealers. These two components then by all means seek consumers; although sometimes it also happens that consumers need them. The producers and dealers then become victimizers and cause victimization by making users the target market so that they experience at least 2 (two) things, namely: (1) drug users are victims of other people's actions, which in this case are illicit drug producers and dealers, (2) experience victimization of themselves (self-victimization) due to the actions they take, namely abusing drugs outside of legal and medical provisions (Ariyanti, 2017). Eva Acjani Zulfa in (Budi Suhariyanto et al., 2023) argues that the requirement for restorative justice always involves three parties, namely the perpetrator, the victim and the community. Thus, the restorative approach which is the concept of recovery can be interpreted as (a) recovery for the victim (b) recovery for the perpetrator (c) recovery for the victim and the perpetrator. Referring to the third dimension of the concept of recovery, Restorative Justice in the case of drug abuse crimes can be understood and aimed at the recovery of drug abusers as perpetrators. But in another view, the perpetrators are also considered victims of drug abuse committed by themselves, in this case the recovery dimension of Restorative Justice for drug abusers will be understood and aimed at victims and perpetrators who both exist in one person (Budi Suhariyanto et al., 2023).

Restorative Justice in narcotics crimes is different from other crimes, the application of Restorative Justice in narcotics crimes that are self victimization is essentially the perpetrator and victim of narcotics abuse so that the main solution as a form of protection and accountability is rehabilitation for what was done (Zidnan Iman, 2024), therefore Restorative Justice in narcotics crimes has outcomes in the form of medical and psychological rehabilitation as a development in tackling narcotics crimes.

Implementation of Restorative Justice for Victims of Drug Abuse

The operationalization of Restorative Justice unfolds across a tripartite procedural continuum: commencing at the investigatory level within the police institution, advancing through prosecutorial deliberation at the prosecutor's office, and culminating within judicial proceedings at the court level. The procedural scaffolding for its application at the investigative stage has been formally institutionalized through the National Police Chief's Circular Letter No. 8/2018, which serves as both a juridical safeguard and an instrument of administrative oversight. This regulatory framework affirms the state's commitment to embedding restorative paradigms within the mechanics of law enforcement—specifically by integrating principles of reparative justice into the

architecture of criminal investigations. As articulated by Husin (2024), this initiative is not merely procedural, but philosophical, aiming to harmonize institutional praxis with societal conceptions of justice, and to cultivate a standardized yet community-responsive approach to the deployment of restorative justice within police operations. The procedural mechanism for initiating restorative justice in cases involving victims of narcotics abuse entails the submission of a formal written request to the police authorities and the respective sectoral police chief. This application may originate from the offender, the victim, or their respective families, in accordance with Article 13 of Indonesian National Police Regulation Number 8 of 2021 on the Handling of Criminal Offenses through a Restorative Justice Framework. Nevertheless, the operationalization of restorative justice is contingent upon the fulfillment of specific substantive conditions. These include the absence of public unrest or societal rejection, the non-emergence of social conflict or divisive national sentiments, the lack of radical elements, and the prerequisite that the offender is not a recidivist. Such stipulations serve as safeguards to ensure that the pursuit of restorative outcomes does not inadvertently destabilize the social fabric or undermine collective legal consciousness.

The prosecutorial phase in Restorative Justice, as codified in the Attorney General's Regulation No. 15 of 2020 on Termination of Prosecution Based on Restorative Justice, mandates a multidimensional evaluation prior to case dismissal. Central to this process is the safeguarding of victim-centric interests alongside the protection of broader legal rights. Additionally, it endeavors to circumvent the proliferation of social stigmatization that could tarnish communal perceptions. Equally critical is the preemption of retaliatory dynamics that might inflict harm upon both offender and victim. The framework further aspires to cultivate societal equilibrium and collective responsiveness, all while anchoring the procedure within the bounds of ethical propriety, public decorum, and social stability. This holistic approach redefines prosecutorial discretion through a lens that transcends traditional retributive justice, embedding restorative ideals at its core (Husin, 2024).

The intensification of Restorative Justice practices in narcotics-related offenses is imperative to ensure the holistic rehabilitation of both victims and offenders. At the prosecutorial echelon, this restorative approach is institutionalized under the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020, which governs the cessation of prosecution grounded in restorative principles. This framework is further operationalized through the Prosecutor's Office Guidelines No. 18 of 2021, which articulate procedures for addressing narcotics abuse cases via rehabilitation, embodying the *dominus litis* doctrine inherent in prosecutorial discretion. Implementation at the local State Attorney's Office level mandates strict adherence to both substantive and procedural stipulations, as prescribed in Article 5 of Regulation No. 15 of 2020, thereby embedding restorative justice within a rigorously defined juridical and practical scaffold.

"A criminal case may be closed by law and the prosecution may be terminated based on Restorative Justice in the event that the following conditions are met: a) the

perpetrator is a first time offender; b) the criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and c) the criminal offense is committed with the value of evidence or the value of losses incurred as a result of the criminal offense is not more than Rp2,500,000.00 (two million five hundred thousand rupiah)."

In Decision Number 29/Pid.Sus/2024/PN Cbn, the defendant was adjudicated under Article 127 paragraph (1) letter a of Law Number 35 of 2009 on Narcotics, which prescribes a maximum custodial sentence of four years for personal use of Class I narcotics. The evidentiary material comprised five packets of plastic clips containing crystal methamphetamine, weighing 0.4710 grams. Notably, pursuant to the Supreme Court Circular Letter Number 4 of 2010, such a quantity falls within the ambit warranting the application of restorative justice measures, particularly emphasizing medical and social rehabilitation in lieu of incarceration. This stance reflects a jurisprudential shift toward a rehabilitative ethos that prioritizes addressing addiction through therapeutic modalities. Furthermore, at the prosecutorial level, the cessation of prosecution is justified when cases meet the formal and substantive prerequisites delineated in the Regulation of the Prosecutor's Office Number 15 of 2020. Hence, the verdict in Decision 29/Pid.Sus/2024/PN Cbn can be interpreted as an enactment of restorative justice principles, advancing a justice framework that privileges healing and societal reintegration above conventional punitive approaches.

CONCLUSIONS AND RECOMMENDATIONS

Decision Number 29/Pid.Sus/2024/PN Cbn exemplifies a juridical stance entrenched in retributive dogma, privileging penal sanctions over rehabilitative remedies, thereby sidelining more progressive approaches attuned to offender reintegration. This posture contrasts sharply with the jurisprudential trajectory embodied in Decision Number 272/Pid.Sus/2021/PN Bir, which harmonizes with extant regulatory frameworks that champion restorative justice as a transformative modality for addressing narcotics-related transgressions.

In embracing restorative justice, Decision 272/Pid.Sus/2021/PN Bir transcends conventional punitive paradigms, reorienting the legal response toward holistic restoration – not only to impose deterrence but to recuperate the dignity and rights of those ensnared in substance abuse. Here, drug-dependent individuals are reconstituted as recipients of medical and social rehabilitation rather than mere subjects of legal condemnation, signaling a paradigmatic reconfiguration of criminal justice that privileges healing and social reintegration over retribution.

ADVANCED RESEARCH

This writing still has limitations both in scope, time and location as well as the methods used. Therefore, for future research, it is recommended to use a larger and more diverse sample of court decisions and to increase the validity and generalizability of the research results.

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