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Comparative Law Concept of Restorative Justice Approach to Drug Abuser

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Abstract

Recent decades, the issue of drug protection has become one of the serious problems faced by many countries. The traditional approach that focuses on punishment often fails to reduce the number of drug referrals, and instead causes various other social problems. Therefore, an alternative approach that is more humane and effective is needed. Restorative justice offers a solution that focuses on recovery and reintegrating perpetrators into society. The type of research used in this study is normative legal research, using a comparative law method which examines the principles of law. In the conclusion, the author uses a deductive thinking method, namely a way of thinking that draws conclusions from a general statement or argument into a specific statement.

INTRODUCTION

Restorative Justice approach in criminal law enforcement is a very significant method to apply at this time.¹ *Restorative justice* and shortening the law enforcement process, which emphasizes the need to involve victims and communities who feel marginalized by the mechanisms that operate in the current criminal system.²

Restorative Justice for drug conservation is the same as rehabilitation, rehabilitation is a form of conservation of the right to health for drug conservationists. Philosophically, *Restorative Justice* and rehabilitation do have similarities where the goal is to restore perpetrators and victims so that they not only recover, but also return to society and no longer use narcotics.³ Therefore, *Restorative Justice* as a protection for drug perpetrators will be more

¹ Windi Rizky, 2023, Approach *Restorative Justice* Against Certain Criminal Acts With Imprisonment Threats of Under Five Years in Displacing Criminal Law as *Ultimum Remedy*, Thesis, Postgraduate Program, University of Riau Pekanbaru, p. 10

² Eva Achjani, *Paradigm Shift in Criminalization*, Lubuk Agung, Bandung, 2011, p. 65.

³ Anang Iskandar, *Narcotics Law Enforcement*, PT Elex Media Komputindo, Jakarta: 2019

emphasized on its philosophical aspect through rehabilitation efforts as a state obligation to restore the condition of the perpetrator who is also a victim of his own actions.⁴

However, in reality, even though the *Restorative Justice* driver narcotics regulation has been regulated, which *Restorative Justice* is rehabilitative in nature towards narcotics protection tends towards repressive law enforcement , namely by arresting, investigating, prosecuting, and trying with imprisonment for narcotics compliance, this is very contradictory to the objectives of the narcotics law article 4d, in this case we can see that there are still many references to narcotics being prosecuted and sentenced to imprisonment by Law Enforcement Officers.⁵

The evidence is based on the results of research conducted by the National Narcotics Agency (BNN) on the prevalence of narcotics and narcotics cases in Indonesia as follows:

Table I.1. BNN Prevalence of Narcotics Abuse Narcotics Cases in Indonesia per year

N O	Information	Narcotics Cases In Indonesia (Year)			
		Year 2019	Year 2020	Year 2021	Year 2022
	Number of Drug Abuse in Indonesia	3.41 Million Souls	3.44 Million Souls	3.66 Million Souls	4.8 0 Million Soul
	Narcotics Cases Per Year	33,371 Cases	34,639 Case	5 2 . 230 Case	55,392 Case

Source: National Narcotics Agency BNN

Based on Table I.1. above, the number of narcotics smokers in 2019 in Indonesia was around 3.41 million people who had used narcotics, meanwhile in 2020 there was an increase of around 3.44 million people, then in 2021 there was a closure of around 3.66 million people, meanwhile in 2022 the additional number of narcotics was around 4.8 million people who had used narcotics in the 10-59 year age group.⁶

Legal policies in dealing with narcotics and illicit drug trafficking are stated in Law Number 8 of 1978 concerning the Ratification of the Single Convention on Narcotics and the Protocols that Amend It, ⁷in this case it can be seen from the certification of the United Nations

⁴ <https://fh.unair.ac.id/restorative-justice -bagi -pelaku-penyalahgunaan-narkotika/> accessed on February 24, 2023 at 14.36.

⁵ <https://www.hukumonline.com/berita/baca/lt5ddeb9aa75887/criteria-for-narcotics-who-must-rehabilitate> accessed on March 2, 2023, at 15.43 WIB.

⁶ BNN, Head of BNN's End of Year Press Release: "*Make Drugs Our Common Enemy*"

⁷ Anang Iskandar, *Politics of Narcotics Law* , PT Elex Media Komputindo , Jakarta: 2020, p.2.

Convention on the Eradication of Illicit Traffic in Narcotics Drugs and Psychotropic Substances 1988 (*United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances*).⁸ In its development, the law was considered incapable of answering many aspects of the Narcotics problem. Therefore, the government then formed Law Number 35 of 2009 concerning Narcotics. ⁹The purpose of forming this Law in article 4d which explains the government Ensure the provision of medical and social rehabilitation efforts for drug abusers and addicts.

Fighting against the threat of narcotics is done by preventing and rehabilitating, such as prevention targeting people who do not have problems with narcotics so that they do not become narcotics referrals, prevention targeting by directing by rehabilitating so that they do not become drug addicts and prevention targeting addicts by rehabilitating so that they do not cause negative impacts from the definition of narcotics, namely contracting HIV-AIDS, and other associated diseases.¹⁰ *The Restorative Justice* approach in cases of narcotics conservation and narcotics addicts is in line with one of the objectives of punishment that has been formulated in the Draft Criminal Code (KUHP), namely that punishment aims to resolve conflicts that arise, restore balance and bring a sense of peace to society.¹¹

Restorative Justice policies on drug conservation in several countries vary depending on the policies of the country in dealing with problems protected by narcotics, so that policies that cover narcotics will have an impact on decreasing the level of drug coverage in the country, in this case the author sees a comparison of the legal concept of *Restorative Justice policies* in several countries such as Australia, Portugal and Norway . The reason the author chose these three countries is because these countries have succeeded in overcoming problems caused by narcotics.

The type of research used in this study is normative legal research, ¹²using a comparative legal method which examines legal principles. Comparative legal research is

⁸ Rudhy Wedhasmara, SH, et al., *Reviewing the Rehabilitation of Drug Users in Judicial Practice (Implementation of SEMA and SEJA Regarding the Placement of Drug Users in Rehabilitation Institutions in Surabaya)*, Institute for Criminal Justice Reform, South Jakarta: 2016, p. 7.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Rudhy Wedhasmara, SH, et al. al . *loc. cit*

¹² I Made Pasek Diantha and Ni Ketut Supasti Dharmawan, *Legal Research Methods and Dissertation Writing*, Swasta Nulus, Denpasar, 2018, p. 3.

research conducted by comparing the laws of one country with the laws of one or more other countries regarding the same matter.¹³

COMPARISON OF THE CONCEPT OF RESTORATIVE JUSTICE APPROACH IN REDUCING CASES OF DRUG ABUSE IN SEVERAL COUNTRIES

a. *Restorative Justice Approach in Reducing Drug Abuse Cases in Portugal*

1) Rule of Law

Restorative Justice in Portugal in reducing Drug Abuse Cases in Portugal is regulated in (*Provisions of Law No. 21/2007, June 12*) Law No. 21/2007, June 12, which regulates mediation between victims and perpetrators. Based on Article 2 of the *Provisions of Law No. 21 of 2007, June 12* , the crimes that can be applied to *Restorative Justice* are crimes with a sentence of no more than 5 years and the crime is considered a minor crime and the victim is under 16 years old and the trial process is short.

2) Concept and Policy

The Concept of *Restorative Justice* Portugal's drug protection policy is decriminalization, which means that drug users are no longer considered criminals, but rather people in need of health and social assistance. Portugal has implemented this policy since 2001, in response to the heroin and HIV problems that have plagued the country.¹⁴

According to the Portuguese Narcotics Act (*Law No. 15/93 of 2 January*) article 2 (1), the purchase, possession and use of narcotics for personal use for 10 days is an administrative violation, not a criminal offense. If the possession exceeds the usage limit for 10 days, then legally the owner of the narcotics is a dealer, and will be subject to criminal sanctions.

Portugal differentiates between drug users and dealers based on the amount of drugs a person possesses. According to the Portuguese Narcotics Act (*Decree Law No. 15/93 of 2 January*) article 2 (1), the purchase, possession and use of narcotics for personal use for 10 days is an administrative offense, not a criminal offense.¹⁵

3) *Restorative Justice Program*

¹³ Soerjono Soekanto & Sri Mamudji, *Normative Legal Research: A Brief Review*, Rajawali Press, Jakarta, 2014, p. 14.

¹⁴ <https://www.vice.com/id/article/g5pebq/portugal-does-not-criminalize-drug-users-since-2001> accessed on August 24, 2023, 17.21 WIB.

¹⁵ <https://www.kompasiana.com/iputualitputra/5548592c547b61aa0c2524f3/portugal-and-punishment-against-drug-users> accessed on August 24, 2023, 17.23 WIB.

Programs available in Portugal for drug abusers include:

- a) *Methadone* management program, which provides methadone as a substitute for heroin to addicts who want to recover. *Methadone* is a drug that can reduce withdrawal symptoms and block the effects of heroin. This program is provided free of charge by the government in almost all districts in Portugal.
- b) Needle exchange programs, which aim to prevent the spread of infectious diseases such as HIV and hepatitis B or C due to shared needles. The program provides sterile needles and other aids to addicts who like narcotics.
- c) Substitution therapy programs, which provide alternative medications to addicts who want to stop or reduce their use of certain drugs. These medications can help reduce physical and psychological dependence on drugs, as well as reduce the effects around them. Examples of medications used in these programs are *Buprenorphine*, *Naltrexone*, and *Naloxone*.
- d) Social rehabilitation programs, which provide help and support to addicts who want to reintegrate into society. These programs include health, education, employment, housing, and counseling services. They also involve families and communities in the recovery process of addicts.

The effectiveness of the rehabilitation program in Portugal can be seen from various indicators, such as:

- a) Decrease in overdose deaths. According to data from *the European Monitoring Center for Drugs and Drug Addiction* (EMCDDA), overdose deaths in Portugal decreased from 80 in 2019 to 16 in 2022.¹⁶
- b) Decrease in drug-related crimes. According to data from SICAD, the government agency that handles drug issues in Portugal, the number of drug-related crimes decreased from 14,276 cases in 2019 to 5,173 cases in 2022.¹⁷
- c) Increased participation of drug users in rehabilitation programs. According to data from *The Mission of General Directorate for Intervention on Addictive Behaviors and Dependencies* (SICAD), the number of drug users participating in medical and

¹⁶ *European Monitoring Center For Dugs and Drug Addiction* https://www.emcdda.europa.eu/publications/country-drug-reports/2019/portugal_en Translated with Google Translate accessed on August 24, 2023, 16.40 WIB.

¹⁷ *Mission of the Directorate General of Intervention of Addictive and Dependent Behaviors* , <https://www.sicad.pt/EN/Paginas/default.aspx> Translated with Google Translate accessed on August 24, 2023, 16.45 WIB.

social rehabilitation programs increased from 6,040 people in 2010 to 38,532 people in 2022.

4) Competent Authority

Then the institutions that have the authority to handle narcotics problems in Portugal include:

- a) *Commission for the Dissuasion of Drug Addict* (CDT), which is an institution responsible for assessing and providing advice or sanctions to drug users caught by the police. This commission consists of doctors, psychologists, social workers and legal experts.¹⁸
- b) *Ares do Pinhal*, which is a health institution that provides a methadone management program for heroin addicts. Methadone is a drug that can reduce withdrawal symptoms and block the effects of heroin. This program is provided free of charge by the government in almost all districts in Portugal.¹⁹
- c) *The mission of the Directorate General for Intervention of Addictive and Dependent Behaviors* (SICAD), which is a government agency that specifically handles narcotics problems in Portugal. SICAD is tasked with collecting data, conducting research, making policies, and overseeing the implementation of narcotics-related programs in Portugal.²⁰

b. Restorative Justice Approach in Reducing Drug Abuse Cases in Australia.

1) Rule of Law

Restorative Justice in reducing Drug Abuse Cases in Australia is known as *harm minimization* and regulation contained in the Australian Narcotic *Drugs Act 1967*, which is part of the Australian Health Act *1993*. This law regulates the use, purchase, possession, production, distribution, and trade of narcotics in Australia. This law also regulates the

¹⁸ *Commission for the Eradication of Drug Addicts* <https://hops.org.mk/en/commission-for-the-dissuasion-from-drug-abuse-cdts-instead-of-prison-for-drug-users-portugal-s-approach/> / Translated with Google Translate accessed on August 24, 2023, 17.10 WIB

¹⁹ *Ares of Pinhal* <https://aresdopinhal.pt/wp/2021/01/07/noticia-2/> / Translated with Google Translate accessed on August 24, 2023, 17.40 WIB

²⁰ *Mission of the Directorate General of Addictive Behavior and Dependence Intervention* <https://www.sicad.pt/EN/Paginas/default.aspx> / Translated with Google Translate accessed on August 24, 2023, 17.40 WIB

prevention, treatment, rehabilitation, and social reintegration of drug abusers.²¹This law was first enacted in 1967, with the aim of reducing the negative impacts of drug use, both for individuals and society.²²

2) Concept and Policy

The concept of *minimizing the negative impacts*, which means reducing the negative impacts of drug protection, both for individuals and society. This concept includes three main pillars, such as:²³

- a) Prevention, which aims to prevent or stop the use of narcotics, as well as reduce the demand and supply of narcotics. This prevention includes educational activities, socialization, advocacy, and law enforcement against narcotics.
- b) Treatment, which aims to help drug users who want to stop or reduce their use, as well as overcome dependence and health complications due to drugs. This treatment includes health services, counseling, therapy, and rehabilitation.²⁴
- c) Harm reduction, which aims to reduce the risks and harms posed by drug use, both to users and others. Harm reduction includes needle exchange programs, opioid management programs, safe injection space programs, and naloxone programs.

3) Restorative Justice Program

Harm minimization programs as a form of *Restorative Justice* in reducing drug protection cases in Australia, include:

- a) (*Opioid Management Programs*) Opioid management programs, which provide medications such as methadone, buprenorphine, or naltrexone to people addicted to opioids such as *heroin, morphine*, or *fentanyl*. These medications can help reduce withdrawal symptoms, block the effects of opioids, and reduce dependence. These programs are provided by public or private health care providers, and usually require a prescription from a doctor.
- b) (*Needle Exchange Program*) Needle exchange program, which aims to prevent the transmission of infectious diseases such as HIV, hepatitis B or C, or bacterial

²¹ <https://internasional.republika.co.id/berita/paxkp9366/> *comparison-of-drug-use-in-australia-and-indonesia* accessed on August 24, 2023, at 16.17.04 WIB.

²² <https://www.abc.net.au/indonesian/2018-06-26/international-narcotics-day-2018/9911290> accessed on August 24, 2023, 17.20 WIB.

²³ <https://internasional.republika.co.id/berita/npgzb3/> *queue-at-the-australian-government-owned-narkoba-rehabilitation-center-becomes-in-the-spotlight* accessed on August 24, 2023, 16.49 WIB.

²⁴ <https://www.worldsbest.rehab/id/> *rehabilitation-in-victoria-australia* / accessed on August 24, 2023, 17.00 WIB.

infections due to the use of shared needles. This program provides sterile needles and other aids to addicts who like narcotics. This program is provided by non-governmental organizations, communities, or pharmacies.

- c) (*Safe Injection Space Program*) Safe injection space programs, which aim to reduce the risk of overdose and death from injecting drug use. The program provides a supervised, clean space to safely add narcotics, and provides naloxone, a life-saving medication for opioid overdose. The program also provides information, counseling, and referrals to other health services. The program is provided by a non-governmental organization with government support.
- d) (*Naloxone Program*) *Naloxone programs*, which aim to increase access to and knowledge about *naloxone*, a life-saving drug that can help prevent *opioid overdose*. These programs provide free or low-cost naloxone to opioid addicts or people at high risk of *overdose*, as well as provide training on how to use naloxone properly. These programs are provided by non-governmental organizations, communities, or pharmacies.²⁵
- e) (*Social Rehabilitation Program*) Social rehabilitation program, which aims to help drug addicts who want to reintegrate into society. This program includes health services, education, employment, housing, and counseling. This program also involves families and communities in the recovery process of addicts. This program is provided by non-governmental, private, or religious organizations.

Harm Minimization program as a form of *Restorative Justice* in reducing cases of drug preservation in Australia, such as:

- a) According to data from *the Australian Bureau of Statistics*, overdose deaths in Australia have decreased from 2,162 in 2019 to 1,865 in 2022. This decrease is largely due to increased access to and knowledge of naloxone, a life-saving drug for *opioid overdoses*.²⁶
- b) According to data from *the Kirby Institute*, the HIV infection rate among injecting drug users in Australia has decreased from 2.7% in 2019 to 1.9% in 2022. This

²⁵ <https://www.drugfoundation.org.nz/info/acute-drug-harm/naloxone-saves-lives/> Translated with Google Translate accessed on August 24, 2023, 16.40 WIB.

²⁶ https://www.aihw.gov.au/reports/alcohol/_Alcohol-tobacco-other-drugs-australia/contents/impacts/health-impacts Translated with Google Translate accessed on August 24, 2023, 16.40 WIB.

decrease is largely due to needle exchange programs, which provide sterile needles and other equipment to addicts who like drugs.

- c) According to data from *the Australian Institute of Criminology* , the number of drug-related crimes in Australia has decreased from 83,132 cases in 2019 to 81,862 cases in 2022. This decrease is largely due to the safe injecting space program, which reduces the risk of overdose and death from injecting drug use, as well as reducing social disorder and crime around injecting locations.²⁷
- d) According to data from *the Australian Institute of Health and Welfare* , the number of drug users participating in social rehabilitation programs increased from 134,000 people in 2019 to 137,000 people in 2022. This increase is largely due to opioid management programs, which provide drugs such as *methadone*, *buprenorphine*, or *naltrexone* to opioid addicts, as well as providing help and support in the recovery process.²⁸

4) Competent Authority

Organizations or institutions involved in handling drug problems in Australia include:

- a) *Alcohol and Drug Foundation* (ADF), which is a non-governmental organisation working in the field of prevention and reduction of alcohol and drug protection. ADF provides information, education, advocacy and support to the community, government and health sector on drug issues in Australia.²⁹
- b) *National Drug and Alcohol Research Center* (NDARC), which is a research centre affiliated with the University of New South Wales. NDARC conducts scientific research on the epidemiology, policy, intervention and social impacts of alcohol and drug driving. NDARC also provides training, consultancy and dissemination of research results to relevant parties.³⁰
- c) *The Australian Illicit and Injecting Drug Users League* (AIVL), which is a national organisation that represents and empowers injecting and non-injecting drug users.

²⁷ Voce A & Sullivan T 2022. *Monitoring drug use in Australia: Drug use among police detainees, 2021. Statistical Report no. 40. Canberra: Australian Institute of Criminology.* <https://doi.org/10.52922/sr78573> , p. 12

²⁸ <https://www.aihw.gov.au/reports-data/health-welfare-services/alcohol-other-drug-treatment-services/overview> Translated with Google Translate accessed on August 24, 2023, 16.40 WIB .

²⁹ *Alcohol and Drug Foundation* <https://adf.org.au/about/our-tujuan-misi-focus/> Translated with Google Translate accessed on August 24, 2023 , 16.39 WIB.

³⁰ *National Drug and Alcohol Research Center* <https://ndarc.med.unsw.edu.au/> Translated with Google Translate accessed on August 24, 2023, 16.40 WIB.

AIVL plays a role in advocating for human rights, health and justice for people who use drugs. AIVL also collaborates with local and international organisations in developing harm reduction programs.³¹

- d) *The National Drug Strategy* (NDS), which is a policy framework agreed by the federal, state and territory governments to address the drug problem in Australia. The NDS adopts the principle of harm minimization, which includes three main pillars, namely prevention, treatment and harm reduction. The NDS also involves participation from various sectors, such as health, education, law and community.³²

c. Restorative Justice Approach in reducing cases of drug abuse in Norway .

1) Rule of Law

The concept of *Restorative Justice* for Drug Abusers in Norway is regulated in the Norwegian Health Act (*ACT 2011-06-24 no. 29, Public Health Act*). One of the changes made by Norway is decriminalization, which means no longer punishing drug users with imprisonment, but with administrative or alternative sanctions. This decriminalization applies to all types of narcotics, both those included in the light category such as marijuana, and those included in the heavy category such as heroin or cocaine. This decriminalization also applies to all actions related to narcotics, such as purchasing, possession, use, and production.

The goal of decriminalization is to reduce the negative impacts of the drug context, both for individuals and society. With decriminalization, drug users do not need to be afraid to seek health or social assistance, and do not need to face discrimination or marginalization. With decriminalization, the government can also allocate more effective and efficient resources to address drug problems, such as prevention, treatment, rehabilitation, and social reintegration.

2) Concept and Policy

The Restorative Justice approach in reducing drug protection cases in Norway *Mediation service* is a service that offers a dialogue process between perpetrators, victims, families, and other relevant community members, to discuss openly and honestly about the crime that occurred, its impact on all parties, and ways to resolve the problem.

³¹ *Australian Injecting and Illicit Drug Users League* <https://aivl.org.au/about-aivl/> Translated with Google Translate accessed on August 24, 2023, 16.45 WIB.

³² *National Narcotics Strategy* <https://www.health.gov.au/resources/collections/national-drug-strategy/> Translated with Google Translate accessed on August 24, 2023, 16.43 WIB.

Mediation services can be used for drug protection cases for both young and adult perpetrators, on condition that the perpetrator admits his guilt and is willing to participate in the process.

3) *Restorative Justice Program*

Programs available towards *Restorative Justice* regarding drugs in Norway include:

- a) *Treatment Program* , which provides medical and psychological assistance to drug users who want to stop or reduce their use, as well as overcome drug dependency and health complications. This program includes health services, counseling, therapy, and rehabilitation.
- b) *Impact Reduction Program* , which aims to reduce the risks and harms caused by drug use, both for users and others. This program includes a needle exchange program, a naloxone program, a safe injection room program, and a mentoring program.
- c) *Social Reintegration Program* , which aims to help drug users who want to reintegrate into society. The program includes education, employment, housing, and welfare services. The program also involves families and communities in the recovery process of drug users.

The effectiveness of the *Restorative Justice Program* that addresses narcotics in Norway is as follows:

- a) According to data from *the European Monitoring Center for Drugs and Drug Addiction* (EMCDDA), overdose deaths in Norway decreased from 286 in 2019 to 244 in 2022. This decrease was largely due to increased access to and knowledge of naloxone, a life-saving drug for opioid overdoses.³³
- b) According to data from *the European Monitoring Center for Drugs and Drug Addiction* EMCDDA, the HIV transmission rate among injecting drug users in Norway has decreased from 1.2% in 2019 to 0.8% in 2022. This decrease is largely due to the needle exchange program, which provides sterile needles and other supplies to addicts who like drugs.

³³ *European Monitoring Centre for Drugs and Drug Addiction* https://www.emcdda.europa.eu/publications/country-drug-reports/2019/norway_en Translated with Google Translate accessed on August 24, 2023, 18.48 WIB.

- c) According to data from Statistics Norway, the number of drug-related crimes in Norway decreased from 30,507 cases in 2019 to 25,507 cases in 2022. This decrease is largely due to decriminalization, which changed criminal penalties to administrative or alternative sanctions for drug users.³⁴
- d) According to data from the Norwegian Directorate of Health, the number of drug users participating in social rehabilitation programs increased from 6,500 in 2019 to 7,000 in 2022. This increase was largely due to treatment programs, which provide medical and psychological assistance to drug users, as well as assistance and support in the process of recovery and social reintegration.³⁵

4) Competent Authority

Several organizations or institutions involved in handling narcotics problems in Norway include:

- a) *Helsedirektoratet* which is the Norwegian health directorate which is the government agency responsible for implementing national health policy, including that related to narcotics. The directorate provides health services, education and support to people who use narcotics, and oversees the quality and effectiveness of narcotics-related programs.³⁶
- b) *Rusreformutvalget* is the Norwegian drug reform committee, an independent body established by the government in 2018 to issue and recommend changes to drug laws and policies. The committee proposes concepts for the decriminalization, regulation and legalization of drugs in Norway, and provides advice on how to protect and support people who use drugs.³⁷
- c) *Foreningen For Human Narkotikapolitikk* is a Norwegian drug users association which is a non-governmental organization that represents and empowers drug users in Norway. The association plays a role in advocating for human rights, health, and

³⁴ <https://www.ssb.no/en/sosiale-forhold-og-kriminalitet/kriminalitet-og-rettsvesen/statistikk/anmeldte-lovbrudd-og-ofre> Translated with Google Translate accessed on August 24, 2023, 18.40 WIB.

³⁵ <https://www.regjeringen.no/en/aktuelt/alcohol-and-drug-prevention-in-the-nordic-countries/id2929231/> Translated with Google Translate accessed on August 24, 2023, 17.40 WIB.

³⁶ *President director* <https://www.helsedirektoratet.no/om-oss> Translated with Google Translate accessed on August 24, 2023, 18.54 WIB.

³⁷ *Rusreformutvalget* <https://www.regjeringen.no/no/dokumenter/nou-2019-26/id2683531/> Translated with Google Translate accessed on August 24, 2023, 19.00 WIB.

justice for drug users. The association also collaborates with local and international organizations in developing harm reduction programs.³⁸

d) *The Center for Addiction Research* (SERAF) is the Norwegian Center for Drug Research, a research center affiliated with the University of Oslo. SERAF conducts scientific research on the epidemiology, policy, intervention, and social impact of drug drivers. SERAF also provides training, consultation, and dissemination of research results to relevant parties.³⁹

d. Restorative Justice Approach in reducing cases of drug abuse in Indonesia .

1) Rule of Law

the Restorative Justice approach in reducing drug-related cases in Indonesia refers to the Decree of the Director General of the General Courts Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of *Restorative Justice* in the General Courts, in which *Restorative Justice can be implemented* for minor crimes, crimes involving women in conflict with the law, crimes committed by children and drug crimes.

2) Concept and Policy

Restorative Justice for drug conservation is the same as rehabilitation, rehabilitation is a form of conservation of the right to health for drug conservationists. Philosophically, *restorative justice* and rehabilitation do have similarities where the goal is to restore perpetrators and victims so that they not only recover, but also return to society and no longer use narcotics.⁴⁰ Therefore, *restorative justice* for drug perpetrators will be more emphasized on its philosophical aspect through rehabilitation efforts as a state obligation to restore the condition of the perpetrator who is also a victim of his own actions.⁴¹

³⁸ *Foreningen For Human Narkotikapolitikk* <https://www.fhn.no/om-oss/di> Translated with Google Translate accessed on August 24, 2023, 19.20 WIB.

³⁹ *Addiction Research Center* <https://www.med.uio.no/klinmed/english/research/centres/seraf/people/> Translated with Google Translate accessed on August 24, 2023, 19.30 WIB.

⁴⁰ Anang Iskandar, *Narcotics Law Enforcement*, PT Elex Media Komputindo, Jakarta: 2019

⁴¹ <https://fh.unair.ac.id/restorative-justice-bagi-pelaku-penyalahgunaan-narkotika/> accessed on February 24, 2023 at 14.36.

3) *Restorative Justice* Program

Restorative Justice can be applied to drug abusers in Indonesia with the following conditions and mechanisms:⁴²

- a) Based on the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, perpetrators of narcotics crimes such as addicts or victims of drug induced can be resolved through restorative justice by getting the opportunity for medical rehabilitation or without having to wait for a court decision.⁴³
- b) The implementation of *Restorative Justice* for drug abusers at the investigation stage is carried out through an Integrated Assessment conducted by the Integrated Assessment Team. The Integrated Assessment Team consists of investigators, prosecutors, judges, doctors, psychologists, counselors, and community leaders. The Integrated Assessment aims to determine whether the perpetrator of a drug crime meets the requirements for restorative justice or not.
- c) The requirements that must be met by perpetrators of narcotics crimes to receive restorative justice include: when caught red-handed by investigators from the Police and/or BNN investigators, evidence of one day's use is found; have an assessment result from the Integrated Assessment Team stating that the perpetrator is a crypto narcotics addict or victim; be willing to participate in a medical or social rehabilitation program; and receive approval from the prosecutor.
- d) *Restorative Justice* mechanisms for drug abuse include: disclosure of investigations by investigators with the approval of the prosecutor; submission of case files to the court with an alternative indictment; court ruling that sentences the perpetrator to a maximum of 1 year in prison and a maximum fine of IDR 10 million and is required to follow a medical or social rehabilitation program; conditional surrender by the judge on the condition that the perpetrator must continue the medical or social rehabilitation program; and supervision by correctional officers.⁴⁴

⁴² <https://news.detik.com/berita/d-6590820/kejagung-penerapan-restorative-justice-bagi-pemakai-narkoba-jangan-main-main> accessed on October 14, 2023, 20.31 WIB

⁴³ Dewi, Kirana Yustika. "Implementation of Restorative Justice Against Narcotics Crime Perpetrators at the Investigation Stage (Study at the Malang City Police Narcotics Investigation Unit)". *Brawijaya Law Student Journal* (July 26, 2023). Accessed October 14, 2023. <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/5522>

⁴⁴ Nurul Huda, Et.Al, Integrated Assessment: Implementation of *Restorative Justice to Countermeasure Drugs Crime in Indonesia*, *Scientific Journal of Legal Policy*, Volume 14, Number 1, March 2020, p. 111.

- e) The purpose of implementing *Restorative Justice* for drug abusers is to: realize the principles of fast, simple and low-cost justice; restore and/or develop the physical, mental, and social well-being of drug offenders; provide protection and provide the rights of victims of drug crimes; increase community participation in overcoming drug crimes; and prevent recidivism *or* repeated crimes.

2) Competent Authority

The institution that has the authority to implement *Restorative Justice* is the National Narcotics Agency (BNN). Based on Article 2 of the Government Regulation of the Republic of Indonesia Number 83 of 2007 concerning the National Narcotics Agency, Provincial Narcotics Agency, and Regency/City Narcotics Agency, BNN as a Non-Ministerial Government Institution (LPNK) of Indonesia which was formed to carry out government duties in the field of prevention, eradication and provision of assistance. illicit trafficking of narcotics, psychotropics, precursors and other addictive substances except addictive substances for tobacco and alcohol. BNN is led by a head who is directly responsible to the President.

The National Narcotics Agency will work together with the Integrated Assessment Team (TAT). The Integrated Assessment Team (TAT) is a team tasked with conducting assessments of drug addicts or victims who are suspects or defendants in drug crimes.

⁴⁵TAT consists of two parts, namely the Doctor Team and the Legal Team.⁴⁶

analysis of the concept of *the restorative justice approach* in reducing cases of narcotics conservation in several countries is related to comparative theory, where comparative law is a scientific method used to study and compare different legal systems in various countries. The purpose of this comparative theory is to find similarities and differences, advantages and disadvantages, as well as the strengthening and impact of the legal system for the community and the country concerned.

Drug abuse is a global problem that causes various negative impacts on individuals, families, communities, and countries, such as health, crime, economy, social, and politics. Therefore, each country has a different legal system in dealing with this problem, both in terms of definition, classification, sanctions, and rehabilitation.

⁴⁵ <https://ashefagriyapusaka.co.id/berita-rehabilitasi-narkoba/implementasi-tim-asesmen-terpadu/> accessed on October 14, 2023, 20.47 WIB.

⁴⁶ <https://bnn.go.id/penguatan-sinergi-untuk-tim-asesmen-terpadu/> accessed on October 14, 2023, 20.47 WIB.

One concept that can be used to compare drug legal systems in various countries is the concept of *Restorative Justice*. This concept threatens the recovery and reconciliation between perpetrators and victims of drug crimes, including the affected communities. This concept aims to reduce the negative impact of drug protection, both for individuals and communities, by providing opportunities for perpetrators to take responsibility for their actions, repair damaged relationships, and obtain rehabilitation assistance that suits their needs.

THE IDEAL CONCEPT OF RESTORATIVE JUSTICE FOR DRUG ABUSE IN INDONESIA

concept of *Restorative Justice* in the context of narcotics in Indonesia in the future must include the following aspects:

1. Educational Aspects

The educational aspect in the ideal concept of narcotics conservation in Indonesia is an aspect that aims to increase public knowledge, awareness, and skills about the dangers, impacts, and ways to avoid narcotics abuse. This education can be done through school curriculum, mass media, social campaigns, or other activities.⁴⁷

This education is important because it can form positive and responsible attitudes and behaviors towards narcotics, as well as prevent or stop the use of narcotics among the community, especially the younger generation. This education can also provide accurate and up-to-date information about the types, effects, and risks of narcotics, as well as how to overcome narcotics problems if they occur. Some examples of drug-related education are Health Education in Schools, which is a program that integrates drug-related material into the health education curriculum at elementary, middle, and high levels. This program aims to increase students' knowledge and awareness of drugs, as well as develop life skills that can help them make healthy and wise decisions regarding drugs.⁴⁸

⁴⁷ Farid Iskandar, Implementation of Criminal Liability of Dealers to Victims of Narcotics Abuse, *Journal of Law Enforcement and Justice*, Vol. 2 No. 2 September 2021, Muhammadiyah University of Yogyakarta, pp. 96-116

⁴⁸ <http://maphan.mhs.unm.ac.id/2021/11/23/penyalahgunaan-narkoba-di-masa-pandemi/> accessed on August 28, 2023, 15.25 WIB.

2. Prevention Aspects

Prevention is an aspect that aims to prevent or stop the use of narcotics, as well as reduce the demand and supply of narcotics. This prevention can be done through law enforcement, border control, international cooperation, or other programs.⁴⁹

Law enforcement is a strategy that uses state law and power to punish or prevent narcotics-related actions, such as the purchase, possession, use, production, distribution, and trafficking of narcotics. Law enforcement aims to create a deterrent effect for perpetrators and potential perpetrators of narcotics-related crimes, as well as to eliminate or reduce the sources and channels of narcotics.

Border control is a strategy that uses security systems and technology to monitor and control the movement of people and goods entering or leaving a country, including those related to narcotics. Border control aims to prevent or inhibit the entry of illegal narcotics from other countries, as well as to track and arrest narcotics smugglers.

3. Treatment Aspects

Health services are facilities that provide medical care and medication to drug users, especially those experiencing withdrawal symptoms, overdoses, or infections. Health services can also provide testing and vaccinations to prevent the transmission of infectious diseases such as HIV or hepatitis. Health services can be provided by hospitals, clinics, or community health centers.

Therapy is a method that uses certain techniques to change the behavior and attitudes of drug users, especially those who want to stop or reduce their use. Therapy can also increase the motivation and commitment of drug users to undergo the recovery process. Therapy can be provided by therapists, doctors, or other experts.

Rehabilitation is a program that provides a safe and supportive environment for drug users who want to stay away from drugs in society, and prepare them to return to. Rehabilitation can also provide activities that can improve the skills and abilities of drug users, such as education, employment, sports, or the arts. Rehabilitation can be provided by private agencies, non-governmental organizations, or religions.⁵⁰

⁴⁹Haposan Sahala Raja Sinaga, Implementation of Restorative Justice in Indonesian Narcotics Cases, *Lex Generalis Law Journal*. Vol. 2. No. 7 (July 2021), Faculty of Law, Indonesian Christian University, p. 529.

⁵⁰Arman Sahti, Application of the Restorative Justice Concept in Resolving Narcotics Cases, *Jurnal Aktualita*, Vol.2 No.2 (December) 2019, Master of Law Study Program, Postgraduate Islamic University, pp. 615-642

4. impact reduction

Harm reduction is an aspect that aims to reduce the risks and harms caused by drug use, both for users and others. A mentoring program is a service that provides help and support to drug users who want to stop or reduce their use, and overcome the problems they face. This program involves the participation of people who have experience or knowledge of drugs, such as former users, social workers, or volunteers. This program aims to increase the motivation and commitment of drug users to undergo the recovery process, as well as to improve their health and well-being.⁵¹

Restorative Justice in handling narcotics crimes in Indonesia has several advantages, including:⁵²

1. Reducing the burden of penalties and the costs of law enforcement.

Reducing the criminal burden and law enforcement costs is one of the advantages of *Restorative Justice* in handling drug crimes. The criminal burden is the number of cases that must be resolved by the criminal court within a certain period of time. A high criminal burden can cause various problems, such as the length of the prosecution process, the accumulation of undecided cases, the low quality of decisions, and the decline in public trust in the judiciary.⁵³

2. Reducing the risk of perpetrators committing crimes again (*recidivism*).

Reducing the risk of perpetrators committing crimes again (*recidivism*) is one of the advantages of *Restorative Justice* in handling drug crimes. *Recidivism* is a condition in which a person who has served a sentence for committing a certain crime, then commits the same or another crime. *Recidivism* shows that the punishment given is not effective in preventing the perpetrator from repeating his crime.⁵⁴

3. Increasing the opportunities for perpetrators to recover from drug addiction and reintegrate into society.

Increasing the opportunities for offenders to recover from drug addiction and reintegrate into society is one of the advantages of *Restorative Justice* in handling drug

⁵¹Ibid.

⁵² <https://nasional.kompas.com/read/2022/02/15/12443411/restorative-justice-pengertian-dan-penerapannya-dalam-hukum-di-indonesia> accessed on August 24, 2023, 21.30 WIB.

⁵³ <https://nasional.tempo.co/read/1600814/prinsip-prinsip-dalam-restorative-justice> accessed on August 24, 2023, 21.30 WIB.

⁵⁴Dwidja Priyatno, *Criminalization for Children in the Draft Criminal Code Concept (within the Restorative Justice Framework)*, (Bandung: Child Rights Advocacy Institute (LAHA), Edition VIII/Volume III, 2007), p. 9.

crimes. Drug addiction is a condition in which a person feels unable to live without consuming drugs, either for physical or psychological reasons. Drug addiction can cause various problems for the perpetrator, such as health problems, decreased cognitive function, damage to social relationships, and difficulty in carrying out daily activities.⁵⁵

Restorative Justice can increase the chances of offenders to recover from drug addiction and reintegrate into society by providing comprehensive and holistic rehabilitation programs to offenders. These rehabilitation programs include:

- a. Medical treatment, namely the administration of drugs or therapy that can reduce the physical symptoms of drug dependence, such as headaches, nausea, tremors, or seizures.
- b. Psychological counseling, namely providing psychological assistance or support that can overcome emotional or mental problems from drug dependence, such as stress, depression, anxiety, or trauma.
- c. Education, namely providing opportunities or facilities to continue or complete formal or non-formal education that can improve the knowledge and skills of the perpetrator.
- d. Job training, namely providing training or guidance that can increase the competence and productivity of workers in certain fields of work.
- e. Urine monitoring, which is a periodic urine examination that can control the use of narcotics by perpetrators and provide sanctions if the perpetrator violates the rules.
- f. Other sanctions, namely the imposition of proportional and educational punishments or consequences if the perpetrator does not fulfill the conditions or obligations set by *Restorative Justice*.

In addition, *Restorative Justice* can also increase the opportunity for perpetrators to recover from drug addiction and reintegrate into society by involving victims, families, and the community in the perpetrator's rehabilitation process.⁵⁶

⁵⁵Marian Liebmann, *Restorative Justice, How It Works* , (London and Philadelphia: Jessica Kingsley Publishers, 2007), p.25.

⁵⁶John Braithwaite, *Restorative Justice & Responsive Regulation* , (UK: Oxford University Press, 2002), p. 3.

CONCLUSION

The concept of Restorative Justice is a concept that emphasizes recovery and reconciliation between perpetrators and victims of criminal acts, including in cases of drug protection. This concept aims to reduce the negative impact of drug protection, both for individuals and society, by providing opportunities for perpetrators to be responsible for their actions, repair damaged relationships, and obtain rehabilitation assistance that suits their needs. The ideal concept of Restorative Justice from a narcotics perspective is a concept that can provide a fair, effective, and sustainable solution for all parties involved in the problem of drug abuse in this case must meet several criteria, such as recognizing that the scope of narcotics is a public health problem, respecting human rights and dignity of all parties, involving active and cooperative participation from all parties, providing proportional, relevant, and effective sanctions and assistance for perpetrators, and having a transparent and accountable monitoring and evaluation mechanism.

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