

Legal Reconstruction of the Regulations for Stopping the Prosecution of Narcotic Addicts within the Framework of Restorative Justice Based on Justice Value

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Abstract

This research consists of 2 (two) main issues, namely the Weaknesses of Regulations on the Cessation of Prosecution of Narcotics Addicts in the Framework of Restorative Justice and Efforts to reconstruct regulations on stopping the prosecution of narcotics addicts within the framework of restorative justice based on values of justice. This type of research is descriptive analysis, using a sociological legal research approach. Sociological juridical research, namely legal research using legal principles and principles in reviewing, viewing, and analyzing problems, in the study, in addition to reviewing the implementation of law in practice. Research Result Shows that the weaknesses mentioned by the author is in the legal substance: the prosecutor's authority to stop prosecution that is not based on restorative justice, there are still many narcotics addicts who end up with prison sentences. Then legal structure: there is no consensus on restorative justice among members or law enforcement officials. And, in legal culture: when the prosecutor indicted and in his charge used Article 127, the judge dominantly gave a prison sentence, as if he did not care that the defendant was also a victim of the crime he had committed. To overcome this, a legal reconstruction is needed in Article 140 Paragraph (2) of the Criminal Procedure Code by adding the termination of prosecution by the prosecutor as the controller of the case with the concept of restorative justice. Reconstruction of article 111 of Law No. 35 of 2009 concerning Narcotics by adding rehabilitation sanctions for narcotics addicts as an option for legal certainty and the effectiveness of sanctions in the field.

Keywords: Prosecution, Restorative Justice, Narcotics.

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INTRODUCTION

Indonesia has placed eradicating narcotics illicit traffic as one of its main priorities for law enforcement because narcotics illicit trafficking is a series of activities carried out without rights and against the law that is defined as narcotics crimes. Narcotic crime is one unconventional crime that is carried out systematically, using a high modus operandi and sophisticated technology, and is carried out in an organized (*organized crime*) and is transnational (Wibowo, Widyantara, & Karma, 2010).

Narcotics Abuse has extended to some parts of society in big cities and small cities and even difficult to stop circulation. Narcotics abuse is used not for treating the disease but used intentionally to achieve a "Certain consciousness" because of the influence of drugs on the

soul. Indonesian people, in general, are currently faced with a very difficult situation to worry about due to the rise in usage, carelessly mavam type narcotics and psychotropic drugs (Setiawan, 2018).

The circulation of narcotics in the form of consumption drugs circulating in the community must obtain permission and supervision from the competent authority from the Minister through register registration with the Food and Drug Supervisory Agency (by Article 36 of the Narcotics Law). Giving narcotics to patients by hospitals or doctors based on a doctor's prescription can be done and it is not a violation of law/crime. Narcotics delivery (by articles 43 and 44 of the Narcotics Law) can be carried out by pharmacies, hospitals, health centers, medical centers, and doctors and can be handed over to patients based on a doctor's prescription. Narcotics in the form of injections in

certain doses submitted by a doctor can only be obtained through a pharmacy. The delivery of narcotics by doctors to patients can be carried out with the aim of (1) carrying out a doctor's practice by giving narcotics by injection, (2) helping sick people in an emergency by giving narcotics by injection, and (3) carrying out tasks in remote areas where there are no pharmacies (Bobby, 2022).

The development of drugs in Indonesia is also influenced by technological developments which involve two aspects, namely regional aspects, and global aspects. This shows that the entry and development of narcotics in Indonesia are influenced by the regional and global political situation from an external aspect besides that which is no less important is the internal factor that makes Indonesia a region with diverse and plural backgrounds with the largest archipelagic country in the world and has a geographical location. unique and strategic. Indonesia has a large population, with a population growth rate of 1.49% per year and a population density of 124 people per km² (Faturachman, 2020).

Drug use has consequences at all levels including social life, family roles, communication, and finances. For example, the financial standing of the family of a drug addict is affected at two levels. First, the addict does not earn and thus cannot add to the family's fate. Second, drug users need money for drugs which can mainly be obtained from the existing family sources of income, thus overburdening the family. In other words, they are liabilities to their families, earning nothing spending more for nothing, and interfering with the lives of other members (Jan, Ali, and Ali, 2016).

Narcotics abuse as stipulated in Article 1 point (15) of Law no. 35 of 2009 concerning Narcotics defines that "People who use narcotics without rights or against the law". Narcotic abuse is a type of crime that has (potentially) very broad and complex social impacts, especially when it is committed by children. The social impact of narcotics abuse by children is not only caused by the consequences that will give birth to suffering and destruction both physical and mental which are very long but also because of the complexity of dealing with it, especially when the choice falls on the use of criminal law as a means.

Efforts to eradicate narcotics cannot be separated from the support of law enforcement officials who are included in the criminal justice system, starting from the police, prosecutors, and judiciary, to penitentiary institutions, all of which have become one unit that cannot be separated, but since the birth of the Law -Law Number 35 of 2009 concerning Narcotics there is one other institution that also plays a role, namely the National Narcotics Agency and is even given a large portion in carrying out investigations

including collaborating with other institutions to eradicate narcotics circulation (Andini & Rizki, 2015).

The process of law enforcement through the approach restorative justice in the settlement of criminal cases carried out by the prosecutor's office refers to the Attorney General's Office Regulation No. 15 of 2020, the definition of restorative justice is the settlement of criminal cases involving the perpetrator, victim, perpetrator/victim's family, and other related parties to jointly seek a solution justice by emphasizing restoration to the original state, and not retaliation. Termination of prosecution based on restorative justice is carried out with the principles of justice, public interest, proportionality, punishment as a last resort, fast, simple, and low cost. Policy *Restorative Justice through Prosecutor's Regulation No. 15 of 2020* which was promulgated in 2021 is expected to be able to resolve minor criminal cases without a green shirt. Since the Prosecutor's Regulation was issued, prosecutors have dismissed 300 cases nationwide. The Prosecutor's Regulation was issued to restore conditions to their original condition before the "damage" caused by the behavior of a person (the suspect). The conditions for people who are "entitled" to receive *Restorative Justice* are:

1. A crime committed for the first time;
2. Loss below IDR 2.5 million;
3. An agreement between the perpetrator and the victim.

This Prosecutor's Regulation also tries to minimize *overcapacity* which is a scourge for prisons in Indonesia. In addition, the contents of this Prosecutor's Regulation are contained to minimize deviations from the powers of prosecution and to restore social conditions directly in society. This is also one of the policies in responding to public disquiet about laws that are sharp downwards, but blunt upwards which so far seem to be the norm. This regulation is one of the innovations of Attorney General Burhanudin to provide legal certainty for ordinary people. The *policy* was echoed by Burhanudin at the international level. In the event themed "*integrated approaches to challenges facing the criminal justice system*" Burhanudin in his presentation said that the *Restorative Justice* in Indonesian criminal justice is an integrated approach from investigation, investigation, and prosecution, to imposing court decisions. Burhanudin said that *Restorative Justice* could shorten the lengthy judicial process and resolve the issue of the overcapacity of prisoners in correctional institutions. Seeing these achievements, the pillars of reform in the Attorney General's body are back on their feet. However, community participation is needed to guard the return of the prosecutor's spirit. The arrangement for restorative justice so far has been regulated by SE Kapolri No. SE/8/VII/2018 of 2018 concerning the Implementation of restorative *Justice* in Settlement of Criminal Cases; Chief of Police Regulation No. 6 of

2019 concerning Investigation of Criminal Acts; Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and Decree of the Director General of the Supreme Court of the Republic of Indonesia No.1691/DJU/SK/PS.00/12/2020 concerning Enforcement of Guidelines for the Implementation of Restorative Justice.

The Public Prosecutor is a Prosecutor authorized by law to carry out prosecutions and determine judges. It is the public prosecutor who evaluates whether a case resulting from an investigation is complete or not for delegation to the District Court, as stipulated in Article 139 of the Criminal Procedure Code. When carrying out the functions and powers of the prosecution: a) At the time of receiving the case file from the investigator. b) And also when the case files he received he delegated to the judge for prosecution and examination at court" (Djafar, Chandra, & Mau, 2022).

The Attorney General's Office has the authority to determine whether a case can be brought to court or not based on valid evidence according to the Criminal Procedure Code. For this reason, as a government institution carrying out prosecution duties, the prosecution process carried out by the Attorney needs to be directed in the context of following the re-orientation of criminal law reform, taking into account the level of disgrace, the mental attitude of the perpetrator, the legal interests protected, the losses or consequences incurred, and taking into account community's sense of justice including local wisdom. Arrangements for termination of prosecution based on restorative justice have urgency, namely, first, deals through the Attorney General's Regulations (Prosecutor's Regulations) only have binding power internally. Secondly, Regulations through Prosecutor's Regulations (Peraturan Kejaksaan) do not have a high level in the hierarchy of Laws and Regulations in Indonesia. Third, the Termination of Prosecution Based on Restorative Justice can reduce the problem of *capacity* in Detention Centers or Correctional Institutions in Indonesia. Fourth, the Termination of Prosecution Based on Restorative Justice can reduce the number of cases and also reduce the burden on the state budget for handling cases.

Termination of prosecution based on restorative justice is carried out with the principles of justice, public interest, proportionality, punishment as a last resort, fast, simple, and low cost. *Restorative justice* through Attorney Regulation No. 15 of 2020 which was promulgated in 2021 is expected to be able to resolve minor criminal cases (tipiring) without a green shirt.

The development of the model of justice in the world has created a new form of justice that is accepted as the most recent approach to justice. Handling

criminal cases using a restorative justice approach that focuses on restoring damage to its original state and balancing the security and safety of victims and perpetrators of crimes that no longer lead to retaliation is a breakthrough in the field of law that society wants and a procedure that must be arranged in the exercise of authority to carry out prosecutions and reforms criminal justice system (Saida, 2018).

Restorative justice increases community participation in the judicial process, crimes can be resolved as conflicts between perpetrators and victims, and the interests of victims that have been neglected by the conventional criminal justice system which are retributive can be restored (Zulfa, 2010).

In Indonesia, law enforcement officers in Indonesia are fond of making arrests and ensuring the law enforcement process runs against narcotics users, as a result, thousands of narcotics users are in detention and prisons. Narcotics are one of the crimes that are a priority for the Indonesian Police. The handling of narcotics users is one of the most handled cases.

In Portugal, this condition is inversely proportional, and a country that implements *restorative justice* for narcotics addicts gets quite surprising results from the initial allegations of a relationship between the police and the community. Since decriminalization, the Portuguese police have focused more on exposing the illicit traffic of high-level narcotics without having to think about the criminalization of drug users. The initial fear that *restorative justice* would complicate the role of uncovering cases turned out to be unfounded, without criminalization and fear of being prosecuted by the law, narcotics users have become the most effective partners of the Portuguese police.

Restorative justice has a positive impact on the performance of law enforcement officials. Then there is the principle of *dominus litis* towards handling cases of narcotics addicts with *restorative justice* so that the resources owned by the state within the body of law enforcement officials will be channeled into more critical, serious, and serious cases. Law enforcement officials are no longer preoccupied with resolving small-scale issues such as narcotics users who accumulate every year. *Restorative Justice* for drug addicts or users will also open up space for public trust in law enforcement officials, and improve mutual relations between law enforcement officers and the community, especially drug users.

Based on the description above, it is essential to conduct research in more depth regarding legal certainty in the examination of narcotics addicts in the criminal justice system, therefore, the authors are very interested in conducting research in the form of a dissertation with the theme: "Reconstruction of Law Enforcement to Stop Prosecution of Narcotics Addicts

Within the Framework *Restorative Justice* of Value-Based

This problem is what the author urges to study further in research with the following issues:

1. What are the current weaknesses in stopping the prosecution of narcotics addicts?
2. How is the reconstruction of regulations to stop the prosecution of narcotics addicts within the framework of *Restorative Justice* based on the value of justice?

METHOD OF RESEARCH

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge (Faisal, 2010). Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

The method used by researchers is a sociological juridical approach, namely research conducted on the real condition of society or the community environment including legal culture/legal effectiveness, law and development to find facts (fact-finding) and then identify (problem identification) which in the end leads to on problem solving (Soekanto, 1982).

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions (Moleong, 2002).

RESEARCH RESULT AND DISCUSSION

1. Weaknesses in the Regulation on Stopping Prosecution of Narcotics Addicts in the Framework of Restorative Justice

a. Weaknesses of Legal Substance

Substance (*legal substance*) is the output of the legal system, in the form of regulations, and decisions that are used both by those who regulate and those who are regulated. The change in the paradigm of *retributive justice* become to *restorative justice* includes being part of the changes to the Prosecutor's Law. According to Attorney General St. Burhanuddin, the spirit of changing the criminal paradigm can be seen in Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, the Law on the Eradication of Trafficking in Persons, and the Attorney General's Regulation (Prosecutor's regulations) No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The Prosecutor's regulations spirit needs to be formulated into the Attorney General's Bill so that the norms are stronger. In the hierarchy of laws and regulations, the position of the Law is much stronger than the Attorney General's Regulations. However, not all formulations of Prosecutor's regulations are appointed as law norms. "Not everything was taken. Only important things," he said.

For example, in what cases can a suspension of prosecution in favor of restorative justice be possible? Case closure can be done for the sake of law, among others, if there has been a settlement out of court. This is commonly referred to as the *afdoening buiten proces*. This process can be carried out under the following conditions: first, for certain non-criminals, the maximum penalty fine is paid voluntarily by the provisions of the legislation; and secondly, there has been the restoration of the original state using a restorative justice approach. In the event of the second circumstance, the prosecutor shall stop the prosecution.

Prosecutor's regulations Number 15 of 2020 stipulate the conditions for cases and perpetrators so that the prosecution can be stopped based on restorative justice. The requirements regarding the person or perpetrator are: the suspect is the first time to commit a crime. Then, there are two conditions regarding the crime. First, the crime committed is only punishable by a fine or punishable by imprisonment for not more than five years. Second, the crime is committed with the value of evidence or the value of the losses incurred due to the crime of no more than 2.5 million rupiah.

Based on Article 140 Paragraph (2) letter of the Criminal Procedure Code, the public prosecutor can stop the prosecution, for the following reasons: cessation of prosecution for technical reasons and cessation of prosecution for policy reasons. Termination of prosecution due to technical reasons, due to

circumstances which caused the public prosecutor to make a decision not to prosecute, namely: If there is insufficient evidence; if the event is not a criminal act; if the case is closed by law.

The article explains that the public prosecutor can terminate the prosecution if there is a lack of evidence or the case is not included in a criminal act. However, the reality in implementing the termination of prosecution is carried out by public prosecutors in cases of abuse of narcotics; most of them have not been implemented in the Indonesian criminal justice system.

There are regulatory inconsistencies in Law no. 35 of 2009 concerning Narcotics, regulatory inconsistencies first appear in the use of inconsistent terms such as "abusers", "narcotics addicts", and "victims of narcotics abuse". Articles 111 and 112 are considered to use terminology that is too generic and broad (to plant, maintain, own, store, control, or provide) so that it is often used by law enforcement compared to other articles, although these other articles are more appropriate to use in the context of the case at hand, for example.

b. Weaknesses of Legal Structure

The *legal structure* is an institution created by the legal system with various functions to support the operation of the system. This component makes it possible to see how the legal system provides services for regularly processing legal materials. Elements of the legal structure (*legal structure*) are institutionalized into legal entities such as the structure of courts of the first instance, appeals and cassation, the number of judges, and the *integrated justice system*. The legal substance concerns the entire meaning of the rule of law which contains norms, principles, principles, and rules, written and unwritten, including court decisions. The legal culture concerns attitudes, behavior, and values related to the law.

Settlement of cases through the justice system ends in a court verdict is an *enforcement slow* track this is because law enforcement goes a long way from the Police, Attorney General's Office, District Court, High Court, and even to the Supreme Court, which will eventually have an impact on the accumulation of cases. By applying Prosecutor's regulations No. 15 of 2020 by carrying out settlements outside the court through restorative justice. Challenges to the implementation of Prosecutor's regulations No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

c. Weaknesses of Legal Culture

Culture (*legal*) consists of values and attitudes that influence the operation of law, or what Friedman calls legal culture. This legal culture functions as a bridge connecting legal regulations with the legal behavior of all citizens. 'Legal culture' is an interrelated

variable. Social forces make laws, but they don't make them directly. On the one hand, legal awareness changes the legal culture, legal culture changes the legal system, and the legal system influences the socio-economic and political system in a wider scope. And on the other hand, socio-economic and political pressures greatly affect legal awareness.

Law No. 35 of 2009 concerning Narcotics has 2 (two) sides, namely a humanist side to narcotics addicts, and a complex and firm side to narcotics dealers, meaning that Law No. 35 of 2009 concerning Narcotics guarantees punishment for addicts/victims of narcotics abuse in the form of rehabilitation sentences, because basically, they are victims, who must be cured, while for narcotics dealers in the state of prison sentences and some even carry the death penalty because they are considered very evil and can damage the nation's generation.

A narcotics addict has just been found, in which the actions committed by the perpetrator in Law no. 35 of 2009 concerning Narcotics were sentenced to prison. When the prosecutor indicted and in his charge used Article 127 the dominant judge gave a prison sentence as if he did not care that the defendant was also a victim of the crime he had committed, someone who had to be assisted in recovering so that he would be free from the narcotics that had addicted him, especially when the defendant They play a role not only as abusers (addicts) but also as dealers (related to the illicit traffic of narcotics).

2. Reconstruction of Regulations for Stopping Prosecution of Narcotics Addicts in the Framework of Restorative Justice based on the Value of Justice

The application of criminal law in the form of imprisonment for victims of drug use has proven to be unsuccessful, which happens every year the number of victims who are sentenced to imprisonment for drug users is increasing. This is what needs to be reviewed regarding the purpose and function of applying criminal law to victims of drug use. The most important factor in efforts to tackle drug abuse, which is often neglected, especially by law enforcement officials in Indonesia, is rehabilitation. The model of punishment for victims of drug use is still positioned as perpetrators of criminal acts (criminals) so rehabilitative efforts are often neglected.

Meanwhile, if one looks at the development of treatment for drug addicts in several countries, there has been a trend that continues to change. In the 1980s, global policy trends were towards a more violent approach to criminalization, even at the user level. In recent years, world drug policymakers have attempted to formulate and recommend policies on how best to manage drug-related problems exclusively based on practical reasons, one of which is by decriminalizing or

depenalizing drug addicts. Even so, the two terms have different working forms.

To stop the prosecution, the prosecutor needs to consider several things, such as subject, object, category, and the threat of crime; background of the occurrence of the crime; level of disgrace; losses or consequences arising from criminal acts; as well as the costs and benefits of case handling. In article 140 paragraph 2 letter (a) of the Criminal Procedure Code, the concept of *restorative justice* sake of justice. Especially for Narcotics users who currently still have many cases ending in court with prison sentences.

Other countries such as Portugal, which prioritize rehabilitation, have succeeded in suppressing narcotics trafficking in their country. The provisions of Article 111 and Article 112 do not consider the element of intent. If a person is found to have narcotics in the form of plants or non-plants, then there are two possibilities: a dealer or user who must be rehabilitated. However, with the formulation of such an article, in this case, it is not important to prove whether a person's ownership of narcotics is for personal consumption or for distribution (this does not need to be proven). This becomes a loophole to punish a user as if he were a dealer and becomes a space for law enforcement officers to abuse this article. When linked to the provisions of Article 127 which is a criminal provision for abusers and includes provisions for rehabilitation for abusers who are proven to be victims of abusers, the problems of Articles 111 and Article 112 become even more obvious. Article 127 is a provision that is in line with the objectives of the Narcotics Law as stated in Article 4 to guarantee the right to rehabilitation for abusers.

CONCLUSION

Based on the discussion of the problems above, it can be concluded that:

1. Weaknesses of the Regulation on Termination of Prosecution of Narcotics Addicts in the Framework of Restorative Justice, namely in Substance of Law: the prosecutor's authority in stopping prosecutions is not based on *restorative justice* is still many narcotics addicts who end up with prison sentences. Regarding legal structure: there is no agreement on restorative justice among members or law enforcement officials. In terms of legal culture: when the prosecutor indicted and in his charge used Article 127, the dominant judge gave a prison sentence, as if he did not care that the defendant was also a victim of the crime he had committed.
2. Reconstruction of Article 140 Paragraph (2) of the Criminal Procedure Code by adding the

termination of prosecution by the prosecutor as the controller of the case with the concept of *restorative justice*. Reconstruction of article 111 of Law No. 35 of 2009 concerning Narcotics by adding rehabilitation sanctions for narcotics addicts as an option for legal certainty and effectiveness of sanctions in the field.

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