

A LEGAL ANALYSIS OF THE RESTORATIVE JUSTICE APPROACH IN RESOLVING CASES INVOLVING VICTIMS OF DRUG ABUSE AT THE POLICE LEVEL (A CASE STUDY IN THE JURISDICTION OF THE BANTEN PROVINCIAL POLICE)

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ABSTRAK

This study aims to critically examine the implementation of the Restorative Justice approach in handling cases of drug abuse victims at the police level based on the Republic of Indonesia National Police Regulation Number 8 of 2021. The research method used is normative juridical with a descriptive-prescriptive nature and a statute approach. Data analysis was conducted qualitatively on primary, secondary, and tertiary legal materials. The results of the study indicate a fundamental conceptual paradigm conflict between the restorative justice mechanism in Police Regulation Number 8 of 2021 and the mandatory rehabilitation instrument contained in Law Number 35 of 2009 concerning Narcotics. In the law, rehabilitation tends to be constructed as part of the criminalization instrument (punitive), while the Police Regulation prioritizes investigative disclosure (non-litigation) for social recovery. In the implementation of the system, overlapping regulations between law enforcement institutions and unclear victimological parameters trigger legal openness and the risk of disparities in the field. This study concludes that a comprehensive revision of Police Regulation No. 8 of 2021 is necessary to harmonize technical regulations for victims of drug abuse and strengthen institutional synergy to achieve transparent substantive justice.

Keywords: Restorative Justice, Victims of Drug Abuse, Drugs, Police Regulation No. 8 of 2021, Rehabilitation

I. INTRODUCTION

Drug crimes in Indonesia have consistently been classified as extraordinary crimes with transnational dimensions. Historically, the response to this phenomenon has been dominated by a punitive-retributive approach, emphasizing imprisonment as the primary instrument for eliminating perpetrators from society. The rigid general view of the criminal justice system often equates all levels of perpetrators, from drug dealers and distributors to users and victims of drug abuse (Adi, 2014).

The most significant implication of this highly punitive criminal policy is a structural crisis of incompetence within correctional institutions. Data (HAM, 2024) from the Directorate General of Corrections at the Ministry of Law and Human Rights confirms that, as of 2024, of the total 269,606 prison inmates in Indonesia, 126,159, or approximately 46.8 percent, were drug convicts. This situation has triggered a massive overcrowding rate of 192 percent, directly crippling the resocialization and development functions mandated by the correctional system. This failure of criminalization stems from the justice system's inability to distinguish victimless crimes, where drug users and victims are individuals who truly require legal protection and medical intervention, not criminalization.

The increasing number of drug inmates in prisons cannot be considered a success. According to Muladi (1995), this situation reflects a rigid criminal justice system that

neglects the principle that criminalization is a state instrument to protect society, especially victims. In drug cases, not all acts are considered crimes that result in victims, such as users and those who are actually victims of drug trafficking. Both of these categories are victimless crimes and, in principle, require legal protection and should not be treated as criminals. Because they generally come from the productive age group, the criminalization of drug users and victims of drug abuse has the potential to have broader negative impacts.

The development of law enforcement against drug users and victims of drug abuse has drawn considerable criticism, particularly regarding the criminal justice system's performance in drug cases, which is considered inadequate. On the other hand, the war on drugs policy, which relies on criminalization, actually increases the potential for human rights violations, encourages the criminalization of users, and limits access to health services. In response to these conditions, an alternative approach has emerged that emphasizes expanding health access, decriminalization, and depenalization. This alternative policy is realized through the implementation of the Restorative Justice approach.

Restorative justice is essentially a method of resolving criminal cases that focuses on fulfilling a sense of justice for victims. Marshall explains that restorative justice is a process that involves all stakeholders in a case to jointly seek a resolution, address the legal consequences that arise, and consider their future impact. (Marshall, 1999) The core of this approach is efforts to restore, provide reparations, and rehabilitate victims through non-litigation mechanisms. In addition to being considered more favorable to victims' interests, this model is also seen as an alternative to criminal justice mechanisms often considered too formal, fraught with technical procedures, and less responsive to public interests. It can also avoid the slow resolution process in litigation due to the backlog of cases. (Henny Saida Flora, 2018)

These various considerations ultimately prompted the Indonesian National Police (Polri) to establish Police Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (hereinafter referred to as Perpol No. 8 of 2021). This regulation then serves as the legal justification for the use of a restorative justice approach in handling drug crime cases within the police force, which is the primary focus of this research. Therefore, this research aims to critically examine the position of the a quo regulation in the context of handling victims of drug abuse.

Upon closer examination, the creation of Perpol No. 8 of 2021 is based on two ratio legis (purposes of its establishment). First, concrete steps are needed to resolve criminal cases with a restorative justice orientation, so that the parties can return to their original conditions and create a balance between protecting and guaranteeing the interests of both victims and perpetrators. This goal is impossible to achieve if case resolution relies solely on criminal penalties for every form of crime. Second, a new model of criminal law enforcement by the police is needed that not only provides a sense of justice for the community but also guarantees the benefits and certainty of the law, grounded in morality and prevailing social values.

In fact, the enactment of Police Regulation No. 8 of 2021 has brought about

significant changes. Between 2021 and 2022, of the approximately 170,000 criminal cases handled, 15,811 were resolved through restorative justice mechanisms (Indonesian National Police, 2022). In the realm of narcotics crimes, the application of restorative justice has shown an increasing trend. In the Jakarta Metropolitan Police, the use of restorative justice approaches for drug abusers increased by 64 percent between 2022 and 2023 (Noviansah, 2023). Meanwhile, in Lombok in 2022 (Suharti, 2023), the police handled eight drug abusers, whose investigations were then terminated and the perpetrators were directed to undergo rehabilitation through restorative justice mechanisms. The application of restorative justice approaches in narcotics cases is not without its challenges. Police Regulation No. Law No. 8 of 2021 encourages the resolution of drug abuse cases through the termination of investigations and inquiries, allowing the restorative justice mechanisms stipulated therein to be implemented outside the judicial process (non-litigation). This approach contradicts the concept of restorative justice in Law No. 35 of 2009 concerning Narcotics, which focuses on protecting drug addicts and victims of drug abuse.

In the a quo law, the form of restorative justice regulated is rehabilitation, as stipulated in Article 54, which states that "Narcotics addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation." According to Article 56, medical rehabilitation for drug addicts can be carried out in hospitals designated by the minister or rehabilitation institutions managed by government agencies, and may also be organized by the community with the minister's approval. Social rehabilitation for former drug addicts can be organized by both the government and the community.

From a goal-based perspective, rehabilitation in Law No. 35 of 2009 and restorative justice in Police Regulation No. Law No. 8 of 2021 and Law No. 8 of 2021 are both aimed at rehabilitating drug abusers, both addicts and victims. However, conceptual and systematic studies reveal fundamental differences, particularly in the paradigm underlying their implementation. Law No. 35 of 2009 still positions rehabilitation within a criminal framework rather than as a medical approach to rehabilitating drug abusers. Consequently, rehabilitation tends to be positioned as a type of criminal sanction, rather than a comprehensive restorative justice instrument.

This view is justified by examining the construction of Articles 54, 103, and 134 of Law No. 35 of 2009. Article 54, for example, mandates that drug addicts and abusers undergo rehabilitation. The word "obligatory" in the formulation of this article indicates the imposition of certain sanctions if failure to comply (Napitupulu & Ginting, 2013), as it represents a legal principle that is both commanding and imperative.

Furthermore, Article 103 paragraph (1) of Law No. 35 of 2009 also emphasizes the importance of rehabilitation. 35 of 2009 confirms:

Judges who examine cases of drug addicts can:

- a. decide to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is proven guilty of committing a Narcotics crime; or
- b. determine to order the person concerned to undergo treatment and/or care through rehabilitation if the Narcotics Addict is not proven guilty of

committing a Narcotics crime.

However, the provisions of paragraph (2) of the above article also explicitly stipulate that rehabilitation is counted as part of the sentence served. This means that even though drug addicts are undergoing rehabilitation, they are still considered to be serving their status as prisoners and are not undergoing recovery efforts as intended in the restorative justice approach. The provisions of Article 134 of Law No. 35 of 2009 provide the opportunity for imprisonment or fines when drug addicts are of age and deliberately fail to report themselves. This penalty can even be imposed on families of addicts who refuse to report their addicted family members. Therefore, it can be said that rehabilitation as referred to in Law No. 35 of 2009 is categorized more as punishment and is provided as an alternative. Based on the explanation above, a conceptual disagreement can be found between the concept of restorative justice in Police Regulation No. 8 of 2021 and the concept of rehabilitation as part of punishment in Law No. 35 of 2009. Therefore, an in-depth scientific study of the concept of the restorative justice approach as stipulated in Police Regulation No. 8 of 2021. This study is crucial for accurately interpreting the substance of the regulations and procedures for implementing restorative justice as stipulated in the regulation.

II. LITERATURE REVIEW

Drug crimes are globally recognized as serious, transnational crimes (extraordinary crimes) that threaten national security and the future of the younger generation. Consequently, Indonesia tends to adopt a punitive-retributive approach as its primary law enforcement instrument. Formal criminal justice culture measures the success of justice by its ability to bring perpetrators, including individual users, to justice.

The most obvious impact of this punitive criminalistic policy is reflected in data from the Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights as of 2024, which recorded that of the total 269,606 prison inmates, 126,159, or 46.8%, were drug convicts. This figure contributes significantly to national prison overcapacity, reaching 192%, directly crippling the effectiveness of the resocialization and development functions of inmates. According to Muladi, this systemic crisis arises because rigid criminal justice often ignores legal protection for those who are actually victims of crime. In modern criminology, drug users and victims are classified as victimless crimes, thus criminalizing them is counterproductive to society's productive age.

Criticism of the conventional "war on drugs" model has prompted global law enforcement discourse to shift from a purely penal approach to a health approach, decriminalization, and depenalization through the concept of restorative justice. To accommodate this paradigm shift, the Indonesian National Police (Polri) issued Police Regulation (Perpol) Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice. This policy grants police investigators substantial discretion to resolve cases outside of court (non-litigation) to restore social order. However, there is a fundamental normative conflict. Law Number 35 of 2009 concerning Narcotics stipulates that rehabilitation (Articles 54 and 103) is not an instrument for dismissing cases at the initial level, but rather as an alternative sanction/punishment calculated as part of a

sentence served by a judge's decision. This conceptual conflict triggers a scientific urgency to conduct an in-depth legal review of the effectiveness and legal certainty of the application of restorative justice at the police level.

III. RESEARCH METHOD

This research employs a normative legal research method (normative juridical) that focuses on examining library materials or secondary data. Peter Mahmud Marzuki states that normative legal research is an intellectual process for discovering legal rules, principles, and doctrines to address legal issues holistically. This research is descriptive-prescriptive in nature. The descriptive approach is used to describe the details of the legal phenomena surrounding narcotics handling, while the prescriptive approach aims to provide recommended solutions or new conceptual proposals.

The research specification uses a descriptive-analytical approach with a statute approach. Data collection techniques include library research on primary legal materials (such as the 1945 Constitution, Law No. 35 of 2009, and Police Regulation No. 8 of 2021) and secondary legal materials in the form of scientific literature and documents from the Directorate General of Corrections and the Institute for Criminal Justice Reform (ICJR). Data analysis was conducted using qualitative descriptive methods to align empirical facts about law enforcement at the police level with positive legal principles.

IV. RESULTS AND DISCUSSION

A. Legal Review of Paradigm Dualism: Police Regulation No. 8 of 2021 vs. Law No. 35 of 2009

The enactment of Police Regulation No. 8 of 2021 brought significant legal reform by providing formal legitimacy for the police to implement termination of investigations and inquiries based on restorative agreements. According to Tony F. Marshall, restorative justice is essentially a collective process in which all stakeholders resolve the impact of a crime for the sake of future implications. However, when this concept is applied to the treatment of drug abuse victims, a discrepancy in the hierarchy of laws is found.

According to Article 3 of Police Regulation No. 8 of 2021, the handling of narcotics cases is required to meet both general and specific requirements. These specific requirements confirm that upstream cases can be terminated for the sake of medical and social rehabilitation without going through the judicial process. In contrast, Law No. 35 of 2009 concerning Narcotics adopts an implicit punitive paradigm in the implementation of rehabilitation. The use of the phrase "obligatory" in Article 54 demonstrates an imperative legal principle. More explicitly, Article 103 paragraph (2) of the Narcotics Law stipulates that medical and social rehabilitation measures decided by a judge are counted as part of the sentence served. As a result, the perpetrator retains the legal status of a convict/prisoner.

This conceptual inconsistency demonstrates that Law No. 35 of 2009 positions rehabilitation as a type of criminal sanction (an alternative to sentencing), while Police Regulation No. 8 of 2021 conceptualizes restorative justice as a diversionary instrument that dismisses criminal charges at the investigation stage. Normatively, the position of

the Police Regulation as a technical regulation of an agency should not negate the norms of laws above it, thus creating legal certainty issues for justice seekers.

The need to implement restorative justice in drug abuse cases in Indonesia arises from the current law enforcement paradigm, which tends to be repressive and positions users as perpetrators who must be imprisoned. This is ineffective in reducing abuse rates and actually increases the burden on correctional institutions. Therefore, a shift in orientation is needed from a punitive approach to a more humane approach through the application of restorative justice from the investigation stage.

National Police Chief Regulation Number 8 of 2021 provides the legal basis for the use of this mechanism at the investigative level and is intended as a compromise to address the impasse in the criminal justice system, which is increasing correctional overcrowding (Harkrisnowo, n.d.). Article 1 paragraph (3) defines restorative justice as a process of resolving criminal cases involving the perpetrator, victim, family, and community leaders to seek a just resolution through reconciliation, emphasizing the restoration of the original situation.

The definition and principles proposed by Tony Marshall and Howard Zehr in (Noor Aulia Sari, 2024), namely active participation of the parties, restitution of losses, and moral responsibility of the perpetrator, are conceptually reflected in the formulation of the Police Regulation. However, they face challenges when applied to drug addicts and victims who have the dual status of perpetrator and victim.

Article 5 of the Police Regulation indicates that the implementation of restorative justice is limited by several material requirements, such as not causing unrest, social conflict, or being related to specific crimes. This indicates that this policy must consider the balance between the interests of the perpetrator and broader social interests. Article 6 emphasizes the requirement for reconciliation between the parties and a return to the original situation. However, this concept is not entirely consistent with drug crimes, which are often classified as victimless crimes.

The specificity of drug regulations is evident in Article 9, which stipulates specific requirements such as addict status, proof of one-day use, or a positive urine test result without evidence, which are then linked to the obligation of an assessment by an integrated team. However, this regulation does not provide a clear definition of who constitutes a victim of drug crimes, even though restorative justice theory requires clarity regarding the victim's role in the decision-making process.

In the context of Indonesian criminal law politics, the author highlights various structural issues, including duplication of norms, inflation of criminal provisions, and violations of the basic rights of suspects/defendants caused by legal uncertainty, which also impact the implementation of restorative justice in the drug sector. Internationally, the failure of repressive policies in several countries – for example, the United States' unsuccessful efforts to eradicate narcotics crops – demonstrates the complexity of the drug problem and its global impact on producing and transit countries, including Indonesia.

In Indonesia, data from the National Narcotics Agency shows that productive-age

workers, students, and the unemployed are the most vulnerable to drug abuse, even though drugs were historically used for treatment. This fact strengthens the argument that victims of drug abuse are more appropriately directed to recovery solutions, such as rehabilitation, rather than mere imprisonment.

Regarding the relationship between criminal policy, rehabilitation, and restorative justice, the author emphasizes that rehabilitation cannot be equated with restorative justice. Within the framework of Indonesian criminal law, which adheres to a two-track system (criminal and action) (Moeljatno, 1985), rehabilitation is a form of sanction that judges can impose under the Narcotics Law, the implementation of which is counted as a prison sentence. Because the law prohibits the use of analogies in determining whether a crime has occurred, equating rehabilitation with restorative justice is seen as a misconception and has the potential to blur the line between criminal policy and non-punitive recovery mechanisms.

Historically, the criminal justice system in Indonesia has evolved from isolation and imprisonment to more varied forms of sanctions. Meanwhile, in socio-cultural practices, restorative dispute resolution models have long been recognized in indigenous communities, such as the *gampong* mechanism in Aceh, which emphasizes deliberation, restoring harmony, and justice that benefits all parties.

Within the framework of modern law enforcement, the principle of equality before the law and the requirement that every state action be based on justice for citizens are the primary foundations that must also be reflected in the handling of narcotics cases. At the same time, global developments in narcotics countermeasures, such as mandatory drug labeling, the prohibition of heroin, and the emergence of the black market, demonstrate that purely repressive policies fail to address the root causes of dependency and illicit trafficking.

A restorative justice approach for victims of drug abuse is deemed urgent because they are legally classified as individuals experiencing physical and psychological dependence, making rehabilitation more appropriate than imprisonment, given the severe medical, psychological, and social impacts of drug use. Rehabilitation serves as a means of physical and mental recovery and social reintegration, thus aligning with the goal of recovery, which is at the heart of restorative justice.

A legal review of Police Regulation No. 8 of 2021 concludes that this regulation marks a paradigm shift in the criminal justice system toward an approach that emphasizes justice, benefit, and balance, and adopts the principles of active participation, perpetrator responsibility, and social restoration as formulated by Marshall and Zehr. However, in practice, the application of restorative justice in drug cases is not entirely consistent with theory, as the peace conditions in Article 6 and the assessment mechanism in Article 9 are closer to the logic of rehabilitation as a sanction than to a community-based recovery mechanism that actively involves the community.

Thus, although Police Regulation No. 8 of 2021 has opened up space for the application of restorative justice in handling cases involving victims of drug abuse, a number of conceptual and normative issues remain, particularly regarding the definition

of a victim, the clear distinction between rehabilitation and restorative justice, and the actual involvement of the community in the recovery process.

B. Implementation Analysis and Obstacles at the Police Level

The restorative justice approach to resolving drug abuse cases at the police level is often not implemented appropriately. This error raises concerns about the emergence of transactional practices between perpetrators and law enforcement officers handling the cases, while restorative justice itself is seen as an old idea repurposed in a contemporary context.

A concrete manifestation of Police Regulation Number 8 of 2021 is evident in the use of a restorative justice approach in the police's handling of drug abuse cases. This regulation authorizes investigators to terminate the investigation and inquiry process in certain cases, taking into account the interests of the perpetrator, the victim, and the community. The implementation of this mechanism reflects a shift in the law enforcement paradigm, from a model that emphasizes sanctions (retaliation) to one that prioritizes recovery efforts.

Empirically, the implementation of this approach brings several benefits to the law enforcement system in Indonesia. First, the use of restorative justice has the potential to reduce overcrowding in correctional institutions because minor cases, particularly those involving drug users and victims, no longer require trial. Second, this mechanism strengthens the sense of substantive justice within the community, as case resolution is not solely oriented toward imposing punishment but also toward restoring the social and psychological well-being of the parties. Third, from an institutional perspective, the implementation of restorative justice can increase public trust in the police institution because law enforcement practices are considered more humane and in line with the humanitarian values enshrined in Pancasila.

Furthermore, the restorative justice model opens up space for the police to optimize their preventive and rehabilitative roles. Investigators not only carry out formal procedural law enforcement functions but are also obligated to facilitate the reintegration of perpetrators into their social environment, including through medical and social rehabilitation programs.

However, the implementation of restorative justice also poses a number of potential problems that must be anticipated. First, there is the risk of abuse of authority by law enforcement officials in determining the suitability of a case for resolution through restorative channels. Without an adequate oversight system, legal uncertainty and discriminatory practices can arise. Second, some members of the public believe this approach is too lenient on perpetrators, thereby reducing the deterrent effect. Third, the limited understanding of police officers regarding the concept of restorative justice itself can hinder implementation, especially when it comes to distinguishing between cases that are appropriate and inappropriate to be resolved using this mechanism. (Edyono et al., 2017).

In theory, the application of restorative justice in drug abuse cases requires support in the form of strengthening the rule of law, increasing the capacity of law

enforcement officials, and establishing a measurable and transparent evaluation mechanism. Thus, restorative justice not only serves as a practical way to ease the workload of the criminal justice system but also serves as a crucial strategy in building a more humane and justice-oriented legal system.

The application of restorative justice, based on Indonesian National Police Regulation Number 8 of 2021, illustrates how this concept is operationalized in law enforcement practice in Indonesia. This provision empowers the police to prioritize a rehabilitative approach over criminal punishment, including by terminating investigations based on restorative justice principles. For example, if a drug user is proven to be a victim of abuse, investigators can redirect the case to a medical or social rehabilitation program without having to undergo lengthy criminal justice procedures.

The resolution mechanism begins when drug addicts and victims of drug abuse receive a recommendation from the Integrated Assessment Team and then submit a request for restorative justice to the Banten Police Chief to terminate the investigation. Afterward, investigators bring in external supervisors, including the Regional Supervisory Agency (Iwasda), the Internal Affairs and Security Agency (Propam), and the Legal Affairs Agency (Bidkum), to assess and determine whether the request to terminate the investigation can be granted. This process culminates in the case being resolved after the issuance of an Investigation Termination Order (SP3).

This case illustrates the potential use of a restorative justice approach in handling narcotics cases. However, implementing a special case review as the basis for determining whether an investigation termination is appropriate has the potential to create room for transactional practices. Furthermore, from the outset, there has been no clear clarity, as suggested by restorative justice theory, regarding who can be classified as a victim.

In the second case, Saderi and Rafliansyah, from Tangerang Regency, were arrested at Mr. Saderi's home on May 12, 2024. They were arrested with evidence including two electronic scales, one clear plastic bag containing 4.04 grams of methamphetamine, and another clear plastic bag containing 0.14 grams of methamphetamine. The investigation and case review revealed that Mr. Saderi was involved in a drug trafficking network, and Mr. Rafliansyah was a victim of drug abuse. Therefore, based on this analysis, Mr. Saderi was charged under Article 114 paragraph 1 and 112 paragraph 1, and Mr. Rafliansyah was recommended for rehabilitation under Article 127 paragraph (1).

The author may be more in agreement with this second case because the law enforcement process did not utilize restorative justice and provided rehabilitation recommendations that would have an impact on the defendant. This aligns with the theory of law enforcement that provides more legal certainty to the defendant. The resolution process for the second case differed because one of the suspects was a drug dealer. While Rafliansyah was submitted for assessment by the Integrated Assessment Team (TAT), Saderi continued his legal process with coercive measures, including detention and investigation. The results indicate that inpatient treatment must be carried

out in a rehabilitation institution that meets the rehabilitation standards of the National Narcotics Agency (BNN) or a rehabilitation institution run by the community or the government.

Furthermore, the author may be more in agreement with the implementation of this case because the law enforcement process did not utilize restorative justice and recommended rehabilitation, which impacted the defendant. This also aligns with law enforcement theory, which assumes defendants have greater legal certainty. Theoretically, criminal law enforcement theory should prioritize the principle of speedy trial (*contante justitie*; speedy trial) in the Criminal Procedure Code (KUHAP), which is often embodied in the term "simply." The principle of speedy, simple, and low-cost justice, as quoted by Andi Hamzah, is actually an elaboration of the Law on Basic Provisions of Judicial Power. (Hamzah, 2017). This, the author believes, leads to the consequence of low costs that the state must provide to each victim, potentially applying it to drug abuse cases.

Empirically, the implementation of restorative justice by the police shows a positive quantitative trend in various regions, such as increased case handling at the Jakarta Metropolitan Police, Banten, and the Sibolga Police. Lawrence M. Friedman argues that the effectiveness of law enforcement rests cumulatively on three main elements: legal substance, legal structure, and legal culture.

1. **Legal Substance:** The overlapping norms and the tendency of law enforcement officers in the field to more easily apply Article 127 paragraph (1) than to prove Article 112 of the Narcotics Law has created confusion in classifying dealers and pure victims who use them. This is exacerbated by data findings from the Institute for Criminal Justice Reform (ICJR) which indicate that only around 10% of court decisions led to substantive medical rehabilitation before the enactment of this Police Regulation.
2. **Legal Structure:** The biggest obstacle at the implementation level lies in differences in interpretation and sectoral egos between law enforcement agencies (Polri, Prosecutor's Office, BNN and Courts). The very broad discretionary authority of the National Police in stopping investigations into narcotics cases creates a high risk of subjectivity in the field. The absence of integrated external supervision has sparked concern among the public about the emergence of individuals who abuse restorative justice mechanisms as legal transaction commodities in order to create impunity for illegal traffickers posing as victims.
3. **Legal Culture:** Formal criminal law enforcement in Indonesia is accustomed to punitive methods. Shifting the perspective of officials from "punishing the perpetrator" to "rehabilitating the victim" requires extensive socialization and competency standardization. Without harmonization of sanctions and clear coordination, this mixed implementation of criminal procedural law could actually undermine the overall working structure of the criminal justice system.

V. CLOSING

A. Conclusion

The implementation of the Restorative Justice approach under Police Regulation No. 8 of 2021 at the police level presents a fundamental dual legal paradigm when compared with

Law No. 35 of 2009 concerning Narcotics. On the one hand, the Police Regulation positions restorative justice as a non-litigation instrument to restore order and terminate cases at the initial investigation stage. On the other hand, the Narcotics Law rigidly categorizes rehabilitation as an alternative legal sanction that must be based on a judge's decision and counted toward the prison sentence. This lack of alignment in legal substance has implications for implementation in the field, with differing interpretations among law enforcement agencies, limited coordination, and a high risk of abuse of police discretion, potentially undermining the principles of legal certainty and substantive justice for the community.

B. Sugesstion

1. 1. Revision of Technical Regulations Comprehensive revisions and adjustments to Police Regulation Number 8 of 2021 are urgently needed, particularly regarding the tightening of specific criteria for narcotics crimes, so that the limits of police discretion are clear, accountable, and do not open up loopholes for impunity for dealers or distributors.
2. 2. Integrated Institutional Synergy and Coordination: The government together with the Supreme Court, the Attorney General's Office, the National Police, and the National Narcotics Agency must formulate a Joint Regulation (SKB) to align operational perceptions regarding the clear boundaries between medical-social rehabilitation as a form of non-litigation restorative justice at the investigation level and rehabilitation as a judicial sanction decision.
3. 3. Increasing the Capacity of Officers: It is recommended that the Indonesian National Police hold ongoing training and outreach for investigators at the regional level regarding the understanding of victimology and multi-layered monitoring mechanisms in the implementation of restorative justice in narcotics cases.

REFERENCE

Books & Journals

- Adi, K. (2014). *Criminal Policy in Combating Narcotics Crimes by Children*. Raja Grafindo Persada.
- Edyyono, S. W., Napitupulu, E., & Panjaitan, S. (2017). *Working Paper: Strengthening the Revision of Indonesia's Narcotics Law Proposed by Civil Society*. Institute for Criminal Justice Reform.
- Hamzah, A. (2017). *Indonesian Criminal Procedure Law, Second Edition*. Graphic Rays.
- Harkrisnowo, H. (n.d.). *Restorative Justice and Its Relevance in the Criminal Justice System in Indonesia*.
- Henny said Flora. (2018). "Restorative Justice as an Alternative in Criminal Justice Settlement and Its Influence in the Criminal Justice System." *University of Law Bengkulu Law Journal* 3.
- Marshall, T. F. (1999). "Restorative Justice: An Overview." Home Office Research Development and Statistics Directorate.
- Moeljatno. (1985). *Principles of Criminal Law*. Bima Aksara.
- Start. (1995). *Kapita Selektta Criminal Law*. Publishing Agency of Diponegoro University.

Noor Aulia Sari, G. (2024). A Philosophical Review of Restorative Justice in the Lens of Justice Theory. *Book Chapter Law and Politics in Various Perspectives Volume III*. [https://doi.org/ https://doi.org/10.15294/hp.v3i1.210](https://doi.org/https://doi.org/10.15294/hp.v3i1.210)

Noviansah, W. (2023). "64% of Drug Cases Completed via Restorative Justice, This is the Reason for the Metro Police," *Detik.Com*. <https://news.detik.com/berita/d-7112955/64-kasus-drugs-completely-via-restorative-justice-this-reason-polda-metro>

Police. (2022). "The National Police Solves 15,811 Cases Through Restorative Justice, Preventing Prisons

Overcapacity," Police website. <https://polri.go.id/berita-polri/239>.

Suharti. (2023). "The NTB Police Stopped the Investigation of 3 Drug Cases That Ensnared 8 Suspects Through Restorative Justice,"

Lombokpost.Jawapost.Com. <https://lombokpost.jawapos.com/hukrim/1502883924/polda-ntb-stop-investigation-3-case-drug-yang-engeng-8-suspect-through-restorative-justice>.

Laws & Regulations

Constitution of the Republic of Indonesia in 1945. Law Number 35 of 2009 concerning Narcotics.

Law Number 1 of 2023 concerning the Criminal Code (KUHP).

Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice

Reports & Organizational Documents:

HAM, D. J. P. K. H. and. (2024). *Report on the Number of Prison Inmates*.

Napitupulu, E. A. T., & Ginting, M. S. (2013). *Portrait of the Situation of Implementation of Criminal Policies Against Narcotics Users*. Institute for Criminal Justice Reform (ICJR) and LeIP.

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