

## The Integration of Restorative Justice Principles in the Handling of Narcotics Crimes Based on the Principles of Justice and Legal Reform

Sudiyanto<sup>1</sup>, Evita Isretno Israhadi<sup>2</sup>

Universitas Borobudur, Indonesia<sup>1,2</sup>

Email: shudy.sasi2018@gmail.com<sup>1</sup>, evita\_isretno@borobudur.ac.id<sup>2</sup>

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### ABSTRACT

*The rehabilitation of individuals struggling with addiction to narcotics, as outlined in Law No. 35/2009, underscores a two-pronged strategy that prioritises the recovery of health and social reintegration. This approach eschews criminal retribution in favour of more holistic methods of addressing the issue. The concept of restorative justice has emerged as an alternative approach to narcotics crime resolution, emphasising the recovery of offenders, victims, and communities through dialogue and deliberation rather than punishment. However, this approach is not without its challenges, and as such, the establishment of a robust legal framework is paramount. This research aims to integrate the concept and principles of restorative justice in the handling of narcotics abuse cases in Law No. 35/2009 based on the principle of justice, and to examine the legal reform of the application of restorative justice in the settlement of narcotics offences. The research method employed is a normative research method through a legislative approach and an analytical approach. The results obtained demonstrate that the concepts and principles of restorative justice can be integrated in handling narcotics abuse cases based on Law No. 35/2009 to realise the principle of justice. The fundamental tenet of restorative justice emphasises the rehabilitation of individuals who use narcotics as a means of recovery, superseding the mere imposition of punishment. It is, therefore, imperative that a comprehensive revision of Law No. 35/2009 is made in order to incorporate the restorative justice approach on a more extensive scale.*

## INTRODUCTION

The notion of restorative justice constitutes a novel concept within the domain of criminal law, emerging as a response to the shortcomings of the retributive justice approach and the criminal justice system. It is regarded as a means of addressing the perceived deficiencies of these established frameworks in ensuring justice for society. The concept of case settlement based on restorative justice can be broadly defined as follows: the process of criminal settlement in which the perpetrator, victim, family of the perpetrator/victim and related parties engage collaboratively to achieve a fair resolution. This collaborative approach emphasises the pursuit of recovery and healing, rather than the pursuit of retribution and vengeance (Prakoso, 2016).

Indonesia is characterised by a high population density, which has the potential to facilitate the proliferation and misuse of narcotics. It is a well-established legal principle in Indonesian criminal law that any individual found guilty of a narcotics offence will be sentenced to a minimum period of imprisonment and will also incur a substantial fine. The law

also stipulates that the death penalty will be applied to those found to be narcotics offenders (Febriana, 2022).

Indonesia is grappling with the issue of narcotics-related offences, and traditional punitive measures are proving ineffective in tackling the root causes and repairing social damage caused by these crimes (Hartanto, 2017). In response, restorative justice has emerged as a more holistic and compassionate alternative approach that focuses on healing and resolving conflicts between offenders, victims, and communities. While there is ongoing debate among experts, restorative justice has already influenced legal policies in several countries.

Unlike criminal law, which treats crime as a state problem, restorative justice perceives crime as harming individuals and societal relationships, emphasizing social action to achieve resolution rather than simply punitive measures (Flora, 2018). This shift in perspective could offer a more productive and transformative way of addressing narcotics-related offences in Indonesia (Pade et al., 2024).

In accordance with the provisions of Article 54 of Law No. 35 of 2009 concerning Narcotics, narcotics addicts and victims of narcotics abuse are required to undergo both medical and social rehabilitation. However, this rehabilitation is not considered a form of restorative justice, but rather an aspect of the penal system. Article 103 of the same law provides judges with the discretion to order rehabilitation, but it also allows for the imposition of a custodial sentence, in accordance with the stipulations of Article 134 of Law No. 35 of 2009 concerning Narcotics. Furthermore, the period of rehabilitation is considered part of the overall sentence. This integration of rehabilitation within the penal framework means that, in essence, rehabilitation becomes a component of criminal punishment.

The resolution of narcotics-related criminal cases through rehabilitation, as outlined in Articles 54, 103, and 127 of Law No. 35 of 2009, is to be carried out with due regard for legality, efficacy (*doelmatigheid*), and the principles of restorative justice. Additionally, considerations for swift, accessible, and affordable justice, the principle of criminal law as a last resort (last resort), cost-benefit analysis, and the reintegration of the offender into society should all be taken into account.

Rehabilitation provisions are specifically intended for narcotics addicts. Judges possess the authority to adjudicate narcotics cases in line with the applicable narcotics legislation. However, in practice, the implementation of narcotics laws does not always align with the intended legal framework. It is often observed that there is a discrepancy between the imposition of sentences and their actual enforcement. Several provisions within narcotics law remain open to various interpretations due to ambiguous language that can lead to multiple meanings. This includes Articles 112 and 127 of Law No. 35 of 2009 concerning Narcotics, which are frequently applied to individuals abusing narcotics. The vagueness of certain legal phrasing has led to inconsistencies in the enforcement actions of law enforcement officials, which in turn generates injustices. Such inconsistencies contradict the fundamental objectives of the law, which are to provide legal certainty, fairness, and utility (Vidiasari, 2023).

Article 54 of Law No. 35 of 2009 mandates that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. Article 103 allows judges to order rehabilitation as an alternative or addition to criminal punishment, while Article 127 requires addicts proven to have abused narcotics unlawfully to undergo rehabilitation. This emphasizes a rehabilitative approach rather than solely punitive measures.

Key principles such as legality, utility, restorative justice, and last resort suggest that rehabilitation should focus on health recovery and social reintegration, with criminal punishment considered only after rehabilitation alternatives have been exhausted. A cost-benefit analysis also highlights the long-term benefits of rehabilitation for both individuals and society.

Restorative justice, which promotes mediation and dialogue to repair the harm caused by crime, is seen as an alternative approach to narcotics cases. It aims to not only punish the offender but also restore social relationships and offer offenders the chance to take responsibility. This approach is supported by guidelines in the Supreme Court Circular No. 1691/DJU/SK/PS.00/12/2020, which advocates for restorative justice in narcotics cases (Hawalia & S, 2022).

In the context of narcotics offences, restorative justice provides a more holistic and humane approach, prioritising rehabilitation and social reintegration rather than mere punishment. However, its implementation faces challenges, such as the perception that narcotics crimes lack direct victims, the stigma attached to offenders, and insufficient community support. Successful implementation requires a supportive legal framework, a deep understanding of restorative justice principles, and broad societal commitment to favour rehabilitation over punitive measures.

Indonesia, with its high population density, has been severely affected by narcotics misuse, leading to significant social and economic consequences. Traditional punitive measures in the country have proven to be inadequate in addressing the root causes of narcotics offenses and reintegrating offenders into society. The existing narcotics law, particularly Law No. 35/2009, integrates provisions for rehabilitation. However, it still largely reflects a penal approach, with rehabilitation often viewed as an alternative or supplement to incarceration rather than a core solution. The current legal framework provides judges with the discretion to impose rehabilitation or criminal punishment but fails to clearly prioritize rehabilitation as a primary approach for narcotics users.

Recent studies highlight that punitive measures not only fail to rehabilitate addicts but often exacerbate the problem, leading to higher recidivism rates and overcrowded correctional facilities. As such, the need for reform has become evident, particularly in adapting the principles of restorative justice to narcotics-related crimes. This study fills the gap by proposing a legal reform that integrates restorative justice into the handling of narcotics cases, in alignment with the principles of justice and human dignity. Through this reform, the aim is to provide a more effective, compassionate, and rehabilitative approach to narcotics offenses, shifting away from a purely punitive system to one that fosters healing and reintegration.

The novelty of this research lies in its exploration of the intersection between restorative justice principles and narcotics law in Indonesia. While previous studies have touched upon the importance of rehabilitation, this study offers a comprehensive analysis of how restorative justice can be fully integrated into the legal framework to better address narcotics abuse. It also suggests practical pathways for revising existing laws to ensure that rehabilitation, not just punishment, is the central focus in the treatment of narcotics offenders.

This research aims to integrate the concept and principles of restorative justice in the handling of narcotics abuse cases in Law No. 35/2009 based on the principle of justice and

examine the legal reform of the application of restorative justice in the settlement of narcotics offences.

## **METHOD**

This study adopted a normative legal research methodology to explore the integration of restorative justice principles in narcotics law. The primary approach is legislative analysis, where relevant legal provisions, particularly Law No. 35/2009, are examined in depth to assess their compatibility with restorative justice. This involves a critical review of the statutory framework, focusing on identifying gaps and potential reforms.

Additionally, an analytical approach was employed to assess how the proposed legal reforms could be applied in practice. This includes analyzing case law, legal commentaries, and scholarly opinions on restorative justice, as well as evaluating the practical implications for the criminal justice system's handling of narcotics offenses. The objective is to determine the potential benefits of adopting restorative justice, such as enhanced rehabilitation and reduced recidivism, in the context of narcotics abuse.

## **RESULTS AND DISCUSSION**

### **The Concept and Principles of Restorative Justice in The Handling of Narcotics Abuse Cases in Law No. 35/2009 Based on The Principle of Justice**

Restorative justice can be defined as an approach within the criminal justice system that focuses on the recovery of victims, the accountability of offenders, and the involvement of the community in the resolution of cases (Diantha, 2016). The objective of the programme is to achieve a balance between the interests of victims, offenders, and society as a whole, with a view to promoting a more humane justice system and addressing the issue of overcrowding in narcotics prisons in Indonesia. In cases involving narcotics, restorative justice seeks to identify alternatives to incarceration, prioritising the rehabilitation of offenders over punitive measures. This approach is informed by the understanding that many individuals who use narcotics require treatment rather than punishment.

The governance of narcotics cases is enshrined in Law No. 35 of 2009, which, in Article 54, stipulates the mandatory requirement for individuals suffering from substance abuse and its victims to undergo medical and social rehabilitation. This phenomenon cannot be regarded as a mere right; rather, it should be conceptualised as an obligation imposed upon the individual afflicted by substance abuse. Article 127 goes on to specify that individuals suffering from narcotic abuse must undergo rehabilitation (Sahputra, 2022).

Restorative justice is a contemporary legal concept that has gained recognition for its efficacy in resolving disputes outside of the courtroom (Roswari et al., 2023). The programme has been endorsed by international organisations, including the United Nations Office on Drugs and Crime (UNODC) (Siregar, 2019). In Indonesia, the administration of restorative justice in narcotics cases is governed by the Attorney General's Regulations No. 15/2020 and No. 18/2021, which establish rigorous criteria for eligibility, encompassing evidence, the severity of the crime, and the offender's intent.

Law No. 35 of 2009 acknowledges that narcotics cases can be addressed not only through criminal law but also by providing rehabilitation for eligible offenders. Restorative justice is predicated on the notion that it serves as a means of rehabilitation, thus aligning with its

overarching objective of remedying the harm caused by the crime in question and circumventing the deleterious consequences of a purely punitive justice system (on Drugs & (UNODC), 2006).

In cases pertaining to narcotics abuse, offenders who are users or addicts can be directed to undergo rehabilitation under strict supervision, thereby facilitating their reintegration as productive members of society (H. Arief & Ambarsari, 2018). This approach has the potential to benefit the broader community by reducing recidivism rates and addressing overcrowding in correctional facilities, a common issue in Indonesia's criminal justice system. The implementation of restorative justice in cases of narcotics abuse is furthermore supported by principles of justice that prioritise a balance between individual and societal interests. In this particular context, the term 'justice' encompasses not only the application of appropriate punishment but also the process of ensuring that offenders are rehabilitated and reintegrated into society in a state of improved well-being (Mintarum et al., 2024).

The concept of restorative justice places significant emphasis on the notion of proportionality in justice administration. In this paradigm, individuals grappling with substance use disorder are regarded as needing assistance rather than being viewed as lawbreakers deserving of severe retribution (Gunawan, 2016). Consequently, the criminal justice system is designed to enforce the law while providing more humane and effective solutions to reduce narcotics abuse. Nevertheless, the implementation of restorative justice in cases pertaining to narcotics abuse must be subject to stringent regulation in order to circumvent any potential misuse. For instance, this approach should be limited to users or addicts not involved in narcotics trafficking networks. Law enforcement agencies, including police forces, prosecutors, and the courts, must possess clear mechanisms to assess whether an offender is eligible for rehabilitation or should face criminal prosecution (Adani & Priyatmono, 2024).

Furthermore, the role of family and community support is of paramount importance in the rehabilitation process, ensuring that offenders recover from narcotics abuse and do not relapse. As a result of integrated assessments, individuals who have committed offences related to narcotics are categorised as either addicts, victims of abuse, or narcotics abusers (Salman & Damian, 2020). This classification is pivotal in determining the legal actions to be taken, including the potential for rehabilitation. Offenders who have not undergone rehabilitation or have been rehabilitated no more than twice may be granted the opportunity for rehabilitation, based on assessment recommendations. It is imperative that this process is supported by a certificate from the relevant authorities confirming the offender's eligibility for rehabilitation instead of punishment. This approach is consistent with the tenets of restorative justice, emphasising the rehabilitation of offenders as opposed to the mere imposition of punishment. Rehabilitation can be regarded as a multifaceted intervention, encompassing both medical and social dimensions. In addition to its role in addressing substance use disorder, it functions as a strategy to mitigate the criminalisation of individuals grappling with addiction. This approach emphasises the necessity of recovery services over incarceration, underscoring a shift towards more compassionate and effective responses to substance abuse (Yanuari, 2022).

Consequently, the integration of restorative justice principles in the handling of narcotics abuse cases in accordance with Law No. 35/2009 represents a step in accordance with the principles of justice. This approach is not solely oriented towards punishment; it also provides a more effective and humane solution to the issue of narcotics abuse. It is evident that the

implementation of a structured rehabilitation mechanism, in conjunction with the support of various stakeholders, can facilitate the restoration and reintegration of narcotics users into society. This process is pivotal in ensuring the optimal realisation of legal objectives, namely the creation of justice and the promotion of social welfare (Hidayat & Hainadri, 2021).

### **The Legal Reform of The Application of Restorative Justice in The Settlement of Narcotics Offences**

Law functions as an instrument for maintaining social order and is, by its very nature, conservative in essence, aiming to preserve existing achievements (Prasetyo, 2017). This conservative role is of particular importance in developing societies, where such achievements require protection. However, in rapidly changing contexts, law must also facilitate transformation. Conventional conceptions of law, which predominantly highlight its static and conservative functions, frequently fail to acknowledge its capacity to facilitate reform (Djaelani & Kristiawant, 2022).

At a broader level, the state is responsible for its citizens and possesses the authority to formulate legal norms, which are embodied in legislation (Asshiddiqie, 2017). It is a commonly accepted proposition that the law is reflective of governmental policy, as codified in legal regulations. In praxis, the discipline of law functions not solely as a subject of study, but also as an object of development, thereby playing a pivotal role in the establishment of social order and justice (Iskandar, 2019). Furthermore, it functions as a tool of social control (Junef, 2017).

There has been a shift from a purely retributive concept of punishment where the offender is treated as a passive object of legal sanction towards a more restorative approach, which seeks to balance the interests of both victims and offenders (Setiadi, 2017). In the context of narcotics-related offences, this shift is of particular significance, given that narcotics users frequently represent both the perpetrators and the victims of their own circumstances. The restorative justice paradigm, by contrast, places emphasis on the needs of all parties involved, thus offering a more holistic and humane alternative.

In Indonesia, the implementation of restorative justice within the criminal justice system is endorsed by Prosecutorial Regulation No. 15 of 2020, which permits the dismissal of cases in the interest of justice under specific circumstances (Afrizal & Anggunsuri, 2019). However, it is important to note that the current provisions primarily apply to cases involving identifiable victims, as the mechanism requires reconciliation between victim and offender (Prakoso, 2017). In the case of victimless crimes such as narcotics misuse, there is a compelling need to expand restorative justice practices, in recognition of the dual role of narcotics users as both offenders and victims who require rehabilitation rather than punitive measures.

Notwithstanding the existence of narcotics legislation and joint regulations that support the rehabilitation of addicts and victims of substance abuse who are classified as suspects or defendants, the implementation of these measures by law enforcement officials remains limited (B. N. Arief, 2016). It is rare for investigators, prosecutors and judges to provide opportunities for assessment or rehabilitation, with imprisonment still being the predominant response. It is frequently the case that rehabilitation through proper assessment procedures is perceived as a more complex alternative. This perception often results in the favouring of incarceration by relevant authorities.

Nevertheless, the criminalisation of narcotics users – of whom a significant proportion are themselves victims – frequently results in their becoming more deeply involved with narcotics trafficking networks whilst in prison. This approach has the potential to compromise the efficacy of narcotics law enforcement and further exacerbate the existing problem. Consequently, a restorative justice approach, which prioritises treatment and reintegration over punishment, should be more widely adopted in addressing narcotics-related offences (Hamzah, 2014).

It is imperative that legal reform, with a view to the implementation of restorative justice in narcotics-related offences, should be initiated with a revision of extant regulations so as to explicitly incorporate this approach into the criminal justice system. Despite the provisions for rehabilitation set out in Articles 54 and 103 of the Narcotics Law, the implementation of these measures remains constrained and contingent on the discretion of law enforcement officials. In a multitude of instances, individuals who use narcotics continue to be subjected to criminal prosecution and imprisonment, despite the fact that they are in greater need of rehabilitation.

Consequently, Law No. 35 of 2009 on Narcotics should be amended to emphasise rehabilitation as the primary resolution for narcotics users and to explicitly mandate that individuals proven to be addiction victims be referred to rehabilitation centres as part of restorative justice, rather than subjected to penal sanctions.

The consumption of narcotics and the illicit distribution of controlled substances are considered to be criminal activities, and as such, they must be addressed through legal processes that are consistent with those applied to other criminal offences. Nevertheless, law enforcement efforts are no longer exclusively reliant on penal measures for the management of addicts and narcotics users. Non-penal approaches, such as the provision of social assistance and education, have seen increased utilisation in order to cultivate a sense of social responsibility within the community (Prakoso, 2017).

Crime prevention strategies can be categorised into two approaches: penal measures, which focus on repressive actions taken after the offence has occurred (such as suppression and eradication); and non-penal measures, which emphasise preventive efforts aimed at deterring or controlling criminal acts before they take place (B. N. Arief, 2016).

In order to ensure that individuals undergoing restorative justice receive appropriate and effective treatment, it is vital that the government enhances collaboration among law enforcement agencies, relevant ministries, and rehabilitation institutions (Hamzah, 2014). Furthermore, the establishment of a specialised independent body to assess and recommend rehabilitation is recommended, thus ensuring that decisions are not solely reliant on law enforcement discretion.

The success of restorative justice in narcotics-related cases is contingent on the willingness of legal practitioners to implement it. Consequently, the implementation of legal reform must encompass the establishment of training programmes for judges, prosecutors, and police officers, with the objective of ensuring a comprehensive understanding and consistent implementation of restorative justice principles.

## **CONCLUSION**

The integration of *restorative justice* principles into the handling of narcotics abuse cases under Law No. 35 of 2009 offers a more humane and effective alternative to punitive

measures by prioritising rehabilitation and balancing individual and societal interests. This approach aims to reduce prison overcrowding and promote justice system reform, but its successful implementation requires clear mechanisms, uniform standards, and strong inter-agency cooperation. A comprehensive revision of the law is necessary to establish rehabilitation as the primary solution for narcotics offences. For future research, it is suggested to conduct empirical studies on the practical challenges and outcomes of implementing *restorative justice* in narcotics cases across different regions in Indonesia, to inform policy improvements and ensure the effectiveness of this approach.

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