



INTERNATIONAL JOURNAL OF LAW AND CONSTITUTION STUDY

Journal home page: <https://jurnal.asrypersadaquality.com/index.php/ijlacos>

OPTIMIZATION OF RESTORATIVE SENTENCE (RESTORATIVE + REHABILITATION) FOR LIGHT-LEVEL DRUG OFFENDERS: EVALUATION OF PRACTICES AND OBSTACLES

Sabna Anggraini, Asti Nurul Puspita, Sofia Zuhro Zein Pulungan, Ainur Rahma

Islamic Criminal Law Study Program, State Islamic University of North Sumatra, Indonesia

sabna0205232039@uinsu.ac.id

Abstract

This study aims to critically evaluate the optimization of restorative punishment, integrating the concepts of restorative justice and rehabilitation (medical and social) for perpetrators of minor drug crimes, particularly abusers and addicts, in Indonesia. The urgency of this research is based on the failure of the conventional punishment system, which focuses on imprisonment, which not only fails to rehabilitate perpetrators but also exacerbates the crisis of overcrowding in correctional institutions. The research method used is normative jurisprudence, enriched with an empirical jurisprudence approach through analysis of field implementation data and case studies of laws and regulations (statutory and conceptual approaches). The results of this study indicate a significant gap between progressive regulations and the reality of implementation on the ground. Although Law Number 35 of 2009 concerning Narcotics and its various implementing regulations, such as the 2014 Joint Regulation and the 2021 Attorney General's Guidelines, have provided a strong legal basis, their implementation faces four major obstacles: (1) inconsistencies and differing perceptions among law enforcement officials in classifying offenders (addicts vs. light dealers), (2) limited rehabilitation infrastructure and human resources that are disproportionate to needs, (3) the suboptimal function and independence of the Integrated Assessment Team (TAT), and (4) high levels of social stigma that hinder the reintegration of former offenders. Optimizing restorative punishment requires harmonizing more uniform and binding regulations, strengthening cross-sector coordination, increasing rehabilitation capacity as a true ultimum remedium, and conducting public education campaigns to eliminate the social stigma against drug abusers.

Keywords: Restorative Justice. Rehabilitation Minor Assessment Team.

INTRODUCTION

The issue of narcotics crime in Indonesia is a crucial issue recognized as an extraordinary crime. However, uniform sentencing policies often blur the lines between different criminal entities: dealers seeking profit versus addicts/abusers who are actually victims of addiction. The dominant retributive approach has led to a significant surge in the prison population. The issue of narcotics crime in Indonesia is a crucial issue recognized as an extraordinary crime. However, uniform sentencing policies often blur the lines between different criminal entities: dealers seeking profit versus addicts/abusers who are actually victims of addiction. The dominant retributive approach has led to a significant surge in the drug inmate population, which now makes up the majority of prison inmates, creating a criminalogenic rather than rehabilitative prison effect.

Law No. 35 of 2009 has initiated a paradigm shift in narcotics criminal law through Article 127, which requires addicts and victims of abuse to undergo rehabilitation. This mandate is in line with the principles of modern criminal law that adopts a restorative approach. In this context, Restorative Justice (RJ) exists as a mechanism to shift the formal criminal process towards a resolution oriented towards damage restoration. In cases of light narcotics (users), the priority damage is the perpetrator's dependence and the socio-economic dysfunction of the family/community. Law No. 35 of 2009 has initiated a paradigm shift in narcotics criminal law through Article 127, which requires addicts and victims of abuse to undergo rehabilitation. This mandate is in line with the principles of modern criminal law that adopts a restorative approach. In this context, Restorative Justice (RJ) exists as a mechanism to shift the formal criminal process towards a resolution oriented towards damage restoration. In cases of minor drug use (users), the primary harm is the perpetrator's dependence and the socio-economic dysfunction of the family/community.

This paper aims to conduct an integrative analysis between RJ (as a diversion mechanism) and Rehabilitation (as a substantial sanction) to formulate an Optimal Restorative Sentencing model. This integration is crucial to ensure that the sanctions imposed are not merely legal formalities, but rather therapeutic interventions capable of achieving the triple goals: breaking the chain of dependency, successful social reintegration, and reducing prison overcrowding. This research fills this gap by empirically and normatively evaluating the main obstacles hindering the realization of

these noble goals. This paper aims to conduct an integrative analysis between RJ (as a diversion mechanism) and Rehabilitation (as a substantial sanction) to formulate an Optimal Restorative Sentencing model. This integration is crucial to ensure that the sanctions imposed are not merely legal formalities, but rather therapeutic interventions capable of achieving the triple goals: breaking the chain of dependency, successful social reintegration, and reducing prison overcrowding. This research fills the gap by empirically and normatively evaluating the main obstacles that prevent the realization of this noble goal.

RESEARCH METHODS

This research adopts a Normative Juridical methodology with qualitative analysis, enriched with empirical data for practice evaluation:

2.1 Statutory Approach

Conducts a hierarchical analysis of laws and regulations, starting from Law No. 35 of 2009, the Supreme Court Regulations (SEMA), the 2014 Joint Regulation, and technical regulations (RI Attorney General's Regulation No. 15/2020, National Police Regulation No. 8/2021, Attorney General's Guidelines No. 18/2021). The primary focus is to identify normative coherences and inconsistencies in regulating the limits of evidence and the criteria for mandatory rehabilitation.

2.2 Conceptual Approach

Analyzes criminal law doctrine and theory related to the paradigm shift from retributive justice to restorative/rehabilitative justice. Comparing the concept of ultimum remedium with the implementation of primum remedium in the context of narcotics, and exploring the concept of disguised depenalization.

2.3 Practical Evaluation (Evaluative Approach)

This is the core of this research. It is conducted through:

- a. Case Analysis: Examining case studies of court decisions or case termination decisions (SP3 by the Police or SKP2 by the Prosecutor) that implement RJ and rehabilitation.
- b. Identification of Empirical Barriers: Using secondary data from reports from the National Narcotics Agency (BNN), the Ministry of Law and Human Rights, NGOs, and previous research to map challenges in the field, including data on prison overcrowding due to drug cases and the availability/accessibility of rehabilitation facilities.

The data is processed qualitatively, producing a synthesis between what should (das sollen) be regulated by law and what actually occurs (das sein) in law enforcement practice.

RESULTS AND DISCUSSION

RESULTS

1. Normative Foundations of Restorative Sanctions: A Strong Construction Fragile Due to Discretion

Legally, Indonesia has established a legal architecture that demonstrates a humanist orientation and a focus on public health. Law Number 35 of 2009 explicitly mandates rehabilitation for addicts and abusers, making it not merely an option but a legal obligation (mandatory). This foundation is reinforced by several implementing instruments, such as the 2014 Joint Regulation governing the Integrated Assessment Team (TAT) mechanism, and Attorney General's Guideline Number 18 of 2021, which explicitly integrates the principles of Restorative Justice (RJ). (Hermawan M. J., 2024)

These regulations collectively affirm that the primary goal of the criminal justice system for drug users is rehabilitation, not punishment. Therefore, imprisonment should be positioned as a true ultimum remedium. However, the fragility of this foundation lies in gaps in interpretation and the discretionary powers still held by law enforcement officials. While there are clear guidelines regarding the threshold for evidence, the absence of statutory or absolutely mandatory regulations makes the interpretation of the categories "addict" versus "small-scale dealer" vulnerable. As a result, the law's progressive intent can be undermined by individual interpretations rooted in the paradigm of retributive justice or the war-on-drugs mentality. (2021, Integrasi Prinsip Restorative Jusitce dalam Penegakan kasus narkoba)

2. Empirical Implementation Challenges: The Gap Between Law and Reality

In-depth field findings indicate that this progressive legal framework is hampered by a number of practical and cultural challenges, resulting in a significant disparity between what should be (das sollen) and what actually happens (das sein).

1. Disparity in Criminalization and Article Interpretation:

A crucial and recurring problem is the lack of uniformity in interpretation among law enforcement institutions (Police, Prosecutors,

and Courts). The focus is often placed exclusively on the quantity of evidence, even for minimal possession, resulting in the application of severe articles (such as Article 112 or 114 concerning Possession or Distribution) instead of Article 127 concerning Abuse. This approach automatically cuts off the rehabilitation pathway to which perpetrators are entitled.

Retributive Implications: When an addict is tried under the distribution law based solely on the amount of evidence, this reflects a law enforcement culture still dominated by a crime-focused and retributive orientation, ignoring the victim-focused nature of the perpetrator as a victim of addiction mandated by the Narcotics Law. Restorative Justice and Rehabilitation immediately lose their relevance. (Fatahillah, 2022)

1. Sub-optimal Function of the Integrated Assessment Team (TAT):

Despite being designated as the primary gatekeeper in determining recovery pathways, the TAT's performance is often suboptimal and lacks independence.

a. Resource Limitations: The TAT faces serious challenges due to a limited number of trained professionals and a lengthy assessment process. This delay is crucial, as offenders awaiting assessment often already serve long prison sentences, negating the spirit of diversion and rehabilitation.

b. Non-Mandatory Recommendation Status: In many cases, recommendations issued by the TAT are considered only as supporting evidence rather than mandatory considerations binding on investigators, prosecutors, or judges. The TAT's discretion to override the results of forensic medical assessments is one of the biggest structural barriers. (Arifai, 2021)

c. Rehabilitation Infrastructure Crisis:

Physical and Budgetary Barriers The most fundamental gap is structural and relates to infrastructure. The quantity and quality of medical and social rehabilitation facilities in Indonesia are far from

adequate to accommodate the surge in the number of addicts who should be diverted.

- a. Prison Capitalization: The failure of the rehabilitation system has directly led to an overcapacity crisis in correctional institutions. Prisons and detention centers, which should accommodate serious criminals, are now filled with drug addicts. This situation creates a vicious cycle, transforming the correctional environment into a more criminal-inducing environment rather than a rehabilitative one.
- b. Budget Allocation: The problem stems from the limited national budget allocation for the rehabilitation sector. As long as rehabilitation is not prioritized in the same budget as criminal justice, it will remain a privilege accessible only to a select few, rather than a universal system that should be implemented as a *primum remedium*. (Akbar M. F., 2022)

1. Social Stigma and the Threat of Recidivism:

Even when rehabilitation is successful, social reintegration often fails. The stigma attached to former addicts as "recidivists" or "problematic individuals" prevents them from finding decent employment and reintegrating into society.

Failed Aftercare: This failure of reintegration demonstrates that the recovery system is incomplete. The rehabilitation process is not only about overcoming addiction, but also about rebuilding the social, economic, and psychological functioning of the offender. High recidivism rates indicate that aftercare support and vocational training remain minimal, defeating the ultimate goal of Rehabilitation Sanctions. (Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika; Pedoman Jaksa Agung Republik Indonesia Nomor 18 Tahun 2021)

3.1 Strategic Steps Towards Effectiveness: Optimizing Recovery Sanctions

To address the existing implementation gap, an integrated intervention is needed that addresses regulatory, institutional, and cultural aspects. (Hermawan M. J., 2024)

- a. Standardization and Harmonization of Binding Regulations:

Legal steps are needed to eliminate excessive discretion. The issuance of a Supreme Court Regulation (PERMA) that explicitly regulates the absolute threshold of evidence (e.g., maximum grammage) at which a perpetrator must be transferred to rehabilitation—unless there is strong evidence of involvement in a large syndicate—is a necessity. This regulation must be binding (mandatory) for all levels of law enforcement agencies, eliminating inconsistent interpretations.

b. Institutional Strengthening and Functional Independence of the Criminal Investigation Agency (TAT): (Ali M. , 2013)

The government is obliged to increase the capacity and independence of the Criminal Investigation Agency (TAT). The budget and training for experts (psychologists, doctors, social workers) within the Criminal Investigation Agency (TAT) must be drastically increased. Furthermore, the status of the Criminal Investigation Agency's recommendations must be elevated to primary and mandatory considerations (*prima facie*), which can only be overruled by judges through exceptionally strong and detailed legal arguments. This will shift the burden of proof from the defendant's defense to the prosecutor/investigator who rejects the recommendation for rehabilitation.

c. Budget Priorities and Increasing Rehabilitation Capacity:

Rehabilitation must be positioned as a national budget priority. Funds should be allocated not only for prosecution but also for the equitable expansion of rehabilitation facilities across all provinces. The quality of services must be improved with a focus on a sustainable rehabilitation model that integrates medical, social, and vocational training aspects. Only by making rehabilitation accessible and high-quality can it serve as a true *primum remedium*. (Ali M. , 2013)

d. de-stigmatization and public education:

Cultural change requires a massive public education campaign to shift public perception from viewing addicts as 'criminals' to 'sick individuals in need of recovery.' This de-stigmatization effort is crucial to ensuring successful post-rehabilitation social reintegration, breaking

the cycle of recidivism, and ensuring that the rehabilitation system truly achieves its goal of restoring offenders to full social functioning.

Discussion

Academic studies conducted between 2020 and 2025 consistently demonstrate a consensus on the imperative to shift the paradigm in handling narcotics abuse cases in Indonesia, moving away from a retributive (punitive) approach towards a restorative and rehabilitative one. However, the majority of research highlights a significant gap between ambitious statutory regulations and their actual implementation on the ground. Here is a synthesis of key findings from recent studies focusing on Restorative Justice (RJ) and Rehabilitation for Minor Narcotics Offenders:

1. Formalization of New Regulations and Diversion Support (2020–2021)

Studies during this initial period focused on institutional responses to the mandate of Law No. 35 of 2009 through various implementing regulations. For instance, research published in the *Jurnal Hukum Lex Generalis* (2021) examined the impact of the Supreme Court's guidelines on implementing RJ within the General Courts system. The study underscored the vital directive for all district courts to apply RJ, particularly in narcotics cases involving limited evidence for one-day use, validating the judicial support for diversion mechanisms targeting users.

In parallel, an evaluation of the Attorney General's Guideline No. 18 of 2021 (The Prosecutor Law Review, 2023) confirmed that the Indonesian Prosecutor's Office had taken explicit procedural steps to prioritize rehabilitation over detention. This research concluded that the guideline serves as a crucial instrument for resolving user cases outside traditional judicial processes, aligning with a more humane approach to justice.

4 Inconsistent Classification and Criminalization Issues (2021–2024)

The most frequently highlighted issue across the literature is the law enforcement apparatus's failure to accurately classify offenders, which leads to disproportionate criminalization.

- a. Disparity Among Law Enforcement Agencies (APH): Studies by the *Jurnal Hukum Dinasti Reviuw* (2021) and *Prosiding ARIPI* (2024) consistently identified that a primary obstacle is the non-uniform understanding among Law Enforcement Officers (APH) when distinguishing between genuine addicts/abusers and small-scale dealers. The findings indicate that APH often bases its charge determination solely on the quantity of evidence,

resulting in users being prosecuted under heavy trafficking articles (Article 112/114), which automatically bars their access to Article 127 (mandatory rehabilitation).

- b. Implication of Penal Articles: This research confirms that the dominant application of Articles 112/114 reflects a prevailing retributive culture that is crime-focused, essentially disregarding the Narcotics Law's mandate to treat users as victims of addiction (*victim-focused*).

3. Structural Barriers of TAT and Rehabilitation Infrastructure (2024–2025)

Several recent papers critically analyzed the systemic and budgetary constraints impeding restorative goals:

- a. Sub-optimal TAT Function: Research published in Jurnal Riset Ilmiah SINERGI (2025) and Dinasti Research (2024) emphasized that while the Integrated Assessment Team (TAT) is intended to be the primary determinant of the recovery path, its actual implementation remains suboptimal. A critical flaw identified is that TAT recommendations lack mandatory binding power over investigators, prosecutors, and judges. This discretion allows APH to bypass medico-forensic assessments and impose punitive prison sentences.
- b. Facility Crisis and Overcapacity: A case study review by Justice Voice (2025) established that the most significant structural impediment is the massive limitation in rehabilitation infrastructure and human resources, which is wholly disproportionate to the demand. This shortfall is the direct cause of the severe prison overcapacity crisis, as correctional facilities are forced to hold individuals who should be receiving medical and social treatment.

4. Conceptual Critique of RJ and the Medical Model (2025)

On a theoretical level, the conceptual underpinnings of the policy have also been scrutinized:

- a. Medical Model Orientation: A critical study from the Jurnal USM (2025) argues that the substance of the diversion policy labeled as "Restorative Justice" in Indonesian narcotics cases is philosophically more aligned with the Medical Rehabilitation Theory. This argument is based on the premise that narcotics offenders are primarily victims of dependence, meaning the

appropriate process is centered on treatment and healing, rather than the traditional RJ model of conflict mediation between a victim and an offender.

Collectively, the literature from the past five years demonstrates that while Indonesia has a strong legal foundation for Restorative Sentencing, this normative progress is consistently hampered by four systemic implementation failures: inconsistent classification of users/addicts by law enforcement, the weak binding status of TAT recommendations, critically limited rehabilitation facility capacity, and the enduring dominance of a retributive culture in practice. This research seeks to synthesize these findings by formulating an optimal integrative model of RJ and Rehabilitation and proposing binding (*mandatory*) policy solutions to specifically address the functional barriers of the TAT and the disparity in applying criminal articles.

CONCLUSION

In summary, the effective and comprehensive implementation of the Restorative Sanction Model, which crucially combines the principles of Restorative Justice (RJ) with rehabilitation (both medical and social), has moved from being a mere alternative option to becoming a fundamental necessity in modernizing Indonesia's drug criminal justice system. This approach offers a far more humane, therapeutic, and public health-focused pathway, particularly for low-level drug offenders (addicts and abusers).

Although a progressive normative foundation has been established, primarily supported by the Narcotics Law No. 35/2009 and its implementing regulations, analysis of field practice clearly demonstrates a significant implementation gap. This disparity is primarily caused by inconsistent legal interpretation by law enforcement officials (APH), the massive limitations of rehabilitation infrastructure, and the persistent issue of social stigma. Therefore, the success of this recovery model in the future depends heavily on three main factors: political commitment and firm budget allocation from the government, solid coordination synergy among all elements of law enforcement, and a cultural change in viewing addicts as individuals who need to be medically and socially recovered, not just criminals who deserve to be locked up.

REFERENCES

- 1691/DJU/SK/PS.00/12/2020, K. D. (t.thn.). General Guidelines for Restorative Justice in Court.
- 2021, P. J. (t.thn.). *Integration of Restorative Justice in Handling Narcotics Cases*.

- Akbar, M. F. (2022). *Restorative Justice Innovation in the Criminal Justice Structure in Indonesia*.
- Akbar, M. F. (2022). Restorative Justice Reform in the Indonesian Criminal Justice System *A comprehensive analysis of the development of RJ*.
- Ali, M. (2013). *Efforts to Actualize Progressive Law*.
- Ali, M. (2013). *Grounding Progressive Law. Providing a theoretical foundation for a paradigm shift in criminal law*.
- Arifai. (2021). Reasoning for Restorative Justice in Narcotics Crime Cases with Child Defendants *A specific study of RJ in narcotics cases can be analogized to minor offenders*.
- Hermawan, M. J. (2024). Sociological Analysis of Restorative Justice in Rehabilitative Law Enforcement for Drug Abuse Cases.
- Hermawan, M. J. (2024). *Sociological Analysis of Restorative Justice in Rehabilitative Law Enforcement for Drug Abuse Cases* Focuses on sociological aspects and implementation in the field.
- Indonesia., K. A. (2023). Statistics on Handling Narcotics Cases.
- Mapping The Effectiveness Of Restorative Justice Through Rehabilitation In Handling Drug Abuse Cases. (t.thn.). UNG eJournal Provides evaluation of RJ effectiveness.
- Narkotika., U.-U. N. (t.thn.). Legal Basis for Mandatory Rehabilitation.
- Nasional, B. N. (2023). BNN Annual Report 2023. Jakarta: BNN.
- Mapping the Effectiveness of Restorative Justice Through Rehabilitation in Handling Drug Abuse Cases. (t.thn.).
- Mapping the Effectiveness of Restorative Justice Through Rehabilitation in Handling Drug Abuse Cases. (n.d.).
- The Implementation of Restorative Justice in Narcotics Cases in Indonesia. . (n.d.). Rewang Rencang: Jurnal Hukum Lex Generalis.
- Joint Regulation of the Chief Justice of the Supreme Court, d. N. (n.d.). Basis for the Establishment of TAT and Rehabilitation Procedures*.
- National Police Chief Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. (n.d.).
- Press., L. U. (2020). The Effectiveness of Rehabilitation Programs for the Recovery of Drug Users. UI Press.

Rahardjo, S. (2010). *Progressive Law: Law That Liberates*. Yogyakarta: Genta Publishing.

Republic of Indonesia Law Number 35 of 2009 concerning Narcotics. (n.d.).

Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics; Guidelines of the Attorney General of the Republic of Indonesia Number 18 of 2021. (n.d.).

Zehr, H. (2022). *The Little Book of Restorative Justice*. Good Books.