

# Forensic Examination and Restorative Justice for Drug Abusers: An Alternative in Handling Drug Cases in Indonesia

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## Abstract

The approach of restorative justice is a new paradigm in responding the crime of drug abuse. So far, the efforts in acting upon drug abuse uses the prohibitionist principle. This approach has the perspective that the drug abuse is illegal and is a violation of law, and therefore must be prohibited. The focus of this policy is the efforts of controlling policies in minimizing drug black markets through punitive ways and imprisonment. Restorative justice is the most logical and humane choice for drug abusers who are not involved in the distribution network. They are victims who must be healed and restored, as opposed to being imprisoned. There are many positive effects of drug abuse rehabilitation. The drug abuser will be saved from their problem of addiction of illegal drugs. It is hoped that when they are healed, they can return to the society and socialize with the people as before.

**Keywords:** *drugs; restorative justice; penal; forensic test.*

## Introduction

Restorative justice is an approach model in the effort to solve criminal cases as a response towards the criminal justice system, which are often thought to not be able to contain the aspirations of the victim and perpetrator.<sup>1</sup> This restorative justice is different from the criminal justice system as it emphasizes the concept of mediation and reconciliation as the mechanism of conflict or dispute resolution in the case of criminal actions. It is something which is nonexistent in the criminal justice system.<sup>2</sup>

The restorative justice approach is a new paradigm in responding the criminal act of drug abuse. In the perspective of the restorative justice approach, the criminal action is understood as a dispute or conflict which may disturb the relations between an individual and the society. It is not merely understood as a violation of law, where as a consequence, the perpetrator is faced

with the state. Thus, justice may only be achieved when the related parties are given a space to participate actively in the process of the drug abuse case to find the best solution which emphasizes healing, reconciliation, and teamwork.

The focus of this policy is the efforts of control policies on minimizing drug black markets through punitive methods or through imprisonment, which are believed to minimize the negative impacts of the drugs. Ironically, this policy will actually cause various violations of the human rights for the drug abuse perpetrator; the violation of the health rights by limiting the access of general medicine and the limitation of health services for prevention, the treatment and handling of HIV, etc.

There are some facts which cannot be ignored when we talk about the violation of the human rights and the arbitrary actions for the addicted people or the drug abusers. This case of policies which emphasize criminalization and which ignore the holistic public health will cause cases which are not easy to be resolved in the future. On 2019, there are 140.423 inmates, 37 295 of them were criminalized for drug abuse. Among them, 285 people died in prison and 89 of them died due to HIV/AIDS.<sup>4</sup>

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**Table 1. Data of Drug Abuse Perpetrator Classification on 2019**

No	Month	Perpetrator classification		
		Drug dealer	Courrier or distributor	User
1	January	0	101	92
2	February	0	67	60
3	March	0	74	72
4	April	0	70	69
5	May	0	71	60
6	June	0	32	57
7	July	0	74	76
8	August	0	133	147
9	September	0	66	56
10	October	-	-	-
11	November	-	-	-
12	December	-	-	-
Total		-	688	692

From the case above, it can be concluded that the research problem is, how is the restorative justice as an alternative method in handling the drug abuse cases in Indonesia, and how is the role of forensic examination for drug abusers in the implementation of restorative justice?

### Research Method

The method of this research was the juridical-normative legal analysis. A legal research was based on the legal concept used. According to Wignyosoebroto,<sup>5</sup> there are five legal concepts, which are:

- 1) The law is an absolute principle of truth and justice which applies universally;
- 2) The law is positive norm in the system of national legal constitution;
- 3) The law is what is decided upon by the

*inconcreto* judge, and it is systemized as a judge-made law;

- 4) The law is patterns of social behavior which is institutionalized and it exists as an empirical social variable;

- 5) The law is a manifestation of symbolic meanings of social actors and is visible in the interaction between them.

In the second concept of law, there is the normative concept, where in this concept, the law is a norm, and which is identified as a justice which must be manifested (*ius constituendum*)<sup>6</sup>. The norms which is manifested as an explicit order and is positively and clearly formulated (*ius constitutum*) to guarantee its certainty<sup>5</sup>. This research combines two approaches, which are the doctrinal/normative<sup>7</sup> method and the non-doctrinal/empirical method, or what is known as the mixed method.<sup>8</sup>

### Result and Discussions

The application of the criminal law in Indonesia is as a method to prevent or to handle crime. It does not inherently become a problem if it is able to achieve the main goal which is to create happiness of citizens; a wholesome and cultural living; social welfare; and equality. The use of punitive efforts (sanctions/criminalization) in managing the people through the constitutions are basically part of the stage of policy.<sup>9</sup>

Meanwhile in the constitutional concept which applies the double-track system, the *stelsel* sanction

simultaneously regulates two things, which are penal sanctions and non-penal sanctions.<sup>10</sup> The law regarding drug abuse also has non-penal sanctions, which is an element of the restorative justice for drug abusers, which is rehabilitation until the addiction is healed.

In its development, the world nowadays tends to not see drug abusers as criminal perpetrators anymore. Yet, they are regarded as victims or patients which must be given empathy. The approach of punishment may make the people who need help ironically hide themselves.<sup>11</sup> The data shows that on 2019, there are no drug abusers who are classified as users who must be rehabilitated.

**Table 2. Drug Case Review Data By BNNP of 2019**

No.	Criteria of Perpetrator	Number of Evidences	Transferred To Proseccutor	Rehabilitation	Information
1.	Drug Dealer	5	5	-	All Cases Transferred to Proseccutor
2.	Courrier	10	10	-	
3.	Distributor	3	3	-	
4.	User	-	-	-	

If analyzed carefully, especially in the medical perspective, there are many parties who think that they are actually victims of a syndicate, or part of the distribution chain of drug trade who have trouble getting over addiction. This may happen even though they actually want to get over drug addiction which binds them. Yet, because their nerves are bound by addictive substances, it is difficult to be done. Users or addicts need a different treatment from other patients in general. There is an urgency for the change of policies in imprisoning drug users and other drug prosecutors. It should be based on the principles of justice, and based on the values of humanity.<sup>12</sup>

The stipulations on rehabilitation for drug abusers are regulated on Articles 54, 55, 56, 57, 58, and 127 of the Constitution No.35 of 2009 regarding Drugs. One of the principles in criminal law which is parallel with this

view is known as the term of restorative justice. It is one of the efforts of legal approach which is used to prevent criminal case resolution. It emphasizes on healing the victim maximally and to return them to the original state.<sup>13</sup> This is because in some cases, the sanction of imprisonment is aimed to punish the inmates physically and to give them a deterrent effect. Yet, it does not give a positive benefit in changing the perpetrator and make them deter in repeating their behavior. It cannot guarantee the achievement of healing for the victims.

Restorative Justice is the most logical and humane choice for drug abusers who are not involved in the distribution network. They are victims who must be healed and restored. They should not be imprisoned. The policy in applying the criminalization sanction for drug abusers has so far created new problems which are quite complex, for example, it will affect the condition of the prison.<sup>14</sup>

**Table 3. Inmate Classification in Yogyakarta Drug Prison on 2018**

No	Inmate Classification	Total	Information
1	Drug Dealer	18	
2	Distributor	23	
3	User	131	
4	Producer	0	
5	Outside of The Classification	18	
Total		190	

In the sociological perspective, the drug users are regarded as acting out from the social norms. Drug abuse may cause death, addictions, diseases, the increase of violence and criminality. It may cause the destruction of the society and may cause a lost generation. In the juridical point of view, drug users who are addicted have on one side violated the law regarding drug usage. This is because there are the legal stipulations on the Constitution on Drugs and Psychotropics which regulates the sanction of imprisonment for perpetrators of drug abusers. If the drug abusers are addicted, they must undergo medical and social rehabilitation. The period of medical treatment and rehabilitation are regarded as the period of undergoing criminal sanction.

The Constitution No. 35 of 2009 regarding Drugs states that the judge which examines the case of drug addicts may undergo two things. First, the judge may give the verdict of ordering the person to undergo medical treatment or healing, if the drug addict is proven to be guilty of drug abuse crime. Second, the judge may give the verdict of ordering the person to undergo medical treatment or healing, if the drug addict is not proven to be guilty of drug abuse crime<sup>15</sup>.

The issuing of SEMA No. 4 of 2010 has given a guide for judges to give a verdict based on restorative justice, which places drug addicts in medical and social rehabilitation institutions. The main consideration for the soul and spirit of the Constitution No. 35/2009 regarding Drugs is the acknowledgement of drug addicts as prisoners. It also protects drug addicts and drug abuse victims by placing them in medical and social institutions.

**Table 4. Inmate Classification in Yogyakarta Drug Prison on 2019**

No	Inmate Classification	Total	Information
1	Drug Dealer	52	
2	Distributor	77	
3	User	136	
4	Producer	0	
5	Outside Of The Classification	31	
Total		296	

Above is the data of prison inmates on 2019. On that year, it is shown that most of the prison inmates from drug cases are users. It shows the alignment of the restorative justice paradigm to place victims of drug abuse in a rehabilitation institution. It has long been voiced and is regulated in the Constitution No. 35 on 2009 regarding Drugs, even though not much has been implemented. Thus, until now, drug abuse victims still have to go through court processes. Drug abuse victims do not need to be captured nor punished. Yet, they need to be given medical treatment and rehabilitation.

The judges' verdict for the drug abuse victims is right when they are placed in rehabilitation institutions. On the contrary, if they are imprisoned, the drug abuse victims will not obtain rehabilitative treatments. Since there is no treatment, the drug abuse victims will try

to obtain drugs illegally, both through the family or through the drug distribution network in the correctional institutions. This restorative justice is only given to the users. Yet, the drug distributors or drug dealers will still be given penal punishments.

Criminal policies certainly do not only use penal law, yet it also uses non-penal laws. Basically, these two have different ways of working. The effort in preventing crime through the penal method emphasizes "repression" (oppression/elimination/eradication). This form of punishment is given to drug distributors, smuggler, and drug producers. Meanwhile, the non-penal method has the preventive orientation (prevention/deterrence/control) and focuses on curation (healing) which is suitable for users.

According to Pakpahan<sup>14</sup>, the resolution method of restorative justice is more effective than giving sanctions in the form of imprisonment punishments. One of the reasons why restorative justice is more effective in handling the case of drug users is based on the worry regarding the condition of prisons. There are many criminal cases which are given the verdict of imprisonment by the judges, which makes prisons crowded, without the addition of rooms or the betterment of facilities. The rehabilitation of drug users has more positive impacts. For example, the drug users will have a solution for their problem of addiction and it is hoped that when they are healed, they may go back to the society and socialize again as before.

How to differentiate between drug users, distributors, smugglers, and producers? There needs to be a forensic examination to the perpetrators, so as to obtain facts, whether they are drug users, distributors, smugglers, and producers. This is so that the correct action of law may be taken. To detect drug users, forensic examinations may be carried out, including urine tests, hair tests, or blood tests.<sup>16</sup>

The time needed to undergo the urine test form of forensic examination is around one hour. Meanwhile only the lab of BNN and the forensic lab of POLRI can carry out the hair and blood tests. Thus, there is no certain information on the price needed. Another form of forensic examination is by using the *Learning Vector Quantization* (LVQ). In the research of Sulaiman<sup>17</sup> the forensic examination algorithm uses this method, and it has a high accuracy of 99%. Then in the research of Leleury and Aulele (2016), the Learning Vector

Quantization (LVQ) has an accuracy rate of 95,92%. Through this system, it is hoped that the primary identification of drug abusers may be eased, so that it may be treated quickly. It is also hoped to be able to detect and differentiated users, distributors, and producers.

## Conclusion

Dropping the verdict of imprisonment sanction for drug abusers cannot actually change their behavior and stop them from using drugs. Meanwhile, the deterrent effect which becomes the main aim of penal punishments is not equivalent with the negative effects which are created. Restorative justice becomes the right choice in treating drug abuse in Indonesia, especially for users who need rehabilitation and healing.

The restorative justice approach is a more effective resolution method compared to giving the sanction of imprisonment. One of the reasons why the restorative justice approach is more effective for handling drug users is the worry regarding the supply of prison rooms. There are many criminal cases which are given the verdict of imprisonment by judges which makes the prisons filled. It happens without the addition of rooms nor the betterment of facilities.

The restorative justice method of approach is preferred as it is hoped for by the victims. They want to undergo rehabilitative treatment and return to their previous state. Even though it might not run optimally nor maximally, at least the victims' rights are guaranteed. The rehabilitation of drug users gives more positive impacts. For example, the drug users may heal from their problem of addiction to dangerous substances. It is also hoped that they may return to the society and socialize again as before after they are healed.

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