

**'APPLICATION OF RESTORATIVE JUSTICE  
IN THE INVESTIGATION OF NARCOTICS CRIMES  
ACCORDING TO POSITIVE LAW AND ISLAMIC LAW  
(STUDY ON THE JURISDICTION OF THE INDONESIAN NATIONAL  
POLICE SOUTH BORNEO REGION)**

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**Abstract:** *Restorative Justice* is a new concept of thinking that develops as a response to the retributive justice system and criminal justice that is considered unsatisfactory to the sense of justice of the community. The problem arises when drug crimes that are considered *victimless crimes* cannot be applied restorative justice in them because there are no victims, on the contrary, according to other legal experts, they argue that drug abusers themselves are perpetrators and victims. On the above issues, research has been conducted to find out how South Kalimantan police investigators, especially the Ditresobat, apply *restorative justice* in investigations Drug crimes, what are the obstacles faced and what is the perspective of Islamic law and positive law in applying *ideal restorative justice* in drug investigations? This research uses a socio-legal approach combination of document studies and field studies. The source of the data was obtained from interviews with five informants (four from the South Kalimantan Regional Police and 1 informant from the South Kalimantan BNNP). Primary legal materials used by all regulations related to *restorative justice* in the investigation process and case studies of investigations (using 6 case studies) of drug crimes in the South Kalimantan regional police area. Based on Pustaka searches and interview results, the application of *restorative justice* in the investigation of narcotics crimes by Investigators in the jurisdiction of the Indonesian National Police in the South Kalimantan Region has been running in accordance with applicable procedures but still gets obstacles derived from its own legal factors, law enforcement factors, facilities or facilities factors, and community factors. In the perspective of national law, normative references *to restorative justice* in drug crimes have not been comprehensive, so state consistency through law enforcement officials is needed in implementing different treatment between drug users and dealers. Meanwhile, in the perspective of Islamic law, victims of drug abuse who undergo rehabilitation do not deviate from Islamic criminal law because the purpose of jarimah ta'zir in addition to providing a deterrent effect to the person concerned also has a positive impact after the law is implemented, namely the safety of body and soul as the main purpose, vision and mission of the Ditresobat Polda South Kalimantan. Based on the results of the study, the researcher reconstructed 3 steps that must be taken by investigators in the jurisdiction of the Indonesian National Police in South Kalimantan Region in implementing restorative justice for drug

convicts, namely by increasing the progress of investigators in law enforcement against drug addicts, synergy of assessment teams towards users and socialization of medical rehabilitation priorities over legal rehabilitation.

**Keywords:** *Restorative justice, drug crime, investigation, rehabilitation*

## Introduction

Drug abuse has become one of the serious problems that plague communities around the world. In recent decades, drug abuse has ruined the lives of millions of people and had widespread negative impacts on various aspects of social, economic, and health life. Both individually and collectively, drug abuse threatens the well-being and stability of a country.

In Indonesia, drug abuse has been handled quite seriously, for certain perpetrators even threatened with the death penalty. The severity of the threat of sanctions for these perpetrators did not have a significant impact in reducing the number of drug abuse. In March 2023, the National Narcotics Agency (BNN) released data on the disclosure of drug abuse cases in Indonesia in 2022, namely 43,099 cases, consisting of 42,220 revealed by the Indonesian Police and 879 cases by BNN.<sup>1</sup> From the high level of drug abuse, in an effort to overcome it, it is necessary to find other alternatives, especially in law enforcement, which has been punished through imprisonment, confinement, rehabilitation or death penalty.

*Restorative Justice* is a new concept of thinking that develops from society as a modern criminal law thinking pattern. This concept developed as a response to the approach of the retributive justice system and criminal justice which was considered unsatisfactory to the sense of justice of the community. The concept of *restorative justice*, or what is commonly called restorative justice in Indonesian, has been accommodated in a small number of national laws. The only legislation that regulates the *restorative justice* approach in handling criminal acts is Law Number 11 of 2012 concerning the Juvenile Criminal Justice System called diversion.<sup>2</sup> Regulations regarding the *restorative justice* approach in handling criminal acts can also be found in Prosecutor's Regulation Number 15 of 2020 and National Police Regulation of the Republic of Indonesia Number 08 of 2021. In general, the practice of using a *restorative justice* approach is carried out by bringing together the perpetrator and the victim then agreeing on forgiveness and the amount of compensation for the victim to be restored to its original state. However, what happens when *this restorative justice* approach is faced with drug abuse crimes which are essentially *victimless crimes* such as gambling, pornography and several other crimes.

## Method

This type of research is empirical juridical research, with the approach used is to examine laws and regulations (positive law) and principles, principles and norms of Islamic law and relate

<sup>1</sup> [https://puslitdatin.bnn.go.id/konten/unggahahan/2023/06/IDR-2023-FIX\\_Compresed.pdf](https://puslitdatin.bnn.go.id/konten/unggahahan/2023/06/IDR-2023-FIX_Compresed.pdf), retrieved June 28, 2023.

<sup>2</sup> According to Law 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law), diversion is the transfer of the settlement of child criminal cases from the criminal justice process to processes outside criminal justice. Juvenile criminal settlement through diversion is carried out with a restorative approach. Through a restorative approach, deliberation is needed and involves all related parties, including children and parents/guardians, victims and/or parents/guardians, Community Advisors (BAPAS), Professional Social Workers (PEKOS), representatives and other involved parties in order to reach a diversion agreement.

to legal values or norms that apply in society. Researchers use several approaches as an integral part of a study. The approaches taken in this study are:

Empirical juridical is a way of legal research that uses secondary data as initial data, which is then continued with primary data or field data. Examining the effectiveness of laws and regulations and research that wants to find relationships (correlations) between various symptoms or variables as a data collection tool consists of document studies, observations (observations), and interviews (interviews) sourced from the practice of investigating narcotics cases in the jurisdiction of the South Kalimantan Regional Police.

## **Results and Discussion**

That the application of restorative justice in the investigation of narcotics crimes by Investigators in the jurisdiction of the Indonesian National Police in the South Kalimantan Region has been carried out in accordance with applicable procedures, namely Police Regulation Number 8 of 2021 concerning Handling Crimes based on Restorative Justice where investigators can consider solving drug crime cases with restorative justice for criminal suspects Drugs are based on applicable conditions.

1. General requirements consist of material requirements and formal requirements. Material requirements are explained in the provisions of Article 5 of Police Regulation 8/2021 which reads:

"Material requirements as referred to in Article 4 letter a, include:

- a. does not cause unrest and/or rejection from the community;
- b. does not have an impact on social conflicts;
- c. does not have the potential to divide the nation;
- d. not radicalism and separatism;
- e. not a repeat offender based on a Court Decision; and
- f. not a criminal act of terrorism, a criminal act against state security criminal acts of corruption and criminal acts against people's lives."

2. That obstacles in the application of restorative justice in the investigation of narcotics crimes by Investigators in the jurisdiction of the Indonesian National Police in the South Kalimantan Region include:

- a. The number of drug users in the South Kalimantan region that is not balanced with the cost and rehab places is still small and the reluctance of victims and families to report because of shame are also factors that hinder the effectiveness of the application of restorative justice in the investigation of narcotics crimes by investigators in the jurisdiction of the Indonesian National Police in South Kalimantan;
- b. Difficulty in bringing together the balance of various interests of parties (perpetrators, victims, society and the State);
- c. Non-observance of basic guidelines and principles that have been formulated on the basis of principles

3. Examples of strategic steps that must be taken by investigators in the jurisdiction of the Indonesian National Police in South Kalimantan Region in implementing restorative justice for drug convicts.

- a. Progressiveness of Law Enforcement Against Drug Addicts, namely efforts to decriminalize or depenalize (shift criminal acts) to non-criminal against drug abuse rules in the revision of the narcotics law. Because, drug users or users are actually victims who make mistakes, not perpetrators of crimes, although Article 127 of Law Number 35 of 2009 concerning Narcotics has led to the application of rehabilitation of users, but the practice is still punishment of drug users. Thus, the appropriate sanction for the user is not punishment, but rehabilitation. If the wrong person causes him to get sick, then he must be healthy through the rehabilitation process. The policy to place abusers in rehabilitation institutions through an assessment process without a formal trial is a form of depenalization of drug crimes where abusers, victims, and addicts who were initially sentenced to criminal sanctions were replaced with rehabilitation.

For example, one of the processes carried out by BNN by doing the process Healing involving substitutes or substitutes, especially subutek substances. The effect of subutek substance dependence is such that subutek is replaced with Methadone has a dependent effect in the medical rehabilitation process.

Drug users themselves who are not involved in the network of dealers or dealers are included in the type of victims of "self-victimizing victims", namely victims of crimes committed by themselves. Therefore, the sanctions that are applied to him are sanctions that reflect the value of restorative justice and not prison sanctions that emphasize retributive justice which is oriented towards retributive justice. Because drug users for themselves are essentially victims of a crime who need to get treatment and / or treatment.

When viewed in terms of the health of drug abusers for themselves, especially those who have experienced dependence, health experts have studied and categorized as brain diseases or damage to brain cells that work in the human body, where the body controlled by the brain that has been disturbed due to the use of substances in narcotics causes the body to want these substances to be consumed continuously. As a result, punishment will not necessarily make those who are dependent on these substances recover and will not use the substance again, but this dependence can only be overcome by medical and social processes.

## **Conclusion**

Moving on from the discussion previously described, it can be concluded that this study initiated a legal formulation in the application of restorative justice in the investigation of narcotics crimes according to positive law and Islamic law. Thus, the application of restorative justice in the investigation of narcotics crimes by investigators in the jurisdiction of the Indonesian National Police in the South Kalimantan Region has been running in accordance with applicable procedures.

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## BIBLIOGRAPHY

Holy Quran, Book and Journal

- A. M. Syukri Akub dan Sutiawait. *Keadilan Restoratif: Perkembangan, Program Serta Prakteknya Di Indonesia Dan Beberapa Negara*. Jakarta: Litera, 2018.
- admin, Oleh bnn. "Rehabilitasi Bagi Pengguna Narkoba Dalam Implementasi Restorative Justice," December 27, 2021. <https://slemankab.bnn.go.id/rehabilitasi-bagi-pengguna-narkoba-dalam-implementasi-restorative-justice/>.
- Afif, Afthonul. *Pemaafan, Rekonsiliasi & Restorative Justice : Diskursus Perihal Pelanggaran Di Masa Lalu Dan Upaya-Upaya Melampauinya*. Pustaka pelajar, 2015. <http://library.stik-ptik.ac.id>.
- Almond, Mustaqim, and Eva Achjani Zulfa. "Optimalisasi Pendekatan Restorative Justice Terhadap Victimless Crime (Penyalahgunaan Narkoba) Sebagai Solusi Lapas Yang Over Kapasitas." *Jurnal Pendidikan Tambusai* 6, no. 1 (2022): 8198–8206.
- Andi Hamzah. *Asas-Asas Hukum Pidana Edisi Revisi*. Jakarta: Rineka Cipta, 2014.
- Arief, Hanafi, and Ningrum Ambarsari. "PENERAPAN PRINSIP RESTORATIVE JUSTICE DALAM SISTEM PERADILAN PIDANA DI INDONESIA." *Al-Adl : Jurnal Hukum* 10, no. 2 (August 13, 2018): 173. <https://doi.org/10.31602/al-adl.v10i2.1362>.
- Ariyanti, Vivi. "Kedudukan Korban Penyalahgunaan Narkotika Dalam Hukum Pidana Indonesia Dan Hukum Pidana Islam." *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 2 (2017): 247–62.
- Bacon, Matthew. *Taking Care of Business: Police Detectives, Drug Law Enforcement and Proactive Investigation*. Oxford University Press, 2017. <https://books.google.com/books?hl=id&lr=&id=tzxRDAAAQBAJ&oi=fnd&pg=PT15&dq=drug+crimes+investigation+police&ots=L04-uO6VNs&sig=O31cUi8OIyyKKmkfHTcS96w89og>.
- Carter, David L. "Drug-Related Corruption of Police Officers: A Contemporary Typology." *Journal of Criminal Justice* 18, no. 2 (1990): 85–98.
- Chandra, Tofik Yanuar, Joko Sriwidodo, and M.S. Tumanggor. "Rehabilitation of Narcotic Addictives: An Overview of Implementation and The Effort by Restorative Justice." *KRTHA BHAYANGKARA* 17, no. 3 (December 14, 2023): 465–80. <https://doi.org/10.31599/krtha.v17i3.2427>.
- Eva Chahyani. *Restorative Justice Dalam Permasalahan Hukum Di Indonesia*. Jakarta: Refika Aditama. Medan: BP Univ, 2014.
- Gorta, Angela. "Illegal Drug Use by Police Officers: Using Research and Investigations to Inform Prevention Strategies1." *International Journal of*

- Police Science & Management* 11, no. 1 (March 2009): 85–96.  
<https://doi.org/10.1350/ijps.2009.11.1.112>.
- Hans Kelsen. *Pengantar Teori Hukum*. Bandung: Nusa Media, 2000.
- Herlina. *Restorative Justice Sebuah Konsep Dalam Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*. Medan: BP Univ, 2014.
- “Keadilan Restorative Justice Implementasi Politik Hukum Pidana Bernilai Filsafat Pancasila,” n.d.
- Kurniawan Tri Wibowo, and Erri Gunrahti Yuni U. *RESTORATIVE JUSTICE Dalam Peradilan Pidana Di Indonesia*. 1st ed. Makassar: Pena Indis, 2021.
- Lanni, Adriaan. “Taking Restorative Justice Seriously.” *Buff. L. Rev.* 69 (2021): 635.
- “LaporanKegiatan\_-\_tahun\_2023.Pdf.” Accessed December 24, 2023.  
[https://jdih.bnn.go.id/internal/assets/assets/produk/LaporanKegiatan/2023/01/LaporanKegiatan\\_-\\_tahun\\_2023.pdf](https://jdih.bnn.go.id/internal/assets/assets/produk/LaporanKegiatan/2023/01/LaporanKegiatan_-_tahun_2023.pdf).
- Lawalata, Jesylia Hillary, Juanrico Alfaromona Sumarezs Titahelu, and Julianus Edwin Latupeirissa. “Pendekatan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Narkotika Pada Tahapan Penyidikan.” *TATOHI: Jurnal Ilmu Hukum* 2, no. 1 (2022): 91–112.
- Mahmud Kusuma. *Menyelami Semangat Hukum Progresif, Terapi Paradigma Bagi Lemahnya Hukum Indonesia*. Yogyakarta: AntonyLib, 2009.
- Mardjono Reksodiputro. *Menuju Pada Suatu Kebajikan Kriminal Dalam HAM Dalam Sistem Peradilan Pidana*. Jakarta: Pusat Pelayanan Hukum dan Keadilan, 1996.
- Marlina. “Diversi Dan Restorative Justice Sebagai Alternatif Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum.” *Pusat Kajian Dan Perlindungan Anak Semarang*, 2007.
- Maulidar, Mira. “Korelasi Filosofis Antara Restorative Justice Dan Diyat Dalam Sistem Hukum Pidana Islam.” *AT-TASYRI’: JURNAL ILMIAH PRODI MUAMALAH*, 2021, 143–55.
- McCold, Paul. “An Experiment in Police-Based Restorative Justice: The Bethlehem (PA) Project.” *Police Prac. & Res.* 4 (2003): 379.
- M.Kn, Dr Abdurrifai, S. H. *Esensi Diversi dalam Penyelesaian Tindak Pidana Terhadap Harta Benda dengan Menggunakan Pendekatan Keadilan Restoratif*. CV. Bintang Semesta Media, 2023.
- Muhammad Rezky Azhari. “Penerapan Restorative Justice Dalam Mengurangi Kapasitas Tahanan (Overload) Di Lembaga Perasyarakatan Kota Makassar,” 2015.
- “Muhammad Taufik - Filsafat John Rawls.Pdf.” Accessed December 23, 2023.  
<https://digilib.uin-suka.ac.id/id/eprint/33208/1/Muhammad%20Taufik%20-%20Filsafat%20John%20Rawls.pdf>.
- Nur Rocheiti. *Model Restorative Justice Sebagai Alternatif Penanganan Bagi Anak Delinkuen Di Indonesia, Masalah-Masalah Hukum*. Semarang: Undip, 2008.
- O’Hear, Michael M. “Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice.” *Stan. L. & Pol’y Rev.* 20 (2009): 463.

Penerbit Alinea. "Restorative Justice & Diversion for Victimless Crime: Studi Perbandingan Penanganan Penyalahgunaan Narkotika: Indonesia, Australia, Portugal," October 9, 2022.  
<https://penerbitalinea.com/product/restorative-justice-diversion-for-victimless-crime-studi-perbandingan-penanganan-penyalahgunaan-narkotika-indonesia-australia-portugal>