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Reconceptualizing Legal Protection for Drug Addicts: A Restorative Justice Perspective in Indonesia

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Abstract

This study aims to analyze legal protections for drug addicts and to examine the relevance of applying restorative justice within the Indonesian criminal justice system, particularly in recognizing addicts as legal subjects who possess a dual role as both perpetrators and victims. **The methods** employed are normative legal analysis using statutory, conceptual, and case-based approaches, analyzed qualitatively through primary legal sources, court rulings, and relevant academic literature.

The novelty of this study lies in the development of an integrated analytical model that combines legal protection theory, victimology, and the principles of restorative and rehabilitative justice, while formulating a regulatory harmonization model that positions drug addicts as subjects of legal protection within narcotics policy.

The findings indicate that the legal status of drug users within Indonesia's criminal justice system remains ambiguous, leading to the dominance of a repressive approach that conflicts with the principle of rehabilitation. The normative inconsistency between Articles 54 and 103 and the criminalization provisions in Article 127 of Law No. 35 of 2009, as well as the disharmony with criminal procedure law and the internal policies of law enforcement agencies, creates legal uncertainty in practice.

The conclusions of this study affirm that regulatory reform is needed, oriented toward strengthening rehabilitation as a right of drug users, strengthening rehabilitation institutions, reducing social stigma, and optimizing restorative justice approaches to realize a criminal justice system that is more just, humane, and sustainable.

Keywords: Legal Protection; Drug Addicts; Rehabilitation; Restorative Justice.

Abstrak

Penelitian ini bertujuan untuk menganalisis perlindungan hukum bagi pecandu narkoba serta mengkaji relevansi penerapan keadilan restoratif dalam sistem peradilan pidana Indonesia, khususnya dalam menempatkan pecandu sebagai subjek hukum yang memiliki dimensi ganda sebagai pelaku sekaligus korban.

Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan (statuta), konseptual, dan kasus, yang dianalisis secara kualitatif melalui bahan hukum primer, putusan pengadilan, serta literatur akademik yang relevan.

Kebaruan penelitian ini terletak pada pengembangan model analitis terintegrasi yang

menggabungkan teori perlindungan hukum, viktimologi, serta prinsip keadilan restoratif dan rehabilitatif, sekaligus merumuskan model harmonisasi regulasi yang menempatkan pecandu narkoba sebagai subjek perlindungan hukum dalam kebijakan narkotika.

Hasil penelitian menunjukkan bahwa posisi hukum pecandu narkoba dalam sistem peradilan pidana Indonesia masih bersifat ambigu, sehingga memunculkan dominasi pendekatan represif yang tidak sejalan dengan prinsip rehabilitasi. Ketidakkonsistenan normatif antara Pasal 54 dan Pasal 103 dengan ketentuan kriminalisasi dalam Pasal 127 Undang-Undang Nomor 35 Tahun 2009, serta disharmoni dengan hukum acara pidana dan kebijakan internal aparat penegak hukum, menimbulkan ketidakpastian hukum dalam praktik.

Kesimpulan penelitian ini menegaskan bahwa diperlukan reformasi regulasi yang berorientasi pada penguatan rehabilitasi sebagai hak pecandu narkoba, penguatan kelembagaan rehabilitasi, pengurangan stigma sosial, serta optimalisasi pendekatan keadilan restoratif guna mewujudkan sistem peradilan pidana yang lebih adil, humanis, dan berkelanjutan.

Kata Kunci: *Perlindungan Hukum; Pecandu Narkotika; Rehabilitasi; Restorative Justice.*

1. INTRODUCTION

The issue of narcotics continues to be one of the most complex legal and social issues in Indonesia. The annual increase in drug abuse and illicit drug trafficking, as reported by the National Narcotics Agency, shows that repressive penal policies have not been fully effective in curbing the rate of drug-related crime in society.¹ This complexity is not only related to the criminal dimension, but also touches on aspects of public health, family resilience, and social stability. Amidst this reality, the position of drug addicts becomes problematic because they are caught between being treated as criminals and as individuals suffering from addiction who need rehabilitation. This ambivalence makes the issue of law enforcement against addicts one of the strategic topics in contemporary criminal law studies.

Comparative evidence further strengthens the argument regarding the limitations of punitive approaches in addressing narcotics-related issues. In the Indonesian context, data from the Badan Narkotika Nasional (BNN) indicates that the prevalence of drug abuse increased from 1.80 percent in 2019 to approximately 1.95 percent in 2023, with an estimated 3.6 million active users, despite the continued enforcement of penal-oriented policies under Law No. 35 of 2009 on Narcotics.² At the same time, data from the Directorate General of Corrections shows that more than 60 percent of prison inmates are incarcerated for drug-related offenses, the majority of whom are users rather than traffickers.³ These figures suggest that punitive policies have not significantly reduced drug demand and instead contribute to prison overcrowding.⁴

¹ Badan Narkotika Nasional Republik Indonesia, "Laporan Tahunan BNN Republik Indonesia" (Jakarta: Badan Narkotika Nasional Republik Indonesia, 2023).

² Indonesia.

³ Ika Sartika, "Penerapan Sistem Pemerintahan Berbasis Elektronik (SPBE) Melalui Sistem Database Pemasarakatan (SDP) Guna Mewujudkan Good Governance Di Lembaga Pemasarakatan," *Private Law* 5, no. 3 (2025): 955–69.

⁴ Fabien Merz, "United Nations Office on Drugs and Crime: World Drug Report 2017. 2017.," *SIRIUS-Zeitschrift Für*

At the global level, contrasting policy models provide clearer empirical support. Following the implementation of drug decriminalization in 2001, Portugal experienced a substantial decline in drug related harms. Drug-induced deaths decreased from approximately 80 cases per year in the late 1990s to fewer than 20 cases annually after 2015.⁵ Similarly, new HIV infection rates among people who inject drugs dropped by more than 90 percent, from over 1,000 cases in 2001 to fewer than 100 cases per year in the following decade. Importantly, these improvements were not accompanied by a significant increase in overall drug use prevalence, which remained below the European average.⁶ In contrast, countries that maintain punitive approaches continue to report high incarceration rates and recidivism among drug offenders.⁷ These comparative findings indicate that the ineffectiveness of penal policies reflects a structural limitation in addressing addiction as both a legal and public health issue.⁸

Normatively, Law No. 35 of 2009 on Narcotics provides two different approaches to drug addicts, namely a penal approach through criminal provisions in Article 127 and a rehabilitative approach as stipulated in Articles 54 and 103. However, various studies and reports on law enforcement practices show that the implementation of rehabilitation provisions is still far from optimal. Many addicts continue to serve prison sentences, even though they are legally entitled to medical and social rehabilitation.⁹

This discrepancy between the normative framework and practical reality raises fundamental questions about the effectiveness of the legal system in dealing with drug addicts in an appropriate and proportionate manner. This situation highlights the need to review the paradigm for resolving drug cases through a more humanistic approach, one example of which is the concept of restorative justice.

Although the issue of the position of drug addicts in the criminal justice system has been widely discussed in various studies in Indonesia, studies that comprehensively integrate the perspective of restorative justice are still relatively limited. A number of previous studies have emphasized the criminalization of drug users and the effectiveness of rehabilitation provisions in the Narcotics Law, without providing a critical assessment of the disharmony between the normative framework and law enforcement practices.¹⁰ Other studies have focused on analyzing rehabilitation policies, but have not positioned restorative justice as an alternative paradigm capable of bridging the dualism of drug users as both perpetrators and victims.¹¹

Strategische Analysen 2, no. 1 (2018): 85–86.

⁵ Caitlin Elizabeth Hughes and Alex Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?," *The British Journal of Criminology* 50, no. 6 (2010): 999–1022.

⁶ Glenn Greenwald, "Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies," *Cato Institute Whitepaper Series*, 2009.

⁷ Merz, "United Nations Office on Drugs and Crime: World Drug Report 2017. 2017."

⁸ Alex Stevens, *Drugs, Crime and Public Health: The Political Economy of Drug Policy* (Routledge-Cavendish, 2010).

⁹ Amjad Fauzan Ahmadushshodiq and Deni Tahyudin, "KRIMINALISASI PENGGUNA NARKOTIKA DALAM PERSPEKTIF HUKUM: ANALISIS YURIDIS, DAMPAK SOSIAL, DAN TANTANGAN PENEGAKAN HUKUM," *Synergy: Jurnal Ilmiah Multidisiplin* 3, no. 01 (2025): 1–12.

¹⁰ YUSRIL DELVI, "REHABILITASI PECANDU NARKOBA SEBAGAI ALTERNATIF PEMIDANAAN." (Universitas dharma andalas, 2025).

¹¹ Salsabila Putri Zahra Nasution and Boedi Prasetyo, "Analisis Program Rehabilitasi Narkotika Dan Dampaknya

On the other hand, several studies on restorative justice in general criminal cases have not elaborated on the complexity of narcotics cases related to health, addiction, and social stigma.¹²

Thus, there is a gap in research at a critical point, namely how the concept of restorative justice can be consistently applied to drug addicts amid an ambivalent legal framework and law enforcement practices that are still oriented towards punishment. This article aims to fill this gap by thoroughly examining the forms of legal protection for drug addicts from a restorative justice perspective and identifying the factors that hinder and support its implementation. This focus is expected to contribute academically by strengthening normative-theoretical arguments and providing implementable recommendations for the development of a more humane and just criminal justice system.

Although the regulatory framework for drug rehabilitation has been developed in a relatively comprehensive manner, empirical data shows that its implementation has not been carried out as it should be. The 2023 BNN report noted that there were approximately 3.6 million active drug users in Indonesia, with a prevalence increase of 0.15 percent compared to the previous year.¹³ At the same time, data from the Ministry of Law and Human Rights' Correctional Database System (SDP) shows that more than 60 percent of prison inmates are convicted of drug-related crimes, and the majority of them are users, not dealers who fall into the category of high-level trafficking.¹⁴

This situation indicates that the punitive approach that has been applied so far has not only failed to reduce abuse rates, but has actually contributed to prison overcrowding, which has led to a decline in the quality of rehabilitation and an increased risk of recidivism. These empirical facts reinforce the urgency of reorienting the legal approach to drug addicts from a repressive penal approach to a more humanistic and recovery-oriented paradigm.

On the other hand, the imbalance between the number of addicts who are prosecuted and those who receive rehabilitation also indicates a serious gap in policy implementation. According to the LBHM report in 2022, out of thousands of narcotics abuse cases examined in court, only about 18 percent resulted in rehabilitation, while the rest were sentenced to prison.¹⁵ The study also found that law enforcement officials are often reluctant to apply rehabilitation due to limited facilities, lack of inter-agency coordination, and the still-strong paradigm that drug addicts are "criminals" who must be punished. The striking difference between the normative objectives of the law and the reality of its implementation reveals a significant implementation gap. Therefore, the use of a restorative justice approach is becoming increasingly relevant, not only as a normative alternative, but also as a response to

Terhadap Peningkatan Kualitas Hidup Pengguna Narkoba," *Jurnal Hukum Lex Generalis* 5, no. 12 (2024).

¹² Ekberth Vallen Noya and Ade Walakutty, "Penyelesaian Tindak Pidana Ringan Melalui Restorative Justice Conferencing Initiative," *SANISA: Jurnal Kreativitas Mahasiswa Hukum* 4, no. 1 (2024): 22–40.

¹³ Indonesia, "Laporan Tahunan BNN Republik Indonesia."

¹⁴ Nimrot Sihotang and A Md IP, *Menuju Pemasarakatan Yang Pasti Berdampak Bagi Hidup, Kehidupan, Dan Penghidupan* (Prenada Media, 2025).

¹⁵ Quinissa Putrirezhy, "Drugs, Death, Despair: Analysing Discourse over the Use of Capital Punishment for Drug Offences in Indonesia" (UiT Norges arktiske universitet, 2024).

the systemic need for a more effective, proportional, and fair mechanism for dealing with drug addicts.

Based on the description of issues related to the ambivalence of the position of drug addicts in the Indonesian criminal justice system, there are several fundamental issues that need to be examined scientifically. Although Law No. 35 of 2009 provides a normative basis for rehabilitation through Articles 54 and 103, these regulations are not yet fully in line with the principles of restorative justice because they continue to position drug addicts as criminals who are subject to repressive prosecution mechanisms. In addition, there are inconsistencies between the Narcotics Law, the Criminal Procedure Code, and the internal provisions of law enforcement agencies, such as the Police Regulations on restorative justice, which create uncertainty in the handling of narcotics abuse cases.

Recent studies on narcotics law in Indonesia have predominantly emphasized the punitive orientation of criminal policy and the structural challenges surrounding the implementation of rehabilitation for drug addicts.¹⁶ Several scholars argue that the Indonesian narcotics legal framework remains heavily influenced by a penal paradigm that prioritizes criminalization over recovery, despite normative provisions mandating rehabilitation.¹⁷ Other studies have explored the application of restorative justice in narcotics cases, particularly in relation to law enforcement discretion, diversion mechanisms, and non-penal approaches.¹⁸ However, existing research tends to adopt a fragmented perspective, focusing either on normative legal analysis or implementation issues, without integrating legal protection theory, victimology, and restorative justice into a single analytical framework. Moreover, prior studies have not sufficiently addressed regulatory inconsistencies and social stigma as interconnected legal variables that significantly affect the protection, recovery, and reintegration of drug addicts.¹⁹ Consequently, there remains a clear research gap concerning the formulation of a harmonized regulatory model that consistently positions drug addicts as subjects of legal protection within a restorative justice-based rehabilitative framework.²⁰

The ambivalent position of drug addicts as both perpetrators and victims has long generated normative and practical inconsistencies in the Indonesian criminal justice system. Although Law No. 35 of 2009 on Narcotics explicitly mandates rehabilitation as an instrument of recovery, its implementation remains overshadowed by criminalization-oriented provisions that reinforce punitive responses.²¹ This contradiction is further exacerbated by the lack of harmonization between rehabilitation norms under Articles 54 and 103 and the criminalization

¹⁶ Eddy O S Hiariej and Prinsip-Prinsip Hukum Pidana, "Yogyakarta: Cahaya Atma Pustaka, 2014," *View Item*, 2022.

¹⁷ Barda Nawawi Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet," *Kedua, Cet. Ke-6, Jakarta: Kencana Prenada Media Group*, 2017.

¹⁸ Noya and Walakutty, "Penyelesaian Tindak Pidana Ringan Melalui Restorative Justice Conferencing Initiative."

¹⁹ Syamsul Adhar, Marlina Marlina, and Ibnu Affan, "Penegakan Hukum Terhadap Pecandu Dan Penyalahguna Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Studi Putusan Pengadilan Negeri Kisaran Nomor 296/Pid. Sus/2021/PN. Kis)," *Jurnal Ilmiah METADATA* 3, no. 3 (2021): 793–817, <https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/88>.

²⁰ Eko Syaputra, "Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang," *Lex Lata*, 2021.

²¹ Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet."

framework in Article 127, as well as their misalignment with the Criminal Procedure Code and internal regulations of law enforcement agencies.²² Previous studies have largely addressed these issues in isolation, either by critiquing the normative structure of narcotics law or by examining implementation barriers such as limited facilities and weak coordination.²³ However, few have comprehensively analyzed how regulatory inconsistencies, institutional practices, and social stigma simultaneously undermine legal protection and the effectiveness of rehabilitation for drug addicts within a restorative justice perspective.²⁴

Departing from existing literature, this study positions drug addicts explicitly as subjects of legal protection by integrating legal protection theory, victimology, and restorative justice into a unified analytical framework. This research offers novelty through the formulation of a regulatory harmonization model that bridges rehabilitative and restorative justice principles within narcotics law policy. By identifying inconsistent legal constructs rather than institutional capacity alone as the core obstacle to effective protection, this study introduces social stigma as a critical legal variable influencing recovery and reintegration processes.²⁵ Accordingly, this research aims to analyze the forms of legal protection afforded to drug addicts, examine the relevance of restorative justice within the Indonesian criminal justice system, and propose a recovery-oriented legal reform model that ensures justice, legal certainty, and humane treatment in narcotics law enforcement.²⁶

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Despite extensive scholarly attention to narcotics law and the position of drug addicts within the criminal justice system, a critical gap remains insufficiently addressed. Existing studies tend to examine the issue in a fragmented manner. A number of legal scholars, for instance, have emphasized the dominance of punitive approaches within Law No. 35 of 2009 on Narcotics, highlighting how criminalization continues to shape law enforcement practices and judicial decisions, often at the expense of rehabilitative mandates. Other studies have focused on the technical and institutional challenges in implementing rehabilitation, such as limited facilities, inconsistent application of integrated assessments, and weak inter-agency coordination, framing the problem primarily as one of capacity and governance. Meanwhile, research on restorative justice has generally been developed within the broader context of criminal law reform, emphasizing diversion, mediation, and non-penal mechanisms, but without sufficiently addressing the specific complexities of narcotics cases, particularly those related to addiction as a health condition and the persistent influence of social stigma.

However, these strands of scholarship largely operate in isolation and have not been

²² Adhar, Marlina, and Affan, "Penegakan Hukum Terhadap Pecandu Dan Penyalahguna Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Studi Putusan Pengadilan Negeri Kisaran Nomor 296/Pid. Sus/2021/PN. Kis)."

²³ Noya and Walakutty, "Penyelesaian Tindak Pidana Ringan Melalui Restorative Justice Conferencing Initiative."

²⁴ Syaputra, "Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang."

²⁵ Amy Elkington, *Criminal Law and Criminal Justice: Morals and Policy* (Taylor & Francis, 2025).

²⁶ Hiariej and Pidana, "Yogyakarta: Cahaya Atma Pustaka, 2014."

systematically integrated into a single analytical framework. There remains a lack of comprehensive analysis that connects normative legal inconsistencies, law enforcement practices, and socio-legal factors—especially social stigma—as interrelated variables that shape both the protection and treatment of drug addicts. More importantly, previous studies have not adequately examined how these overlapping dimensions contribute to the persistent ambivalence in positioning drug addicts as both perpetrators and victims within the legal system. Consequently, the absence of an integrated approach that combines legal protection theory, victimology, and restorative justice reveals a significant theoretical and practical gap, particularly in formulating a coherent regulatory harmonization model capable of resolving this ambivalence and ensuring effective rehabilitation and social reintegration.

At the implementation level, rehabilitation also faces various obstacles, such as limited facilities, inconsistent implementation of integrated assessments, and weak coordination between law enforcement agencies. In addition, the strong social stigma against addicts also hinders the process of recovery and social reintegration. Thus, this research focuses on the appropriate form of legal protection for drug addicts from a restorative justice perspective, the extent to which regulatory disharmony affects the effectiveness of rehabilitation, and what policy harmonization model can be developed so that rehabilitation truly functions as a humane, proportional, and consistent instrument of recovery in line with the objectives of modern criminal justice.

2. METHOD

This study uses a normative legal approach with a descriptive-analytical nature. The normative legal approach was chosen because the study focuses on the analysis of positive law related to the legal status and protection of drug addicts, so that the study is directed at legal principles, norms, and legislation governing rehabilitation mechanisms and the application of restorative justice. The descriptive-analytical nature is used to describe normative conditions and law enforcement practices systematically, while assessing the compatibility between theory, positive legal provisions, and the reality of implementation in the field.

The approaches used include: (1) a statute approach, which examines Law No. 35 of 2009 on Narcotics, the Criminal Procedure Code, Police Regulations on restorative justice, Supreme Court Circular Letters, Joint Regulations on rehabilitation, and international legal instruments related to the treatment of drug addicts; (2) a conceptual approach, to understand the concepts of victimology, sentencing theory, and the principles of restorative justice as the theoretical basis for the research; and (3) a case approach, through the analysis of court decisions to identify rehabilitation implementation practices and discrepancies between theory and reality. This approach is also supported by an analysis of legal synchronization (vertical and horizontal synchronization) to assess the consistency of applicable regulations.

The data sources consist of primary legal materials, namely legislation, court decisions, and international instruments ratified by Indonesia; secondary legal materials, in the form of academic literature, scientific journals, research articles, and reports from relevant institutions;

and tertiary legal materials, such as legal dictionaries and encyclopedias. Data collection techniques were carried out through literature studies by examining relevant legal documents and literature.

The data was analyzed using qualitative analysis, which was conducted through grammatical, systematic, historical, and teleological interpretation of the law to find the meaning of norms and the relationship between legal provisions. The analysis was then directed at assessing regulatory disharmony, the effectiveness of rehabilitation implementation, and the relevance of applying restorative justice in cases of drug abuse. Using this method, the study is expected to produce comprehensive arguments and provide prescriptive recommendations for strengthening legal protection for drug addicts in Indonesia.

3. DISCUSSION

3.1. The Normative Position of Drug Addicts in the Criminal Justice System

The position of drug addicts in the Indonesian criminal justice system shows normative ambivalence, because they are simultaneously positioned as perpetrators of criminal acts and victims of drug abuse. Article 127 of Law No. 35 of 2009 explicitly places drug addicts as perpetrators who must be punished, while Article 54 requires the state to provide medical and social rehabilitation services for drug addicts as a form of legal protection.²⁷

This inconsistency gives rise to normative conflicts that lead to legal uncertainty, especially when law enforcement officials are faced with the dilemma of whether to apply a repressive or rehabilitative approach. According to Arief, the development of modern criminal law requires a shift from a retributive approach to a more humanistic restorative approach that treats addicts as people who need help rather than punishment.²⁸

The inaccuracy of applying a repressive approach to drug addicts is also apparent when analyzed from a victimology perspective. Addicts, especially those caught up in abuse due to psychological, economic, or environmental influences, can essentially be categorized as victims of circumstance who do not have complete control over their actions.²⁹ The traditional punitive approach has been proven to exacerbate the problem because imprisonment does not solve addiction and actually increases the risk of recidivism.³⁰ In addition, policies that prioritize punishment also have an impact on violations of the right to health as guaranteed in international human rights instruments that have been ratified by Indonesia, thus giving rise to constitutional issues in the application of Article 127.³¹ Therefore, a progressive interpretation is needed that prioritizes the goal of recovery over retribution, in accordance

²⁷ Rido Rizki Andriawan, "Penerapan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dan Perhatian Khusus Terhadap Generasi Milenial," *Jurnal Media Administrasi* 8, no. 1 (2023): 1–12.

²⁸ Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet."

²⁹ H Siswanto Sunarso, M H Sh, and M Kn, *Viktimologi Dalam Sistem Peradilan Pidana* (Sinar Grafika, 2022).

³⁰ Riki Afrizal and Upita Anggunsuri, "Optimalisasi Proses Asesmen Terhadap Penyalah Guna Narkotika Dalam Rangka Efektivitas Rehabilitasi Medis Dan Sosial Bagi Pecandu Narkotika," *Jurnal Penelitian Hukum De Jure* 19, no. 3 (2019): 259–68.

³¹ United Nations Office on Drugs and Crime, "International Standards on Drug Use Prevention" (United Nations Office on Drugs and Crime & World Health Organization Vienna, 2018).

with the principles of restorative justice.

Criticism of the construction of Article 127 is also reinforced by an analysis of the implementation of Article 103 of the Narcotics Law, which gives judges the authority to impose rehabilitation as an alternative to criminal punishment. However, in practice, this norm is often not applied consistently because it depends on the results of an integrated assessment that is not always carried out comprehensively.³² Several court decisions show that judges prefer to impose prison sentences even though the perpetrators meet the criteria as addicts who should be rehabilitated.³³ This condition shows that the legal protection mechanism is conditional and does not fully reflect the spirit of victim protection in the framework of modern criminal justice. Thus, the harmonization of norms and the strengthening of the rehabilitative paradigm are necessary to realize a more just and recovery-based legal protection.

3.2. The Principle of Restorative Justice and Its Relevance in Handling Drug Abuse

The application of restorative justice principles in handling drug abuse cases in Indonesia has been legitimized through the provisions on mandatory rehabilitation in Article 54 and the authority of judges in Article 103 of the Narcotics Law. However, substantively, these provisions do not yet fully reflect the main characteristics of restorative justice, namely victim recovery, community participation, and needs-based resolution for perpetrators.³⁴ The concept of restorative justice emphasizes a shift from punishment to recovery, as Zehr argues that restorative justice aims "to repair harms, not to inflict further suffering."³⁵

In the context of drug addicts, recovery through rehabilitation should be the primary instrument, but national regulations still position addicts as criminals through Article 127, creating a philosophical contradiction between the normative goals of rehabilitation and the structure of positive criminal law.

This gap is even more apparent when comparing the theory of restorative justice with law enforcement practices. Nugroho's research shows that law enforcement officials still focus on proving criminal elements rather than the offender's need for recovery, so that requests for rehabilitation are often rejected administratively.³⁶ Theoretically, drug addicts meet the criteria for restorative justice because they are "victims of dependency," individuals who suffer psychological, social, and health losses due to their addiction.³⁷ From the perspective of modern criminal policy, the approach of punishing addicts is counterproductive because it increases recidivism rates and hinders social reintegration.³⁸ Thus, the implementation of

³² Siga Ali Tamher, Basuki Basuki, and Tofik Yanuar Chandra, "Penegakan Hukum Asesmen Terpadu Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika," *Perfecto: Jurnal Ilmu Hukum* 1, no. 3 (2023): 211–24.

³³ Adhar, Marlina, and Affan, "Penegakan Hukum Terhadap Pecandu Dan Penyalahguna Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika (Studi Putusan Pengadilan Negeri Kisaran Nomor 296/Pid. Sus/2021/PN. Kis)."

³⁴ John Braithwaite, *Restorative Justice & Responsive Regulation* (Oxford University Press, 2002).

³⁵ Zehr Howard, "The Little Book of Restorative Justice," *Intercourse: Good Books*, 2002, 1–89.

³⁶ Rio Verieza, Tofik Yanuar Chandra, and Santrawan Paparang, "Penerapan Rehabilitasi Bagi Penyalahguna Narkotika Dalam Sistem Peradilan Pidana Di Indonesia," *SALAM: Jurnal Sosial Dan Budaya Syar-I9*, no. 4 (2022): 1047–58.

³⁷ Arif Gosita, "Masalah Korban Kejahatan: Kumpulan Karangan," (*No Title*), 2004.

³⁸ Afrizal and Anggunsuri, "Optimalisasi Proses Asesmen Terhadap Penyalah Guna Narkotika Dalam Rangka

restorative justice has not been effective because the repressive paradigm still dominates, even though the normative basis is already in place.

When compared to international practices, several countries have demonstrated the successful application of restorative justice in their drug abuse treatment systems. Portugal, for example, after decriminalization in 2001, implemented dissuasion commissions that focused on rehabilitation and social intervention. This policy has been proven to significantly reduce dependency rates and increase access to health services.³⁹ This model confirms that the success of restorative justice requires regulatory harmonization, the readiness of rehabilitation institutions, and a paradigm shift among law enforcement officials. In the Indonesian context, the implementation of restorative justice will only be effective if norms are reformulated to eliminate the ambivalence surrounding the status of drug users and strengthen the role of rehabilitation as the main instrument of legal protection.

3.3. Regulatory Disharmony in the Treatment of Drug Addicts

Regulatory disharmony between Law No. 35 of 2009 on Narcotics, the Criminal Procedure Code, and technical regulations of law enforcement agencies is one of the root causes of uncertainty in the treatment of drug addicts. Although Articles 54 and 103 of the Narcotics Law mandate rehabilitation as an instrument of recovery, Article 127 continues to construct drug addicts as perpetrators of criminal acts, thus giving rise to a normative dualism that contradicts modern recovery-based sentencing theory⁴⁰. The Criminal Procedure Code, on the other hand, does not provide a specific mechanism to accommodate rehabilitation as a form of case resolution, so that the authority of law enforcement officials still relies heavily on the conventional penal paradigm.⁴¹ This lack of synchronization means that the application of rehabilitation provisions depends on the interpretation of each institution, rather than on uniform normative standards as recommended in the literature on the harmonization of Indonesian criminal law.

In addition, technical regulations such as Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice actually add to the complexity because they do not provide explicit exceptions for narcotics cases. Theoretically, restorative justice can be applied to crimes without direct victims, including drug abuse,⁴² but in practice, police officers tend to be cautious because there are no explicit norms in the Narcotics Law or the Criminal Procedure Code that regulate the relationship between investigations and restorative mechanisms. Arief Barda Nawawi's study states that this kind of regulatory disharmony has the potential to weaken the effectiveness of the criminal justice system, because unclear norms will result in inconsistent handling processes between jurisdictions and between institutions.⁴³ Thus, regulatory inconsistency is not only a technical issue, but also a

Efektivitas Rehabilitasi Medis Dan Sosial Bagi Pecandu Narkotika."

³⁹ Hughes and Stevens, "What Can We Learn from the Portuguese Decriminalization of Illicit Drugs?"

⁴⁰ Braithwaite, *Restorative Justice & Responsive Regulation*.

⁴¹ M Yahya Harahap, "Pembahasan Dan Permasalahan Dan Penerapan KUHAP, Sinar Grafika" (Jakarta, 2000).

⁴² Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet."

⁴³ Ahadin Mintarum, Vieta Imelda Cornelis, and Siti Marwiyah, "Rehabilitasi Bagi Pecandu Narkotika Sebagai Fungsi

structural issue that hinders the realization of legal protection for drug addicts.

This regulatory disharmony has a direct impact on the failure to achieve the principles of legal certainty and substantive justice in the handling of drug addicts. Empirical research by Supriyadi and Latif shows that differences in interpretation between the police, prosecutors, and courts have led to many rehabilitation requests being rejected due to differences in the reading of norms, standards of proof, and administrative requirements that are not uniform.⁴⁴ At the normative level, this condition reflects the need for vertical harmonization (between laws and technical regulations) and horizontal harmonization (between fellow law enforcement technical regulations) so that the standards for handling drug addicts are consistent. This harmonization is in line with Lawrence Friedman's view that the effectiveness of law depends on the coherence between legal substance, legal structure, and legal culture.⁴⁵ Therefore, without regulatory alignment in the criminal justice system, the application of restorative justice will remain sporadic and unable to function as an effective legal protection instrument.

In order to address the structural inconsistencies identified above, this study proposes a regulatory harmonization model that operates at both the normative and institutional levels.⁴⁶ At the normative level, the model emphasizes the need for vertical and horizontal harmonization across legal instruments, particularly by aligning the provisions of Law No. 35 of 2009 on Narcotics with the Criminal Procedure Code and technical regulations of law enforcement agencies.⁴⁷ This includes clarifying the legal status of drug addicts as subjects of mandatory rehabilitation through the reinterpretation or revision of Article 127, so that it no longer contradicts the rehabilitative mandates under Articles 54 and 103. In addition, harmonization must ensure that restorative justice mechanisms are explicitly recognized within the procedural framework, thereby eliminating normative ambiguity in their application to narcotics cases.⁴⁸

At the implementation level, the model requires the establishment of integrated and standardized mechanisms across institutions.⁴⁹ This includes the mandatory use of integrated assessment teams at the early stage of case handling, the development of cross-institutional standard operating procedures (SOPs) for diversion to rehabilitation, and the strengthening of coordination between police, prosecutors, courts, and rehabilitation agencies.⁵⁰ Such mechanisms are intended to reduce discretionary disparities and ensure that rehabilitation is

Asesmen," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 4, no. 03 (2024): 60–93.

⁴⁴ Mustafa' Afifi Ab Halim, Shabrina Zata Amni, and Mufti Maulana, "Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman," *Peradaban Journal of Law and Society* 2, no. 1 (2023): 51–61.

⁴⁵ Risya Hadiansyah and Nur Rochaeti, "Penerapan Rehabilitasi Terhadap Anak Penyalahguna Narkotika," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 1–13.

⁴⁶ Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet."

⁴⁷ Daeng Rahman, "Perspektif Kebijakan Kriminal Dalam Upaya Penanggulangan Tindak Pidana Narkotika Di Indonesia," *Unes Journal of Swara Justisia* 4, no. 4 (2021): 314–21.

⁴⁸ Jac Armstrong, "Rethinking the Restorative–Retributive Dichotomy: Is Reconciliation Possible?," *Contemporary Justice Review* 17, no. 3 (2014): 362–74.

⁴⁹ Sharon Dolovich, "Forms of Deference in Prison Law," *Federal Sentencing Reporter* 24, no. 4 (2012): 245–59.

⁵⁰ Natalie Thomas et al., "Governing Drug Use through Partnerships: Towards a Genealogy of Government/Non-Government Relations in Drug Policy," *International Journal of Drug Policy* 28 (2016): 34–42.

applied consistently as a primary response to drug addiction cases.⁵¹ Furthermore, the model incorporates social stigma as a critical policy variable by promoting public awareness programs and institutional guidelines that prevent discriminatory treatment against drug addicts within the legal process.⁵²

From a policy design perspective, this harmonization model also requires a reorientation of criminal policy from a predominantly punitive framework toward a recovery-based approach.⁵³ This can be achieved through legislative refinement, institutional capacity building, and the integration of monitoring and evaluation systems to assess the effectiveness of rehabilitation outcomes.⁵⁴ By combining normative alignment, procedural clarity, and institutional coordination, the proposed model provides a concrete framework for transforming the current fragmented system into a coherent legal structure that supports legal certainty, substantive justice, and sustainable social reintegration for drug addicts.

The persistence of inconsistent treatment toward drug addicts within the criminal justice system cannot be separated from the structural weaknesses embedded in the regulatory framework itself.⁵⁵ The disharmony between Law No. 35 of 2009 on Narcotics, the Criminal Procedure Code, and various technical regulations issued by law enforcement agencies has created a fragmented legal foundation that lacks coherence.⁵⁶ At the core of this problem lies a normative dualism within the Narcotics Law, where Article 127 continues to construct drug users as criminal offenders, while Articles 54 and 103 simultaneously mandate rehabilitation as a form of recovery. This internal contradiction is further exacerbated by the absence of explicit procedural mechanisms within the Criminal Procedure Code to operationalize rehabilitation as an alternative form of case resolution.⁵⁷ As a result, the application of rehabilitation measures is largely contingent upon the discretionary interpretation of law enforcement officials rather than grounded in uniform legal standards. The situation is further complicated by the existence of technical regulations, such as Police Regulation No. 8 of 2021, which introduce restorative justice mechanisms without clearly integrating them into the broader narcotics legal framework. Consequently, the lack of synchronization across these regulatory instruments reflects not merely a technical deficiency, but a deeper structural

⁵¹ Stevens, *Drugs, Crime and Public Health: The Political Economy of Drug Policy*.

⁵² Suzanne Fraser et al., "Addiction Stigma and the Biopolitics of Liberal Modernity: A Qualitative Analysis," *International Journal of Drug Policy* 44 (2017): 192–201.

⁵³ Donal Wilson Harve, "Evaluating the Effectiveness and Impact of Government Policies on Drug Eradication: A Comparative Analysis of Punitive, Harm Reduction, and Decriminalization Approaches," *Inspirasi & Strategi (INSPIRAT): Jurnal Kebijakan Publik & Bisnis* 15, no. 1 (2024): 37–47.

⁵⁴ Alison Ritter, "How Do Drug Policy Makers Access Research Evidence?," *International Journal of Drug Policy* 20, no. 1 (2009): 70–75.

⁵⁵ Karnadi Rangkuti, Adi Mansar, and Agusta Ridha Minin, "Kebijakan Kriminal Penanggulangan Penyalahgunaan Narkotika Di Lingkungan Sekolah (Studi SMA N 1 Ranto Baek Kabupaten Mandailing Natal)," *RIO LAW JURNAL* 5, no. 2 (2024): 601–9.

⁵⁶ Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, "Reformasi Sistem Peradilan Pidana Indonesia Berwawasan Pancasila," *Kertha Wicaksana* 15, no. 1 (2021): 1–10.

⁵⁷ Ryan Fani and Riza Zulfikar, "PEMERIKSAAN TAMBAHAN OLEH PENUNTUT UMUM TERHADAP TERSANGKA DALAM PEMBAHARUAN HUKUM ACARA PIDANA DIHUBUNGKAN DENGAN MEKANISME PRAPENUNTUTAN SESUAI HUKUM POSITIF DI NEGARA INDONESIA," *Wacana Paramarta: Jurnal Ilmu Hukum* 22, no. 1 (2023): 25–34.

inconsistency that undermines legal certainty and the coherent implementation of a recovery-oriented approach in narcotics law enforcement.

The persistence of this regulatory inconsistency is also closely linked to the role of legislative institutions in formulating the legal framework governing narcotics⁵⁸. The construction of norms within Law No. 35 of 2009 on Narcotics reflects a compromise between punitive and rehabilitative paradigms, yet it fails to provide a clear hierarchy or operational priority between the two approaches⁵⁹. This ambiguity indicates that the legislative design itself has not fully embraced a recovery-oriented perspective, thereby leaving room for multiple interpretations in its implementation. As a result, the absence of precise and harmonized legal formulations at the statutory level has contributed significantly to the emergence of inconsistent practices across the criminal justice system. In this regard, the legislature bears a fundamental responsibility in ensuring that legal norms are not only substantively coherent, but also systematically aligned with contemporary principles of criminal justice that emphasize proportionality, rehabilitation, and social reintegration.

At the level of law enforcement, the inconsistency is further reinforced by the discretionary practices of key actors, including the police, prosecutors, and the judiciary. Police investigators often remain oriented toward formal criminal processing, partly due to institutional pressures and the lack of clear procedural guidance on the application of restorative mechanisms in narcotics cases. Prosecutors, in turn, tend to construct indictments within a punitive framework that prioritizes legal certainty in a formal sense, rather than exploring alternative resolutions such as rehabilitation. Similarly, judicial decisions frequently exhibit variability in interpreting the eligibility of drug addicts for rehabilitation, reflecting differences in legal reasoning and evidentiary standards. In addition, institutional bodies such as the National Narcotics Agency play a dual role in both enforcement and rehabilitation policy, which may lead to inconsistencies between normative objectives and practical implementation. Taken together, these dynamics demonstrate that the persistence of legal disharmony is not only a product of regulatory design, but also a consequence of fragmented institutional practices that operate without a unified interpretative and procedural framework.

4. CONCLUSION

Based on the overall analysis, the treatment of drug addicts within the Indonesian criminal justice system remains fundamentally inconsistent due to structural legal disharmony and the persistence of a punitive paradigm that conflicts with rehabilitative objectives. The dualistic construction within Law No. 35 of 2009 on Narcotics, particularly the tension between Article 127 and Articles 54 and 103, reflects a normative inconsistency that is further reinforced by the lack of procedural alignment with the Criminal Procedure Code and technical regulations of law enforcement agencies. This condition is not solely the result of regulatory fragmentation, but also of institutional practices, where legislators have produced ambiguous

⁵⁸ Arief, "Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), Cet."

⁵⁹ Rangkuti, Mansar, and Minin, "Kebijakan Kriminal Penanggulangan Penyalahgunaan Narkotika Di Lingkungan Sekolah (Studi SMA N 1 Ranto Baek Kabupaten Mandailing Natal)."

legal formulations, and law enforcement actors ranging from police and prosecutors to judges continue to exercise discretion within a predominantly punitive framework. Consequently, the implementation of restorative justice and rehabilitation remains sporadic and dependent on interpretation rather than standardized legal mechanisms. In response, this study proposes a regulatory harmonization model that integrates normative alignment, standardized procedural mechanisms, and cross-institutional coordination, while also recognizing social stigma as a critical legal variable affecting recovery and reintegration. This model contributes to the development of a more coherent and recovery-oriented legal framework by bridging the gap between legal substance, structure, and culture, thereby supporting legal certainty, substantive justice, and the sustainable social reintegration of drug addicts.

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