

Harmonization of Termination of Drug Abuse Cases Based on Restorative Justice

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Abstract

The handling of drug abuse crimes in Indonesia still faces a disharmony between the repressive approach in law enforcement and the need for rehabilitation and recovery for drug abusers or addicts. On the one hand, Law Number 35 of 2009 concerning Narcotics places rehabilitation as a crucial instrument in handling drug abusers and addicts. On the other hand, law enforcement practices still show a tendency to use conventional criminal justice mechanisms oriented towards punishment. The development of national criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code further strengthens the need for harmonization of case resolution mechanisms based on restorative justice. This study aims to analyze the harmonization of regulations for the termination of drug abuse cases based on restorative justice and to formulate a settlement model that provides legal certainty, justice, and benefit. The study uses a normative juridical method with a legislative, conceptual, and analytical approach. The research findings indicate that restorative justice provisions are embedded in various legal instruments, including Indonesian National Police Regulation Number 8 of 2021, Indonesian Prosecutor's Office Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. However, these provisions have not yet fully established a unified mechanism, encompassing the stages of inquiry, investigation, prosecution, and trial. Harmonization is needed through the establishment of an integrated mechanism that prioritizes rehabilitation for drug abusers or addicts, along with objective assessments, supervision among law enforcement officials, and strict restrictions on cases related to drug trafficking. This model is expected to create a more proportional and recovery-oriented narcotics criminal justice system.

Keywords: Legal Harmonization; Case Dismissal; Drug Abuse; Restorative Justice; Rehabilitation.

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Introduction

Narcotics are a highly complex legal and social problem. Drug abuse is not only related to violations of criminal laws but also relates to health issues, dependency, the social environment, and the future of the individual who uses them. Therefore, drug control policies cannot be solely focused on punishment but also need to consider aspects of prevention, recovery, rehabilitation, and social reintegration.

Law Number 35 of 2009 concerning Narcotics remains the main basis for regulating narcotics in Indonesia and contains provisions regarding treatment and rehabilitation in addition to provisions regarding investigation, prosecution, court hearings, and criminal provisions.

Problems arise when drug abusers are placed in the criminal justice system with the same approach as drug traffickers. Conceptually, the two categories have distinct characteristics. Dealers are actors focused on distribution and profiting from drug trafficking, while drug abusers, under certain circumstances, are individuals experiencing dependence and require health intervention and rehabilitation.

These differences in characteristics should result in different law enforcement policies. An overly repressive approach to drug abusers can create new problems such as overcrowding in correctional facilities, disrupting the rehabilitation process, and reducing the opportunities for drug abusers to recover and reintegrate into society.

Developments in national criminal law provide important momentum for these reforms. Law Number 1 of 2023 concerning the Criminal Code came into effect on January 2, 2026, and its First Book serves as the general basis for the application of criminal provisions, including criminal laws outside the Criminal Code, unless otherwise specified.

Furthermore, Law Number 20 of 2025 concerning the Criminal Procedure Code replaced Law Number 8 of 1981 and came into effect on January 2, 2026. These changes are part of the reform of criminal procedural law to align with developments in the state system, society, and information technology. In previous developments, the restorative justice approach has been grounded in various sectoral policies. The National Police, for example, issued Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice. This regulation serves as the basis for handling criminal cases through a restorative approach within the police force.

At the prosecution level, Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 regulates the termination of prosecution based on restorative justice. This regulation places restoration of the original state and balancing the protection and interests of victims and perpetrators as one of the foundations of the restorative approach in the exercise of prosecutorial authority. Meanwhile, the Supreme Court has issued Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This regulation emphasizes the principles of restoration of the state, strengthening victims' rights, the responsibility of the accused, punishment as a last resort, consensualism, and transparency and accountability. The existence of these various regulations indicates progress towards a more restorative criminal justice system. However, a fundamental problem remains: the lack of fully harmonized mechanisms between the police, prosecutors, and courts in drug abuse cases.

The issue of harmonization is increasingly important because the termination of a case at the investigation stage, the termination of a prosecution at the prosecution stage, and the application of restorative justice at the trial stage have different bases, mechanisms, and authorities. Without unified standards, differences in interpretation and application can arise in cases that substantially share similar characteristics.

Several previous studies have shown that restorative justice has been implemented in practice in drug cases. Research on the implementation of restorative justice at the Mojokerto City Police, for example, demonstrated the use of Police Regulation No. 8 of 2021 in resolving drug abuse cases. Other studies also indicate that the application of restorative justice in drug cases still faces challenges in terms of human resource capacity, training, and inter-agency

coordination. Therefore, the primary issue is no longer simply whether restorative justice can be applied to drug abuse, but rather how to harmonize case terminations from the early stages of the criminal justice process to avoid differences in standards between investigators, prosecutors, and judges. Based on these issues, this study is entitled "Harmonization of Drug Abuse Case Termination Based on Restorative Justice."

Literature Review

2.1. The Concept of Restorative Justice

Restorative justice is a paradigm for resolving criminal cases that does not merely view punishment as a form of retribution against the perpetrator. This approach directs the case resolution process toward reparation for the consequences of the crime, the perpetrator's accountability, the victim's interests, and the restoration of social relationships.

In the Indonesian context, Supreme Court Regulation No. 1 of 2024 emphasizes that the implementation of restorative justice is based on, among other things, restoration of the situation, strengthening the rights and interests of victims, the responsibility of the accused, criminal sanctions as a last resort, consensualism, and transparency and accountability. Therefore, restorative justice is not synonymous with eliminating criminal liability. Instead, this principle requires proportional accountability, taking into account recovery and the interests of society.

2.2. Drug Abuse and Rehabilitation

Drug abuse has unique characteristics because perpetrators can develop a state of dependency that requires medical and social treatment. Therefore, the legal approach to drug abusers should not be completely equated with that of illicit traffickers. Law Number 35 of 2009 includes treatment and rehabilitation as part of the regulation of narcotics. Consequently, legal policies toward drug abusers must integrate penal and non-penal approaches. Criminal penalties remain necessary for illicit traffickers and those who profit from drugs, while rehabilitation can be the primary tool for recovery for drug abusers who meet certain requirements.

2.3. Harmonization of Law

Legal harmonization is the process of harmonizing various legal provisions to avoid conflicts, overlaps, or regulatory gaps. In the context of narcotics cases, harmonization is necessary because several institutions have authority at different stages. The police have authority over the investigation and inquiry phase. The Prosecutor's Office has authority over prosecution, while the courts carry out the function of examining and deciding cases. When each institution uses different standards in determining a case's eligibility for a restorative approach, legal certainty becomes difficult to achieve.

2.4. Termination of Cases from a Restorative Perspective

Restorative justice-based case termination must be understood as a legal mechanism that has conditions and limitations, not as a form of baseless release.

In the context of drug abuse, ideally, a case termination can only be granted after an assessment of:

1. the perpetrator's status as an abuser or addict;
2. whether or not there is involvement in illicit trafficking;
3. medical and legal assessment results;
4. quantity and type of narcotics;
5. criminal history;
6. condition of dependency;
7. willingness to undergo rehabilitation;
8. public interest; and
9. risk of repeating criminal acts.

With these parameters, restorative justice can be directed to provide restoration without opening up space for abuse of authority.

Research Methodology

This research employs a normative juridical research method, which places legal norms, legal principles, doctrines, and legal principles as the primary object of research. This research aims to analyze the harmonization of restorative justice-based drug abuse case termination regulations within the Indonesian criminal justice system. The approaches used include a statutory approach, a conceptual approach, and an analytical approach.

A legislative approach is used to examine various provisions related to narcotics, case termination, rehabilitation, and restorative justice, specifically Law Number 35 of 2009 concerning Narcotics, Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning the Criminal Procedure Code, Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, Regulation of the Republic of Indonesia Attorney General's Office Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and Regulation of the Supreme Court Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. A conceptual approach is used to examine the concepts of restorative justice, legal harmonization, case termination, rehabilitation, and criminal law policy, while an analytical approach is used to identify conformities, differences, overlaps, and gaps in norms in the application of termination of drug abuse cases.

The legal materials in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of laws and regulations related to narcotics, the criminal justice system, case termination, rehabilitation, and restorative justice. Secondary legal materials consist of law books, scientific journals, research results, expert opinions, and doctrines relevant to the research object. Tertiary legal materials consist of legal dictionaries, legal encyclopedias, and other supporting sources. The collection of legal materials was carried out through a literature study by inventorying, classifying, and reviewing legal materials relevant to the research problem. Furthermore, all legal materials were analyzed qualitatively using descriptive-analytical and prescriptive methods.

Descriptive analysis is used to describe the legal construction regarding drug abuse and restorative justice, while prescriptive analysis is used to formulate an ideal harmonization model in terminating drug abuse cases based on restorative justice.

Results

4.1. Regulations for Termination of Narcotics Abuse Cases Based on Restorative Justice

The research findings indicate that the Indonesian legal system provides space for the application of restorative justice in resolving criminal cases, including those related to drug abuse. However, its provisions are still scattered across several legal instruments and fall under the authority of different law enforcement agencies. Law Number 35 of 2009 concerning Narcotics not only positions narcotics as an object of eradication through a criminal approach, but also provides space for treatment and rehabilitation for drug addicts and abusers. This situation indicates that narcotics legal policy essentially recognizes a balance between penal and health approaches. Therefore, for abusers or addicts who meet certain requirements, the orientation of law enforcement should not be solely directed at punishment, but also at recovery through rehabilitation.

The development of the concept of restorative justice further strengthened this orientation. Indonesian National Police Regulation Number 8 of 2021 provides the basis for the police to handle criminal acts based on restorative justice. This regulation allows for case resolution during the pre-investigation and inquiry stages, taking into account recovery and the interests of the parties. At the prosecution level, Indonesian Prosecutor's Office Regulation Number 15 of 2020 provides the basis for discontinuing prosecutions based on restorative justice. Meanwhile, at the trial stage, the Supreme Court issued Supreme Court Regulation Number 1 of 2024 as a guideline for judges adjudicating criminal cases based on restorative

justice. The existence of these three instruments demonstrates the importance of the restorative approach in the Indonesian criminal justice system, but also highlights the fragmentation of the regulations, as each institution has different mechanisms and standards.

In the context of drug abuse, this fragmentation is problematic because the characteristics of drug cases differ from those of conventional crimes. Drug abusers can essentially be in a state of dependency that requires medical and social treatment. Therefore, determining whether a case can be dismissed based on restorative justice cannot be based solely on the suspect's confession or the amount of evidence, but must consider the legal status and condition of the perpetrator as a whole. An objective assessment is needed to distinguish between abusers, addicts, victims of abuse, and perpetrators involved in illicit drug trafficking networks. This distinction is crucial to prevent restorative justice from becoming an instrument that provides protection to drug dealers or networks.

4.2. The Problem of Harmonizing the Termination of Narcotics Abuse Cases

The main problem in the application of restorative justice to drug abuse cases lies in the lack of integration of the case termination mechanism from the investigation stage to the court hearing. During the investigation stage, the police have the authority to determine the steps for resolving the case in accordance with applicable regulations. When a case is transferred to the prosecutor's office, the public prosecutor has a separate mechanism for determining whether a case meets the requirements for termination of prosecution under restorative justice. Once the case reaches the trial stage, the judge has his own authority and considerations based on procedural law and restorative justice guidelines. This difference in authority is normatively justifiable, but if not accompanied by harmonized standards, it can lead to disparate treatment of cases with similar characteristics.

Disharmony can also arise in determining the status of a perpetrator. A person who is assessed as a drug abuser during the investigation stage may receive different treatment when the case reaches the prosecution stage if there are differences in the assessment results regarding the perpetrator's involvement. This situation demonstrates the importance of an integrated assessment as an objective instrument in determining the characteristics of the perpetrator and the appropriate form of treatment. The assessment should not merely serve as a supplement to case administration, but also serve as a substantive basis for law enforcement officials in determining whether a case is worthy of resolution through restorative and rehabilitation mechanisms. Another issue is the lack of a truly uniform standard regarding the relationship between case termination and the obligation to rehabilitate. In a restorative approach to drug abuse, case termination should not be understood as releasing the perpetrator from all forms of responsibility. Case termination should be constructed as a form of case resolution that shifts from a punitive orientation to one of rehabilitation. Thus, a drug abuser who receives a case termination remains obligated to participate in a rehabilitation program in accordance with the assessment results. This obligation is necessary to prevent the termination of a case from giving the impression that the state is granting drug abusers unsupervised freedom.

The enactment of Law Number 1 of 2023 concerning the Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code on January 2, 2026, further reinforces the urgency of this harmonization. Updates to national criminal law must be accompanied by adjustments to various sectoral regulations governing the resolution of criminal cases. In the context of narcotics cases, harmonization is necessary so that regulations regarding case termination, rehabilitation, and restorative justice can be placed within a consistent criminal justice system framework. Thus, the existence of various sectoral regulations does not lead to fragmentation of authority, but rather forms a complementary mechanism.

4.3. Harmonization Model for Case Termination Based on Restorative Justice

Based on the analysis, harmonization of drug abuse case resolution needs to be directed toward the establishment of an integrated mechanism that connects the authority of the police, prosecutors, courts, and rehabilitation institutions. Harmonization does not mean eliminating the authority of each institution, but rather unifying the standards and objectives of case

resolution. Every case suspected of drug abuse must first undergo an identification process to determine the perpetrator's status and level of involvement. This identification is then followed by an integrated assessment involving legal, medical, and social aspects. The assessment results serve as the basis for law enforcement officials to determine whether the perpetrator meets the requirements for a restorative approach.

If the assessment results prove the perpetrator to be a drug abuser or addict and there is no indication of involvement in a drug trafficking network, the case can be considered for resolution through a restorative justice mechanism in accordance with the authority at the current stage of the process. Conversely, if a role as a dealer, dealer, courier, producer, or other form of involvement in drug trafficking is found, the restorative approach may not be used as a basis for avoiding criminal liability. This distinction is an important principle so that restorative policies maintain legitimacy and do not undermine drug eradication policies.

Further harmonization needs to be achieved through shared assessment standards between investigators and prosecutors, which can serve as a reference for judges when cases reach the trial stage. These standards cover the identity and status of the perpetrator, assessment results, type and quantity of narcotics, criminal history, level of dependency, involvement in trafficking, willingness to undergo rehabilitation, and the risk of reoffending. With these standards, decisions to terminate cases are no longer dependent on individual interpretation by law enforcement officials, but are based on transparent and accountable legal parameters.

This harmonization model ultimately positions rehabilitation as the primary consequence of restorative solutions for drug abusers. Thus, the mechanism developed is not simply a case termination, but rather a series of processes starting with assessment, restorative resolution, case termination in accordance with legal authority, rehabilitation, supervision, and social reintegration. This model can create a balance between the interests of individual drug abusers and the interests of society. Drug abusers are given the opportunity to recover, while the state retains the authority to take firm action against drug traffickers.

4.4. Harmonization as an Effort to Achieve Legal Certainty and Justice

Harmonizing the termination of drug abuse cases based on restorative justice must ultimately be directed towards realizing three legal objectives: justice, legal certainty, and expediency. From a justice perspective, dependent drug users should not always be treated with the same criminalization approach as illicit traffickers. From a legal certainty perspective, every case termination must be based on clear requirements and procedures to prevent discriminatory actions or abuse of authority. Meanwhile, from an expediency perspective, rehabilitation can provide greater benefits for individuals and society because the ultimate goal is not simply to punish the perpetrator, but rather to reduce the risk of recurrent abuse and return the individual to a productive social life.

Thus, restorative justice in drug abuse cases must be positioned as part of reforming the criminal justice system, not as an exception to law enforcement. Harmonization is necessary so that all institutions have a common understanding of the goals, boundaries, and procedures for dismissal. A harmonized system will result in a more consistent, transparent, and proportional law enforcement process. At the same time, this approach maintains a clear boundary between abusers who need rehabilitation and dealers who must be held accountable for their actions through criminal mechanisms.

Conclusion

Based on the discussion, it can be concluded that restorative justice regulations in the Indonesian legal system have developed through various instruments, including Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024. However, these regulations are still scattered based on the authority of each institution so that they have not yet fully formed an integrated mechanism for stopping drug abuse cases.

Disharmony primarily occurs in differences in standards for determining case eligibility, mechanisms for terminating cases at each stage of the judicial process, assessments of the status of abusers, and coordination between the police, prosecutors, courts, and rehabilitation institutions. These conditions can lead to legal uncertainty and differences in the treatment of cases with similar characteristics.

The enactment of Law Number 1 of 2023 concerning the Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code since January 2, 2026, has become a momentum to harmonize policies to stop narcotics abuse cases.

The harmonization model offered is the Harmonization Model for Termination of Narcotics Abuse Cases Based on Restorative Justice (MHPN-RJ) which consists of identifying the perpetrator's status, integrated assessment, coordination between law enforcement agencies, determining restorative eligibility, termination of cases accompanied by rehabilitation, as well as supervision and evaluation.

This model must clearly differentiate between drug abusers or addicts and dealers or members of illicit trafficking networks. Therefore, restorative justice should not become a vehicle for impunity, but rather an instrument for criminal law reform that balances rehabilitation, restoration, legal certainty, and community protection.

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