

Restorative Justice for Narcotics Abusers as an Alternative Treatment (Study Case of Court Decision No. 83/Pid.Sus/2020/Pn.Kpg)



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ABSTRACT: Marijuana is a plant that can be used to treat a variety of diseases, particularly those affecting the nervous system. However, the use of Marijuana, which is included in class I narcotics, is strictly limited by Law Number 35 of 2009 concerning Narcotics. The research method adopted was normative legal, including a literature review and qualitative analysis. This research topic is formulated as first, how to impose criminal penalties on narcotics abusers as an alternative treatment in judge's decision Number: 83/Pid.Sus/2020/PN.Kpg? Second, what about the case of narcotics abusers as an alternative treatment in decision Number: 83/Pid.Sus/2020/PN.Kpg based on a restorative justice perspective?. The criminal justice system in Indonesia focuses on prioritizing retributive justice over restorative justice. In addition, cases of narcotics abuse in Indonesia have been reported as an alternative medicine option. Moreover, Rossy utilized Marijuana to relieve a pinched nerve and was subsequently sentenced to prison. Criminal sentencing is legal, according to the law. However, it is mandatory to evaluate the primary causes of these crimes. The restorative justice approach is crucial to adopt as an alternative treatment for narcotics addicts since it aims to re-establish the situation that existed before the crime was committed. Thus, recovery can be through providing medical and social rehabilitation.

KEYWORDS: Restorative Justice; Narcotics Abusers; Medical Marijuana; Alternative Treatment.

I. INTRODUCTION

Narcotics are permitted substances or medicines. However, excessive use can pose a health risk to the consumer.¹ Narcotics are defined by Law Number 35 of 2009 as substances or medications obtained from plants or non-plants, synthetic or semisynthetic, that can produce a decrease or change in consciousness, loss of taste, pain reduction or elimination, and dependence. Which are separated into groups.²

According to a number of research and medical practices, narcotics have become crucial in the treatment of a variety of disorders. Moreover, narcotics are the primary focus of innovation initiatives in the health industry. However, when contemplating the potential negative consequences, the dual nature of narcotics obviously appear. Despite positive effects, narcotics may cause serious dependency issues if not used appropriately and under secure supervision.³ Marijuana is one form of narcotic that has been used in medicine to treat several diseases.

Medical researchers are now conducting studies on the benefits of Marijuana. One of the benefits of marijuana discovered is the ability to cure nerve-related problems.⁴ The use of Marijuana as an alternative treatment has occurred in Indonesia, specifically in the Rossy case, as stated in judgment Number 83/Pid.Sus/2020/PN.Kpg. Rossy applied Marijuana as an alternative treatment for the pinched nerve he was suffering from. In his verdict, Rossy was proven to have committed the crime of narcotics abuse and was sentenced to prison for 10 (ten) months.

The new paradigm in dealing with narcotics consumption no longer considers it an illegal activity. As a result, treatment must be divided into two parts which is intended for users/users and imprisonment which is intended for makers/distributors and

¹ Mustaqim Almond and Eva Achjani Zulfa, "Optimizing Restorative Justice Approaches for Victimless Crimes Crime (Drug Abuse) as a Solution to Overcrowded Prisons Capacity", *Tambusai Journal of Education* 6.1 (2022), p. 8201.

² Article 1 Number 1 Law Number 35 of 2009 concerning Narcotics.

³ Rezky Ayu Lestari (et.al), "Implementation of Restorative Justice for Narcotic Abusers: A Case Study in the Takalar Public Attorney's Office", *SIGN Jurnal Hukum* 5.1 (2023), p. 208-209.

⁴ Dwi Putri Gunawan, "Legislasi dan Masalah: Studi Pemanfaatan Ganja untuk Pengobatan Medis", *Ijtihad* 38.1 (2022), p. 42.

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illegal carriers of narcotics.⁵ As part of criminal law reform, the punishment system is starting to evolve from retributive to restorative justice, arguing that punishment no longer serves as a deterrence to the perpetrator. Additionally, restorative justice is an approach

to resolve criminal cases involving the community, victims, and perpetrators with the aim of achieving justice for all parties, so that the situation remains the same as before.⁶ The approach is primarily directed toward addicts, abusers, and victims of narcotic abuse.⁷

Based on the facts and explanation provided above this research discusses legal issues regarding: First, how to impose criminal penalties on narcotics abusers as an alternative treatment in judge's decision Number: 83/Pid.Sus/2020/PN.Kpg?. Second, what about the case of narcotics abusers as an alternative treatment in decision Number: 83/Pid.Sus/2020/PN.Kpg based on a restorative justice perspective?

II. RESEARCH METHODS

The type of research used is legal research. Legal research requires identifying the truth of coherence, whether there are legal rules in accordance with legal norms, norms in the form of orders or prohibitions by legal principles, and whether a person's actions are in line with legal norms or principles.⁸

The approaches used are the statutory approach and the case approach. Furthermore, the type of data used is secondary data with the main material being primary legal material, including statutory regulations, and court decisions Number: 83/Pid.Sus/2020/PN.Kpg in addition to secondary legal material in the form of literature, textbooks, and scientific journals regarding a restorative justice approach to narcotics abusers obtained from a literature review, which is then analyzed using qualitative analysis to provide answers to the legal issues or problems raised.

III. DISCUSSION

A. Sentencing of Narcotics Abusers as an Alternative Treatment in Judge's Decision Number: 83/Pid.Sus/2020/PN.Kpg

Based on the chronology, Rossy had been suffering from a pinched nerve since mid-2015. Rossy had a CT scan at the hospital on August 10, 2015. Then, Rossy also had 3 (three) checks at the hospital. However, at the end of 2018, the pinched nerve pain returned, which was triggered by engaging in a lot of activities or heavy works that required a lot of energy and physical exertion. Until one day, Rossy discovered on the internet that the substances included in Marijuana can help decrease and treat diseases associated with pinched nerves.

These factors influenced Rossy's decision to use Marijuana leaf narcotics as an alternative treatment for his pinched nerve. This case is worth investigating further because narcotics abusers receive prison sentences. Even though the sentence imposed by the judge is lower than that demanded by the public prosecutor, it is also necessary to look at the perpetrators of narcotics abuse, in this case, narcotics a0

users who use narcotics as an alternative treatment. However, Rossy's decision to use Marijuana as an alternate treatment did not come out of nowhere. According to the chronology, Rossy has suffered a pinched nerve since 2015, and it relapsed in 2018. Rossy had previously obtained legal therapy by going to a doctor. However, because he never recovered, Rossy ultimately chose to embark on an illegal route.

The public prosecutor charged Rossy with an alternative form of indictment for his actions, specifically the first indictment under Article 114 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, the second indictment under Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, or the third charge under Article 127 paragraph (1) letter an of Law Number 35 of 2009 concerning Narcotics. Rossy was arraigned on the third charge, Article 127 paragraph (1) letter of Law Number 35 of 2009 concerning Narcotics, and sentenced to 1 (one) year in prison.

In his verdict, Rossy was charged with Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics because he had been legally and convincingly proven guilty of committing the crime of abusing class I narcotics in the form of plants for himself. Furthermore, the judge sentenced him to 10 (ten) months in prison. According to the witness statements and the defendant's statement at trial, Rossy's intention in purchasing Marijuana was to cure the pain he was experiencing as a result of a pinched nerve.

The imposition of imprisonment on narcotics abusers is a natural and legal matter for a court to do, because the provisions of Article 127 of Law Number 35 of 2009 concerning Narcotics provide for the threat of imprisonment for class I narcotics abusers.

⁵ Rospita Adelina Siregar and Lila Pitri Widi Hastuti, "Restorative Justice Bagi Terpidana Pemakai Narkotika Golongan 1 (Studi Kasus Putusan Pengadilan No.111/Pid.Sus/2017/PN Sag)", Jurnal Hukum Kesehatan Indonesia 1.1 (2021), p. 62.

⁶ *Ibid.*

⁷ Haposan Sahala Raja Sinaga, "Implementation of Restorative Justice in Indonesian Narcotics Cases", Jurnal Hukum Lex Generalis 2.7 (2021), p. 531.

⁸ Peter Mahmud Marzuki, "Penelitian Hukum Edisi Revisi", Jakarta: Kencana (2023), p. 47.

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This means that class I narcotics abusers are now considered narcotics abusers as an alternative treatment. However, Law No. 35 of 2009 on Narcotics acknowledges the presence of medical and social rehabilitation activities. As stated in Article 4 letter d, the purpose of establishing the Narcotics Law is to regulate medical and social rehabilitation efforts for narcotics abusers and addicts. This means that apart from Article 127 which threatens criminal sanctions for narcotics abusers, referring to Article 4 letter d, narcotics abusers are guaranteed the provision of medical and social rehabilitation. However, in this case, the judge elected to impose a prison sentence based on the public prosecutor's demands. This demonstrates that Indonesia's criminal justice system remains focused on retributive rather than restorative justice.

B. Cases of narcotics abusers as an alternative treatment in decision Number: 83/Pid.Sus/2020/PN.Kpg is based on a restorative justice perspective towards

Restorative justice exists as a form of shift in punishment within the scope of the criminal justice system. Restorative justice is an effort to resolve criminal cases using an approach that focuses on the direct participation of the perpetrator, victim, and community in the case resolution process, which is different from the approach used in the conventional justice system which focuses on the deterrent effect for criminals.⁹

Restorative justice in criminal law aims at restoring the situation to the way it was before the crime occurred. When someone commits the law, the situation changes/becomes different from earlier, so that is where the law plays a role in protecting the rights of every crime victim. The intention is to return to the previous circumstance, which is referred to as rehabilitation in Law Number 35 of 2009. The purpose of rehabilitation is to recover narcotics users overcome their addiction and regain physical, mental, emotional, and spiritual function.¹⁰ Law Number 35 of 2009 on Narcotics recognizes the presence of two (two) types of rehabilitation: medical rehabilitation and social rehabilitation, which the two types of rehabilitation are differentiated. According to Article 1 Number 16 of Law Number 35 of 2009 concerning Narcotics, medical rehabilitation is an integrated treatment approach intended to relieve addicts from narcotics dependence. Meanwhile, article 1 number 17 specifies that social rehabilitation is a comprehensive recovery process that includes physical, mental, and social components, intending to allow former narcotics users to resume social functions in community life. Referring to the definition of medical and social rehabilitation, rehabilitation is an effort that is not punishable by imprisonment but focuses on providing treatment and restoring/restoring narcotics abusers' social functions with the aim of being able to carry out narcotics users' social functions well in community life.

Such restrictions are strengthened by Article 4 Letter d of Law Number 35 of 2009 regarding Narcotics, which specifies the main objective of establishing the narcotics law is to regulate medical and social rehabilitation efforts for narcotics abusers and addicts. Moreover, the term "narcotics abuser" refers to someone who consumes narcotics illegally or without the right permission, even as an alternative treatment.

Despite the fact that narcotics addicts are guaranteed medical and social rehabilitation, Article 127 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics provides a maximum criminal consequence of four (four) years in jail for class I narcotics abusers. It doesn't end there; under Article 127 paragraph (2), judges in deciding cases are required to pay attention to the provisions of Article 54, Article 55, and Article 103. Then, in Article 127 paragraph (3) for abusers who can be proven or proven to be victims of narcotics abuse, then the abuser must undertake medical and social rehabilitation.

Article 103 states that a judge who examines the case of a narcotics addict can direct a narcotics addict, whether or not proven guilty of committing a narcotics crime, to undergo treatment and/or rehabilitation treatment, and if proven guilty of committing a narcotics crime, to undergo treatment and/or treatment. This counts as time served. Based on this statement, the table below compares the legal basis structure and provision for rehabilitation:

Table 1. Comparison of the Legal Basis and Provision of Rehabilitation

No.	Legal Basis	Provision of Rehabilitation
1	Article 4	Narcotics Abusers and Addicts
2	Article 54	Addicts and Victims of Narcotics Abuser
3	Article 55	Narcotics Addict
4	Article 103	Narcotics Addict

In this context, the restorative justice approach toward narcotics abusers in Law Number 35 of 2009 concerning Narcotics becomes extremely challenging to implement, because even though the provisions of Article 4 letter d, the aim of establishing the

⁹ Hatarto Pakpahan, "Restorative Justice Terhadap Pengguna Narkotika Dan Obat Obatan Berbahaya", Jurnal Cakrawala Hukum 6.2 (2015), p. 131.

¹⁰ Zainab Ompu Jainah, "Legal Policy in the Implementation of Rehabilitation for Drug Addicts in Lampung Province", Legal Brief 11.3 (2022), p. 1655.

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narcotics law is to guarantee the regulation of medical and social rehabilitation efforts for narcotics abusers, however in the subsequent provisions of Article 127, there is no regulation that provides rehabilitation but rather threatens for narcotics abusers,¹¹ due to the requirement for providing recovery is that the narcotics abuser, is already an addict and/or can be demonstrated to be a victim of narcotics abuse with an element of unintentional behavior. Therefore, for narcotics abusers in the following provisions, their actions are subject to the threat of imprisonment. In fact, narcotics abusers, addicts, and victims of narcotics abuse are all persons who use narcotics to consume themselves, therefore the repercussions of consuming narcotics might represent a danger in the form of narcotics dependence. So there is no reason to distinguish between the three because they are all narcotics users whose cases require a restorative justice strategy for obtaining medical and social rehabilitation. This is different from narcotics dealers and/or dealers who suffer the harshest punishments in order to prevent them from selling or distributing narcotics. Meanwhile, narcotics abusers should no longer be categorized as narcotics criminals, unless it can be proven that they are abusers who are also involved in committing crimes.¹²

According to Adrianus Meliala, there are four factors why restorative justice is urgently needed, including a) punishment causes further problems for criminals' families. b) Punishing the perpetrator of the crime provides no relief or healing to the victim. b) The criminal justice system's formal process is too time-consuming, expensive, and uncertain. d) Correctional care as a continuance of punishment has the potential to contribute nothing to the prisoner's future or the relationship with the victim.¹³

In Rossy's case, legal problems arose because Rossy used Marijuana. The reason or main purpose of Rossy's use of Marijuana was stated before the trial. Rossy's main reason for consuming or abusing Marijuana was to relieve the pinched nerve he was suffering from. In addition, the punishment of narcotics abusers as an alternative treatment as experienced by Rossy was due to regulations that impose the threat of imprisonment for narcotics abusers, Article 127 of Law Number 35 of 2009 concerning Narcotics. Rossy's conviction had an impact on the state's deprivation of liberty; all of his activities were restricted, and treatment for Rossy's pinched nerve was hampered. In line with Adrianus Meliala's perspective regarding to significance of a restorative justice strategy for narcotics abusers as an alternative treatment, punishment causes additional issues not only for the perpetrators' families but also for the perpetrators themselves. The new problem is that Rossy was unable to achieve his purpose and desire of curing his pinched nerve. However, punishment did not relieve or cure Rossy of the pinched nerve he was suffering from, nor did it recover Rossy from the consequences of using Marijuana-type narcotics. As a result, correction as a continuation of the sentence has the potential to contribute nothing to Rossy's future because there was no treatment for the pinched nerve or recovery through medical rehabilitation and social towards narcotics users.

IV. CONCLUSIONS

Based on the results of the discussion above, a conclusion can be drawn: the imposition of a prison sentence on a narcotics abuser is regulated in Article 127 of Law Number 35 of 2009. However, Article 4 Letter d governs guarantees for medical and social rehabilitation efforts for narcotics abusers, including narcotics abusers as an alternative treatment. Rossy was caught in Article 127 paragraph (1) letter of Law Number 35 of 2009 concerning Narcotics by judgment Number 83/Pid.Sus/2020/PN.Kpg because he had been legally and conclusively shown guilty of committing the crime of narcotics abuse class I in the form of plants for himself. Rossy received a 10-month prison sentence for his actions. The imposition of prison sentences on perpetrators of criminal narcotics abuse is both legal and acceptable. However, in this situation, it is also necessary to pay attention to how Rossy eventually decided to utilize Marijuana as an alternate treatment for the pinched nerve. Such criminal sentences show that the criminal justice system in Indonesia constantly focuses on retributive rather than restorative justice.

The purpose of solving problems with a restorative justice method is to return the situation to its pre-crime state. Medical and social rehabilitation is one method of recovering from criminal narcotics improper use. Moreover, rehabilitation attempts to recover narcotics abusers from addiction to narcotics use, but it also aims to restore physical, mental, emotional, and spiritual functions. Although Article 4 letter d establishes the basis for guaranteed rehabilitation for narcotics addicts, the possibility of jail in Article 127 paragraph (1) letter a makes it impossible for a narcotics addict to recover.

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