

## **Restorative Justice Policy of Class I Drug Convicts of Marijuana in Dealing With Over-Capacity Correctional Institutions in Indonesia**

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### **ABSTRACT**

Law Number 35 of 2009 based on Pancasila and the 1945 Constitution of the Republic of Indonesia, was implemented based on justice, protection, humanity, order, protection and security. Often the authority to try becomes a dilemma for judges when there is a conflict between certainty and a sense of community justice. So it is predictable that the high number of narcotics users greatly affects the number of prisoners/inmates of narcotics abuse cases who enter prisons/detention centers, even though the best place they need is a rehabilitation center. The government, law enforcement officers and the media always provide information about marijuana abuse, if there is abuse the public should also be given information about the 'justification' of marijuana. Here, political will is needed from the government to review policies and provide objective facts about the benefits and dangers of cannabis plants, because politically this can reduce public trust in the government. Based on the facts and explanations of the above, the researchers are interested in conducting legal research on "Restorative Justice for convicts of narcotics users Golongal marijuana"

**Keywords: Restorative Justice Policy, Marijuana Narcotics in Over Capacity of Correctional Institutions.**

### **Introduction**

As a form of criminal law reform, it is time for the criminal system to switch its approach from retributive to restorative justice, because it turns out that punishment no longer creates a deterrent effect for the perpetrators. Restorative justice or what in Indonesian is called restorative justice is a way to resolve criminal cases involving the community, victims, and perpetrators of crimes with the aim of achieving justice for all parties so that it is hoped that the same conditions will be created as before. In the context of law enforcement, courts have a very important role, judges who are executor of activities in the field of justice must pay attention to the values that develop and live in society and must also master written legal norms. The court's decision is expected to be used as a correction and a record of Law Number 35 of 2009 concerning Narcotics whether it has fulfilled a sense of justice or otherwise based on existing legal facts. Then it can then be used as a guide whether the current law (*ius constitutum*) needs to be improved based on the value of justice

for the future (*ius constituendum*). In line with this, Law Number 35 of 2009 based on Pancasila and the 1945 Constitution of the Republic of Indonesia was implemented based on justice, protection, humanity, order, protection and security. Often the authority to try becomes a dilemma for judges when there is a conflict between certainty and a sense of community justice.

The bad conditions of the Correctional Institution (Lapas) were revealed, the bad conditions at the Salemba Rutan starting from the inadequate condition of fulfilling the basic rights of WBP, namely the right to food to the right to health, as well as the practice of illicit narcotics trafficking to commodification for the fulfillment of proper facilities in prisons. .because this condition continues to occur without a comprehensive solution. This clearly occurs in line with the ongoing overcrowding of detention centers and prisons without a comprehensive solution. For the record, prior to the policy of releasing WBP to prevent the spread of COVID-19, as of March 2020 the number of inmates of detention centers and prisons in Indonesia reached 270,466 people. Whereas the capacity of the detention center and prison can only accommodate 132,335 people. In conclusion, the burden of prisons and detention centers in Indonesia reaches 204%.<sup>1</sup>

Unfortunately, the solution to these problems is not comprehensive and comes and goes. The government does not really pay attention that the root of the problem of overcrowding is the criminal policy in Indonesia. The Ministry of Law and Human Rights in July 2017 issued the Minister of Law and Human Rights Regulation (Permenkumham) No. 11 of 2017 concerning Grand Design for Overcrowded Handling in State Detention Centers and Correctional Institutions. In the attachment to the Minister of Law and Human Rights, it is stated that efforts to handle overcrowding must also be carried out by making policy changes and reforming the punishment paradigm that is thick in the criminal justice system in Indonesia.

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<http://download.garuda.ristekdikti.go.id/article.php?article=1676696&val=18193&title=POLICY%20HUKUM%20PIDANA%20PENGGUNAAN%20NARKOTIKA%20GOLONGAN%201%20SATU%20JENIS%20WANJA%20UNTUK%20HEALTH>

This Permenkumham highlights the practical culture of law enforcement officers who excessively detain suspects/defendant during the trial period. As of March 2020, the number of detainees in detention centers/prisons in Indonesia accounted for 24% of the total population. This is due to the law enforcement paradigm that detention is a must. Whereas the Criminal Procedure Code provides other mechanisms, such as city detention, house arrest or a mechanism for suspension of detention. For detention detention, the Criminal Procedure Code has also stated that a suspect "can" be detained, and not "should" be detained.

In the Academic Manuscript of the RKUHP, the formulator of the RKUHP is committed to presenting an alternative to non-imprisonment punishment to eliminate the destructive impact of imprisonment. But unfortunately, until the draft RKUHP September 2019, the existence of a new criminal alternative does not seem to have a positive impact in dealing with the problem of overcrowding, with a very minimal amount and many conditions that must be applied. Not only related to the excessive use of detention and the lack of alternative punishments for non-imprisonment, Permenkumham No. 11 of 2017 clearly criticizes the existence of a punitive narcotics policy by saying that this policy will have an impact on the problem of fulfilling the health rights of prison residents.

So it is predictable that the high number of narcotics users greatly affects the number of prisoners/inmates of narcotics abuse cases who enter prisons/detention centers, even though the best place they need is a rehabilitation center. The increase in imprisonment for narcotics users is confirmed to be directly proportional to the prevalence of HIV/AIDS in prisons/detention centers. This is alleged to have happened through the unrelenting illicit traffic of narcotics (with all its modus operandi) being smuggled into prisons/remand centers and unsafe sexual practices taking place in prisons/detention centers. This number certainly needs special attention for policy makers to realize that the handling of narcotics abuse in prisons requires special treatment<sup>2</sup>

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<sup>2</sup> (Attachment to Permenkumham No. 11 of 2017 p. 42)

This is indeed explicitly stated in the current anti-narcotics law, with a note that drug users are required to report themselves and participate in medical and social rehabilitation programs Article 54 of Law No. 35 of 2009, and then supplemented by an article which requires parents of drug users to initiate this process. However, we can find ambiguity in several articles of the anti-narcotics law which in fact often lead to multiple interpretations. The government includes marijuana in class 1 narcotics which can only be used for scientific research purposes, this becomes an irony when the reality is that the government and existing government institutions have never actually conducted research on cannabis plants. Government, Law enforcement officials and the media always provide information about marijuana abuse, if there is abuse the public should also be given information about the 'justification' of marijuana. Here, political will is needed from the government to review policies and provide objective facts about the benefits and dangers of cannabis plants, because politically this can reduce public trust in the government.

Based on the facts and explanations of the above, the researchers are interested in conducting legal research on "Restorative Justice for convicts of narcotics users Golong1 marijuana" The type of legal research carried out is normative juridical (normative law). The normative legal research method is a scientific research procedure to find the truth based on the logic of legal scholarship from the normative side.<sup>3</sup>Therefore, this legal research is focused on examining legal research on the rules or norms in positive law. Because the type of research used is a normative juridical research type, the approach used is a statutory approach. This approach examines the laws and regulations related to the subject matter.

### **Restorative Justice Policy Against Convicts Of Narcotics Types Of Marijuana**

It should be noted that narcotics policies promoting imprisonment are obsolete and have failed in many countries. Continuing to criminalize drug users and addicts is the same as continuing to fail. As of March 2020, 55% of WBP came from narcotics crimes and 38,995 WBP were narcotics users. Even earlier in February 2020, 68% of

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<sup>3</sup> Johnny Ibrahim, Theory & Research Methods of Normative Law, Banyumedia Publishing, Malang 2006, p..57

WBP came from narcotics crimes and narcotics users who were forced to languish in prison reached 47,122 people.

Permenkumham Document No. 11 of 2017 concerning the Grand Design of Overcrowded Handling in State Detention Centers and Correctional Institutions can actually be the key for the government to conduct a basic evaluation of criminal policy in Indonesia. This criminal policy reform is also in line with the Government's 2020-2024 National Medium-Term Development Plan, which is committed to mainstreaming the use of Restorative Justice in the criminal justice system. One of the important points in the use of Restorative Justice is also in line with avoiding excessive detention, ensuring the optimization of alternatives to non-imprisonment detention and reforming narcotics policy to return to a public health approach by ensuring that narcotics users and addicts are not criminalized. Regarding the cannabis plant, based on Attachment I point 8 of Law no. 35 of 2009 concerning Narcotics, the plant is included in narcotics group I. Based on Article 7

Etymologically, the term "marijuana" is taken from the Sanskrit language which has the same meaning in Indonesia. While scientifically cannabis has the name "Cannabis sativa" which was given by Carrolus Linnaeus in 1753.) In fact, history tells itself that "cannabis" or "marijuana" is one of the words with the oldest linguistic roots in the world.<sup>4</sup>

Law No. 35 of 2009, narcotics can only be used for the benefit of health services and or the development of science and technology. In the Elucidation of Article 7 of Law no. 35 of 2009, it is explained that what is meant by "health services" is including medical rehabilitation services. What is meant by "development of science and technology" is the use of narcotics especially for the purpose of treatment and rehabilitation, including for the purposes of education, training, research and development as well as skills carried out by government agencies whose duties and functions are to supervise, investigate, investigate, and eradicate drug trafficking. educational interests, training and skills include for the benefit of training narcotic sniffer dogs from the Indonesian National Police, Customs and Excise and

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<sup>4</sup>Aristedes Julian, *Allegory 420*, (Yogyakarta: Vice Versa Books, 2018), p. 1

the National Narcotics Agency and other agencies. Based on the provisions of Article 7 of Law no. 35 of 2009, there is an exception, namely Article 8 paragraph (1) of Law no. 35 of 2009 which states that class I narcotics are prohibited from being used for the benefit of health services. However, in limited quantities, class I narcotics can be used for the purpose of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency. Based on the provisions of Article 7 of Law no. 35 of 2009, there is an exception, namely Article 8 paragraph (1) of Law no. 35 of 2009 which states that class I narcotics are prohibited from being used for the benefit of health services. However, in limited quantities, class I narcotics can be used for the purpose of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency. Based on the provisions of Article 7 of Law no. 35 of 2009, there is an exception, namely Article 8 paragraph (1) of Law no. 35 of 2009 which states that class I narcotics are prohibited from being used for the benefit of health services. However, in limited quantities, class I narcotics can be used for the purpose of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister on the recommendation of the Head of the Food and Drug Supervisory Agency.<sup>5</sup>

According to the 2009 narcotics law, all elements of marijuana are classified as Category I narcotics, along with other types of psychoactive substances such as heroin, cocaine and methamphetamine. Because this categorization stems from the United Nations Single Convention of 1961, marijuana is rarely discussed separately as a separate type of substance. This is closely related to the discourse of zero tolerance and generalization of the effects of narcotics, the most common example being the assumption that the level of danger and addiction to marijuana is on par with other class 1 narcotics. According to several drug policy experts in Indonesia, the law

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<sup>5</sup>Sundryani, FS (February 2015). Government wants to rehabilitate 100,000 drug addicts in 2015. The Jakarta Post. Retrieved from <http://www.thejakartapost.com/news/2015/02/01/govt-wants-rehabilitate-100000-drug-addicts-2015.html> Stoicescu.

passed in 2009 was deliberately designed by the government to prioritize rehabilitation for drug users and/or addicts,

Basically the Narcotics Law is also a form of abstraction of the manifestation of the principle of restorative justice or restoration, restorative justice is an alternative or other way of criminal justice by prioritizing an integrated approach to perpetrators. On the one hand and victims/community on the other hand as a unit to find solutions and return to the pattern of good relations in society.

The basic principle of restorative justice is that there is recovery for those who have suffered as a result of crime, perpetrators have the opportunity to be involved in restoring the situation (restoration), and the court's role is to maintain public order and the community has a role to play in preserving a just peace.

The purpose of the principle of restorative justice is to reform the criminal justice system that has been growing and developing in Indonesian society. The concept of the criminal justice system is considered to have fallen behind in terms of punishment. The criminal system, which still prioritizes the *primum remidium* principle, makes imprisonment the main route. Whereas in the present context, the criminal system no longer relies on the perpetrator but has led to the alignment between the perpetrator and the victim in a criminal case.

The principles of restorative justice are at least divided into 3 (three) major points, among others,

- 1) Make the violator responsible for repairing the damage caused by his mistake;
- 2) Provide opportunities for violators to prove their capacities and qualities while addressing their guilt constructively, involving victims, parents, extended family, school and peers;
- 3) Creating a forum for working together in solving problems, establishing a direct and tangible link between mistakes and formal social reactions.

Difficulties in enforcing the principles of restorative justice in the justice system in Indonesia are caused by the attitude of law enforcers who tend to be formalistic. So to reveal the values of justice that live in society is still very difficult.

Meanwhile, in the majority of existing legislation in the current era, many are oriented towards restorative justice.

There are several programs in the concept of restorative justice, namely:

- a) Mediation;
- b) *Victim-Offender Mediation Programmes*(Penal Mediation);
- c) *Restorative Conference*(conferencing);
- d) *Family and Community Group Conferencing*;
- e) *Informal Mediation*(Informal Mediation);
- f) *Traditional Village or Tribal Moots*; g) Reparation Negotiation Programmes;
- g) *Circles*(Circle); and i) Reparative Board/Youth Panel.

It is universally understood that the principle of restorative justice basically upholds the values of restoration and balance between the litigants in a criminal context. At first it only prioritized punishment with the aim of imprisoning a criminal, now with the concept of restorative justice, it will always prioritize the value of deliberation to produce decisions that prioritize common interests both in law and outside the law. Especially in drug cases, there is rehabilitation as an effort to cure narcotics abusers, especially marijuana.

When viewed conceptually, the restorative justice approach is very relevant to be applied in Indonesia, this is because a country where the majority of the people like deliberation and pluralism. For centuries, Indonesia has adhered to the so-called customary law, in customary law the emphasis is on deliberation and consensus in every case settlement. Therefore, restorative justice is not new, so it is very effective if applied even though of course it must go through many adjustments to social culture.

That in general, at least 50 countries have regulated the use of medical marijuana, including Thailand and Lebanon which regulate the use of medical marijuana in 2020, based on the description above, it can be concluded that the use of medical marijuana has been widely used and regulated in various countries. in the world, and this should be considered by judges in deciding cases of marijuana abuse so as not to impose criminal sanctions. In principle, the Narcotics Law legitimizes the use of narcotics for the benefit of health services, Article 4 paragraph (1) letter a explains the purpose of the Narcotics Law, one of which is to guarantee availability of narcotics for the benefit of health services and/or development of science and

technology, so that the use of marijuana in the medical field for cases of marijuana abuse does not impose criminal sanctions.

## CONCLUSION

It is universally understood that the principle of restorative justice basically upholds the values of restoration and balance between the litigants in a criminal context. At first it only prioritized punishment with the aim of imprisoning a criminal, now with the concept of restorative justice, it will always prioritize the value of deliberation to produce decisions that prioritize common interests both in law and outside the law. Especially in drug cases, there is rehabilitation as an effort to cure narcotics abusers, especially marijuana.

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