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Ratio Legis Policy of Republic of Indonesia State Police Regulation Number 8 of 2021 Based On Restorative Justice In Narcotics Crimes

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Abstract: Restorative justice, which is based on POLRI Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, was formed to realize efforts to resolve criminal acts by prioritizing aspects of restorative justice. Through this regulation, criminal law enforcement by the police is oriented to re-emphasize the restoration of the original situation as before the crime occurred. The research method used uses a normative juridical research type with a statutory and regulatory approach. This research uses literature study techniques by inventorying suitability based on primary and secondary legal materials to answer the problems in this research. ratio legis implementation of the Republic of Indonesia State Police Regulation Number 8 of 2021 reflects a restorative justice approach in the investigation stage of handling criminal acts. It emphasizes the importance of healing and reconciliation as part of the investigative process, reflecting a paradigm shift in criminal law towards a more holistic and recovery-oriented approach. The dynamics of handling narcotics crimes based on the principles of restorative justice, there are special requirements that must be complied with. Republic of Indonesia State Police Regulation Number 8 of 2021 pays special attention to the condition of individuals involved in narcotics abuse. This consideration involves evaluating the status of drug users, the condition of the victim of drug abuse, the level of drug dependence of the perpetrator, the type of narcotics used, and the amount.

Keyword: Ratio Legis, Republic of Indonesia National Police Regulations, restorative justice, Narcotics.

INTRODUCTION

Restorative justice can generally be defined as an effort to resolve criminal acts by prioritizing justice that emphasizes restoring the situation to its original state and aims to protect both victims and offenders who are not oriented towards punishment. Restorative justice views law enforcement as a form of protection and enforcement of human rights. Therefore, law enforcement must be carried out consistently and in line with legal

developments that consider a sense of justice and the evolving issues in society. In fact, drug abuse in society is increasing, especially among children, teenagers, and young people who are still students. The modus operandi used in drug crimes often exploits children and other young generations as easy targets. Therefore, drug traffickers often use children to conduct their business, both as users and as distributors. This reality illustrates that drug users cannot be seen solely as criminals but as victims exploited to carry out drug businesses and networks in Indonesia.¹

The presence of restorative justice in the Indonesian National Police Regulation on Handling Criminal Acts Based on Restorative Justice makes rehabilitation efforts for drug addicts an obligatory measure provided by the state to restore addicts to their original condition. The implementation of restorative justice in the criminal sentencing system for drug offenses has the potential to drive a paradigm shift in law enforcement and the implementation of Law Number 35 of 2009 concerning Narcotics. Restorative justice, as regulated in the Indonesian National Police Regulation Number 8 of 2021 concerning Handling Criminal Acts Based on Restorative Justice, aims to achieve the resolution of criminal acts by prioritizing the aspects of restorative justice. Through this regulation, criminal law enforcement by the police is reoriented to emphasize restoring the situation to its original state before the commission of the crime. This is done to maintain a balance regarding the protection and interests of the victims while also seeking forgiveness for offenders who are not oriented towards punishment.

The paradigm of crime handling in Indonesia has shifted towards law enforcement without using penal sanctions. The existence of Indonesian National Police Regulation Number 8 of 2021 can be utilized as an effort to handle crimes without emphasizing penal sanctions against certain offenders. This is in line with Bagir Manan's opinion stating that penal policy is not only oriented towards formulating positive law better but can also serve as a guide for law enforcers to protect society in achieving prosperity. Through restorative justice, the state is not only oriented towards punishment and sentencing of offenders. Based on the above description, it is necessary for the state to be present in efforts to achieve restoration, both for victims and perpetrators. The application of restorative justice to drug addicts involves the state, so in its implementation, careful consideration must be given to Indonesian National Police Regulation Number 8 of 2021, which contains specific requirements that must be met for drug users to be eligible for restorative justice.²

The Indonesian National Police Regulation on Handling Criminal Acts Based on Restorative Justice, which prioritizes the principle of restorative justice, plays a crucial role in the investigation stage, considering that the investigation stage serves as the first gateway to a case. Therefore, the repressive steps taken by investigators are oriented towards legal resolution in the form of restoration for both perpetrators and victims, considering the principle of legal protection for both parties. Hence, the criminal law approach applied is not punitive but aims to achieve justice for all parties as a legal solution to cases involving perpetrators and victims. Legal resolution based on restorative justice in the investigation stage has shifted the paradigm of criminal law, no longer making positive criminal law the sole criterion for determining criminal acts as the primary step in legal resolution. Thus, the enactment of this police regulation fulfills the sense of justice and legal certainty to provide legal benefits. Efforts to restore the situation to its original state as a paradigm to be built in society aim to instill a sense of responsibility in criminals to participate in resolving the

¹ Zainab Ompu Jainah dan Suhery, "Analisis Penanganan Tindak Pidana Narkotika Melalui Keadilan Restoratif (Restorative Justice) Berdasarkan Peraturan Polri Nomor 8 Tahun 2021 (Studi pada Satuan Reserse Narkoba Polres Metro)", *Jurnal Pendidikan dan Konseling* 4, No. 4, (2022): 2.

² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2002):21

consequences of their actions.³ In addition, law enforcement authorities are the main determinants of the success of implementing restorative justice for drug-related crimes. Achieving this success requires seriousness and considerable time. Law enforcement authorities must be able to synergize to create criminal law enforcement policies that can help ensure that restorative justice benefits all parties.

The problem with the retributive approach applied to address drug-related cases has not been proven to effectively deter offenders. Ultimately, the retributive approach, which tends to impose criminal sanctions, leads to two main problems: overcrowding in correctional facilities and a criminal law paradigm that views drug abusers solely as criminals who must be punished. Building on these two issues, law enforcement agencies have proposed the idea of a restorative justice approach to drug control in Indonesia. Restorative justice in the context of Indonesian National Police Regulation No. 8 of 2021 indicates that the primary approach to addressing criminal acts is through the principle of restorative justice, emphasizing restoration and reconciliation as the main focus in handling criminal acts.⁴ This principle differs from a punitive approach that solely seeks sanctions or punishment against perpetrators. In restorative justice, it signifies that the police regulation places more emphasis on restoration and reconciliation efforts. This means that handling criminal acts is not only aimed at punishing the perpetrators but also at restoring the well-being of both the perpetrators and the victims.

Restorative justice includes, among other things, repairing disrupted relationships caused by criminal acts. This approach seeks to restore interpersonal and social damage that may have occurred, with the hope of creating a more harmonious environment.⁵ The Republic of Indonesia Police Regulation Number 8 of 2021 has distinct characteristics in differentiating between restorative justice and punitive sanctions. Punitive sanctions tend to focus on punishment as a means of upholding justice, while restorative justice places more emphasis on the process of recovery and reconciliation. The existence of Republic of Indonesia Police Regulation Number 8 of 2021, which is based on restorative justice principles, encourages active participation of both perpetrators and victims in the resolution process. They are given the opportunity to contribute to defining solutions that meet their needs and reach agreements together. Considering that recovery in the context of restorative justice is not only about repairing the harm that has occurred but also supporting personal and social transformation. This includes efforts to prevent the recurrence of criminal acts and support the rehabilitation of perpetrators. Based on these principles, this subsection will explain how the principles of restorative justice can be applied in the context of handling criminal acts according to Republic of Indonesia Police Regulation Number 8 of 2021.

METHOD

Research methods are used to answer problems systematically and structured. This research uses a normative juridical research type using a statutory approach, namely in the form of the Republic of Indonesia State Police Regulation Number 8 of 2021 and a conceptual approach related to the concept of restorative justice. In analyzing this research, it refers to primary and secondary legal materials using literature study techniques in answering problems regarding the legal ratio of implementing the policy of the Republic of Indonesia State Police Regulation Number 8 of 2021 based on restorative justice in narcotics crime cases.

³ Haris Wirayuda “*Upaya Rehabilitasi Bagi Penyalahguna Narkotika Oleh Badan Narkotika Nasional (Bnn) Kabupaten Gianyar*” *Jurnal Konstruksi Hukum* 3, No. 2, (2022): 255

⁴ Manuel Rianto Siburian, Marzuki, Panca Sarjana Putra, “*Restoratif Justice Terhadap Penanganan Tindak Pidana Penyalahgunaan Narkotika (Studi Di Polres Asahan)*” *Jurnal Meta Hukum* 2, No.3, (2023): 52

⁵ Gukguk, Roni Gunawan Raja, & Jaya, Nyoman Serikat Putra. *Tindak pidana narkotika sebagai transnasional organized crime*. *Jurnal Pembangunan Hukum Indonesia* 1, No. 3, (2019): 338

RESULTS AND DISCUSSION

Ratio Legis Actualization of Republic of Indonesia State Police Regulation Number 8 of 2021 Based on Restorative Justice

The concept of ratio legis in the context of interpreting legislation pertains to the teleological method, which seeks to uncover the purpose or rationale behind a specific provision in order to understand its meaning. From a teleological perspective, the term "telos" refers to the purpose or objective of a legal rule, and in doing so, refers to ratio legis as an indication of that purpose. The existence of ratio legis as support for a particular way of understanding a vague provision is considered one of the strongest argumentative steps, as if it were one of the most powerful tools wielded by a lawyer. The underlying assumption seems to be that an interpretation aligned with the ratio legis of a particular legal rule is highly persuasive. Even if other arguments may be put forward, relying on an interpretation that aligns with the ratio of a provision often takes precedence. What exactly is ratio legis, where does it originate, and where can it be found? So far, at first glance, defining and understanding ratio legis can be contemplated. We can begin by thinking of ratio legis as the "reasoning" behind a law. But is ratio legis an absolute reason for, or behind the law, or can it also refer to the legal reasoning itself?⁶

The theory of ratio legis, according to Konstanze von Schütz, points to "rationality." What, then, is the nature of the relationship between rationality and law? Is "ratio legis" an expression of different rationalities into law, or should the law, along with every specific provision, be inherently rational, with "ratio legis" serving as an indicator of this specific rationality? Answering these questions not only promotes a better understanding of what "ratio legis" is but also sheds light on assumed or mandated conceptions of legal interpretation. Providing answers gives further guidance on theoretical assumptions that seem to enable an understanding of proposed laws by examining their goals, how this relates to the concept of "ratio legis," and ultimately where an argument referring to "ratio legis" derives its specific strength.⁷

That by delving into the understanding of "ratio legis" within the dominant interpretative approach and only in the next step examining the possible impact of the conception of "ratio legis" as an expression of legal rationality on legal interpretation methods. The idea of "ratio legis" as encountered in the context of the dominant method of legal interpretation serves as a starting point, with the analysis focusing on statutory interpretation as well. I will not delve into contractual interpretation, and I will not explore specific aspects of constitutional interpretation.⁸

Based on the understanding above regarding the underlying conception of legal interpretation and how the concept of "ratio legis" can influence legal interpretation methods, this explanation offers a foundation for considering alternative approaches in understanding and applying "ratio legis" related to the application of restorative justice in the investigative stage of handling criminal offenses based on the Republic of Indonesia National Police Regulation Number 8 of 2021, referring to the Principle of Justice in the investigative stage in handling criminal offenses considered a critical and strategic phase, and the police regulation emphasizes the primary role at this stage. Because the investigation is seen as the initial phase or the first entry point of a case. At this stage, information and evidence are gathered to understand the case more deeply. The investigative stage plays a central role in determining the truth regarding the reported criminal offense. Investigators play a key role in collecting

⁶ Verena Klappstein, Maciej Dybowski, *Ratio Legis: Philosophical and Theoretical Perspectives*, (Poland: Springer International Publishing, 2018) : 162

⁷ Verena Klappstein, Maciej Dybowski, *Ratio Legis: Philosophical and Theoretical Perspectives*, 2018, 162

⁸ Verena Klappstein, Maciej Dybowski, *Ratio Legis: Philosophical and Theoretical Perspectives*, 2018, 163

evidence and information to form the basis of the investigation. The repressive actions taken by investigators at the investigative stage should be oriented towards legal resolution.

This reflects the restorative justice approach, which focuses not only on punishment but also on the rehabilitation of offenders and reconciliation with victims. Republic of Indonesia National Police Regulation Number 8 of 2021 aims to respond to the evolving legal needs of society, which applies within the community as a solution and also provides legal certainty, especially the benefit and sense of justice of the community. This is in line with the concept of restorative justice mechanisms as conveyed in the Preliminary Draft Elements of a Declaration of Basic Principles on The Use of Restorative Justice Programmes in Criminal Matters.⁹ The application of restorative justice is a process of recovery or aiming to achieve outcomes that restore to the original state. According to Daniel S. Lev in his writing, he mentions that the majority of Indonesian society, especially those living in Java and Bali, prioritize resolving issues through familial processes.¹⁰

In the context of history, the Javanese and Balinese societies tend to choose a conciliatory approach in dispute resolution. This cultural tendency is also rooted in the densely populated village communities of Java. The primary value emphasized is to create surface harmony within the community. It is noted that Javanese people exhibit characteristics such as being cautious in personal relationships, showing concern for others, being diplomatic, exercising restraint, and respecting social status. The approach taken to avoid personal disputes is through subtle means, seeking solutions that are least detrimental and non-embarrassing. The practice of resolving disputes involving affected parties and the community has long been prevalent in the archipelago of Nusantara and Indonesia. Dispute resolution outside formal judicial processes has been conducted long before the formation of the Indonesian state. This is because the majority of Indonesia's population is rural and non-secular, thus prioritizing social values that emphasize personal relationships characterized by mutual respect, communal solidarity, and conflict avoidance. Dispute resolution involving affected parties is commonly known as "musyawarah." Such dispute resolutions can be conducted through customary courts or on an individual basis. Customary courts are typically facilitated by individuals, families, neighbors, traditional leaders, village heads, or association representatives. The main characteristic of resolving disputes through customary court mechanisms is to peacefully restore the disturbed societal balance. Guntur Eka Septi explains that typically, when a legal issue arises within the community, a musyawarah process is conducted first before the matter is reported to law enforcement authorities. This can be seen as an effort to restore cosmic balance within the community.¹¹

Based on the aforementioned juridical reasons, the implementation of restorative justice in the investigation stage of handling criminal offenses according to the Indonesian National Police Regulation Number 8 of 2021 refers to the principle of justice in the investigation stage of handling criminal offenses, which is considered a critical and strategic phase, with the police regulation emphasizing the primary role in this stage. Because the investigation is seen as the initial phase or the first entry point of a case. In this stage, information and evidence are gathered to understand the case more deeply.¹² The investigation stage plays a central role in determining the truth regarding the reported criminal offense. Investigators play a key role in collecting evidence and information to form

⁹ Lembaga Kajian dan Advokasi Independensi Peradilan (LeIP), *Peluang dan Tantangan Penerapan Restorative Justice dalam Sistem Peradilan Pidana di Indonesia*, (Jakarta: Institute for Criminal Justice Reform, 2022) : 74

¹⁰ Daniel S. Lev, *Hukum dan Politik di Indonesia (Kesinambungan dan Perubahan) Cetakan ke-4*, (Jakarta: Pustaka LP3ES Indonesia, 2014) : 150

¹¹ Daniel S. Lev, *Hukum dan Politik di Indonesia*, 2014 153

¹² Haposan Sahala Raja Sinaga, "Peberapan Restorative Justice Dalam Perkara Narkotika Di Indonesia," *Jurnal Hukum Lex Generalis* 14, No. 1, (2021): 536.

the basis of the investigation. The repressive actions taken by investigators during the investigation stage should be oriented towards legal resolution. This reflects a restorative justice approach, which not only focuses on punishment but also on the rehabilitation of offenders and reconciliation with victims.¹³

The principle of restorative justice, which focuses on the rehabilitation of both the offender and the victim, indicates that the investigation stage is not just about identifying the perpetrator and imposing sanctions, but also about seeking solutions that involve the process of recovery and reconciliation for both parties. During the investigation stage, there is a need to achieve a balance between addressing the perpetrator and providing justice to the victim. This orientation reflects the goal of creating a fair resolution for all parties involved. By emphasizing that repressive actions should be oriented towards legal resolution, this regulation may attempt to avoid a purely repressive approach that focuses solely on punishment without considering aspects of rehabilitation and reconciliation. The orientation at the investigation stage underscores the importance of understanding the initial conditions of the case. This involves a thorough evaluation of the situation, engaging all parties involved, and seeking solutions that are appropriate to the circumstances encountered.¹⁴

Septiana writes that the recovery of both the perpetrator and the victim as a principle in restorative justice reflects a more holistic approach to responding to criminal acts. Furthermore, Septiana explains that restorative justice is an approach that emphasizes recovery and reconciliation as an alternative or complement to punitive sanctions. The focus is on rebuilding relationships and repairing the harm caused by the criminal act. For the perpetrator, recovery can involve various aspects such as rehabilitation, counseling, or mentoring programs.¹⁵ This approach views perpetrators as individuals capable of change and seeks to provide support to avoid future criminal behavior. Recovery for victims involves efforts to reduce the emotional, physical, or material impact they may experience as a result of the criminal act. This may involve counseling support, restitution, or compensation to help victims recover and rebuild their lives.

Restorative justice places emphasis on repairing the relationship between the perpetrator and the victim. The recovery process involves open communication and rebuilding trust that may have been disrupted. Recovery is not only individual but also interpersonal. Sometimes, restorative justice involves organizing meetings between the perpetrator and the victim to achieve reconciliation and agreement on next steps. By understanding and addressing the root causes of the criminal act, restorative justice is preventive. This includes efforts to educate perpetrators about the consequences of their actions and encourage positive behavioral change. This approach also acknowledges the role of the community in supporting the recovery of both the perpetrator and the victim. Positive community responses can help create an environment supportive of the recovery process. The goal is to create more holistic solutions, provide opportunities for repentance, and avoid the continuous cycle of criminality.¹⁶

The principle of restorative justice refers to the aspect of Legal Protection for Perpetrators and Victims. This indicates the importance of safeguarding the rights and interests of both perpetrators and victims during the criminal investigation process. The principle of legal protection reflects efforts to ensure that all parties involved in the legal process, both perpetrators and victims, have rights recognized and protected by the law. Legal

¹³ Haposan Sahala Raja Sinaga, *Peberapan Restorative Justice Dalam Perkara Narkotika Di Indonesia*, 2021, 536

¹⁴ Haposan Sahala Raja Sinaga, *Peberapan Restorative Justice Dalam Perkara Narkotika Di Indonesia*, 2021, 538

¹⁵ Haposan Sahala Raja Sinaga, *Peberapan Restorative Justice Dalam Perkara Narkotika Di Indonesia*, 2021, 195

¹⁶ Anang Iskandar, *Penegakan Hukum Narkotika*, (Jakarta: Alexmedia Komputindo, 2015): 43

protection for perpetrators includes basic rights, such as the right to be presumed innocent until proven guilty, the right to legal representation, and the right to be free from torture or abuse. Protection for victims includes rights to adequate information, the right to be respected and involved in the legal process, and the right to receive compensation or restitution for the losses suffered. The principle of legal protection also includes aspects of non-discrimination.¹⁷ This means that all parties should be treated fairly and equally before the law, regardless of gender, race, religion, or other discriminatory factors. Privacy and security rights for both perpetrators and victims are also part of legal protection. This includes measures to ensure that their personal information is not misused and that they are protected from threats or revenge actions.

Legal protection based on restorative justice means ensuring that the investigative process is conducted in a fair and transparent manner. This includes providing adequate access to information, the right to legal defense, and active participation in the legal process. In addition to legal rights, protection also includes psychological support for perpetrators and victims. Recognition of the emotional impact they may experience is also an important part of the protection principle. Legal protection must strike a balance between protecting the rights of perpetrators and ensuring the well-being of victims. This shows that not only the rights of perpetrators are considered, but also the interests and rights of victims are recognized and respected.

The Shift in Criminal Law Paradigm refers to a fundamental change in the way criminal law is viewed. The statement implies that Republic of Indonesia National Police Regulation Number 8 Year 2021 reflects a shift from a conventional paradigm that focuses solely on legal sanctions to a more holistic approach that includes elements of recovery and reconciliation. The conventional criminal law paradigm tends to emphasize legal sanctions as the primary response to legal violations. This shift indicates that, with the existence of this regulation, there is a push to adopt a more holistic approach. The statement indicates that recovery becomes the main focus of the paradigm shift. Recovery includes efforts to address the impact of the crime, both on the perpetrator and the victim, and provides opportunities for redemption.

The paradigm shift in restorative justice also reflects an orientation towards reconciliation.¹⁸ Reconciliation means rebuilding relationships that may have been disrupted as a result of a crime, creating opportunities for understanding and forgiveness.¹⁹ In this context, Republic of Indonesia National Police Regulation Number 8 Year 2021 demonstrates a desire to avoid approaches that are purely punitive in responding to legal violations. Instead, recovery and reconciliation are considered integral parts of the response to criminal acts. This shift in the paradigm of criminal law may also reflect efforts to achieve broader legal benefits, such as creating a fairer, more effective justice system that meets the needs of society. The new paradigm, with the introduction of Republic of Indonesia National Police Regulation Number 8 Year 2021, pays more attention to aspects of perpetrator rehabilitation as part of the recovery process. Efforts to guide perpetrators towards positive behavioral change can be a key component of the legal response. The paradigm shift may also reflect responses to criticisms of conventional criminal law systems that may be considered ineffective or unfair in achieving broader legal goals.

Harmonization with the Principles of Positive Criminal Law in the context of Republic of Indonesia National Police Regulation Number 8 Year 2021, which emphasizes restorative justice, indicates that this paradigm shift is aligned with the principles of positive

¹⁷ Septiana, H. "Keadilan restoratif dalam putusan pidana anak". *Jurnal Yudisial* 11, No. 2, (2018):201

¹⁸ Yuliana Yuli W, Atik Winanti, "Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana," *ADIL: Jurnal Hukum*, 10 No.1 (2019): 149

¹⁹ Yuliana Yuli W, Atik Winanti, "Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana," (2019) : 149

criminal law that are already in place. Therefore, although this regulation introduces a new restorative justice approach, harmonization has been achieved with the principles already enshrined in existing positive criminal law. Harmonization with the principles of positive criminal law indicates that the paradigm shift is not intended to disregard or disrupt the existing legal framework. Instead, there is an effort to create consistency and alignment.²⁰ Despite its focus on restorative justice, this regulation is described as remaining in line with key aspects of positive criminal law, such as basic principles of criminal law, human rights, and applicable legal procedures.²¹

Harmonization with the birth of the Republic of Indonesia State Police Regulation Number 8 of 2021 shows the maintenance of existing legal standing and continuity with legal norms that have been implemented previously. This can provide legal certainty and ensure that changes introduced do not violate existing basic principles. The emphasis on harmonization may also reflect the view that the adoption of restorative justice principles is a positive development in criminal law, which remains integrated within the broader legal framework. Harmonization with applicable positive criminal law helps minimize potential legal conflicts or ambiguities that could arise as a result of paradigm changes.

Jeremy Bentham's theory of utilitarianism is always identified as happiness which is determined by the number of people, so that the measuring level of happiness of the majority determines how the law is formed.²² However, it is more suitable to be interpreted as a guarantee of individual happiness that the state must provide to its citizens and eliminate suffering for society through legal instruments, so that the benchmarks for these legal instruments are "happiness" and "suffering". Based on this theory, Bentham's theory of utilitarianism emphasizes that policies or actions that are considered good are those that produce the greatest happiness for the greatest number of people. In this case, happiness is measured as the amount of satisfaction or benefits obtained by society. In the context of the application of law, this term can be interpreted as a guarantee of individual happiness that must be provided by the state to its citizens, and eliminate suffering for society through legal instruments..²³

The provision of legal benefits in the Republic of Indonesia National Police Regulation Number 8 of 2021 shows concrete efforts to provide positive benefits and contributions to society. The aim is to achieve justice, legal certainty and recovery through a restorative justice approach. These regulations, by emphasizing restorative justice, are expected to make a positive contribution to individual happiness and reduce societal suffering. The legal instruments regulated in this regulation are expected to be a means of creating a better legal environment. In the context of utilitarianism, providing legal benefits can be seen as a step that supports the achievement of happiness and reduces suffering in society, in line with the principles of utilitarianism. By adapting the interpretation of "The greatest happiness of the greatest number" with a focus on justice, legal certainty and recovery, this regulation is an effort that is expected to achieve the utilitarian goal of creating maximum benefits for society.

The concept of happiness determined by the majority was the most recent breakthrough when Jeremy Bentham outlined it in his time. At first glance, providing great happiness to society seems to be true, but the author thinks that the explanation that ends with

²⁰ Yuliana Yuli W, Atik Winanti, *Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana*, 2019, 197

²¹ Yuliana Yuli W, Atik Winanti, *Upaya Rehabilitasi Terhadap Pecandu Narkotika Dalam Perspektif Hukum Pidana*, 2019, 197

²² Endang Pratiwi, dkk. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum?" *Jurnal Konstitusi* 19, No.2, (2022): 277

²³ Endang Pratiwi, dkk. *Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum* 2022, 278

this conclusion is still considered inappropriate because the term "The greatest happiness of the greatest number" was put by Jeremy Bentham to mention one of the touchstones of the theory. His utilitarianism is not an important point which states that "in order to fulfill benefits, the law must fulfill the wishes of the majority".²⁴

Providing Legal Benefits refers to the concrete benefits that are expected to be provided by the issuance of the Republic of Indonesia National Police Regulation Number 8 of 2021. One of the main objectives of this police regulation is to achieve justice. This means that these regulations are designed to make a positive contribution to the process of handling criminal acts to make them fairer. Apart from justice, this regulation is expected to contribute to legal certainty. Clarity and order in the application of the law are the keys to providing legal certainty to the public. If these regulations emphasize restorative justice, providing legal benefits includes applying these principles in practice. This can involve healing and reconciliation as key elements in dealing with criminal acts.

Providing legal benefits can also include efforts to prevent abuse of authority in handling criminal acts. These regulations may contain provisions detailing the limitations and responsibilities of law enforcement officials. For the parties involved, such as perpetrators and victims, this regulation is expected to provide clear guidelines regarding their rights and obligations during the legal process. This helps create a more structured and fair environment.

The Dynamics of Actualization of Specific Requirements for the Provision of Restorative Justice in Narcotics Offenses

Based on the provisions of Article 3 of Republic of Indonesia National Police Regulation Number 8 of 2021, the handling of criminal acts based on Restorative Justice must comply with general and/or specific requirements. General requirements apply to the handling of criminal acts based on restorative justice in the implementation of the functions of Criminal Investigation, Investigation or Prosecution. Specific requirements only apply to the handling of criminal acts based on Restorative Justice in the activities of Investigation or Prosecution. Furthermore, Article 7 letter (b) of Republic of Indonesia National Police Regulation Number 8 of 2021 states that the specific requirements include additional requirements for criminal acts, one of which is drug-related crimes.

Republic of Indonesia National Police Regulation Number 8 of 2021 places special attention on the status of drug abusers who apply for termination of investigation. This means that this regulation considers the conditions or legal positions of individuals involved in drug abuse. This consideration involves an assessment of the extent to which drug abusers can meet certain qualifications and requirements set forth in the regulation to obtain termination of investigation. Consideration of the drug abuser's status includes an assessment of the extent to which the perpetrator understands and is willing to undergo the investigation termination process. In this regard, psychological and behavioral aspects of the perpetrator may be taken into consideration. Additionally, this regulation may also consider whether the drug abuser is a first-time offender or has a history of previous drug abuse. By considering the status of drug abusers, this regulation seeks to create a more differentiated approach in handling drug abuse cases, where termination of investigation may be an option depending on the individual situation and conditions.

Special attention is given to the aspects of victims of drug abuse. This indicates that this regulation considers the conditions or legal positions of victims of drug abuse when applying for termination of investigation.²⁵ These considerations may involve several factors

²⁴ Endang Pratiwi, dkk. *Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum atau Metode Pengujian Produk Hukum* 2022, 278

²⁵ Hikmawati, P. *Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika*. *Jurnal Negara Hukum* 2, No. 2.

that are specific to victims of abuse. The aspects taken into account involve the psychological and physical impacts experienced by victims of narcotics abuse. The regulation considers whether victims of abuse have received adequate access or assistance for recovery, and the extent to which ending the investigation would provide a real benefit to the victim's well-being.. Aspects of victims of abuse, this regulation tries to create a more holistic approach in responding to narcotics crimes, where the interests and needs of victims are taken into account in the decision-making process regarding terminating investigations.²⁶

The aspect of the perpetrator's narcotics dependence is one of the factors that can be considered in the process of terminating the investigation. This indicates that the regulation takes into account the level of narcotics dependence experienced by criminals. Consideration of narcotics dependence can include a number of factors, such as the extent to which the perpetrator has been involved in rehabilitation or efforts to recover from this dependence. If the offender has demonstrated a commitment to overcoming drug addiction and has followed steps for recovery, this may be considered in the decision to terminate the investigation. Consideration of narcotics dependency shows that this regulation does not only look at the punitive aspect, but also recognizes the need for a rehabilitative approach towards drug offenders. Thus, the termination of the investigation can be directed at providing an opportunity for the perpetrator to recover and preventing further involvement in narcotics abuse.

The type of narcotics and the amount used are important factors in determining the termination of an investigation. This regulation imposes concrete limits on the use of certain narcotics, such as methamphetamine. that the use of certain types of narcotics, in this case methamphetamine, must not exceed a certain amount, namely 1 gram in one day. This limitation indicates that the regulation pays attention to the extent to which the amount and type of narcotics used by the perpetrator can be a consideration for stopping an investigation. Setting concrete limits on the types of narcotics and their quantities reflects a proportional approach in responding to cases of narcotics abuse. This is in line with the aim of providing space for consideration of perpetrators who may be involved in the use of narcotics in relatively small and non-massive quantities.²⁷ By paying attention to the type of narcotics and the amount, this regulation emphasizes that stopping the investigation can be an option if the perpetrator meets certain criteria, including limits regarding the type and amount of narcotics involved.

The limits regarding the type of narcotics and quantity regulated in Police Regulation Number 8 of 2021 have clear directions. This limitation is focused on cases where narcotics abusers are not included as recidivists. In other words, the implementation of the termination of the investigation is selective and is aimed at perpetrators who are still in the non-recidivist category. Offenders who can apply for a termination of the investigation are those who meet certain criteria, including having no history of previous narcotics offenses and complying with limits regarding the amount of narcotics used. used within one day, as stipulated in the regulations. This approach reflects an effort to provide different legal treatment between perpetrators who are still classified as non-recidivists and those who have a history of previous violations.

First, the application of solutions based on restorative justice is applied to perpetrators without a history of narcotics violations.²⁸ This is an aspect of the requirements which indicates that individuals who wish to apply for a termination of investigation must not have a track record or record related to narcotics violations in the past. This requirement

(2011): 340

²⁶ Hikmawati, P. *Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika*. 2011, 340

²⁷ Hikmawati, P. *Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika*. 2011, 341

²⁸ Prasetya, D. D. *Perlindungan Hukum Terhadap Pelaku Dan Korban Penyalahgunaan Narkotika*. (Yogyakarta: Fakultas Hukum Universitas Atma Jaya Yogyakarta, 2017): 67

emphasizes that the perpetrator concerned must be an individual who has never been involved in unlawful actions or activities related to narcotics in the past. In other words, the perpetrator must not have a criminal record related before to narcotics. The emphasis on the past indicates that this requirement relates to incidents or acts of narcotics offenses that may have occurred before a certain period of time, which then becomes the basis for submitting a request to stop the investigation, thus an effort to provide a new opportunity to individuals who have not had a history of being involved in offenses. narcotics.²⁹ By fulfilling these requirements, individuals are given the opportunity to apply for termination of investigation, indicating that the regulation considers giving a second chance to those who have not been involved in similar crimes in the past.

Second, the Importance of the Non-Recidivist Category in law enforcement efforts in resolving drug crimes based on restorative justice as a principle or requirement that emphasizes the importance of non-recidivist status for perpetrators applying for termination of investigation. The explanation of the importance of the non-recidivist category can be outlined as follows: Non-Recidivist Status as a Primary Requirement because this requirement signifies that non-recidivist status, or never having been involved in previous violations, is a primary condition that must be met by perpetrators who wish to apply for termination of investigation. In other words, non-recidivist status becomes a determining factor in assessing the eligibility for termination of investigation.

The application of the recidivist concept refers to someone who has a history of previous violations or criminal actions. Therefore, with no prior history of drug violations, the perpetrator is considered a non-recidivist in the context of drug violations. Implications for the Eligibility of Termination of Investigation as a non-recidivist category are considered important because they indicate that the perpetrator has not been involved in previous drug violations. This can be interpreted as an indication that the perpetrator may not have a tendency to engage in similar crimes in the future, thus providing a basis for considering termination of investigation. The importance of understanding the perpetrator's track record to determine the non-recidivist category also reflects the importance of understanding the perpetrator's track record in responding to legal actions. By understanding that the perpetrator does not have a track record of drug violations, the legal system can provide different treatment and rehabilitation opportunities.

Third, Efforts to Provide Opportunities for Offenders Not Involved in Drug Crimes as an approach or requirement aimed at providing opportunities to individuals who have no history of previous drug violations. Providing a New Opportunity will reflect the spirit of giving a second chance or new opportunity to individuals who have not been involved in drug crimes before.³⁰ Dengan kata lain, peraturan ini menunjukkan niat untuk memberikan ruang bagi mereka yang belum memiliki catatan kriminal terkait narkoba. Konsep memberikan kesempatan pada pelaku yang belum terlibat dalam kejahatan narkoba juga berarti memberikan perlakuan yang lebih toleran terhadap mereka. Pendekatan ini dapat mencerminkan sikap hukum yang memandang bahwa individu tanpa riwayat pelanggaran narkoba sebelumnya mungkin memiliki potensi untuk direhabilitasi atau diberikan sanksi yang lebih ringan. Aspek keterbatasan jumlah narkoba berkaitan dengan keterbatasan jumlah narkoba yang dapat mengajukan permohonan penghentian penyidikan. Jumlah yang terbatas mungkin menunjukkan bahwa peraturan ini lebih ditekankan pada kasus-kasus di mana pelaku tidak terlibat secara signifikan dalam penyalahgunaan narkoba. Dengan menargetkan individu yang belum terlibat dalam kejahatan narkoba, persyaratan ini bisa

²⁹ Prasetya, D. D. *Perlindungan Hukum Terhadap Pelaku Dan Korban Penyalahgunaan Narkoba*. 2017, 67

³⁰ Sasangka, H. *Narkoba dan Psikotropika Dalam Hukum Pidana*. (Bandung: CV Mandar Maju. 2003): 52

dianggap sebagai pendekatan preventif untuk mengurangi risiko terlibat dalam tindakan kriminal narkotika.³¹

In other words, this regulation indicates an intention to provide space for those who do not have a criminal record related to narcotics. The concept of providing opportunities for offenders not involved in drug crimes also means offering more tolerant treatment to them. This approach may reflect a legal stance that views individuals without a history of narcotics violations as potentially rehabilitatable or deserving of lighter sanctions. The aspect of limiting the amount of narcotics relates to the restriction on the number of narcotics cases that can apply for termination of investigation. The limited number may suggest that this regulation is more focused on cases where the perpetrator is not significantly involved in drug abuse. By targeting individuals who have not been involved in drug crimes, this requirement could be considered a preventive approach to reduce the risk of involvement in narcotic criminal activities.³² This is in line with the principle of presumption of innocence, where everyone is presumed innocent until proven otherwise, so that efforts to prevent unreasonable prosecutions by emphasizing sufficient evidence, Article 109 of the Criminal Procedure Code seeks to prevent prosecutions that are unreasonable or based on evidence. the weak. This supports the integrity of the legal system and ensures that every prosecution is based on reliable facts and evidence.

The problem of stopping investigations and prosecutions is that the prosecutor has the authority to stop the investigation and prosecution process if the existing evidence is deemed inadequate.³³ This is a proactive step to prevent waste of legal resources and protect the rights of defendants from unfounded prosecution. Sustainability of a Fair Legal Process as a Principle focusing on sufficient evidence also guarantees the continuation of a fair legal process. By setting high standards for prosecution, the legal system strives to achieve justice and legal certainty. so as to support the principle of procedural justice, where each party has the right to defend themselves and participate in the legal process. Sufficient evidence is the basis for ensuring that every legal decision is based on fair and transparent procedures.³⁴

The problem of applying the principle of presumption of innocence is the main foundation in the criminal law system which emphasizes that every individual is presumed innocent until proven otherwise. The principle of presumption of innocence is an integral part of individual human rights. It guarantees that every person has the right to be presumed innocent until proven otherwise, thereby protecting the dignity and freedom of every individual. In the criminal law system, prosecutors are expected to be neutral and not take the lead in prosecuting the defendant.³⁵ By applying the principle of presumption of innocence, prosecutors are reminded not to file charges unless there is sufficient evidence to support the charges. so the prosecutor has the responsibility to prove the defendant's guilt, not the other way around. Termination of prosecution when evidence is insufficient reflects this responsibility and emphasizes that any prosecution efforts must be based on strong evidence. Termination of prosecution, as regulatelawad in Article 109 of the Criminal Procedure Code, is a proactive step taken by prosecutors to prevent injustice. This avoids the possibility of the defendant being entangled in claims that do not have adequate grounds. The principle of presumption of innocence protects defendants from prosecutions that are unwarranted or

³¹ Sasangka, H. *Narkotika dan Psikotropika Dalam Hukum Pidana*. 2003, 52

³² Sasangka, H. *Narkotika dan Psikotropika Dalam Hukum Pidana*. 2003, 155

³³ Melani. "Membangun sistem hukum pidana dari retributif ke restoratif". *Jurnal Litigasi* 6, No. 3. (2005): 81

³⁴ Melani. "Membangun sistem hukum pidana dari retributif ke restoratif". 2005, 81

³⁵ Lawalata, Jesylia Hillary, Titahelu, Juanrico Alfaromona Sumarezs, & Latupeirissa, Julianus Edwin. *Pendekatan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Narkotika Pada Tahapan Penyidikan*. TATOHI: Jurnal Ilmu Hukum 2, No. 1, (2022):107

based on weak evidence. Termination of prosecution is an instrument to ensure that every legal effort is based on justice and truth.³⁶

Article 109 of the Criminal Procedure Code establishes strict requirements for continuing the prosecution process against criminal perpetrators. This standard aims to ensure legal certainty, where legal action against an individual cannot be pursued without sufficient evidence. This creates a protective measure to prevent speculative prosecution or prosecution without strong evidence. The Heavy Consideration of Evidence implies that the evidence presented must carry significant weight. In other words, this evidence must provide strong conviction of the alleged perpetrator's involvement in the suspected crime. This standard helps ensure that the legal process is not based on weak or dubious evidence.

Protection against unwarranted criminalization by stipulating that a minimum of two strong pieces of evidence is required, this provision also aims to protect individuals from unwarranted criminalization. It avoids the possibility of someone being ensnared in the legal process without sufficient evidence to support the charges. Thus, preventing legal errors is in line with efforts to prevent legal mistakes. Requiring the presence of at least two strong pieces of evidence can help reduce the risk of law enforcement errors and ensure that the legal process is based on certainty and fairness. The high standard of evidence is also consistent with the presumption of innocence principle, where the defendant is considered innocent until proven otherwise. Requiring two strong pieces of evidence provides extra protection against the potential abuse of the legal process.

CONCLUSION

The ratio legis of the implementation of the Republic of Indonesia National Police Regulation Number 8 of 2021 reflects a restorative justice approach in the investigative stage of handling criminal offenses. It emphasizes the importance of rehabilitation and reconciliation as part of the investigation process, which reflects a paradigm shift in criminal law towards a more holistic and recovery-oriented approach. The regulation is also in line with the principles of positive criminal law, indicating that it complies with the existing legal framework and meets the necessary legal standards. Thus, Republic of Indonesia National Police Regulation Number 8 of 2021 provides a strong foundation for the application of restorative justice in handling criminal offenses in Indonesia, emphasizing the importance of rehabilitating perpetrators and reconciling with victims.

Republic of Indonesia National Police Regulation Number 8 of 2021 outlines specific requirements for handling criminal acts based on Restorative Justice, distinguishing between general and specific criteria. General requirements apply broadly to activities related to Criminal Investigation, while specific requirements target Investigation or Prosecution activities, particularly for drug-related crimes. The regulation emphasizes special attention to the status of drug abusers and victims in the termination of investigations. Consideration of drug abusers' status includes evaluating their willingness to undergo investigation termination and their history of drug abuse. Similarly, the regulation considers the psychological and physical impacts on victims of narcotics abuse, aiming for a holistic approach to narcotics crime resolution. Furthermore, the regulation takes into account the perpetrator's narcotics dependency, considering rehabilitation efforts and the type and amount of narcotics involved. This nuanced approach reflects a balance between punitive measures and rehabilitation. Additionally, the regulation prioritizes non-recidivist offenders in the termination of investigations, offering opportunities for individuals without prior drug offense records. It also sets limits on the type and quantity of narcotics involved, aiming to prevent unwarranted.

³⁶ Lawalata, Jesylia Hillary, Titahelu, Juanrico Alfaramona Sumarezs, & Latupeirissa, Julianus Edwin. *Pendekatan Restorative Justice Dalam Penyelesaian Perkara Tindak Pidana Narkotika Pada Tahapan Penyidikan*. 2022, 107

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