

Critiquing the Use of the Term Restorative Justice in Narcotics Cases

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Abstract

This study aims to evaluate the appropriateness of using the term “Restorative Justice” (RJ) in the settlement of narcotics cases at the investigation and inquiry stages in Indonesia, as regulated under the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice (INPR 8/2021). The background of this research arises from the conceptual tension between RJ’s core principles—namely, victim-offender dialogue and community involvement—and the actual practice in narcotics cases, where the offender is simultaneously the victim and no external harmed party is present. The urgency of this writing lies in the widespread use of RJ terminology in policy documents without adequate alignment to its philosophical foundations, which may create confusion in legal interpretation and practice. Using normative juridical methods, this research employs conceptual and statutory approaches to find that the substance of INPR 8/2021 is more aligned with Rehabilitation Theory (RT), particularly the medical model, which views the offender as a patient in need of treatment rather than as a morally responsible agent. This study provides a novel conceptual clarification by framing INPR 8/2021 within the medical model of rehabilitation rather than traditional RJ. This reinterpretation contributes to more accurate legal discourse and supports the development of coherent and normatively sound drug policy frameworks in Indonesia, ensuring that the use of legal terminology reflects the actual purpose and design of the policy.

Keywords: *Medical Model; Narcotics Abuse; Rehabilitation Theory; Restorative Justice*

1. INTRODUCTION

The just desert approach to sentencing—that is, punishment proportionate to the criminal act committed—reflects a retributive orientation that emphasizes equality between the offense and the sentence imposed.¹ However, this approach is often considered insufficient to meet the needs of justice and restoration for victims, especially in criminal justice systems that still operate within an adversarial model. In this model, the judicial process is more focused on the contestation between the prosecutor and the defendant, while the victim is often marginalized from the legal process.²

The idea of Restorative Justice (RJ) emerged as a more inclusive alternative with the aim of restoring the situation to its original state and involving all parties, including victims, in the case resolution process.³ This approach aligns with the principles of victimology, particularly in

¹ Jacob S. Bower-Bir, “Desert and Redistribution: Justice as a Remedy for, and Cause of, Economic Inequality,” *Policy Studies Journal* 50, no. 4 (2022), <https://doi.org/10.1111/psj.12439>.

² Robert E. Mackay, “The Shadows of Bloodfeud in the Development of Restorative Justice: Comparing the Histories and Literatures of Albania and Scotland,” in *Comparative Restorative Justice*, 2021, https://doi.org/10.1007/978-3-030-74874-6_5.

³ Jefferson Hakim and Azeem Marhendra Amedi, “Prosecutorial Application of Restorative Justice: Overview, Mechanism, and Commentary on Prosecution Cessation,” *Jurnal Hukum Dan Peradilan* 12, no. 2 (2023), <https://doi.org/10.25216/jhp.12.2.2023.319-346>.

providing space for the voices of victims to be heard within the criminal justice system. Additionally, RJ also reflects a paradigm shift from a purely punitive approach to restoring social relationships.⁴

However, the application of RJ in the context of drug crimes in Indonesia presents its set of problems. This is because narcotics offenses are essentially victimless crimes, meaning they are criminal acts without direct victims who are personally harmed. Therefore, the use of the term RJ in this context becomes conceptually and philosophically questionable.

One of the regulations governing RJ in Indonesia is the Regulation of the Chief of the Indonesian National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice (INPR 8/2021). This regulation allows for the application of restorative justice in narcotics cases for individuals categorized as "narcotics addicts or victims of narcotics abuse, provided they are not involved in the narcotics crime network as dealers or couriers."

The implementation of RJ based on INPR 8/2021 in narcotics cases has been realized in several instances, such as at the Majalengka Police Station against MMR (24 years old), a light methamphetamine user recommended for rehabilitation by the Integrated Assessment Team because he was not involved in the distribution network.⁵ Another example is at the Riau Islands Regional Police against Khairurrijal, a KPU member, who was declared an active user and underwent three months of rehabilitation at the Riau Islands BNN.⁶ Similarly, at the West Jakarta Metro Police, against musician Ardhito Pramono, who was declared a user by the Jakarta BNN and directed to undergo rehabilitation at the Drug Dependence Hospital (RSKO), with criminal proceedings halted according to the RJ mechanism.⁷

This provision offers an avenue for narcotics abusers to obtain a more just resolution through an RJ approach. It is relevant to the reality that such offenders are often also victims, either due to medical dependency or external pressure and coercion. Repairing the relationship between the offender and the victim or society is a key part of the RJ framework.⁸ However, in the context of narcotics abuse, the identification of the roles of offender and victim becomes problematic, as both may reside within a single individual. As a result, identifying the "harmed party" and initiating reconciliation becomes challenging. Therefore, it is essential to analyze the substantive meaning of RJ and to identify the most appropriate theoretical framework to understand the

⁴ Nicholas Dungey, "Foucault, Disciplinary Power And The Phenomenology Of Victimization And Restorative Justice," *Revista Internacional De Vitimologia E Justiça Restaurativa* 2, no. 1 (2024), <https://doi.org/10.58725/rivjr.v2i1.60>.

⁵ Jaja Sumarja, "Polres Majalengka Gelar Restorative Justice, Warga Yang Tersandung Kasus Narkoba Direhab," *TI Berita*, 2025, <https://malang.times.co.id/news/berita/9PzJJTlym/Polres-Majalengka-Gelar-Restorative-Justice-Warga-yang-Tersandung-Kasus-Narkoba-Direhab>.

⁶ Roland, "Polda Kepri Hentikan Proses Hukum Kasus Narkoba Anggota Bawaslu Kepri Khairurrijal," *Presmedia*, 2024, <https://presmedia.id/polda-kepri-hentikan-proses-hukum-kasus-narkoba-anggota-bawaslu-kepri-khairurrijal/>.

⁷ Tim Detikcom, "Jejak Terkini Ardhito Pramono Di Kasus Narkoba Yang Disetop Polisi," *Detiknews*, 2022, <https://news.detik.com/berita/d-5985195/jejak-terkini-ardhito-pramono-di-kasus-narkoba-yang-disetop-polisi>.

⁸ Sebastián Galleguillos and Ulda O. Figueroa, "Is It Part of My Job? Prosecution and Restorative Justice in Chile," *Criminology and Criminal Justice*, 2023, <https://doi.org/10.1177/17488958231175994>.

regulatory provisions in INPR 8/2021, especially given that these provisions do not entirely reflect the understanding of RJ that emphasizes the relationship between offender and victim.

Various studies have explored the application of RJ justice in cases of drug abuse, both from a practical perspective and the urgency of its normative regulation. Karmana et al. found that RJ had been implemented in the environment of the Bali Regional Police Directorate of Narcotics Investigation, but emphasized the importance of strengthening the legal basis through formal legislation.⁹ Patoni, Abdul Gani, and Rasito argue that drug users should be treated as victims more deserving of rehabilitation than punishment, in line with RJ values.¹⁰ Wahid and Rafiqi proposed the establishment of a rehabilitation center as a concrete form of RJ while also addressing the issue of overlapping authority between institutions.¹¹ Daulay emphasized the importance of legal awareness and synergy among stakeholders as the key to the success of RJ.¹² Almond and Zulfa associate RJ with efforts to reduce prison overcapacity by granting prosecutors discretion to resolve drug cases at the prosecution stage.¹³ Meanwhile, Zainab Ompu Jainah believes that RJ can be applied at the investigation stage if the perpetrator is an addict or a victim of abuse, provided that the evidence is limited and they are not involved in a drug trafficking network.¹⁴

However, these various studies have not critically examined the conceptual problems in applying RJ to drug cases—particularly the difficulty in clearly distinguishing between perpetrators and victims—even though reconciliation between the two is a key feature of RJ. Based on the description, there is still a legal vacuum, particularly in the application of the RJ concept to drug abuse. This research aims to deeply examine the conceptual understanding of restorative justice and analyze how the meaning of recovery can be interpreted contextually in cases of drug abuse. This study explores the essence and core values of RJ, which serve as the foundation for interpreting the provisions in INPR 8/2021. Thus, this research offers novelty in the form of a relevant and contextual reinterpretation of the meaning of recovery for drug users—an aspect that has not been widely highlighted in previous studies. Various previous studies have discussed the implementation and policy aspects of RJ in the context of drug abuse, but none have

⁹ Sienny Karmana et al., “Implementasi Restorative Justice Bagi Pelaku Penyalahgunaan Narkotika Di Direktorat Reserse Narkoba Polda Bali,” *Jurnal Interpretasi Hukum* 4, no. 1 (2023), <https://doi.org/https://doi.org/10.55637/juinhum.4.1.5805.68-73>.

¹⁰ Patoni Patoni, Ruslan Abdul Gani, and Rasito Rasito, “Restorative Justice Dalam Penegakan Hukum Tindak Pidana Penyalahgunaan Narkotika Di Kecamatan Senyerang Tanjung Jabung Barat,” *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2, no. 5 (2023), <https://doi.org/10.54443/sibatik.v2i5.846>.

¹¹ Deny Noer Wahid and Ilham Dwi Rafiqi, “Rumah Rehabilitasi Bagi Penyalah Guna Narkoba: Sebuah Konsep Untuk Restorative Justice,” *Jurnal Hukum Dan Etika Kesehatan*, 2023, <https://doi.org/10.30649/jhek.v3i1.112>.

¹² Husnil Mubarak Daulay, “Implikasi Kebijakan Keadilan Restorativ Justice Terhadap Penyalahgunaan Narkoba Jenis Sabu Dihubungkan Dengan Efektivitas Pemberantasan Tindak Pidana Narkoba,” *Jurnal Impresi Indonesia* 1, no. 11 (2022), <https://doi.org/10.58344/jii.v1i11.623>.

¹³ Mustaqim Almond and Eva Achjani Zulfa, “Optimalisasi Pendekatan Restorative Justice Terhadap Victimless Crime (Penyalahgunaan Narkotika) Sebagai Solusi Lapas Yang Over Kapasitas,” *Jurnal Pendidikan Tambusai* 6, no. 1 SE-Articles of Research (2022), <https://doi.org/https://doi.org/10.31004/jptam.v6i1.3684>.

¹⁴ Suhery Zainab Ompu Jainah, “Analisis Penanganan Tindak Pidana Narkotika Melalui Keadilan Restoratif (Restorative Justice) Berdasarkan Peraturan Polri Nomor 8 Tahun 2021 (Studi Pada Satuan Reserse Narkotika Polres Metro),” *Pendidikan Dan Konseling* 4 (2022).

critically reviewed the appropriateness of using the term RJ conceptually and philosophically in cases where the perpetrator is also a victim. Therefore, this research offers novelty in the form of a conceptual reinterpretation of this approach through the analytical lens of rehabilitation theory and the medical model.

2. METHOD

This research employs a normative juridical method that incorporates both a statutory approach and a conceptual approach.¹⁵ The specifications of this research are descriptive-analytical, aiming to systematically describe the regulation of RJ in INPR 8/2021, as well as analyze its conformity with RJ theory and rehabilitation theory, particularly the medical model. The data sources used are secondary data, which include primary legal materials such as regulations and court decisions, as well as secondary legal materials in the form of literature, scientific journals, and related academic documents. The data collection method was conducted through library research, while data analysis was carried out qualitatively to identify gaps between normative provisions and theoretical foundations, as well as to formulate a reinterpretation of the most appropriate legal approach in addressing drug abuse.

3. RESULTS AND DISCUSSION

3.1 Exploring the Concept of Restorative Justice to Discover Its Meaning and Foundational Values

In criminal law enforcement, Eva Achjani Zulfa emphasizes that the state's approach to crime aims to maintain social order by placing the state as the investigator, prosecutor, court, and executor of decisions within the criminal justice system.¹⁶ In the context of the dominance of this retributive approach, RJ emerged as a response that rejects the one-way punitive approach, prioritizing the reciprocal relationship between the offender and the victim and the reaffirmation of their shared values.^{17 18}

The retributive justice approach is based on the idea of just desert, which means giving punishments proportionate to the level of moral or legal wrongdoing, without considering rehabilitation or usefulness.¹⁹ The basis for punishment can stem from the belief that the

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi, 13th Ed, Prenadamedia*.

¹⁶ Eva Achjani Zulfa, "Implementation of Restorative Justice Principles in Indonesia: A Review," *International Journal of Science and Society* 2, no. 2 (2020), <https://doi.org/10.54783/ijssoc.v2i2.161>.

¹⁷ Michele R. Decker et al., "Defining Justice: Restorative and Retributive Justice Goals Among Intimate Partner Violence Survivors," *Journal of Interpersonal Violence* 37, no. 5–6 (2022), <https://doi.org/10.1177/0886260520943728>.

¹⁸ Mengyao Li, Bernhard Leidner, and Silvia Fernandez-Campos, "Stepping into Perpetrators' Shoes: How Ingroup Transgressions and Victimization Shape Support for Retributive Justice through Perspective-Taking With Perpetrators," *Personality and Social Psychology Bulletin* 46, no. 3 (2020), <https://doi.org/10.1177/0146167219858652>.

¹⁹ Oliver Nnamdi Okafor, "Shaming of Tax Evaders: Empirical Evidence on Perceptions of Retributive Justice and Tax Compliance Intentions," *Journal of Business Ethics* 182, no. 2 (2023), <https://doi.org/10.1007/s10551-021-05011-y>.

perpetrator truly deserves to be punished,²⁰ with the primary focus on society's response to past law violations.²¹

In contrast, RJ rejects the centralization of state authority in conflict resolution. In the conventional criminal justice system, the conflict between the perpetrator and the victim is entirely taken over by the state, resulting in the victim's role being neglected and the perpetrator losing the opportunity to atone for their actions. RJ returns some control to the victim and encourages direct participation between the victim and the perpetrator in a dialogic process aimed at restoring losses and dignity. This approach focuses not only on punishment but also on the perpetrator's accountability, social reintegration, and recidivism prevention.²²

Nils Christie stated that the state has usurped the community's role in resolving conflicts, replacing it with a rigid and impersonal system. Within the framework of restorative justice, crime is understood as a conflict between individuals, and the responsibility for repairing it lies with the parties involved, not the state. This approach is prospective and recovery-oriented, not retaliatory.²³ Thus, RJ allows victims and affected communities to lead the healing process and seek meaningful resolutions.²⁴

The initial concept of RJ was formulated by Tony F. Marshall in 1996 as a process involving all parties affected by a crime to jointly formulate a resolution. Howard Zehr expanded on this idea by emphasizing the importance of involving as many affected individuals as possible to collectively acknowledge and respond to the harm and responsibility. John Braithwaite added that RJ must restore social relations, strengthen community life, and avoid negative labeling of offenders, emphasizing the values of responsibility, forgiveness, and social reintegration.²⁵

RJ did not originate from modern practices but is rooted in the traditions of conflict resolution among indigenous communities such as the Māori in New Zealand and indigenous communities in Canada, which emphasize restoring social relationships rather than state punishment.²⁶ Since the 1970s, this approach has developed in response to the failures of the conventional criminal justice system, particularly in meeting the needs of victims. Models such as victim-offender mediation and family conferencing are beginning to be implemented in the context of child

²⁰ Julia Marshall, Anton Gollwitzer, and Paul Bloom, "Why Do Children and Adults Think Other People Punish?," *Developmental Psychology* 58, no. 9 (2022), <https://doi.org/10.1037/dev0001378>.

²¹ Harvey Charles Peters and Melissa Luke, "Social Justice in Counseling: Moving to a Multiplistic Approach," *Journal of Counselor Leadership and Advocacy* 8, no. 1 (2021), <https://doi.org/10.1080/2326716X.2020.1854133>.

²² College of Policing Limited, "Restorative Justice Evidence Briefing," *College of Policing*, 2022, <https://www.college.police.uk/>.

²³ Veronika Szontagh, "The Chances of Restorative Justice in Hate Crime Cases," *Hungarian Journal of Legal Studies* 61, no. 3 (2020), <https://doi.org/10.1556/2052.2020.00345>.

²⁴ Peters and Luke, "Social Justice in Counseling: Moving to a Multiplistic Approach."

²⁵ Szontagh, "The Chances of Restorative Justice in Hate Crime Cases."

²⁶ Jeremy Simons, "Restorative Justice, Social Cohesion, and Preventing and Countering Terrorism and Violent Extremism: Time for a New Zealand Praxis?," *National Security Journal* 5, no. 1 (2023), <https://doi.org/10.36878/nsj20230329.09>.

rehabilitation and justice, including for cases of drug abuse, with a focus on recovery, personal responsibility, and the social reintegration of offenders.^{27 28}

In Indonesia, RJ is exemplified in the Gampong Customary Court in Aceh. This court is a dispute resolution mechanism rooted in local values and institutionalized through Qanun and statutory regulations in Aceh. The Gampong customary court plays a role in maintaining social harmony through open and cost-free deliberations.²⁹ This entity reflects the RJ principle, emphasizing consensus and the restoration of social relations.³⁰ This role is supported by Law No. 11 of 2006 on Aceh Governance, Qanun Aceh No. 9 of 2008 on the Development of Customary Life and Traditions, and Qanun Aceh No. 10 of 2008 on Customary Institutions, which recognize the function of customary institutions in resolving certain cases in Aceh.³¹

While the long history of RJ in various countries is important to understand, its primary relevance in the Indonesian context is how these principles can be adapted to address the challenges of the criminal justice system, particularly in narcotics cases. The dominance of the retributive approach, which emphasizes imprisonment, has proven ineffective in addressing the problem of drug abuse. Therefore, RJ can be a more humane and solution-oriented alternative approach, with recovery, responsibility, and reintegration as the main focus in resolving cases.

Zehr views crime as a form of harm, trauma, and injustice that must be addressed through dialogue, openness, and empathy. He argues that RJ is not merely a method but a way of life grounded in respect for human relationships.³² This approach avoids judgment and promotes healing, especially by focusing on four aspects: relationships, relevance, responsibilities, and restoration.³³

Meanwhile, Braithwaite reminds us that RJ's success is not merely measured by statistical outcomes such as reduced recidivism but by the quality of its implementation. Through his theory of reintegrative shaming, he shows that constructive shame—not stigmatizing shame—can help offenders make amends. He also highlights the importance of the connection between

²⁷ Krystina Shpak, Alexandra Gracheva, and Olga Golovko, "Restorative Juvenile Justice," *Law and Innovative Society*, no. 2 (17) (2021), [https://doi.org/10.37772/2309-9275-2021-2\(17\)-24](https://doi.org/10.37772/2309-9275-2021-2(17)-24).

²⁸ Golda Sahoo, "A Victim-Sensitive Approach towards Victim - Offender Mediation in Crimes: An Analysis," *Revista Brasileira de Alternative Dispute Resolution* 4, no. 8 (2023), <https://doi.org/10.52028/rbadr.v4i8.7>.

²⁹ Misran Ramli et al., "State, Custom, and Islamic Law in Aceh: Minor Dispute Resolution in the Perspective of Legal Pluralism," *Samarah* 8, no. 2 (2024): 872–90, <https://doi.org/10.22373/sjhk.v8i2.15924>.

³⁰ Marlina and Mahmud Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh," *Cogent Social Sciences* 10, no. 1 (2024), <https://doi.org/10.1080/23311886.2024.2347410>.

³¹ Mohd. Din and Darmawan, "Restorative Justice in the Settlement of Cases Through Formal Traditional Institutions in the Gayo Community of Aceh Province," in *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, vol. 549, 2021, <https://doi.org/10.2991/assehr.k.210506.019>.

³² Steve Kirkwood, "Howard Zehr, Restorative Justice: Insights and Stories from My Journey," *The International Journal of Restorative Justice* 6, no. 3 (2023), <https://doi.org/10.5553/tijrj.000178>.

³³ Giovanni P. Dazzo, "On Restorative Validity: Reorienting Inquiry Toward Peace, Justice, and Healing," *Qualitative Report* 29, no. 2 (2024), <https://doi.org/10.46743/2160-3715/2024.5690>.

shame, ethical identity, and social recognition in crime prevention, including white-collar crime.³⁴

The European Forum for Restorative Justice outlines seven RJ principles, including the requirement of voluntariness, honest communication, participant equality, and tailoring the process to the needs and cultural background of each party. Facilitators must remain neutral, and agreements must be followed with high commitment.³⁵ Zehr reiterates that RJ places the victim, offender, and community as the main actors in the recovery process. The state acts only as a facilitator and protector of this process. RJ's focus is to restore, not to retaliate or punish, by involving all parties equally and rebuilding damaged relationships.³⁶ This process encourages acknowledgment of wrongdoing, apologies, reconciliation, and the personal transformation of the offender. Sanctions are imposed only if necessary, and the process must proceed without motives of vengeance or excessive social control.³⁷

As Zehr and Mika state, RJ prioritizes the healing of harm and social relationships, requiring the offender to take active responsibility rather than merely serve a state-imposed punishment.³⁸ This process is guided by trained facilitators and may take the form of mediation, community conferencing, or dialogue circles.³⁹ If properly implemented, RJ has proven effective in preventing reoffending, fulfilling victims' needs, and encouraging offender accountability, even in serious cases.⁴⁰

In the Nova Scotia Program, it is stated that RJ strengthens public trust in the legal system, reduces trauma, and provides cultural meaning in conflict resolution.⁴¹ Developed models such as restorative conferencing, victim-offender dialogue, restorative circles, and family group decision-making, as well as RJ implementation in schools and prisoner reintegration, demonstrate that RJ continues to evolve as an adaptive and diverse recovery approach.⁴²

By positioning the victim equally in the process, RJ significantly shifts the paradigm of the criminal justice system. The process is no longer about determining guilt or innocence but about

³⁴ John Braithwaite, "Restorative Justice and Reintegrative Shaming," in *Criminal Justice Theory, Volume 26*, vol. 28 (Routledge, 2020), 281–308, <http://johnbraithwaite.com/wp-content/uploads/2021/07/restorative-justice-and-reintegrative-shaming.pdf>.

³⁵ Florian Bonensteffen, Sven Zebel, and Ellen Giebels, "Corrigendum: Sincerity Is in the Eye of the Beholder: Using Eye Tracking to Understand How Victims Interpret an Offender's Apology in a Simulation of Victim–Offender Mediation (*Frontiers in Psychology*, (2020), 11, (835), 10.3389/fpsyg.2020.00835)," *Frontiers in Psychology*, 2020, <https://doi.org/10.3389/fpsyg.2020.01943>.

³⁶ Howard Zehr, *The Little Book of Restorative Justice. Revised and Updated, The Little Book of Plagiarism*, 2015.

³⁷ Zehr.

³⁸ Howard Zehr and Harry Mika, "Fundamental Concepts of Restorative Justice," in *Restorative Justice*, 2019, <https://doi.org/10.4324/9781351150125-4>.

³⁹ Justice and Public Safety, *Framework for Restorative Justice Practices in Conflict and Crime* (New Brunswick Canada, 2022).

⁴⁰ United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes Second Edition Criminal Justice Handbook Series* (Vienna: United Nations, 2020).

⁴¹ Safety, *Framework for Restorative Justice Practices in Conflict and Crime*.

⁴² Restorative Justice Colorado, "Practices & Models," 2025, <https://rjcolorado.org/restorative-justice-defined/practices-and-models/>.

healing wounds, uncovering causes, and preventing recurrence.⁴³ RJ principles emphasize voluntary communication, balance between victim and offender rights, and healing through interactive dialogue. However, implementation must be carefully prepared, especially where victims are vulnerable and offenders pose a risk of repeat violence. RJ must not be a substitute for court proceedings where offenders deny responsibility.⁴⁴

By tracing its historical roots, philosophical foundations, and various models of implementation, it is clear that RJ is not merely an alternative case-resolution method within the criminal justice system but also an approach that places restoration of social relationships, acknowledgment of responsibility, and victim participation as its core values. This form of justice is grounded in the view of crime as a social wound, not merely a legal violation, thus requiring active engagement from the offender, victim, and community in its recovery. By emphasizing empathy, deliberation, and social reintegration, RJ promises a more humane and contextual approach to addressing the harms of crime and opens space for more just and human-centered resolutions.

In situations like this, the RJ approach needs to be adapted to identify forms of social or personal harm that can be restored, as well as to contextually determine who plays the role of victim, such as the affected family, community, or society. This challenge is important to ensure that RJ principles remain relevant and applicable, even in cases that do not involve conventional victims.

The next section will examine the compatibility of the RJ concept with the provisions and practices of resolving narcotics cases in Indonesia. The focus is on how national legal frameworks respond to the ideas of rehabilitation and perpetrator accountability in the context of drug abuse, which does not always involve direct victims. This analysis is important to assess whether RJ can be meaningfully applied or whether it requires a more suitable alternative framework, such as a rehabilitation-based approach.

3.2 Reassessing INPR 8/2021: Restorative or Rehabilitative Justice?

In Indonesia, narcotics-related criminal acts are governed by Law No. 35 of 2009 concerning Narcotics (Narcotics Law), which explicitly emphasizes the role of rehabilitation as part of the response to addicts and victims of narcotics abuse. This is reflected in Article 54, which states that “narcotics addicts and victims of narcotics abuse are obliged to undergo medical and social rehabilitation”.⁴⁵ This provision reflects legal awareness that the use of narcotics not only violates the law but also harms the user’s physical and psychological well-being.

According to data from the Directorate General of Corrections, as of 2024, the total number of prison inmates in Indonesia has reached 275,137 persons, far exceeding the ideal capacity of

⁴³ Roger Graef, *Why Restorative Justice? Repairing the Harm Caused by Crime* (London: Calouste Gulbenkian Foundation, 2000).

⁴⁴ Graef.

⁴⁵ Erwin Susilo, Eddy Daulatta Sembiring, and Wigati Taberi Asih, “Penerapan Teori Pada Hakikatnya Dalam Menafsirkan Tindak Pidana Narkotika,” *Nagari Law Review* 8, no. 1 (2024): 51–64, <https://doi.org/https://doi.org/10.25077/nalrev.v.8.i.1.p.51-64.2024>.

only 145,518. Of this number, the majority are inmates convicted in narcotics cases, namely 139,088 persons, representing nearly half of the total prison population. The dominance of narcotics cases is also reflected in the tragedy of the fire at the Tangerang Penitentiary, where 42 of the 48 casualties were narcotics-related inmates.⁴⁶ This data shows that the issue of overcrowding is closely related to penal policies that continue to prioritize imprisonment—particularly in narcotics cases, which should instead be addressed through rehabilitative and non-custodial approaches for users, not dealers or traffickers.

Given this situation, there is consensus that cases involving narcotics users (not traffickers) need not proceed to court. The Indonesian National Police's initiative to resolve cases through INPR 8/2021 is a commendable policy that provides tangible benefits for the state—especially in addressing prison overcrowding, economic efficiency, and recovery for the users themselves.

INPR 8/2021 specifically regulates the application of the restorative justice approach in narcotics cases, but it is limited to only applying to drug addicts or victims of drug abuse who meet certain criteria. The provisions in Article 7, letter b, and Article 9, paragraph (1), state that restorative justice is possible if the perpetrator is an addict or a victim of drug abuse, was arrested with limited evidence for one day's use, has a positive urine test result, is not involved in a drug trafficking network, has undergone an integrated assessment, and is willing to cooperate with the investigator. Unlike the general requirements of restorative justice, which stipulate peace and compensation for the victim as regulated in Article 6, paragraph (1) letters a and b, this provision is excluded in the context of narcotics cases. The primary goal of the restorative approach in this policy is the rehabilitation of the perpetrator, not compensation for the victim. Articles 15 and 16 also allow for the termination of investigation or inquiry by submitting a request to the competent official and conducting a special case conference. Thus, restorative justice in narcotics cases is focused on efforts for rehabilitation and preventing recidivism, rather than simply punishment.

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⁴⁶ Novianto Murti Hantoro and Rachmi Suprihartanti Septiningtyas, "Upaya Penanganan Overkapasitas Pada Lembaga Pemasyarakatan," *Info Singkat XVI*, no. 21 (2024), https://berkas.dpr.go.id/pusaka/files/info_singkat/Info_Singkat-XVI-21-I-P3DI-November-2024-187.pdf.

also allow for the termination of investigation or inquiry by submitting a request to the competent official and conducting a special case conference. Thus, restorative justice in narcotics cases is focused on efforts for rehabilitation and preventing recidivism, rather than simply punishment.

The implementation of INPR 8/2021 RJ in narcotics cases has been realized in several instances, such as at the Majalengka Police with MMR (24), a light-category meth user recommended for rehabilitation by the Integrated Assessment Team for not being involved in distribution networks;⁴⁷ at the Riau Islands Regional Police involving Election Commission official Khairurrijal, who was declared an active user and underwent three months of rehabilitation at the Riau Islands BNN;⁴⁸ and at the West Jakarta Metro Police involving musician Ardhito Pramono, who was declared a user by the Jakarta BNN and directed to rehabilitation at the Drug Dependency Hospital, with criminal proceedings halted in accordance with RJ mechanisms.⁴⁹

Although INPR 8/2021 represents progress by offering a fairer and more humane approach to handling narcotics cases through the RJ mechanism, it must be conceptually scrutinized. As explained earlier, RJ is not merely a technical alternative for criminal case settlement but a paradigm based on the understanding that crime is a social wound, not merely a legal violation against the state. Therefore, RJ's fundamental values include restoring interpersonal relationships, the offender's moral acknowledgment of responsibility, and the active involvement of the victim and community in the recovery process.

In narcotics cases, particularly where the offender is an addict or victim of abuse, the RJ approach as outlined in INPR 8/2021 indeed demonstrates a strong orientation toward rehabilitation and social reintegration. However, conceptually, the application of RJ in this context does not fully reflect the participatory aspect that characterizes RJ. This limitation is due to the unique position of narcotics users, who are seen as both perpetrators and victims, thereby eliminating the dialogic element that is the hallmark of RJ. In fact, as emphasized by Zehr and Braithwaite, the presence of the victim as one who suffers social harm and the involvement of both offender and victim with the community in the recovery process are essential elements of RJ. Hence, even if they share the same final goal—recovery—the meaning of recovery in narcotics cases should not be categorized as RJ.

Accordingly, the approach used in INPR 8/2021 is more appropriately classified as an implementation of Rehabilitation Theory (RT). RT views punishment as a means to correct the offender's behavior and prevent recidivism.⁵⁰ This idea is rooted in the rehabilitative ideal, developed in the United States, which views crime as the result of environmental, social, or

⁴⁷ Sumarja, "Polres Majalengka Gelar Restorative Justice, Warga Yang Tersandung Kasus Narkoba Direhab."

⁴⁸ Roland, "Polda Kepri Hentikan Proses Hukum Kasus Narkoba Anggota Bawaslu Kepri Khairurrijal."

⁴⁹ Detikcom, "Jejak Terkini Ardhito Pramono Di Kasus Narkoba Yang Disetop Polisi."

⁵⁰ Lihat Skylar Davidson, "Preventing Crime Through Rehabilitation," The Alliance for Citizen Engagement, 2022, <https://ace-usa.org/blog/research/research-criminaljustice/preventing-crime-through-rehabilitation/>.

psychological factors, rather than merely the evil intent of individuals. RT emphasizes the view that human actions are determined by external factors.⁵¹

Lisa Forsberg and Thomas Douglas outline five forms of rehabilitation: (1) as recidivism prevention, (2) as harm reduction, (3) as psychological therapy, (4) as moral enhancement of the offender, and (5) as the restoration of broken social relationships—the latter overlapping with the RJ concept.⁵² Edgardo Rotman, in *Beyond Punishment*, maps the history of rehabilitation into four models: first, religious rehabilitation in early prison systems; second, psychiatric-psychological models; third, social learning models; and fourth, rights-based rehabilitation, which emphasizes the state's moral obligation to ensure inmates' social reintegration.⁵³ The fourth model is most relevant to narcotics abuse in Indonesia, as it places addicts as subjects of state protection in need of reintegration, not merely subjects of punishment.

More specifically, this approach aligns with the medical model, in which the offender is positioned as a “sick person” who needs to be treated.⁵⁴ In this model, deviant behavior is considered a symptom of psychosocial disorder⁵⁵ and the primary solution is rehabilitation—not incarceration.⁵⁶ This model not only focuses on the individual's medical recovery but also integrates various interdisciplinary approaches, including diagnosis, crime-risk prediction, and the selection of appropriate treatment methods.⁵⁷

The medical model recognizes that the causes of crime do not solely lie in individual choices but also in external conditions such as poverty, trauma, or mental illness. Hence, the proposed solutions are holistic and prioritize early intervention and individualized treatment through therapy, education, counseling, and even housing and economic assistance.⁵⁸

The history of the medical model also influenced correctional policies in the United States during the 20th century,⁵⁹ including the parole system, which evaluates inmates' readiness to re-enter

⁵¹ Eugenia Zivanai and Gilbert Mahlangu, “Digital Prison Rehabilitation and Successful Re-Entry into a Digital Society: A Systematic Literature Review on the New Reality on Prison Rehabilitation,” *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2116809>.

⁵² Lisa Forsberg and Thomas Douglas, “What Is Criminal Rehabilitation?,” *Criminal Law and Philosophy* 16, no. 1 (2022), <https://doi.org/10.1007/s11572-020-09547-4>.

⁵³ Fergus McNeill, “Probation, Rehabilitation and Reparation,” *2nd Annual Martin Tansey Memorial Lecture*, no. May (2009).

⁵⁴ M. E. Wolfgang, “The Medical Model versus the Just Deserts Model,” *Bulletin of the American Academy of Psychiatry and the Law* 16, no. 2 (1988), <https://scholar.archive.org/work/dnwe4m7c4ffurmwwwarxhe4eha/access/wayback/http://jaapl.org/content/jaapl/16/2/111.full.pdf>.

⁵⁵ Michael King, *The Framework of Criminal Justice, The Framework of Criminal Justice*, 2023, <https://doi.org/10.4324/9781003361534>.

⁵⁶ Febby Mutiara Nelson, “Due Process Model Dan Restorative Justice Di Indonesia: Suatu Telaah Konseptual,” *Jurnal Hukum Pidana Dan Kriminologi* 1, no. 1 (2020), <https://doi.org/10.51370/jhpk.v1i1.5>.

⁵⁷ Kusal Kavinda Amarasinghe, “Characteristics and Practical Applicability of Selected Criminal Justice Models: A Review on Sri Lankan Criminal Procedure,” *Hulftsdorp Law Journal*, 2020, <https://scholar.google.com/scholar?oi=bibs&cluster=4593685433301872368&btnI=1&hl=en>.

⁵⁸ Adam J. McKee, “Medical Model,” Doc's CJ Glossary, 2023, <https://docmckee.com/cj/docs-criminal-justice-glossary/medical-model-definition/>.

⁵⁹ Bruce Western, Leonard Lopoo, and Becky Pettit, *Punishment and Inequality in America, Punishment and Inequality in America*, 2006, <https://doi.org/10.5860/choice.44-4178>.

society based on recovery parameters.⁶⁰ In juvenile justice systems, the model evolved into an approach that views delinquency as a symptom of internal conflict, with interventions directed toward therapy focused on self-understanding.⁶¹

In analyzing the application of RJ to narcotics abuse in Indonesia, it is important to first understand that not all non-punitive approaches can be immediately classified as RJ. Conceptual confusion often arises when policies aiming to recover offenders—without actively involving victims and the community—are still labeled as RJ. In fact, RJ has a distinct value structure and principles, especially the involvement of all affected parties in the recovery process. Conversely, RT, in its derivative form, the medical model, focuses more on individual recovery from a condition without requiring dialogue or victim participation. Therefore, to assess whether INPR 8/2021 truly represents RJ or is more accurately aligned with RT, the following presents a comparative table outlining the conceptual and operational differences between the two approaches.

Table 1. Comparison between Restorative Justice and Rehabilitation Theory

Aspect	Restorative Justice	Rehabilitation Theory
Purpose	Restoration of social relationships and interpersonal justice	Restoration of the offender's psychological, social, and physical condition
Perception of Offender	Offender is seen as a moral agent responsible for their actions	Offender is seen as a sick individual or a victim
Role of Victim	Actively involved in the healing process	Not directly involved as the offender is also viewed as a victim
Focus of the Process	Dialogue among offender, victim, and community	Diagnosis, prediction, and individual treatment
Community Participation	High, essential to the process	Low or unnecessary
Form of Accountability	Admission of guilt, apology, reconciliation	Therapy, medical and social rehabilitation
Role of the State	Facilitator of the process, not the primary decision-maker	Service provider and process controller
Philosophical Foundation	Crime as a social wound that must be healed	Crime as a result of disorder or external factors
Conceptual Weakness	Difficult to apply when the	Does not adequately address

⁶⁰ APC SLM Law, "The Shift Towards Rehabilitation Over Punishment In Criminal Justice," 2024, <https://www.silvalegal.com/the-shift-towards-rehabilitation-over-punishment-in-criminal-justice/>.

⁶¹ Leanne Dowse, Eileen Baldry, and Phillip Snoyman, "Disabling Criminology: Conceptualising the Intersections of Critical Disability Studies and Critical Criminology for People with Mental Health and Cognitive Disabilities in the Criminal Justice System," *Australian Journal of Human Rights* 15, no. 1 (2009), <https://doi.org/10.1080/1323238X.2009.11910860>.

	offender is also the victim	social relationships
Contextual Relevance in Narcotics Cases	Less suitable when the offender is the victim and there is no external victim	Highly relevant for offenders who are users and victims

Source: Researcher's Elaboration, 2025.

Table 1 shows a comparison between the RT and RJ approaches, reflecting fundamental differences in their respective goal orientations, actor involvement, and philosophical underpinnings. RJ emphasizes restoring social relationships damaged by criminal acts, with the active participation of the offender, victim, and community as the main actors in the resolution process. Conversely, RT focuses more on restoring the perpetrator's psychological, social, and physical condition through professional intervention, without requiring the involvement of victims or the community. Within the framework of restorative justice, the perpetrator is viewed as a moral agent who must be held accountable for their actions, while in therapeutic justice, the perpetrator is seen more as an individual who needs care due to certain disorders or vulnerabilities.

As shown in the table, the approach used by INPR 8/2021 more closely reflects a medical rehabilitation model rather than the classic restorative justice framework. Therefore, the use of the term "RJ" in this context is not only terminologically inaccurate but also risks misleading the direction of criminal law policy. In cases where the perpetrator is also the victim—as is often the case with drug abuse—RT becomes more normatively appropriate because it can accommodate the therapeutic needs of the perpetrator without requiring an external victim or community involvement. Thus, normative clarity is critical for guaranteeing coherence in policy formulation and implementation.

Based on this comparison, it can be understood that although INPR 8/2021 claims to adopt the RJ approach, substantively, the more accurate framework is RT in the form of the medical model. This is because the primary focus of the policy is the individual recovery of addicts through medical and social rehabilitation, not through dialogical processes with victims or community members. Accordingly, the use of the term RJ in this context requires reconsideration in order to avoid conceptual confusion.

The application of RT through the medical model is the most appropriate course in handling narcotics abuse, as it better reflects the reality of offenders as individuals suffering from medical, psychological, or social conditions. This approach views addicts as individuals seeking recovery and reintegration, not as criminals deserving of punishment. Its primary focus lies in the recovery of individual conditions through rights-based rehabilitation services supported by a comprehensive state protection system. This framework does not require the involvement of external victims, as RJ does, making it more aligned with the nature of narcotics cases, in which offenders are often victims of addiction or structural pressures. The use of RT enables more

accurate policy development and avoids the conceptual inaccuracy associated with applying RJ in contexts that are not fully relevant.

4. CONCLUSION

Based on the analysis above, it can be concluded that although INPR 8/2021 normatively uses the term RJ, the approach applied in resolving cases of drug abuse is more accurately classified as the implementation of RT based on a medical model. This is because the main focus of this policy lies in the recovery of individual drug users through medical and social rehabilitation, without the direct involvement of victims or the community, as is common in the classic RJ concept. The novelty of this research lies in the conceptual argument that INPR 8/2021 is more accurately categorized as a form of state protection for vulnerable citizens, rather than simply as an instrument to divert from criminal sanctions. Therefore, it is necessary to strengthen the legal basis that explicitly places rehabilitation as an integral part of a humanistic and restorative criminal justice policy. This research is expected to serve as a conceptual reference for policymakers, law enforcement officials, and academics in formulating more targeted drug control policies, not only in terms of legal effectiveness but also from a humanitarian perspective. The consequences of misusing this term can affect the accuracy of legal policies and the legitimacy of case resolution in the field.

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