

# Realizing Restorative Justice through Rehabilitation for Narcotics Abuse as an Implementation of The Principle of Dominus Litis\*

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## Abstract

Rehabilitation is one form of restorative justice in Indonesia's criminal justice system. The rehabilitation practice is also able to reach drug abusers. The condition of correctional institutions that are overcapacity is the reason for the importance of alternative punishment for narcotics cases. On the other hand, narcotics are the category of victimless crimes, so the victims and perpetrators must be protected to reduce other impacts. This research uses the juridical-normative method by studying legislation and principles of criminal law. The results represent that the prosecutor's office has an important role in realising restorative justice in drug cases based on the dominus Litis principle. The use of rehabilitation is limited to drug abusers who commit criminal acts against themselves. It is still necessary to reorient the policy of terminating cases of narcotics abuse by the prosecutor's office so that the implementation of rehabilitation is truly compatible with the principle of victim protection in punishment.

**Keywords:** Dominus Litis; Restorative Justice; Narcotics

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## Penerapan Keadilan Restoratif Melalui Rehabilitasi Penyalahgunaan Narkoba Sebagai Implementasi Prinsip Dominus Litis

### Abstrak

Rehabilitasi merupakan salah satu bentuk keadilan restoratif dalam sistem peradilan pidana di Indonesia. Rehabilitasi dalam praktek juga dapat menjangkau penyalahguna narkoba. Kondisi Lembaga pemasyarakatan yang over kapasitas menjadi alasan pentingnya alternatif pemidanaan terhadap kasus narkoba. Di sisi lain, narkoba termasuk dalam kategori kejahatan tanpa korban (*victimless crimes*), sehingga diperlukan upaya perlindungan dan pertolongan terhadap korban dan pelaku untuk mengurangi dampak lainnya. Penelitian ini menggunakan metode yuridis-normatif dengan mempelajari peraturan perundang-undangan dan asas-asas hukum pidana. Hasil penelitian menunjukkan bahwa kejaksaan mempunyai peran penting dalam mewujudkan keadilan restoratif terhadap kasus narkoba berdasarkan asas dominus litis. Penggunaan rehabilitasi ini terbatas pada penyalahguna narkoba yang melakukan perbuatan pidana terhadap dirinya sendiri. Masih diperlukan reorientasi kebijakan penghentian perkara kasus penyalahgunaan narkoba oleh kejaksaan supaya pelaksanaan rehabilitasi benar-benar sesuai dengan asas perlindungan korban dalam pemidanaan.

**Kata Kunci:** *Dominus Litis*, Keadilan Restoratif, Narkoba

## Реализация Восстановительного Правосудия Через Реабилитацию При Злоупотреблении Наркотиками Как Реализация Принципа Dominus Litis

### Анотація

Реабилитация является одной из форм восстановительного правосудия в системе уголовной юстиции Индонезии. Реабилитационная практика также способна достичь лиц, злоупотребляющих наркотиками. Состояние исправительных учреждений, имеющих избыточный потенциал, является причиной важности альтернативного наказания в случаях наркомании. С другой стороны, наркотики относятся к категории преступлений без жертв, поэтому жертвы и правонарушители должны быть защищены в целях уменьшения других последствий. Данное исследование использует юридико-нормативный метод изучения законодательства и принципов уголовного права. Результаты свидетельствуют о том, что прокуратура играет важную роль в осуществлении восстановительного правосудия по делам о наркотиках, основанного на принципе доминус литис. Использование реабилитации ограничивается злоупотребляющими наркотиками лицами, которые совершают преступные акты против самих себя. По-прежнему необходимо переориентировать политику прекращения случаев злоупотребления наркотиками прокуратурой, с тем чтобы осуществление реабилитации было действительно совместимо с принципом защиты жертв в наказании.

**Ключові слова:** Dominus Litis, Восстановительное правосудие, Наркотики.

## A. INTRODUCTION

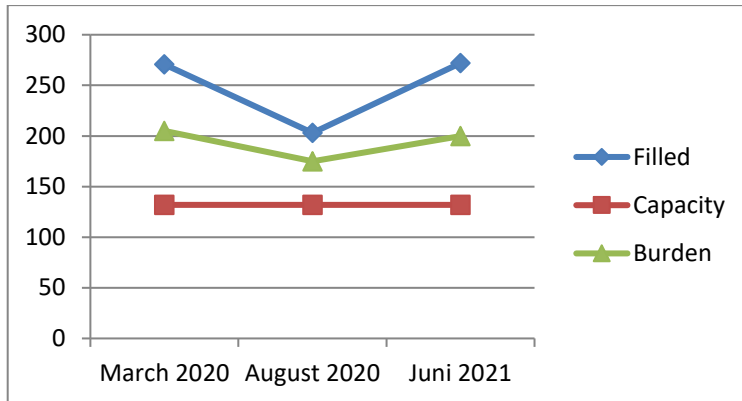
In general, narcotics crimes are known in three forms: abusing or consuming narcotics in excess of the dose, distributing narcotics without a permit, and carrying out the process of buying and selling narcotics without a valid permit. An addict is a person who uses or abuses narcotics in a state of dependence both physically and psychologically, which must then be placed in a medical and social rehabilitation institution; in other words, they are placed as victims of narcotics crimes. (Hidayatun, 2020) Victims of addictive crimes require special treatment to be accepted by society again, this conception is known as the implementation of restorative justice. Restorative justice in narcotics sanction comes from the idea of a double-track system. (Fajrin, et.al, 2022) Restorative justice, also known as restorative justice, is a way to resolve criminal cases in which several parties aim to achieve justice for all parties so that it is expected to create the same conditions as before the crime occurred and prevent further crimes, including narcotics crimes as special crimes. (Sinaga, 2021)

Narcotics crime is also known as crime without a victim (Panjaitan, 2022), so it is appropriate to use a restorative justice approach because the victim and perpetrator are integrated into one individual. The application of restorative justice can be realized with various strategies, one of which is by applying the principle of Dominus Litis by the Attorney General's Office, this principle is the controller of cases based on this principle, the settlement of cases of criminal acts of narcotics abuse leads to the rehabilitation process at the prosecution stage. (Ariyanto, 2021)

Since the issuance of Law Number 9 of 1976 concerning Narcotics, the government has begun to provide criminal sanctions for narcotics users. Until now, criminal penalties have increased as stipulated in Law Number 35 of 2009 concerning Narcotics. However, the application of these criminal sanctions did not impact the number of illicit narcotics trades. Another problem that arises from the punitive approach used in the Narcotics Law (Ikhtiar, 2019) is related to correctional overcrowding, especially for convicts of narcotics cases.

### Figure 1.

Conditions of Detention Centers and Correctional Institutions (Syarif, 2022)



**Table 1.**

Prison conditions, capacities and strengths

	Filled	Capacity	Overload
March, 2020	270.721	131.931	205
August, 2020	203.992	131.931	175
June, 2021	271.992	131.931	200

The data explains that currently, the conditions of detention centres and prisons are in apprehensive condition; overcapacity, which reaches 200%, is proof that the current system is incapable of suppressing and providing fulfilment of individual human rights in the criminal justice system.

The Directorate General of Corrections (Ditjenpas) of the Ministry of Law and Human Rights (Kemenkumham) stated that the number of inmates in correctional institutions (*lapas*) with special crimes was 151,303 people as of August 2021. Of that number, 145,413 people or 96% were convicts of narcotics cases. (Dihni, 2021)

In such conditions, it is appropriate to apply decriminalization. Decriminalization of narcotics abusers and addicts is a model of pressing demand reduction so as to reduce the supply of illegal narcotics. Decriminalization is the answer to the government's confusion in tackling the narcotics problem by stipulating that actions that were originally criminal become non-criminal. The impact is that it can reduce law enforcement costs and the suffering of victims of criminalization.

The restorative justice approach is a criminal law approach that empowers all parties to become important parties. Restorative justice prioritizes the values

of togetherness and restoration. It is hoped that the use of a restorative justice approach in dealing with narcotics abusers can provide appropriate sanctions, so that abusers can recover themselves so that they do not repeat similar crimes in the future. Based on practice, the restorative justice approach is not only applied to criminal acts that impact victims, but also to victimless crimes such as crimes involving narcotics abuse.

Implementing rehabilitation can reduce the negative impact of imprisonment for victims of narcotics abuse. Imprisonment is a form of deprivation of liberty, which makes it difficult for abusers to access rehabilitation for narcotics addiction. Prosecutor's Guidelines Number 18 of 2021 concerning Completion of Handling Criminal Cases of Narcotics Abusers using a Restorative Justice Approach as Implementation of the Prosecutor's Dominus Litis Principle. The Dominus Litis principle means that the prosecutor is the authorized party in a criminal justice process, whether a case can be prosecuted in court or not. (Riyanto, 2021) With such great authority, prosecutors can play an active role in implementing restorative justice. However, unfortunately, restorative justice is often interpreted in a limited way only in the form of peace, so it applies to crimes with victims. So, what about victimless crimes, as is the case with narcotics abuse crimes? This article is intended to discuss the active role of prosecutors based on the Dominus Litis principle in enforcing restorative justice for narcotics abusers.

## Literature Review

There are several articles that discuss the position of restorative justice in resolving narcotics cases, especially regarding narcotics abusers and the rehabilitation of users from narcotics dependence. Among the articles that discuss the position of restorative justice in resolving narcotics cases are: First an article from Yaris Adhial Fajrin et.al., "Ideal Double-Track System Construction for Narcotics Abusers in Indonesia". Fajrin explained that the basis for providing rehabilitation to narcotics abusers is the existence of a double-track system in criminal law. However, this system is not ideal at this time because the assessment stages are not yet regulated in the Narcotics Law. (Fajrin, et.al, 2002)

Article from Lidya Rahmadani Hasibuan and Rika Jamin Marbun, "Applying Diversion and Restorative Justice in Juvenile Narcotics Cases at the Binjai District Court, North Sumatra, Indonesia". Hasibuan explained the existence of Prosecutor's Guidelines number 18 of 2021 requires supervision and transparency in the rehabilitation process for narcotics abusers. (Hasibuan, 2023) Then, the article from Ismu Armanda, "Implementation of Diversion as a

Restorative Justice Approach to Child Performers in Narcotics",. Armanda explained that restorative justice is applied to children who abuse drugs because they are considered victims, not perpetrators of crimes. (Armanda, 2022) Article from Muhammad Ihsan et al., "Restorative Justice for Users of Narcotics Through Implementation of Depenalization". Ihsan explained that the implementation of restorative justice policies is a form of legal reform, especially criminal law. The application of restorative justice in the form of rehabilitation for drug defendants is provided with the requirements as regulated in SEMA No. 4 of 2010. (Ihsan, 2022)

## **B. METHODS**

This study uses a juridical-normative research method, namely the research method is a legal research method that uses the d method to analyze the legal basis in relation to the application of the principle of Dominus Litis in cases of narcotics abusers. This study also describes the legal basis and facts related to the implementation of case termination.

## **C. RESULTS AND DISCUSSION**

### **1. The concept of rehabilitation for drug abusers in Indonesia**

The definitions of addicts, users and abusers are ambiguous due to the fact that there is no clear distinction made by lawmakers. Whereas there are addicts/users who do not violate the law, there are also addicts/users who violate the law. Legislators have not explicitly positioned addicts as victims. To solve this categorization problem, it is appropriate to regulate the operational definition and grammar as a solution. But unfortunately, the new law on narcotics again does not regulate it.

There are also problems related to grammar and minimum possession in Indonesia. Grammage is the weight/amount of narcotics found in the user's hands as evidence. In Indonesia, even though there has been a new law, namely Law Number 35 of 2009, concerning Narcotics, in certain cases, it is still difficult for law enforcement officials to determine whether a user who is caught red-handed from the start of the investigation is an addict, user or abuser.

In general, rehabilitation is an effort to restore the former position (state, good name), or rehabilitation can also be interpreted as repairing disabled limbs and so on for individuals (eg hospital patients, disaster victims) so that they

become useful human beings. and have a place in society. (Wade, 2020) Discussion at the Narcotics level, Rehabilitation is a process of integrated recovery activities, both physical, mental and social so that former drug addicts can return to carrying out social functions in social life. (Putra, et.al. 2022)

The Big Law Dictionary defines the word Drug Addict is defined as a person who uses or abuses Narcotics and is in a state of dependence on Narcotics, both physically and psychologically. Apart from recovering, rehabilitation is also a treatment or treatment for narcotics addicts, the goal is for addicts to recover from their addiction to narcotics. (Sulfiani, 2021)

Rehabilitation is only given to perpetrators who commit criminal acts against themselves. (Hariyanto, 2020) Bearing in mind that in this crime the perpetrator of narcotics abuse is also a victim, this recovery practice is given to drug addicts not only as a form of punishment. (Tambunan, 2023) The principles of victim protection are also one of the things that encourage the birth of punishment in the form of rehabilitation. (Zahra & Sularto, 2017) The main goal of rehabilitation is recovery for addicts both morally and materially (self-esteem, social in society until they achieve independence). (Andito, et.al., 2022) Meanwhile, the goal is to form a personal identity useful for oneself and society. (Cecep Ramli, 2018) The Types of Rehabilitation According to RI Law number 35 of 2009, there are two types of rehabilitation: (a) Medical rehabilitation is a comprehensive process of medical activities which aims to free addicts from dependence on anaesthesia. Medical rehabilitation for drug addicts can be carried out in hospitals designated by the Minister of Health, namely hospitals managed by the government or the community (Nugroho, et.al., 2015); and (b) Social rehabilitation is a process of recovery activities that are comprehensive physically, mentally and socially so that former drug addicts can return to carrying out their social functions in social life. (Hadiansyah & Rochaeti, 2022)

Regarding healing or treatment through medical or medical rehabilitation, other treatment processes can be carried out with approaches carried out by the community related to religion and tradition. From the interpretation of social rehabilitation above, as previously stated by former narcotics addicts, what is meant by former narcotics addicts here are people who have recovered from dependence on narcotics both physically and psychologically. Social rehabilitation for narcotics addicts can be tried through social rehabilitation institutions appointed by the Minister of Social Affairs, namely social rehabilitation institutions organized either by the government or by residents.

Rehabilitation stages are based on the Regulation of the Minister of Health of the Republic of Indonesia Number 80 of 2014 concerning Technical Guidelines

for Implementation of Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse who are in the process of Investigation, Prosecution, and Trial or have received/received a court decision.

Limitations in the implementation of rehabilitation also have other problems, namely the existence of a minimum sentence that is severe in narcotics crimes is felt to be unfair to certain cases. This is also not in accordance with the principle of "ultimum remedium", namely as a last resort. We need to look at criminal sanctions from the pros and cons so that punishment becomes a real symptom, not a more serious "disease" in society. (Rahmawati, 2013)

The purpose of the law is not only for certainty and justice but also for "usefulness/usefulness". Known in criminal law as a relative theory (relative theory) or objective theory, that "criminal is not to take revenge on the perpetrators of crime but to have certain useful purposes". (Pratiwi, et.al., 2022) The principle of expediency is one of the goals of the law, taught by Jeremy Bentham, who argues that this is the ultimate goal of the law, which, if it can be argued simply, is "the greatest happiness for the greatest number of people." (Fios, 2012)

## **2. Application of restorative justice in the criminal justice system**

Since 2000, the United Nations (UN) has been open to the concept of restorative justice as an option for resolving criminal cases. After its approval, its application in criminal cases is increasingly being adopted by many countries. Restorative justice is a pattern of handling criminal cases that prioritizes the recovery of victims, perpetrators, and society. The principal thing about restorative justice is the role of the perpetrator and the victim, as well as members of the community, as volunteers or facilitators of case settlement. (Flora, 2018)

Several experts explained efforts to define restorative justice and its model. For example, Pohan explained that restorative justice is not the same as attributive justice as we know it in the criminal justice system in Indonesia.

Positive social values form the basis for building the concept of restorative justice. No less important, human rights are respected in the implementation of sanctions on this concept of justice. (Symeonidou-Kastanidou, E., 2019) Principal matters in restorative justice include the principle of responsibility being practised directly by the perpetrator in returning everything that was damaged due to his mistake to a good state as before, there is an opportunity given to the perpetrator to deal with his guilt with constructive methods, until there is a



forum cooperation involves victims and even members of the community to participate in overcoming the problem of the crime in question.

It was also stated by Van Ness & Strong that there are several values to be achieved by restorative justice through the administration of criminal justice, namely: first, conflict resolution which generally takes the form of implementing compensation, restoration of a good name (vindication); and secondly, the issue of safety which has elements of order and peace. (Satria, 2018) Restorative justice, which can also be interpreted as justice that restores, is an approach to criminal justice that emphasizes the recovery of victims and communities rather than being oriented only to punishing the perpetrators of criminal acts. (Braithwaite, 2002)

The Restorative Justice Consortium provides a definition of restorative justice as: "Restorative justice works to resolve conflicts and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparations. It offers those who have suffered harm the opportunity to have their harm or loss acknowledged and amends made." The principle of restorative justice works to resolve conflicts and recover losses. (Rochaeti, et.al., 2023) This justice encourages those who have caused harm to realize the consequences of what they have done and gives them an opportunity to make amends. This principle of justice offers the opportunity to realize losses and participate in making improvements for those who experience losses. (Robinson & Hudson 2016)

Restorative Justice seeks to restore society's condition and create social harmony. The existence of restorative justice in Indonesian criminal law is actually in accordance with the nation's values because restorative justice is in accordance with the peace values that apply in customary law. (Nasution, 2022)

Although the concept of restorative justice is often put forward as an alternative to the traditional criminal justice system. (Butt & Lindsey, 2018) This concept is increasingly seen as effective as proposed by Immarigeon, Lee, Robert, and Hough. These experts stated that restorative justice programs exist at every stage in the criminal justice process, namely from pre-investigation, post-investigation, pre-prosecution, post-prosecution, pre-judgment or post-decision, to other stages.

According to the Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning the Enforcement of Guidelines for the Application of Restorative Justice in the General Courts environment, Restorative Justice must apply and be

applied by all district courts in Indonesia, especially in matters of settlement of cases in minor crimes, cases of children, women dealing with the law and narcotics cases.

The application of Restorative Justice in narcotics cases can be carried out as long as they are categorized as addicts, abusers, victims of abuse, narcotics dependence, and narcotics for one-day use as stipulated in the Joint Regulation of the Chief Justice of the Supreme Court, Minister of Law and Human Rights, Minister of Health, Minister of Social Affairs, Prosecutor Agung, Chief of Police, Head of the National Narcotics Agency Number 01/PB/MA/111/2014, Number 03 of 2014, Number 11 of 2014, Number 03 of 2014, Number Per005/A/JA/03/2014, Number 1 of 2014, Number Perber/01/111/2014/BNN concerning Handling of Narcotics Addicts and Victims of Narcotics Abuse in Rehabilitation Institutions (abbreviated as "Joint Regulations" came into effect on March 11, 2014).

Restorative justice can also be applied if it meets the requirements, namely when caught red-handed by police investigators and/or National Narcotics Agency (BNN) investigators, evidence of one day's use is found and also has the results of an assessment from the Integrated Assessment Team for each case file transfer. It is hoped that with this alternative settlement of cases through Restorative Justice it can realize the principles of a fast, simple and low-cost trial with balanced justice. In the future, it is only a matter of waiting at the level of implementation from the scope of law enforcement officials to better understand and be able to apply Restorative Justice efforts in the criminal justice system as a solution to solving overcrowding problems in correctional institutions (Lapas) and as an alternative settlement of criminal cases which have been too formalistic so far. and positivistic.

### **3. Application of the principle of Dominus Litis by the Attorney General's Office in realizing restorative justice for narcotics abusers**

#### **a. Opportunity problem**

Before entering the context of the Dominus Litis principle, there is also an important principle to discuss which is part of the authority of the public prosecutor, namely the opportunity principle. The principle of opportunity is stated in Article 35 c of the Prosecutor's Law. The article should not explain the meaning of the opportunity principle. It can only be said that the Attorney General has the duty and authority to set aside cases in the public interest. The meaning of "public interest" is explained in the elucidation of Article 35 point c as follows: "What is meant by "public interest" is the interests of the nation and

state and/or the interests of the general public. Setting aside a case as referred to in this provision constitutes an implementation of the opportunity principle, which can only be carried out by the Attorney General, after taking into account suggestions and opinions from state power agencies that have a relationship with the problem.” (Pasaribu, 2017)

This explanation is increasingly unclear at the level of implementation of the opportunity principle. There is a phrase: "After paying attention to suggestions and opinions from state power agencies that have a relationship with the problem" the meaning becomes increasingly blurred. It becomes blurred because it is difficult to define who are the state power bodies that have a relationship with the problem. This means that the authority of this opportunity is limited in a dim way so that there is no legal certainty in its application.

The practice becomes the same as the application of the legality principle which is the opposite of the meaning of the opportunity principle. The principle of legality adopted by Germany, Austria, Italy and Spain means that all cases must be transferred to court by the public prosecutor. However, in practice in Germany, the Prosecutor may ask permission from the Judge not to prosecute under certain conditions. In Italy, there is a tendency for prosecutors to prolong cases so that they become overdue, so that prosecution cannot be carried out if the prosecutor of a case is not sent to court.

This is very different from the opportunity principle, which is known globally. This principle states that all prosecutors (not just the Attorney General) have the authority to carry out this principle with the understanding that "the public prosecutor can demand or not demand conditionally or without conditions for a case to court" (the public prosecutor may decide—conditionally or unconditionally—to bring the prosecution to court or not).

#### **b. Principle of Dominus Litis Attorney**

The existence of the prosecutor's authority in Indonesia in carrying out prosecutions is closely related to the principle of Dominus Litis. the principle of Dominus Litis, the determination and control of prosecution policies is only in one hand, namely the prosecutor's office. The prosecutor conducts investigations only regarding certain criminal acts. This leads to the need to study the authority of prosecutors in investigations and prosecutions in the Indonesian Criminal Justice System in relation to the principle of Dominus Litis. Regarding the formulation of the regulation of the prosecutor's authority at the stage of

investigation and prosecution as an effort to reform the criminal procedural law in Indonesia.

The Dominus Litis position of the prosecutor as a public prosecutor is in line with the opinion of Marwan Effendy, who said that the Attorney General's Office, as controller of the case process or Dominus Litis, has a central position in law enforcement because only the Prosecutor's office can determine whether a case can be brought to court or not based on evidence. This is lawful according to the law of criminal procedure. Apart from being a dominus litis (Procureur die de procesvoering vaststelt), the prosecutor's office is also the only institution executing criminal decisions (executive ambtenaar).

The Criminal Procedure Code has regulated the Dominus Litis of each law enforcer in criminal law enforcement. The Dominus Litis of the police is in the field of investigation and investigation, prosecution is Dominus Litis from the prosecutor's office while the Dominus Litis judge is presiding over the trial. However, there have been deviations in the Attorney General's regulations, which are permitted to carry out investigations and prosecutions in Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, while Article 284 of the Criminal Procedure Code prohibits it. This means that the Dominus Litis of the Attorney General's Office is not only limited to prosecution but also includes the investigation of certain (special) crimes whose authority arises from violations of general provisions.

The principle of Dominus Litis can realize the professionalism and proportionality of the Public Prosecutor, in which there are already provisions governing the professionalism and proportionality of prosecutors which must be guided in carrying out their inherent duties and powers, especially in which it has emphasized the existence of the Dominus Litis principle which is absolute and independently which makes prosecution the main task and becomes an integrated part.

This principle will strengthen and strengthen the Prosecutor as a public prosecutor in carrying out the prosecution of criminal cases that occur, and only a Prosecutor can determine whether a criminal case that has occurred can be resolved or not. (Perbawa, 2016)

In relation to narcotics crimes, the Attorney General should apply the principle of Dominus Litis (case-control), especially with regard to prosecution. As with the integrated criminal justice system, the prosecutor has an important role in certain processes. This role can be optimized to realize restorative justice in certain narcotics cases.

The prosecutor's authority regarding the principle of Dominus Litis in realizing restorative justice in narcotics crimes can be carried out from the pre-prosecution and prosecution stages. The following are general provisions stipulated in the RI Attorney General's Guidelines Number 18 of 2021 Concerning the Completion of Handling Cases of Narcotics Abuse Through Rehabilitation Using a Restorative Justice Approach as the Implementation of the Prosecutor's Dominus Litis Principle.

Pre-prosecution is carried out by taking into account several things such as evidence of criminal acts of narcotics abuse; suspect qualifications; qualifications of criminal acts and conformity with the article alleged; element of guilt (mens rea) in the suspect; examination of the suspect; and recommendations on the results of the integrated assessment.

**Table 2.**

Mechanisms and prerequisites for implementing restorative justice by prosecutors in narcotics cases

<b>Prosecution</b>		
<b>User Qualification</b>	<b>Rehabilitation Requirements</b>	<b>Implementation of Restorative Justice</b>
<b>Abuser</b>	Positive for using narcotics based on lab results	Implementation of Rehabilitation through legal process
<b>Abuse Victims</b>	The results of the investigation using the know your suspect method, the suspect is not involved in the narcotics illicit network and is the end user.	Medical Rehab
<b>Narcotics Addict</b>	the suspect is arrested or caught red-handed without narcotic evidence or with narcotic evidence which does not exceed the amount of 1 (one) day usage  the results of the integrated assessment, the suspect is qualified as a narcotics addict, a victim of narcotics abuse, or a narcotics abuser	Social Rehabilitation

there is a guarantee letter for the suspect to undergo rehabilitation through legal proceedings from his family or guardian

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After the Public Prosecutor receives or receives back the complete investigation results from the Investigator and accepts the transfer of responsibility for the suspect and evidence (stage 2), the Public Prosecutor immediately determines whether the case file meets the requirements to be transferred to court or not based on the principle of *Dominus Litis*.

The mechanism or concept of implementing the *Dominus Litis* principle carried out by the prosecutor's office can also be called a progressive application of restorative justice in Indonesia. Access to rehabilitation is a form of restorative justice for perpetrators of violence that must be recognized in the criminal justice system in Indonesia. This approach is one way to reduce the problem of excess capacity in correctional institutions, which are mostly filled with narcotics cases. This concept can also be called strategic criminal policy.

The starting point in using restorative justice is to differentiate between abusers and addicts or dealers. The next step is to use one of the prosecutor's authorities, namely the *Dominus Litis* principle. This principle can set aside cases by prioritizing restorative justice with a humanist approach. This principle is the key for prosecutors in overhauling the structure of criminal law, which has so far moved along the path of revenge without paying attention to the human rights of the individuals themselves.

#### **D. CONCLUSIONS**

The concept of rehabilitation that has been regulated in Indonesia is related to medical and social rehabilitation; this concept of rehabilitation is the embodiment of restorative justice because it has placed the abuser as a victim who needs help to return to its original state. The existing criminal justice system is still punitive in nature, this can be seen from the excess capacity in correctional institutions (overcrowding) reaching 207% of their proper capacity, of which 96% are narcotics crimes. The issue of overcrowding needs to be a crucial discussion in order to improve the legal and judicial system. So that a strategic criminal policy is needed, especially in handling cases of criminal acts of narcotics abuse, one of which is through a reorientation of law enforcement policies in narcotics regulations. This reorientation can be applied by the Prosecutor's Office which has the duty and authority to prosecute. Prosecutors as case controllers (*Dominus*

Litis) can resolve cases of narcotics abusers by choosing rehabilitation for abusers in the prosecution process. Completion of case handling by using this mechanism is a manifestation of the implementation of restorative justice, which leads to the goal of restoring the abuser to his original state, which is a victimless crime. So that this is a manifestation of restorative justice through the rehabilitation of narcotics abusers by the Attorney General's Office by optimizing the principle of Dominus Litis in their duties and authorities.

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