

# **The Concept of Restorative Justice in Criminal Procedure Law through The Rehabilitation Process: Integrated Assessment at The National Narcotics Agency of Bone Regency**

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## **Abstract:**

The study discusses the "Concept of Restorative Justice in Criminal Procedure Law through Rehabilitation Process by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency." The research aims to: identify the essence of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency, describe the implementation of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency, and analyze the integration of Competency Development in Criminal Procedure Law courses through the Concept of Restorative Justice in Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency. This research employs a qualitative approach with legislative, case, and conceptual approaches located at the National Narcotics Agency of Bone Regency, with doctors and the rehabilitation section of BNNK Bone as the sources of information, who are part of the integrated assessment team. The data used are primary data obtained through interviews, observation, and documentation. The research findings indicate that: (1) The essence of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency is rooted in the protection of the health and social life of drug abusers specifically and society in general. (2) The

implementation of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency complies with regulations, but there are still some challenges, including ambiguous regulations, law enforcement officers' paradigm towards rehabilitation, and inadequate rehabilitation facilities; (3) The integration of Competency Development in Criminal Procedure Law courses through the Concept of Restorative Justice in Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency can be applied to related criminal law courses through sub-topics in the semester lesson plan, especially regarding narcotics offenses.

Penelitian ini membahas mengenai “Konsep Restoratif Justice dalam Hukum Acara Pidana Melalui Proses Rehabilitasi Assesment Terpadu di Badan Narkotika Nasional Kabupaten Bone”. Penelitian ini bertujuan untuk: mengidentifikasi hakikat restoratif justice melalui rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone, menguraikan implementasi restoratif justice melalui rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone, dan menganalisis integrasi pengembangan kompetensi mata kuliah hukum acara pidana melalui konsep restoratif justice pada rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone. Penelitian ini menggunakan jenis kualitatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual yang berlokasi di Badan Narkotika Nasional Kabupaten Bone, dengan narasumber dokter dan seksi rehabilitasi BNNK Bone yang merupakan unsur dari tim assesment terpadu. Data yang digunakan adalah data primer dengan mengadakan wawancara dan pengumpulan data dengan Wawancara, observasi dan dokumentasi. Hasil penelitian menunjukkan bahwa: (1) Hakikat restoratif justice melalui rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone bermuara pada perlindungan terhadap kesehatan dan kehidupan sosial penyalah guna secara khusus dan masyarakat secara umum. (2) implementasi restoratif justice melalui rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone, berjalan sesuai peraturan perundang-undangan namun masih ada beberapa kendala diantaranya regulasi yang ambiguitas, paradigma aparat penegak hukum terhadap rehabilitasi dan sarana prasarana rehabilitasi yang masih kurang memadai; (3) Integrasi pengembangan kompetensi mata kuliah hukum acara pidana melalui konsep restoratif justice pada rehabilitasi oleh tim assesment terpadu di Badan Narkotika Nasional Kabupaten Bone dapat di terapkan pada mata kuliah yang berkaitan dengan pidana melalui sub bahasan di rencana pembelajaran semester, terkhusus pada tindak pidana narkotika.

**Key words:** *Restorative Justice; Rehabilitation; Integrated Assessment.*

## Introduction

Indonesia, as a country that upholds the law in implementing its governance and regulating its citizens, also firmly adheres to the principle of protecting the fundamental rights and human rights of every citizen, in line with Pancasila and the 1945 Constitution of the Republic of Indonesia. The existence of Law No. 35 of 2009 concerning Narcotics has regulated rehabilitation, namely medical and social rehabilitation, as well as the use of narcotics intended for medical treatment and health purposes.<sup>1</sup>

The rehabilitation of drug offenders is part of the criminal justice system, which is obtained in the criminal procedural law course. Criminal procedural law encompasses all regulations related to the implementation of criminal justice, governing the institutional structure and procedures for case resolution, including reporting and complaints, investigation, prosecution, court hearings, verdicts, and the execution of criminal judgments.

Criminal procedural law, as one of the courses in the Constitutional Law program, serves as the foundation and guidance for the implementation of criminal justice. It delineates the authority and limitations for law enforcement and its institutional structure in executing regulations concerning the criminal case resolution process.

This study will uncover and examine the implementation of rehabilitation through an integrated assessment team as one of the procedures in criminal procedural law related to drug abuse. Since Criminal Procedural Law is a manifestation of existing regulations developed based on universal values such as justice, honesty, truth, and equality, it is highly significant to be revealed through a disciplinary approach. Therefore, the development of the program's basis through the Concept of Restorative Justice in Criminal Procedural Law through the Rehabilitation Process by the Integrated Assessment Team in the National Narcotics Agency of Bone Regency becomes a phenomenon that needs to be studied for its implementation.

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<sup>1</sup> Siswanto S: *Politik Hukum Dalam Undang-Undang Narkotika*. Jakarta: Rineka Cipta, 2012

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This research is more focused on the implementation of rehabilitation in criminal proceedings. Furthermore, it generally aims to respond to government programs in advocating for the eradication of narcotics. The purpose is to facilitate the public in understanding the criminal procedure through the implementation of rehabilitation by the Integrated Assessment Team. Therefore, as a manifestation of the research orientation, specific objectives are formulated, including:

- 1) To identify the essence of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency.
- 2) To elaborate on the implementation of Restorative Justice through Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency.
- 3) To analyze the integration of Competence Development in Criminal Procedure Law courses through the Restorative Justice concept in Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency of Bone Regency.

Tony Marshall suggests that the restorative approach is a process in which all stakeholders in a particular criminal act are involved in seeking solutions together and simultaneously finding resolutions in facing the aftermath of the criminal act and how to overcome its implications in the future.<sup>2</sup>

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<sup>2</sup>Rufinus Hotmaulana Hutaruk, *Penanggulangan Kejahatan Korporasi Melalui Pendekatan Restoratif Suatu Terobosan Hukum*, Jakarta Timur: Sinar Grafika, 2013, p. 103

## Method

The research is an empirical legal study that associates law with actual human behavior. Therefore, the scope of empirical legal research is the degree of effectiveness of the law, which means to what extent the law or rules truly apply in the reality of social life.<sup>3</sup> The study is qualitative in nature, as it is aimed at obtaining an overview of the object under investigation. It is classified as qualitative due to initial responses, including natural sensitivity that arises, a desire to delve deeper, and an intention to reveal the meaning of phenomena (social, activities, perceptions, attitudes, and thoughts) within a social context.<sup>4</sup> In addition, endeavoring to obtain understanding, enlightenment regarding phenomena, and exploratory.<sup>5</sup> The research aims to reveal the existence of the integrated assessment team's rehabilitation with a focus on the development of competency values in criminal procedural law courses. The research employs various approaches, including legislative, case-based, and conceptual approaches. The legislative approach involves examining norms within specific legislation related to rehabilitation conducted by the integrated assessment team. The case-based approach entails analyzing cases associated with rehabilitation by the assessment team. The conceptual approach aims to generate academic competency quality in the form of ideas within criminal procedural law.

The research is conducted at the National Narcotics Agency of Bone Regency. The study population comprises law enforcement officials, specifically the integrated assessment team at the National Narcotics Agency of Bone Regency, while the sample includes doctors and rehabilitation section personnel from the medical team, as well as prosecutors, prison staff, and police investigators from the legal team, as they are part of the integrated assessment team.

Data sources include field data obtained through on-site research at the National Narcotics Agency of Bone Regency and literature data obtained by studying legislation, written works, books, and legal journals related to the subject under investigation. Data collection techniques involve methods such as<sup>6</sup> interview, observation dan documentation.<sup>7</sup>

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<sup>3</sup>Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2005.

<sup>4</sup>Suwendra, I. W, *Metodologi Penelitian Kualitatif dalam Ilmu Sosial, Pendidikan, Kebudayaan dan Keagamaan*. Nilacakra, 2008.

<sup>5</sup>Anggito, A., & Setiawan, J. *Metodologi penelitian kualitatif*. CV Jejak (Jejak Publisher), 2018

<sup>6</sup>Amiruddin. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo, 2014, p. 39

<sup>7</sup>Anggito, A., & Setiawan, J. *Metodologi penelitian kualitatif*. CV Jejak (Jejak Publisher), 2018.

## Discussion

### The Essence of Restorative Justice through Rehabilitation by The Integrated Assessment Team at The National Narcotics Agency of Bone Regency

In the effort to improve in the field of medicine and healthcare services, the availability of narcotics is quite necessary. However, if they are misused, they will cause dangerous impacts on the users because they will experience highly detrimental dependence. Therefore, strict and careful control and supervision must be carried out.<sup>8</sup>

Indonesia, as a country that has adopted the 1961 Single Convention on Narcotic Drugs and its amending Protocol, refers to the principles of the 2009 Political Declaration and Plan of Action in its drug handling policy, using the Balance Approach between demand reduction (breaking the chain of users) and supply reduction (breaking the chain of suppliers). The 2009 Narcotics Law No. 35 refers to this Balance Approach, where the focus on demand reduction is through prevention activities. Prevention of drug abuse is aimed at protecting the community from drug abuse, targeting those who have never been involved in drug abuse to prevent them from becoming abusers or dealers.

The essence can be interpreted as the essence or general nature of something. It can also be interpreted as a personal identity or self-identity that exists in something. In English, we often find terms such as 'substance' or 'essence', both of which refer to the 'essential nature or ultimate nature of a thing'. Therefore, it can also be interpreted as the basic core or highest essence of something.<sup>9</sup>

The national legal policy still emphasizes punishment and imprisonment for all suspects in drug cases, including drug abusers. The overcrowded condition of correctional facilities has reached 186%, with 252,384 inmates while the available capacity is only for 135,704 individuals. More than 50% of the inmates are related to drug cases. The policy plan for 2020-2024 regarding the improvement of the criminal justice system through a restorative justice approach has driven the reorientation of law enforcement policies and the implementation of Law Number 35 of 2009 concerning Narcotics.

The purpose of the Narcotics Law as stipulated in Article 4 of Law Number 35 of 2009 concerning Narcotics is to:

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<sup>8</sup>Koesno Adi. *Diversi Tindak Pidana Narkotika Anak*, (Malang: Setara Press, 2015, p. 3

<sup>9</sup>Suparlan Suhartono. *Filsafat Ilmu Pengetahuan: Persoalan Eksistensi dan Hakikat Ilmu Pengetahuan*. Yogyakarta: Ar-Ruzz Media, 2005, p.107

- a) Ensure the availability of narcotics for health, scientific, and technological purposes. The legal distribution for health purposes is strictly regulated and monitored to prevent it from becoming a source of illicit drug circulation.
- b) Prevent, protect, and save the Indonesian nation from drug abuse. Prevention is aimed at those who have not yet used drugs to prevent them from doing so. Protection is specifically aimed at victims of drug abuse, namely those who have been deceived, persuaded, coerced, or forced to use drugs. Saving is aimed at drug abusers, especially those in a state of physical or psychological drug dependence.
- c) Eradicate the illicit drug trade. Eradication in this context is aimed at traffickers, producers, couriers, distributors, and those involved in drug trafficking.
- d) Ensure efforts for medical rehabilitation and social rehabilitation for drug abusers and addicts.

In the imposition of medical rehabilitation sanctions against drug abusers, it must be based on Pancasila, namely fair and civilized humanity. Justice becomes the first principle in narcotics law. Justice is one of the things that must be realized by the judiciary. According to some experts, justice is one of the legal goals for any society. Justice is an inseparable part of the law itself. Realizing justice is not only in the judicial process that emphasizes methods, procedures, mechanisms (procedural law), but must also extend to the final decision. The judge's decision is expected to meet justice as much as possible, namely the justice felt by the parties involved in the case. The justice referred to should be substantial justice as much as possible, not formal justice, meaning it is real justice accepted and felt by the parties involved in the case. Meanwhile, formal justice is interpreted as justice based solely on the law, which may not necessarily be accepted and felt as fair by the parties involved.

One of the preventive methods in combating drug crimes is the rehabilitative method, namely the restoration of mental and physical health aimed at drug abusers who have undergone curative programs. The goal is for drug abusers to no longer use drugs and be free from secondary diseases caused by drug use. Such as physical damage (nerves, brain, blood, heart, lungs, kidneys, liver, etc.), mental damage, negative character changes, and secondary diseases (HIV/AIDS, hepatitis, syphilis, etc.). That is why treatment methods without rehabilitation are not beneficial, because after recovery, many other problems will arise. All the negative impacts are very difficult to overcome because many drug abusers, when "awake," experience despair and depression.

In the system of imposing sanctions on drug abusers, every drug abuser has the right to obtain their rights, such as the right to health through medical rehabilitation. The birth of Law No. 35 concerning Narcotics reinforces the double-track system adopted. This approach is seen from a philosophical background that shows that the perpetrators are both victims and criminals. The most important element in addressing the narcotics problem is to involve all elements, both from law enforcement agencies, government agencies, and all levels of society.

Criminal Law policy through a humanistic approach, in the form of rehabilitation actions through an integrated assessment mechanism, must be prioritized in terms of formulation, application, and execution of the assessment against drug abusers. As stated by Barda Nawawi Arif that:<sup>10</sup>

“Especially for Indonesia, which is based on Pancasila and whose national policy aims to shape the complete Indonesian human. If punishment is to be used as a means to achieve this goal, a humanistic approach must also be considered. This is important not only because crime, in essence, is a humanitarian issue, but also because punishment itself contains elements of suffering that can attack the interests or values most precious to human life.”

#### **The Implementation of Restorative Justice Through Rehabilitation by The Integrated Assessment Team at The National Narcotics Agency of Bone Regency**

The following data was obtained regarding cases of narcotics abuse in the National Narcotics Agency of Bone Regency:

No	Reference	Year					January-August 2022
		2017	2018	2019	2020	2021	
1	Reporting Obligatory Recipient Institution (RORI)	86	126	105	56	89	92
2	Outpatient Clinic	47	66	40	40	60	65
3	Psychiatrist	4	-	-	-	-	-
4	Sayang Rakyat Hospital	1	-	-	-	-	-
5	Hapsah Hospital	9	12	15	-	-	-
6	Baddoka	9	6	-	3	3	7
7	Tenriawaru General Hospital	17	6	-	-	-	-
8	Forum for Advocates and	7	21	15	-	-	1

<sup>10</sup>Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*. Bandung. Alumni, 2010.



**The Concept of Restorative Justice in Criminal Procedure Law ...**

Muljan &amp; Jumriani Nawawi

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Observers of Indonesian Children (FP2AI)							
9	Integrated Assessment Team	18	13	15	9	-	-
10	Medical Assessment	-	56	31	-	-	-
11	LDUA	-	6	-	8	-	-
12	Public health center of Watampone	5	5	-	-	-	-
13	Pancaitana Hospital	-	-	5	-	-	-
14	Psychiatry	-	-	-	-	3	-
15	IBM	-	-	-	-	10	-
16	Post Service	-	-	-	-	15	5
<b>TOTAL</b>		<b>203</b>	<b>317</b>	<b>226</b>	<b>116</b>	<b>180</b>	<b>170</b>

Based on the data from the table above, it can be seen that the number of cases handled by the National Narcotics Agency (BNN) of Bone Regency began active processing in 2017. The data for 2017 shows that the number of cases handled was 203, some of which were handled by government and private institutions. Meanwhile, from 2019 to 2020, there was a decrease from 226 to 116 cases. Among the findings by BNN of Bone Regency, some cases were rehabilitated and not pursued through legal processes. The data from 2020 to 2021 showed an increase from 116 to 180 in the number of findings by BNNK investigators. By August 2022, the number had further increased to 170.

Furthermore, Mr. Subagyo stated that for the prosecution of drug offenders through the legal system, an assessment must be conducted first. This assessment is requested by investigators to determine the recommendation for the drug offender, whether they are addicts or victims of drug abuse. There are two types of assessments: medical assessment and the Integrated Assessment Team. Based on the recommendations of the Integrated Assessment Team (IAT), which consists of a legal team and a medical team, the legal team includes police investigators, BNN of Bone Regency, and prosecutors, while the medical team consists of a psychologist and a rehabilitation doctor from BNN of Bone Regency. The assessment results from TAT must be concluded within 6 days of the arrest or apprehension by the investigators.<sup>11</sup>

The quoted text discusses regulations related to the handling of suspects and/or defendants who are drug addicts or victims of drug abuse, as outlined in the National Narcotics Agency Head Regulation No. 11 of 2014. Article 6 of this

<sup>11</sup>The result of the interview at the National Narcotics Agency of Bone Regency, 17 August 2022.

regulation states that the results of the assessment conducted by the Integrated Assessment Team, as referred to in paragraphs (1), (2), and (3), must be concluded no later than 6 (six) days after the suspect or perpetrator is arrested or caught red-handed by the investigator.

The Integrated Assessment Team is responsible for conducting medical, psychosocial, and therapeutic assessments and analyses, as well as recommending therapy and rehabilitation plans for drug users who are arrested or caught red-handed, and analyzing individuals who are arrested or caught red-handed in relation to drug abuse and trafficking. The role of the Integrated Assessment Team is crucial in the handling of drug crimes, as the results of their analysis will determine the role of an individual in drug crimes, whether as a drug user or a drug dealer.

The difference between medical assessment results and Integrated Assessment Team results is that medical assessments are obtained only from doctor recommendations, while Integrated Assessment Team results are obtained from assessments conducted by doctors, clinical psychologists, and legal teams consisting of police, the National Narcotics Agency, the prosecutor's office, and the Ministry of Law and Human Rights. According to Dr. Karlina, who conducted medical assessments, if there are findings by investigators, it would be better if the assessment is not obtained only from medical aspects because doctors only examine the health condition of drug users without considering other aspects. In conducting Integrated Assessment Team assessments, medical personnel will always provide recommendations to determine rehabilitation sanctions so that drug users can immediately receive therapy. This is aimed at making the medical condition of drug users that must be treated medically more important before the level of addiction appears. However, in the Integrated Assessment Team assessment, the medical team is always different from the legal team.<sup>12</sup>

The investigator conducted tests on the evidence and performed a urine test on the arrested suspect caught in the act. The investigator submitted a written request addressed to the local National Narcotics Agency, and subsequently, the investigator will receive a registration number for the assessment request. The request must be submitted by the investigator within 24 hours of the arrest.

The Integrated Assessment Team conducts the assessment upon receiving the request. The Integrated Assessment Team carries out its tasks and provides assessment results recommendations within a maximum period of 6 days to the

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<sup>12</sup>The results of the interview with the Rehabilitation Doctor at the National Narcotics Agency (BNN) in Bone Regency, 16 August 2022

## The Concept of Restorative Justice in Criminal Procedure Law ...

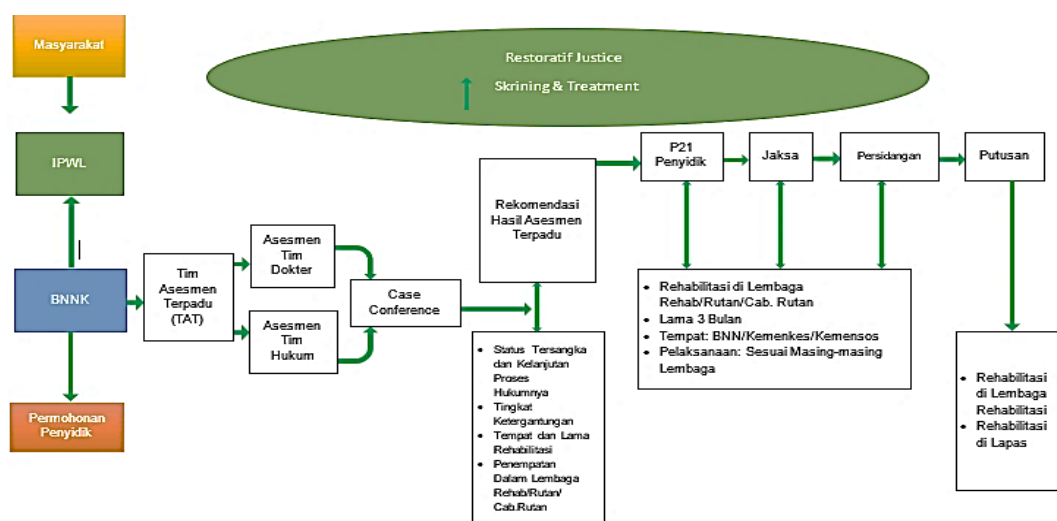
Muljan & Jumriani Nawawi

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investigator for written reporting to the court. Based on the recommendations of the Integrated Assessment Team, it will be determined whether the investigator will proceed with detention.

Based on the author's analysis concluded from interview results, it is observed that investigators rarely submit recommendations from the Integrated Assessment Team due to the time limit of only 6 days to request the assessment. As a result, many assessment requests from police investigators are not accepted by the local National Narcotics Agency. Consequently, the majority of drug abuse cases proceed to court without the Integrated Assessment Team's files, leading to judges imposing criminal penalties without medical rehabilitation.

Regarding the procedures and mechanisms for handling drug abuse in the field, the author can illustrate them in the following diagram:



## The development of Competence Integration in the Criminal Procedure Law Course through the Concept of Restorative Justice in Rehabilitation by the Integrated Assessment Team at the National Narcotics Agency in Bone Regency

The scope of Criminal Law Policy is extensive. This aspect is oriented towards the fact that criminal law policy, in the form of crime prevention through "penal" means as a form of *penal* policy or *penal* law enforcement policy, is implemented through stages consisting of the Formulation Stage, which is the stage of *in abstracto* law enforcement by the legislative body. This stage is also called the legislation stage. The Application Stage, which is the stage of the application of criminal law by law enforcement officers from the police to the court. The Execution Stage,

which is the concrete implementation of criminal law by law enforcement officers. This stage can be called the executive or administrative policy stage.

The prospect of integrated assessment regulation for drug abuse in the future will determine how far the existing criminal provisions need to be amended and updated. Criminal law reform is also part of criminal law policy. The meaning of criminal law reform itself is essentially an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underpin social policy.<sup>13</sup>

Knowledge of information about the implementation of restorative justice through rehabilitation services for law enforcement officials should improve. The public should also have a better understanding of the right to receive rehabilitation services according to applicable regulations.

On the other hand, the concept of restorative justice in combating drug abuse is integrated with Criminal Procedure Law courses. This concept can provide a deeper understanding of anti-drug education, especially in the Education curriculum. The next generation of the nation should be free from drugs. Recognizing that there are already local government policies regulating the integration of anti-drug education in university curricula as a significant step in saving the younger generation from the threat of drugs.

The Restorative Justice concept becomes a soft power approach, specifically in higher education, for preventing drug abuse. Through Restorative Justice in Rehabilitation, it can change the mindset of the community to have resilience when facing peer pressure, thus preventing prolonged involvement in drug abuse. Through the integration of anti-drug education programs, we hope to fortify and protect the next generation of the nation from the threat of drugs, while creating a shining educational environment to produce outstanding human resources.

Students can gain a clear understanding of the criminal justice system, particularly in relation to drug offenses, both theoretically and in implementation. Additionally, rejuvenation of the Criminal Procedure Law course can be carried out in accordance with curriculum development to address issues related to drug offenses. This can be achieved by incorporating drug offenses as a specific topic in the course syllabus, outlining them as specific criminal acts. Given that narcotics are a highly dangerous criminal activity, especially for the future generations, this serves as a preventive effort to support the government in combating drug abuse by enhancing students' understanding of narcotics and their dangers.

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<sup>13</sup>Muladi and Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana* (Bandung. Alumni, 2010).

Furthermore, this concept can serve as a follow-up to the collaborative efforts between institutions, as agreed upon in the memorandum of understanding between the National Narcotics Agency of Bone Regency and the academic institution. This collaboration aims to provide guidance to students with discerning histories and may serve as a prerequisite for new students, particularly those in the constitutional law and political jurisprudence program at the Faculty of Sharia and Islamic Law. Thus, the expectation aligns with the vision and mission of the constitutional law and political jurisprudence program, which is to create excellent and high-quality human resources.

### **Conclusion**

The protection of the degree of human resource health in Indonesia, in order to realize the welfare of the people, has been framed in the form of legislation. The efforts made by the government to enhance protection for abusers through rehabilitation constitute a constitutional mandate in terms of health services. The form of restorative justice is elaborated in sanctions and rehabilitation actions for drug abusers. The concept of Restorative Justice through rehabilitation demonstrates holistic protection for abusers to fulfill their health needs and provide social protection. The implementation of rehabilitation as a form of Restorative Justice in the criminal justice system has been in line with regulations. However, there are still obstacles in its implementation, namely, the various factors related to rehabilitation policy synchronization. In addition, the inconsistent perception of law enforcement officers in interpreting regulations, as well as the facilities and infrastructure that pose their own obstacles in the optimal implementation of rehabilitation. Criminal Procedure Law, as a subject in the Constitutional Law study program, which is related to other subjects such as Criminal Law and Criminology, is important to develop its study into specific offenses to enrich the scientific knowledge, by rejuvenating the course syllabus.

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