



## **THE CONCEPT OF HANDLING OVERCAPACITY IN PRISON THROUGH A RESTORATIVE JUSTICE APPROACH TO DRUG ABUSERS**

**Nani Widya Sari**

Faculty of Law, Universitas Pamulang, Indonesia

**Oksidelfa Yanto**

Master of Law Universitas Pamulang, Indonesia

**Bhanu Prakash Nunna**

Assistant Profesor (Psychology and Victimology), RV University, India

**Abdul Azis**

Faculty of Law, Universitas Pamulang, Indonesia

Corresponding Author: dosen02124@unpam.ac.id

### **Submission Track**

Received: 1 Agustus 2023, Revision: 9 Agustus 2023, Accepted: 13 Agustus 2023

### **ABSTRACT**

*The implementation of the coaching carried out by Prison for the inmates often becomes not optimal due to the complexity of the problems that occur within Prison. One of the root causes of issues at Prison is overcapacity. This paper then tries to see by analyzing the nature of narcotics crime as a particular crime and Indonesia's role in overcoming narcotics crime. Then also visit and explore the implications of overcapacity in Prison and concepts that can be applied to prevent overcapacity in Prison. The research method used in this paper is a normative juridical research method, with the data source used being secondary data obtained through library research. The study results indicate that narcotics crime as a particular crime is transnational and involves international crime organizations. Indonesia's role in overcoming narcotics crime can be seen from the regulation in Law Number 35 of 2009. In this regulation, sellers and dealers are given a high penalty, even death. Sentences should not be given to those who are called victims or addicts. The implications of overcapacity in Prison can result in non-optimal coaching due to the complexity of the problems that occur in Prison. Overcapacity is one of the root causes of issues at Prison. For this reason, it is necessary to apply a concept to prevent overcapacity from occurring in Prison by providing rehabilitation as a form of using restorative justice.*

**Keywords:** *Over Capacity; Prison; Restorative Justice, Drugs.*

### **ABSTRAK**

Pelaksanaan pembinaan yang dilakukan oleh Lembaga Pemasyarakatan terhadap warga binaan sering menjadi tidak optimal karena kompleksnya permasalahan yang terjadi di dalam Lapas. Salah satu yang menjadi akar permasalahan di Lembaga Pemasyarakatan adalah kelebihan daya tampung (*over capacity*). Tulisan ini kemudian mencoba melihat dengan menganalisis sifat dari tindak pidana narkoba sebagai suatu kejahatan khusus dan peran Indonesia dalam rangka penanggulangan kejahatan narkoba. Kemudian

juga melihat dan menganalisis implikasi *over capacity* di Lembaga Pemasyarakatan dan konsep yang bisa diterapkan agar tidak terjadi *over capacity* di Lembaga Pemasyarakatan. Metode penelitian yang digunakan dalam penulisan ini adalah metode penelitian yuridis normatif dengan sumber data yang digunakan adalah data sekunder yang didapat melalui studi kepustakaan. Hasil penelitian menunjukkan bahwa tindak pidana narkoba sebagai suatu kejahatan khusus bersifat transnasional dan melibatkan organisasi kejahatan Internasional. Peran Indonesia dalam rangka penanggulangan kejahatan narkoba tampak dari adanya pengaturan dalam Undang-undang Nomor 35 Tahun 2009. Dalam aturan tersebut bagi penjual dan pengedar diberikan ancaman hukuman yang tinggi, bahkan sampai pidana mati. Penjatuhan hukuman tidak boleh diberikan kepada mereka ini disebut sebagai korban atau pecandu. Implikasi *over capacity* di Lembaga Pemasyarakatan dapat mengakibatkan pembinaan menjadi tidak optimal karena kompleksnya permasalahan yang terjadi di dalam Lembaga Pemasyarakatan. *Over capacity* menjadi salah satu yang menjadi akar permasalahan di Lembaga Pemasyarakatan. Untuk itu, perlu diterapkan suatu konsep agar tidak terjadi lagi *over capacity* di Lembaga Pemasyarakatan dengan cara memberikan rehabilitasi sebagai bentuk penerapan *restorative justice*.

**Kata Kunci:** *Over Capacity; Lembaga Pemasyarakatan; Restorative Justice; Narkoba.*



Ciptaan disebarluaskan di bawah lisensi [Attribution-ShareAlike 4.0 International \(CC BY-SA 4.0\)](https://creativecommons.org/licenses/by-sa/4.0/).

## INTRODUCTION

As regulated in Article 6 of Law Number 12 of 1995, Prison is obliged to organize correctional facilities by prioritizing the fulfillment of fundamental rights for prisoners. The completion of these basic rights cannot be reduced or even revoked so that convicts who have been sentenced to a crime can be accepted back by the community and can typically live as good and responsible citizens.

This follows correctional principles, namely protection, equality of treatment, service, education, guidance, respect for human dignity (Pagau, Kimbal, and Kumayas, 2018). The hope is that, because of the development process with the fulfillment of the fundamental rights of

the inmates, then after convicts who have been sentenced to a crime are returned, the community can be accepted and can typically live as good and responsible citizens.

Indeed, the ultimate goal in sentencing is how individuals who have committed crimes can be deterred and no longer become criminals and can then play an active role in development (Mertha, 2014). This is where the part of good coaching is needed. Coaching is the core of the correctional system because coaching is expected to change prisoners into good citizens and return to society (Efendi, 2015).

Good coaching at Prison becomes capital for the inmates when they later live life in the community to seek the truth. The fundamental moral

truth is a command to oneself about what is good and avoids evil (Marzuki, 2009). The avoidance of humans from evil deeds is based on human behavior itself with a high legal awareness not to repeat their actions.

Paul Scholten said that in human behavior itself, there is a law. Meanwhile, every time humans and society behave, act, or work, therefore, the law already exists; it's just a matter of digging, searching, and finding it (Prakoso, 2016). For this to be achieved, Prison's role as a criminal system in carrying out its functions must continue to provide sound guidance to all inmates. So that when they are back in the community, they can behave according to the existing law.

It is undeniable that the law arises from the community's social life (humans), based on a sense of human justice and social phenomena (Djamali, 2014). For that, Prison must serve as the end of the judicial settlement process. The success or failure of the goals of criminal justice can be seen from the results that have been taken and issued by Prison in the entire criminal justice process (Husin and Husin, 2016). At least, the performance of a Prison in carrying out a correctional facility is strongly influenced by several factors, namely, quantity and quality of Prison officers, adequate facilities and infrastructure, coaching programs tailored to interests and talents, and the existence of comparability. These factors complement each other (Sandra, 2016).

The magnitude of prison's role in equipping the inmates to return to being good citizens is undoubtedly a very noble job. But lately, prison's role has been criticized by many parties. For example, the fire at Prison Class 1 Tangerang did not escape the cross of

opinion. Even criticism from various parties, including a request that the Minister of Law and Human Rights immediately resign from his position because he was considered less severe in managing prison, is primarily concerned with the issue of excess capacity, which has long been the subject of much discussion. A prison is no longer a place for fostering correctional residents. The criminal system seems to no longer create an atmosphere of change for criminals. The existence of overcapacity or excess capacity in prison leads to many illegal acts within the Prison environment.

In the view of Ilham Panunggal Jati Darwin (2019), at least four factors cause overcapacity; first, the number of crimes that occur every day. Second, the lack of process (pre-trial detention) or detention in the police and prosecutor's office. Third, the number of prisoners and detainees can no longer be accommodated by prison's capacity. Fourth, this is also supported by the enactment of Government Regulation (PP) 99 of 2012. The PP is considered very difficult for inmates to apply for a reduced period of detention or parole.

Stories about prison overcapacity in Indonesia have been going on for years. The interested parties have recognized this problem, but the density continues to occur, and until now, the issue of overcrowding has not been resolved. Various policies have been taken to overcome the overcapacity problem, including building rehabilitation to constructing new buildings to increase the prison's capacity.

However, this policy cannot significantly overcome the problem of overcapacity considering the increasing number of prisoners and inmates who

are still much more as a result of the high level of crime in the community. Thus, although the construction of the prison continues, it appears that the addition of the prison has not been effective in stemming the large number of inmates who enter the jail every day.

This condition makes no more space left for the inmates. Prison's conditions are full and crowded, so there is no longer a suitable place to re-socialize the inmates. At the same time, the purpose of correctional is to restore the unity of the relationship of life, life, and livelihood (Nugraha, 2020). It's ironic if you look at the function of the prison. Based on Article 1 paragraph (3) of Law Number 12 of 1995 concerning Corrections, it is stated that prison is a place to carry out guidance for Prisoners and Correctional Students.

Coaching is an activity carried out effectively and efficiently to obtain better results. Understanding coaching, in general, is a process of using humans, equipment, money, time, methods, and systems based on certain principles to achieve predetermined goals with maximum usability and results. Another definition of "coaching" is any effort or action directly related to planning, compiling, building or developing, directing, using, and controlling something efficiently and effectively (Budiyono, 2009).

Prison is a place to convict people solely and as a place to foster or educate convicts so that after they finish carrying out their crimes, they can adjust to life outside Prison as good citizens and obey the law (Lamintang, 2012). The success or failure of the coaching process carried out by Prison depends on the conditions at Prison, including the issue of overcapacity. Suppose Prison's situation continues to

be overcapacity from time to time. In that case, the coaching will not go well because overcapacity is one of the inhibiting factors for the effectiveness of inmate coaching. In addition, overcapacity has caused prisoners' rights not to be fulfilled. One of the essential legal means to realize the goals of the correctional system is by regulating the rights of prisoners as stipulated in Article 14 paragraph (1) of Law Number 12 of 1995 concerning Corrections.

Overcapacity in Prison is a violation of human rights. The emergence of the discourse of restorative justice is the answer to this. Currently, the existing punishment is no longer effective in suppressing the high crime rate, which leads to overcapacity in prisons. The concept of conventional criminal justice, which only focuses on punishing and punishing criminals, has not touched the interests of prisoners.

Based on the description above, the writer in this study will try to formulate the main problems: What is the nature of narcotics crime as a particular crime, and the role of Indonesia's positive law in overcoming narcotics crime? What are the implications of overcapacity in Prison and concepts that can be applied so that there is no overcapacity in Prison, especially for convicts in narcotics cases?

## **RESEARCH METHODS**

The research method used in this research using legal research methods normative juridical by collecting legal materials through data secondary. After the data is collected, it is analyzed to help answer the existing problems.

## **RESULTS AND DISCUSSION**

## **Narcotics as a Transnational Crime and the Positive Role of Indonesian Law**

The problem of narcotics crime has become a problem for nations worldwide that is always discussed (Sudanto, 2017). Narcotics or illegal drugs are no longer circulating illegally in big cities but have penetrated districts, even reaching the sub-district and village levels. Its users are not only those who have money but have also penetrated the lower-middle-class economy. Likewise, people who consume it are teenagers ranging from children to older adults (Hikmawati, 2011).

Several legal events have occurred as a result of drug abuse. Of course, you still remember the Xenia car accident by Afriyani, which resulted in nine deaths, the pilot caught consuming shabu-shabu, the existence of legal officers known to be drug users, and many others. This incident made the community restless (Simanungkalit, 2012). As a result of dependence on drugs, it has led to various events in people's lives. Even the incident resulted in the loss of human life.

Drug dependence is a condition that is mainly caused by substance abuse accompanied by substance tolerance (higher doses) and withdrawal symptoms (Mardani, 2008). The abuse and illicit trafficking of narcotics, psychotropics, and other hazardous materials is a problem both nationally and internationally. It is not wrong, and narcotics crime has become a transnational crime committed by organized crime groups (Jainah, 2013). The global form of narcotics crime is carried out using a high modus operandi advanced technology and is supported by an extensive network of

organizations. The transnational crime involves international organizations where the consequences are very damaging and widespread. This problem is not only faced by the Indonesian state but also by all nations in this world. In Indonesia, transnational crime is a real security threat that Indonesia has been significantly harmed by international crimes (Hasan, 2018).

It is declared a transnational crime because it is prohibited and cross-border and ignores all sovereignty and state borders. Or in other words, international crimes no longer consider the sovereignty or jurisdictional boundaries of a country, region, frame but instead pay more attention to the smooth flow of goods, people, and illicit trade that provides money for the perpetrators. In its most extreme form, transnational crime is a threat and an enemy to the state (Wangke, 2011). In Indonesia, drug crimes are qualified as particular crimes in its legal system, which are also explicitly handled through the law.

Special criminal law was formed to regulate legal material specifically (Renggong, 2019). In general, Teguh Prasetyo describes the characteristics of special criminal law, namely having an open nature with the intention of having provisions to include criminal acts contained in other laws provided that other laws are determined to be criminal acts (special requirements). In narcotics crime, this unique arrangement is because narcotics crime is seen as a form of crime that has severe consequences for the future of the nation, namely destroying the life and end of the young generation, including children, which in turn can threaten the existence of the government and state. Therefore, the

United Nations recognizes this particular crime as the most severe crime and ranks first to be wary of.

The United Nations Convention Against Transnational Organized Crime in Palermo in 2000 concerning Against Transnational Organized Crime mentions the form of anti-tolerance carried out by the United Nations against all forms of transnational crime. In the context of countries in the Southeast Asian region, the Association of Southeast Asian Nations (ASEAN) has also agreed to eradicate all forms of organized transnational crime with the emergence of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) which defines 8 (eight) forms of organized transnational crime consisting of 1). Illicit Drug Trafficking (Illicit Drug Trafficking); 2). Trafficking in Person (trafficking in persons); 3). Sea Piracy (sea piracy); 4). Arms Smuggling (weapon smuggling); 5). Money Laundering (money laundering); 6). Terrorism (terrorism); 7). International Economic Crime (international economic crime); and 8). Cyber Crime (cybercrime) (Ariadno, 2009). The emergence of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) indicates that the Southeast Asian region must be wary of drug abuse and trafficking.

As a region with the second-largest level of narcotics production, abuse, and illicit trafficking in the world after North America, narcotics crimes occur in cross-country flows in a particular region, in any aspect, be it production, abuse, or illicit trafficking. The illegal trafficking of narcotics in the Southeast Asian region has two main routes, namely the southern route through Thailand to Bangkok for the distribution channel and the northern

way which enters the Yunnan Province in China, then goes to Kunming and then spreads to other areas (Sari and Putrawan, 2018).

These conditions ultimately make regulation and law enforcement to eradicate the production, abuse, and illicit trafficking of narcotics be implemented in an integrated manner, as revealed in the ASEAN Plan of Action to Combat Trans-National Crime, namely, the main target of ASEAN is to combat transnational crime and drug trafficking. An everyday crime that affects the growth and vitality in ASEAN countries. With the impact of globalization, technological advances, and the overall mobility of people and resources across national borders, transnational crimes are increasingly rampant, diversified, and organized. The region has to deal with many other forms of corruption that transcend national boundaries and political sovereignty, such as terrorism, new types of drugs, art smuggling, trafficking in women and children, and piracy.

Especially in Indonesia, the government is continuously trying to tackle drug crimes by giving threats of punishment up to the death penalty to perpetrators as dealers, dealers, or couriers. The role of Indonesia's positive law in overcoming narcotics crime can be seen from the regulation in Law Number 35 of 2009, which threatens with high penalties, even the death penalty. The death penalty is given to those who distribute and those who sell.

Positive law, known as *ius constitutum*, has the meaning of a law that has been established and applies now in a place or country (Mertokusumo, 2007). In positive law, dealers or people who distribute, distribute, possess, control,

intermediary, provide, trade, export-import narcotics without the authorities' permission may be subject to imprisonment for between 2 (two) and 20 (twenty) years, even up to the death penalty, or life imprisonment depending on the type and quantity of narcotics being circulated, distributed or traded (Article 111 to Article 126 of the Narcotics Law). With all its equipment, the state is obliged to enforce the law against the perpetrators. The state is also obliged to provide a sense of security to the community so that they are free from the dangers of drug abuse, particularly those who act as dealers or trade.

Suppose an addict is undoubtedly different from a dealer, seller, or drug dealer. Under the provisions of the law, for dealers, the punishment for the seller is severer, even up to the death penalty. In practice, sometimes those who are victims of drug users are also sentenced to prison by the judge. Here, in the end, what makes prison complete. For those who are victims or addicts, the punishment given should be in the form of rehabilitation. Different from drug dealers or seller.

According to Article 112 of the Narcotics Law, it is explained that any person who without rights or against the law owns, keeps, controls, or provides Narcotics Category I, which is not a plant, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 years and a minimum fine of Rp. Eight hundred million and a maximum of Rp. 8 billion. That article makes the victims of drug users can be imprisoned. In the concept of rehabilitation, judges can decide drug users to undergo medical rehabilitation and social rehabilitation to return users

to everyday lives again (Universitas Jambi, 2020).

Narcotics abusers, especially narcotics users, must be trained to avoid excessive addiction. This refers to Law Number 35 of 2009 concerning Narcotics so that Narcotics users remain rehabilitated. Rehabilitation is an activity or process to help sufferers with serious illnesses or disabilities who require medical treatment to achieve maximum physical, psychological and social abilities (Pramudita, 2016).

Prevention and eradication of drug abuse and illicit trafficking rely not only on law enforcement efforts but must be balanced with efforts to reduce demand. Imprisonment or criminalization of addicts and victims of drug abuse is not the only solution. In other words, criminalization is not the root cause of narcotics abuse, and illicit trafficking and the practice of criminalizing narcotics abuse can create new problems (Zaidan and Yuliana, 2015).

Drug crimes in Indonesia are part of transnational crimes committed by professional and organized perpetrators involving Indonesian citizens and foreign nationals. There is no other way for the perpetrators, and the harshest sentence must be given, such as the threat of the death penalty. Unlike the case with people who are victims of drug abuse, they should not be criminalized. The criminalization of drug abusers (addicts) is equivalent to fertilizing the behavior of addicts and even creating new groups in prison life.

### **Implications of Over Capacity in Prison and the Concept of Restorative Justice Against Narcotics Abusers**

If you look at the data collected in June 2020, the number of Prison Occupants is 230,310 people, consisting of 50,276 prisoners and 180,084 inmates. This data shows that prisons in Indonesia are experiencing excess capacity, which reaches 74% on a national scale. Of the 33 Regional Offices in Indonesia, there are only 10 Regional Offices that do not experience excess capacity, namely Regional Offices. D.I Yogyakarta, Gorontalo Regional Office, Maluku Regional Office, North Maluku Regional Office, East Nusa Tenggara Regional Office, Papua Regional Office, West Papua Regional Office, West Sulawesi Regional Office, Southeast Sulawesi Regional Office and North Sulawesi Regional Office (Yulianti, 2021).

In all regions in Indonesia, Prison capacity and detention centers are only 135,561 people. Meanwhile, the number of assisted residents as of August 2021 has reached 266,514 people. That means exceeding capacity by up to 97 percent. In various areas, the density of Prisons is also an obstacle to the development process.

For example, in Prison Class 1 Tangerang, the Prison occupants during the recent fire incident were mainly drug abusers. At the time of the fire incident, those who had become victims should not be sentenced to prison, only with medical rehabilitation.

Based on data on the official website of the Directorate General of Corrections, Ministry of Law and Human Rights processed by Litbang Kompas, Prison Class I Tangerang has a capacity of 600 people. Until August 2021, the prison was inhabited by 2,087 prisoners and convicts. This means an excess of Prison occupants of up to 248

percent. Once again, most of the residents are narcotics abusers.

This issue is undoubtedly essential and urgent to be addressed immediately because overcrowding in prison can trigger the desire of certain people to get the facilities they want. The financial advantages possessed by certain prisoners allow fraudulent actions to be carried out to fulfill the desire to obtain facilities that should not be available in prison cells (Ohoiwutun and Samsudi, 2017). During this pandemic, the overcrowding of prisoners made prison a very vulnerable place for massive and rapid transmission of the Covid-19 virus if one of the prisoners was exposed to the virus (Arsheldon, Simanjuntak, and Benuf, 2020).

Although overcoming the problem of Prison density cannot be done quickly. However, one of the effective ways to reduce prison's burden, which is so overwhelming with the number of inmates, is to pay attention to the methods and patterns of coaching for narcotics abusers.

In-Law Number 35 of 2009 concerning Narcotics, it is explained about the perpetrators of drug crimes, ranging from dealers (found in Articles 111-125), and includes regulation on the position of drug addicts. The rights of addicts in the law are stated in Article 54, that they are obliged to undergo medical rehabilitation and social rehabilitation. Because addicts are called the "victim" category, namely the victim of the consequences of their actions or the perpetrator and the victim (self victimizing victim or mutual victim), this means that if a drug addict is a victim, it means that the government is obliged to provide medical and rehabilitation services according to the



standards as mandated by the 2009 law on narcotics. The provision of repair follows the provisions contained in the narcotics law. Article 103 of the law explains that narcotics abusers can be given rehabilitation, which can be counted as a period of serving a sentence.

Regarding the application of Article 103 of the Narcotics Law, the Supreme Court issued SEMA Number 4 of 2010 in conjunction with SEMA Number 3 of 2011 concerning Placement of Abusers, Victims of Abuse, and Narcotics Addicts Medical Rehabilitation and Social Rehabilitation Institutions. According to SEMA No. 4 of 2010, rehabilitation measures can be imposed. Namely, the defendant was caught in the hands of investigators from the National Police and the National Narcotics Agency; when caught red-handed found evidence of 1-day use; there is a certificate of positive laboratory test using narcotics based on the investigator's request; a certificate from a government psychiatrist appointed by a judge; it is not proven that the person concerned is involved in the illicit trafficking of narcotics .

Further, it can be seen that Article 103 reads as follows: (1). Judges examining Narcotics Addict cases may: a. decide to order the person concerned to undergo treatment through rehabilitation if the narcotic addict is proven guilty of committing a narcotic crime; or b. stipulates to call the person to undergo treatment or rehabilitation if the narcotic addict is not proven guilty of committing a narcotic crime punishment.

This is the mandate of Law 8/1976 concerning the Ratification of the Single Convention on Narcotics and the Protocol that amends it and Law

7/1997 concerning the Ratification of the United Nation Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances 1988, and has been translated in article 4 letter (d) ) Law No. 35 of 2009 concerning Narcotics which animates some articles in it.

As a state of law, all drug abuse problems must be resolved according to applicable law, and this is, of course, aimed at dealers or dealers. The provision of legal sanctions to dealers and sellers is necessary. Unlike those who are caught as addicts. Punishing drug abusers (addicts) in prison will only make prison complete. The victims of addicts should only be rehabilitated. This is what really should be a priority. By placing drug abusers (addicts) in prison all this time, there will be overcapacity, which will undoubtedly affect the effectiveness of fostering the inmates.

The narcotics law currently in effect aims to provide guarantees for rehabilitation arrangements for drug abusers (addicts). So it can be believed that the state has guaranteed the obligation to place in the rehabilitation of drug abusers in a provision of the existing law. This guarantee is expected so that those who are being rehabilitated can recover and not become a recidivist.

Rehabilitation is one way to save victims of narcotics users from dependence because the definition of rehabilitation is an effort to recover addicts from narcotics dependence and live every day, physically and mentally healthy life so that they can adjust and improve their skills, knowledge, intelligence, interactions in the environment or with family, which is called resocialization.

For this reason, the judge in dealing with the issue of narcotics abusers should in deciding cases depart from the existing rules, namely Law No. 35 of 2009 concerning Narcotics. Referring to the research conducted by the Institute for Criminal Justice Reform (ICJR) in 2016, imprisonment is still the most significant type of decision made by judges. The use of alternative measures or punishment outside prison has not been significantly used.

Rehabilitation as a form of punishment is the duty of the judge to decide and determine the person concerned to undergo rehabilitation. Thus, Article 54 of the Narcotics Law explains that narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation. It is time for the judge to refer to the provisions of the articles in the narcotics law. The prison where the inmates are fostered does not experience excess capacity, complicating the coaching process. The provision of rehabilitation is in line with the new concept of punishment in the Indonesian criminal justice system. This is known as restorative justice.

Several efforts have been made sectorally and partially by law enforcement, including the Police Institution through the letter of the National Police Chief Number Pol: B/3022/XII/2009/SDEOPS, which seeks to resolve minor crimes by using alternative pathways outside the court through penal mediation as the application of the ADR concept. However, because the position of the Kapolri letter is under the law (KUHP and KUHAP), it is not uncommon for the Kapolri letter to be raw and cannot be used because it is considered contrary to higher laws and regulations.

Including the decision of the Supreme Court of the Republic of Indonesia No. 1600 K/Pid/2009. In the decision, the panel of judges stated that one of the objectives of criminal law is to restore the balance that occurred because of a criminal act. Then the panel of judges assessed that revocation of the case could correct the disturbing imbalance. The Supreme Court said that the peace between the complainant and the reported party contained a high value that must be acknowledged. If this case is stopped, the benefits are more significant than continuing.

Restorative justice is one solution to divert or place criminals in the criminal justice system. This means that not all narcotics case problems are resolved through formal justice channels. Still, it can be done by providing an alternative for settlement with a justice approach in the best interests of the perpetrators by considering justice for the victims.

Restorative justice can be formulated as a thought that responds to the criminal justice system's development by focusing on the need for community involvement and victims who feel excluded from the mechanisms that work in the current criminal justice system. In addition, restorative justice can be used as a frame of mind that can respond to a crime for law enforcement (Pradityo, 2016).

Restorative justice does not focus on imprisonment but on improving or restoring the victim's condition after the occurrence of a crime. In this case, the perpetrator of the crime may be required to pay compensation, perform social work, or other reasonable actions ordered by law enforcement or the court.

This restorative justice perspective results from a shift in law from *lex talionis* or retributive justice, emphasizing practical efforts. To recover victims, when using a more disciplinary and legalistic approach, it is difficult to treat the victim's wounds. So restorative justice seeks to emphasize the perpetrator's responsibility for his behavior that causes harm to others (Sunarso, 2014).

The principles of restorative justice, according to Adrinus Meliala, are as follows: First, make the perpetrators of criminal acts responsible for repairing the losses caused by their mistakes; Second, providing opportunities for criminals to prove their capacity and quality in addition to dealing with their guilt constructively; Third, involving victims, families and other parties in problem-solving; Fourth, create a forum to work together in solving problems; Fifth, establish a direct and honest relationship between actions that are considered wrong or evil and formal social reactions.

Judges can apply the transfer of formal legal processes to non-formal settlements by applying a restorative justice model in dealing with narcotics cases. Restorative justice can be used as a reference for judges to resolve narcotics cases.

For judges, restorative justice should be formulated as a substitute concept for formal punishment that has been applied in response to the development of the criminal justice system. In the future, the judge in every decision for drug abusers will focus more on involving drug abusers as victims of drug dealers and syndicates. Restorative justice can be used as a frame of mind that can respond to a crime for law enforcement.

Based on the description above, it is necessary to make more strenuous efforts in implementing restorative justice efforts in the criminal justice system. This is one solution to the problem of overcapacity in prisons. Institutionalizing and applying the principles of restorative justice in the form of norms in the Draft Criminal Code and other laws and regulations serve as guidelines for all sub-systems in the criminal justice system, such as the police, prosecutors, and judicial institutions. This can be used as a solid legal basis for implementing restorative justice. Thus, it is hoped that the problem of overcapacity in prison can be resolved, considering that the negative impact caused by this problem is not tiny and consumes a large amount of the state budget.

As the author described above, in Law Number 35 of 2009 concerning Narcotics, it is explained about the perpetrators of drug crimes, ranging from dealers (found in Articles 111-125). It includes regulation on the position of drug addicts. The rights of addicts in the law are stated in Article 54. They are obliged to undergo medical rehabilitation and social rehabilitation.

Drug addicts must be rehabilitated. In this case, what is meant by addicts based on the Circular Letter of the Supreme Court (SEMA) Number 4 of 2010 concerning Placement of Abuse, Victims of Abuse and Narcotics Addicts into Medical Rehabilitation and Social Rehabilitation Institutions are people who use or abuse narcotics in a state of dependence both physically and mentally psychological, regarding the placement of abusers, victims of abusers and narcotics addicts placed into medical and social rehabilitation institutions. Meanwhile, for those who

distribute and sell them, the existence of criminal law is still recognized as a means to give the threat of punishment. So that efforts to overcome or prevent crime, especially narcotics and illegal drugs, can continue to be carried out.

## **CLOSING CONCLUSION**

Narcotics crime as a particular crime is transnational. The perpetrators use a high modus operandi advanced technology and are supported by an extensive network of organizations. Because narcotics crime is global, it certainly involves international crime organizations where the consequences are far-reaching in all nations worldwide. It is declared a transnational crime because it is prohibited and cross-border and ignores all sovereignty and state borders. Or in other words, international crimes no longer consider the sovereignty or jurisdictional boundaries of a country, region, frame but instead pay more attention to the smooth flow of goods, people, and illicit trade that provides money for the perpetrators. The role of Indonesia's positive law in overcoming narcotics crime can be seen from the regulation in Law Number 35 of 2009. In this regulation, those who distribute, distribute, possess, control, become intermediaries, provide, trade, export-import narcotics without the third party's permission. Authorities may be subject to imprisonment for between 2 (two) to 20 (twenty) years, even up to the death penalty. Sentencing should not be given to addicts who are victims of narcotics abusers because narcotics addicts should be rehabilitated. The implications of overcapacity in Prison can result in non-optimal coaching due

to the complexity of the problems that occur in Prison. Overcapacity is one of the root causes of issues at Prison. For this reason, it is necessary to apply a concept so that there is no more overcapacity in Prison by providing rehabilitation as a form of applying restorative justice. However, no law regulates the use of restorative justice. Because the application of Restorative Justice in the Indonesian legal system is still partial and not comprehensive. Restorative justice is still scattered in various legal and policy instruments and has not been fully implemented in our criminal justice system. In addition, the application of the concept of restorative justice as an effort to reduce prison overcapacity needs to be supported by legislation that regulates the use of restorative justice through Alternative Dispute Resolution (ADR) for criminal cases.

## **SUGGESTION**

The future it is necessary to provide guidance to prisoners by taking into account the capacity of existing correctional institutions. One way is not to include perpetrators of narcotics abuse in correctional institutions, but rehabilitation can be carried out. Punishment should not be given to those who are known as victims or addicts. Because this has implications for over capacity in Correctional Institutions and can result in coaching not being optimal, because Over capacity is one of the root causes of problems in Correctional Institutions. For this reason, it is necessary to apply a concept so that over capacity does not occur again in Correctional Institutions by providing rehabilitation as a form of implementing restorative justice.

## REFERENCES

- Anton Sudanto, Penerapan Hukum Pidana Narkotika di Indonesia, *Jurnal Hukum ADIL*, Vol. 8, (No1), 2017.
- Aditya Nugraha, Konsep Community Based Corrections Pada Sistem Pemasyarakatan Dalam Menghadapi Dampak Pemenjaraan, *Jurnal Sains Sosio Huaniora*. Volume 4 Nomor 1 Juni 2020.
- Abintoro Prakoso, *Penemuan Hukum, Sistem, Metode, Aliran dan Prosedur dalam Menemukan Hukum*, (Yogyakarta: LaksBang PRESSindo, 2016).
- Abdoel Djamali, *Pengantar Hukum Indonesia*, (Jakarta: RajaGrafindo Persada, 2014).
- Budiyono, Fungsi Prison Sebagai Tempat Untuk Melaksanakan Pembinaan Dan Pelayanan Terpidana Mati Sebelum Dieksekusi, *Jurnal Dinamika Hukum*, Vol. 9 No. 3 September 2009.
- Depdikbud, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1997).
- Humphrey Wangke, *Kejahatan Transnasional Di Indonesia Dan Upaya Penanganannya*, Cetakan Pertama, 2011, (Jakarta: Pusat Pengkajian Pengolahan Data dan Informasi Sekretariat Jenderal Dewan Perwakilan Rakyat Republik Indonesia, 2011).
- Ilham Panunggal Jati Darwin, Implications Of Overcapacity For Correctional Institutions In Indonesia, *Jurnal Cepalo*, Volume 3, Nomor 2, Juli-Desember 2019.
- I Ketut Mertha, *Efek Jera Pemiskinan Koruptor dan Sanksi Pidana*, (Denpasar: Udayana University Press, 2014).
- Kadri Husin dan Budi Rizki Husin, *Sistem Peradilan Pidana Di Indonesia*, (Jakarta:Sinar Grafika, 2016).
- M. Ali Zaidan Yuliana Yuli W, Peran Indonesia Dalam Penanggulangan Narkotika, *Jurnal Yuridis*, Vol.2 No.2, Desember 2015.
- Melda Kamil Ariadno, Maritime Security in South East Asia: Indonesian Perspective, *Indonesian Journal of International Law (IJIL)*, Vol.7, (No.1), 2009.
- Muh. Irfansyah Hasan, Kejahatan Transnasional Dan Implementasi Hukum Pidana Indonesia, *Lex Crimen*, Vol. VII/No. 7/Sept/2018.
- Mardani, *Penyalahgunaan Narkoba dalam Perspektif Hukum Islam dan Hukum Pidana Nasional*, (Jakarta: Raja Grafindo Persada, 2008).
- Ni Putu Nita Mutiara Sari dan Suatra Putrawan, Pengaturan Hukum Tindak Pidana Narkotika Sebagai Kejahatan Trans Nasional Di Kawasan Asia Tenggara, *Jurnal Kertha Negara*, Vol. 06, No. 02, Maret 2018.
- P.A.F. Lamintang-Theo Lamintang, *Hukum Penitensier Indonesia*, (Jakarta:Sinar Grafika, 2012).
- Puteri Hikmawati, Analisis Terhadap Sanksi Pidana Bagi Pengguna Narkotika, *NEGARA HUKUM*: Vol. 2, No. 2, November 2011.

- Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Jakarta: Kencana Prenada Media Group, 2009).
- Parasian Simanungkalit, Model Pemidanaan Yang Ideal Bagi Korban Pengguna Narkoba Di Indonesia, *Yustisia*, Vol.1 No. 3 September - Desember 2012.
- Pusat Informasi Kementerian Hukum dan HAM Sulawesi Selatan, Restorative Justice, Solusi Over Kapasitas Prison Rutan, 15 Mei 2019.
- Randy Pradityo, Restorative Justice in Juvenile Justice System, *Jurnal Hukum dan Peradilan*, Volume 5 Nomor 3, November 2016.
- Ruslan Renggong, *Hukum Pidana Khusus Memahami Delik-Delik di Luar KUHP*, (Jakarta: Prenadamedia Group, 2019).
- Sembilan Prison dengan Kelebihan Penghuni Terbesar di Indonesia*, Kompas.com 10 September 2021.
- Samuel Arsheldon, Supriardoyo Simanjuntak, Kornelius Benuf, Strategi Antisipasi Over Kapasitas Prison Suatu Refleksi Atas Kebijakan Pencegahan Penyebaran Covid-19, *ADLIYA: Jurnal Hukum dan Kemanusiaan*, Vol. 14, No. 1, Juni 2020.
- Siswanto Sunarso, *Viktimologi dalam sistem peradilan pidana*, (Jakarta: Sinar Grafika, 2014).
- Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, (Yogyakarta: Liberty, 2007).
- Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab Tentang Penemuan Hukum*, (Bandung: Citra Aditya Bakti, 1993).
- Tim FH Unja, *Pentingnya Rehabilitasi Sebagai Solusi Dalam Menekan Kasus Narkotika*, (FH Universitas Jambi, 23 September 2020).
- Vanessa Sandra, Pengaruh Over Capacity Prison Terhadap Kinerja Pemasarakatan Prison Kelas Ii B Sleman, *Jurnal Hukum*, Fakultas Hukum Atma Jaya Yogyakarta, Desember, 2016.
- Wulan Dwi Yulianti, Upaya Menanggulangi Over Kapasitas Pada Prison Di Indonesia, *Jurnal Humani (Hukum dan Masyarakat Madani)*, Volume 11 No. 1 Mei 2021.
- Zainab Ompu Jainah, Kejahatan Narkoba Sebagai Fenomena Dari Transnational Organized Crime, *Pranata Hukum* Volume 8 No 2 Juli 2013.