

# ISRG Journal of Arts, Humanities and Social Sciences (ISRGJAHSS)



**ISRG PUBLISHERS**

Abbreviated Key Title: ISRG J Arts Humanit Soc Sci

**ISSN: 2583-7672 (Online)**

Journal homepage: <https://isrgpublishers.com/isrgjahss>

Volume – IV Issue - V (September-October) 2026

Frequency: Bimonthly



## Problems in Applying Restorative Justice to Drug Users or Abusers

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| **Received:** 31.08.2026 | **Accepted:** 05.09.2026 | **Published:** 07.09.2026

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### Abstract

*The application of restorative justice to drug users or abusers has raised legal issues following the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code. Article 82 letter i opens up space for the application of restorative justice to drug users or abusers. At the same time, Law Number 35 of 2009 concerning Narcotics has provided medical and social rehabilitation mechanisms for people with an addiction and victims of drug abuse. This study aims to analyze the problems of the application of restorative justice to drug users or abusers, particularly regarding the position of perpetrators and victims and the relationship of restorative justice with rehabilitation mechanisms. This study is a normative legal research study using a legislative and conceptual approach. Legal materials are analyzed qualitatively using the theory of legal certainty. The results of the study indicate that the application of restorative justice still faces ambiguity regarding the position of victims in cases of drug abuse for themselves, considering that abusers can be both perpetrators and victims of abuse. Furthermore, the Narcotics Law contains no regulations that clearly integrate restorative justice with rehabilitation mechanisms. This situation has the potential to lead to overlapping mechanisms and differing interpretations in practice. Therefore, clarity on the relationship between the two mechanisms is needed so that the implementation of restorative justice provides legal certainty and continues to support the goal of rehabilitation for drug users or abusers.*

**Keywords:** Restorative Justice, Drug Abusers, Rehabilitation.

### INTRODUCTION

Narcotics are a form of extraordinary crime that has a far-reaching impact on the lives of individuals, communities, and the nation. The distribution and abuse of narcotics not only threaten the health and development of young people but are also linked to organized crime networks and can lead to various forms of derivative crimes. These characteristics place narcotics crimes as crimes that require

specific countermeasures through a comprehensive approach, both repressive and preventive policies (Dudy et al., 2026).

A repressive approach is realized through criminalization and the imposition of criminal sanctions on parties involved in the illicit trafficking of narcotics, particularly distributors, dealers, producers, and others who profit from the circulation of narcotics. Imposing severe criminal sanctions on perpetrators of illicit

trafficking is part of the state's efforts to break the chain of narcotics distribution. On the other hand, drug control cannot rely solely on a repressive approach. Drug abuse has health and social dimensions that require a different approach for users or abusers than for perpetrators of illicit drug trafficking (Erawan et al., 2026).

Law Number 35 of 2009 concerning Narcotics has accommodated this approach through a rehabilitation mechanism. Article 54 stipulates that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision is reinforced through Article 55, which regulates the reporting obligation for drug addicts to obtain treatment and/or care through rehabilitation. Meanwhile, Article 127 provides criminal threats against drug abusers themselves. Still, when determining the verdict, the judge must consider the provisions on rehabilitation as stipulated in Articles 54, 55, and 103. In fact, if the abuser can be proven to be a victim of drug abuse, Article 127 paragraph (3) requires the abuser to undergo medical and social rehabilitation. This regulation indicates the existence of a legal policy that differentiates the treatment of abusers from perpetrators of illicit drug trafficking through a recovery orientation (Suyono et al., 2026).

The development of criminal procedural law then introduced a new approach with Law Number 20 of 2025 on the Criminal Procedure Code. This law provides a normative basis for implementing restorative justice as a mechanism for resolving criminal cases. Restorative justice is positioned as an approach oriented towards restoring the original state by involving the interested parties in a criminal case. Problems arose when Article 82 letter i of Law Number 20 of 2025 excluded narcotics crimes from the restorative justice mechanism, except for parties with the status of users or abusers (Suteja et al., 2026).

This exception raises legal issues when applied to drug abusers. The concept of restorative justice is fundamentally built on the involvement of the perpetrator and the victim and is directed at rehabilitating the victim. In cases of drug abuse for personal gain, this construction is not simple. The abuser may be considered a perpetrator of a crime under Article 127 of the Narcotics Law. Still, in certain circumstances, they may also be considered a victim of drug abuse, who, under Article 127 paragraph (3), is required to undergo rehabilitation. The question that then arises is who is considered a victim in the restorative justice process for drug abusers and to whom the rehabilitative action is directed (Angrayni & Handayani, 2026).

This issue is increasingly relevant because the Narcotics Law already provides specific mechanisms for medical and social rehabilitation for drug addicts and victims of abuse. The introduction of a restorative justice mechanism in the Criminal Procedure Code (KUHAP) raises questions about the relationship between the two. Is restorative justice intended as a standalone mechanism, as a complement to rehabilitation, or as a means to guide drug abusers toward the rehabilitation process? This unclear relationship has the potential to create problems in determining which mechanism should be prioritized in handling drug users or abusers.

Given these issues, this study does not merely view restorative justice as an alternative means of resolving criminal cases. Still, it examines the problems of its application when dealing with the character of drug abuse, which involves the construction of both

perpetrator and victim and already has a rehabilitation mechanism in the Narcotics Law. This focus is important to assess whether the regulation of restorative justice for drug users or abusers has provided clarity regarding the position of the parties and the relationship between restorative justice and rehabilitation. Based on that, this study raises the problematic issue of the application of restorative justice to drug users or abusers.

## RESEARCH METHODS

This study employs a normative legal research method, as it examines the regulations concerning restorative justice for narcotics users or abusers and the issues surrounding their implementation. Additionally, the study employs both a statutory and a conceptual approach. The statute approach is used to analyze restorative justice regulations for narcotics users or abusers within Law Number 20 of 2025 concerning the Criminal Procedure Code, as well as rehabilitation provisions in Law Number 35 of 2009 concerning Narcotics. The conceptual approach is employed to analyze the concept of restorative justice and the status of narcotics users or abusers within a recovery framework (Rosidi et al., 2026).

The legal materials utilized consist of primary legal sources—specifically relevant laws and regulations—secondary sources such as books, scholarly journals, research findings, and legal doctrine, and tertiary sources serving as supplementary material. These materials are analyzed qualitatively using a prescriptive analysis method to identify challenges in applying restorative justice to narcotics users or abusers and to formulate legal arguments regarding the relationship between restorative justice and rehabilitation mechanisms (Satory et al., 2024).

## RESULT AND DISCUSSION

### A. Regulations on the Implementation of Restorative Justice for Drug Users or Abusers

Restorative justice is one of the important reforms in criminal procedure law through Law Number 20 of 2025 concerning the Criminal Procedure Code. Article 1, number 21, defines restorative justice as an approach to handling criminal cases involving victims, the victim's family, the suspect, the suspect's family, the defendant, the defendant's family, and/or other related parties, aimed at restoring the original situation. This formulation shows that restorative justice is not solely directed at ending the criminal process, but instead places restoration as the primary orientation of case resolution. This restoration is achieved by involving parties with an interest in the case, so that the resolution is not solely oriented toward the relationship between the state and the perpetrator, as in the conventional criminal approach (Iswahyudi, 2026).

This construction demonstrates that the presence of victims is a crucial element in restorative justice mechanisms. This is evident in the mechanism's regulations, which require the involvement of both victims and perpetrators in the case resolution process. Restorative justice fundamentally begins with a criminal incident that causes harm or impacts the victim. Then the parties are given space to resolve the resulting consequences through a recovery process. Therefore, the presence of victims is not merely an accessory to the process but is intertwined with the primary goal of restorative justice. Restoring the original state will be difficult to construct if there is no clarity regarding who suffered the harm or the impact of the crime.

Law No. 20 of 2025 further limits the cases that can be resolved through restorative justice mechanisms. These limitations demonstrate that restorative justice is not a mechanism applicable to all crimes. Article 82 excludes several crimes, including crimes against state security, terrorism, corruption, sexual violence, crimes punishable by imprisonment of five years or more, crimes against life, crimes with special minimum penalties, and certain crimes that are particularly dangerous or detrimental to society. These limitations demonstrate that lawmakers prioritize public protection and law enforcement in cases deemed serious (Hafid & Utomo, 2026).

Interestingly, Article 82 letter i specifically places narcotics crimes as one of the crimes exempted from restorative justice mechanisms, except for those with the status of users or abusers. This formulation demonstrates a distinction between narcotics crimes in general and crimes committed by users or abusers. Lawmakers do not appear to equate users or abusers with other perpetrators of narcotics crimes, particularly those involved in the production and illicit trafficking of narcotics. Instead, users or abusers may seek resolution through a recovery-oriented approach (Poeloengan, 2026).

This exception is important because users or abusers are in a different position from dealers, producers, or distributors. Criminal law policy against illicit drug trafficking can still be directed at repressive action, while for users or abusers, there is a need to consider the aspect of recovery. Article 82 (i) can be understood as an attempt to incorporate this approach into criminal procedure through a restorative justice mechanism. The problem is that the phrase "except for those with the status of users or abusers" does not specifically explain the nature of the application of restorative justice to these groups.

This issue becomes important when the provisions of Article 82, letter i, are read in conjunction with the concept of restorative justice in Article 1, number 21. The regulation of RJ uses a construction that involves the victim and the party who committed the crime. Meanwhile, in cases of drug abuse for personal use, the user or abuser is the party who commits the act of using drugs against themselves. At the same time, narcotics law allows abusers to be positioned as victims of drug abuse. This condition creates a different character from criminal cases in general because it allows one subject to have two positions simultaneously, namely as the party who committed the crime and as a victim of abuse (Nbu et al., 2026).

This is where Article 82(i) leaves a conceptual problem. When users or abusers are given access to restorative justice, there is no clarity regarding who constitutes the victim in the process. If the abuser uses drugs for themselves and there are no individual victims who directly suffer losses as a result of their actions, the RJ mechanism cannot simply use the perpetrator-victim model as in ordinary criminal cases. Families, communities, and the state may indeed experience the impacts of drug abuse. Still, their status as "victims" in the RJ mechanism cannot be simply equated without a clear normative basis.

This demonstrates that Article 82 letter i cannot be understood simply as a provision permitting RJ for drug users or abusers. This norm must also be viewed from an operational perspective. When a law provides exceptions to the prohibition on RJ, there should be a structure that addresses how the mechanism is implemented, given the nature of the excluded crimes. Without clarity regarding the

parties' positions, the purpose of restitution, and the form of resolution to be achieved, these exceptions can create room for differing interpretations in practice.

On the other hand, Law Number 35 of 2009 concerning Narcotics does not place drug users or abusers solely within a criminal perspective. The provisions regarding their status demonstrate an approach that combines law enforcement with rehabilitation efforts. This is evident in Article 54, which stipulates that drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. This provision demonstrates that when someone is a person with an addiction or a victim of abuse, the law views the problem not only as a violation of the law but also as a problem that requires treatment through medical and social rehabilitation (Sari et al., 2026).

This approach is reinforced by Article 55, which regulates the reporting obligation for drug addicts, both minors through their parents or guardians, and adults through themselves or their families. These reports are addressed to community health centers, hospitals, and/or government-appointed rehabilitation institutions to obtain medical and social rehabilitation treatment and/or care. The construction of Article 55 shows that rehabilitation is not solely positioned as a consequence of sentencing, but also as a mechanism that can be used to obtain treatment and care. This orientation demonstrates the existence of legal efforts to shift the handling of the problem of drug dependence and abuse from a purely repressive approach to a rehabilitative approach (Rezky et al., 2026).

The importance of rehabilitation within the narcotics legal system is also reflected in Article 103, which authorizes judges to order drug addicts to undergo treatment and/or rehabilitation if they are found guilty of a drug crime. This provision is important because it demonstrates that the criminal justice process does not always end with a prison sentence for people with an addiction. Judges have the authority to incorporate rehabilitation as part of the legal treatment of people with an addiction, ensuring that recovery interests remain a consideration in the criminal justice process. Rehabilitation, in this context, is not merely a form of leniency but rather a normatively grounded instrument for resolving drug abuse issues (Siregar et al., 2026).

This construction becomes clearer when Article 127 is read in its entirety. Paragraph (1) still provides a criminal threat to drug abusers themselves based on the class of narcotics used. However, paragraph (2) requires judges to pay attention to the provisions of Articles 54, 55, and 103 in deciding cases of drug abusers. Furthermore, Article 127 paragraph (3) stipulates that if a drug abuser can be proven to be a victim of drug abuse, the drug abuser is required to undergo medical rehabilitation and social rehabilitation. This series of provisions shows that the Narcotics Law differentiates the character of treatment between drug abusers and perpetrators who are oriented towards illicit drug trafficking. For drug abusers who have a position as victims, the law does not stop at imposing criminal sanctions, but directs the solution to recovery through rehabilitation (Hatiku, 2026).

This legal construction becomes crucial when linked to the emergence of restorative justice mechanisms in the new Criminal Procedure Code. Before restorative justice was explicitly provided for drug users or abusers, the Narcotics Law already had a specific mechanism that allowed drug abusers to receive recovery-based treatment. Therefore, the existence of Article 82 letter i of Law No.

20 of 2025, which opens exceptions for drug users or abusers, raises questions regarding the position and function of restorative justice alongside existing rehabilitation mechanisms. This issue becomes even more complex when drug abusers in the same case can be positioned as both perpetrators of the crime and victims of abuse. At this point, further examination is needed to determine whether restorative justice provides a distinct and necessary recovery mechanism, or whether it actually overlaps with the rehabilitation mechanisms specifically established by the Narcotics Law.

## **B. Problems in Applying Restorative Justice to Drug Users or Abusers**

The application of restorative justice to drug users or abusers leaves issues that are not only related to the technical implementation but also touch on the basic construction of restorative justice itself. Article 1, number 21 of Law No. 20 of 2025 places the victim, the victim's family, the suspect, the suspect's family, the defendant, the defendant's family, and/or other related parties as parties who can be involved in the restorative justice process. This construction indicates that restorative justice is built on the presence of both the party who committed the crime and the party who experienced its consequences. This relationship forms the basis for efforts to restore the original state. The problem is that the character of drug abuse for oneself does not fully align with this construction (Yono & Laia, 2026).

### **1. Unclear Position of Perpetrator and Victim**

In cases of drug abuse for personal use, the abuser is the party who commits the act of using narcotics and can therefore be held accountable under Article 127 of Law No. 35 of 2009. At the same time, the Narcotics Law recognizes the concept of victims of drug abuse. Article 127 paragraph (3) even stipulates that if the abuser can be proven to be a victim of drug abuse, the abuser is required to undergo medical rehabilitation and social rehabilitation. This means that there is a possibility for one legal subject to have two dimensions of status: as the party who committed the crime and as the victim of drug abuse. This character differs from the construction of criminal acts, which clearly shows the separation between the perpetrator and the victim (Naibaho et al., 2026).

This issue becomes relevant when Article 82 letter i of Law No. 20 of 2025 provides an exception for narcotics crimes to be resolved through restorative justice if the perpetrator is a user or abuser. This provision opens the door to the implementation of RJ, but does not specifically explain how the construction of perpetrators and victims in drug abuse cases is determined. In fact, if the abuser is a victim of abuse, then questions arise regarding which party should be placed as a victim in the RJ process. Can the abuser's family be placed as a victim? Is the community a victim? Can the state be placed as a victim? Or is it the abuser themselves who are the victims? Each option carries different legal consequences, while the Criminal Procedure Code does not provide a definition that explicitly addresses this issue.

This problem cannot be resolved simply by expanding the definition of victim interpretively. Restorative justice is not simply a procedure to prevent someone from being punished, but rather a mechanism that places certain parties in the recovery process. When the perpetrator and victim cannot be clearly identified, the goal and direction of recovery become uncertain. In the case of drug abuse for personal use, for example, if the abuser is considered the victim, there are no other parties directly affected by

the drug use. If the family or community is identified as the victim, there needs to be a basis explaining the type of loss or impact to be recovered and their position in the RJ process.

This situation illustrates the problem from the perspective of Gustav Radbruch's theory of legal certainty. Legal certainty requires clarity regarding the subject matter regulated, the actions permitted, and the legal consequences that arise from a norm. Article 82 letter i does provide certainty that users or abusers are among those who can obtain an exception from the prohibition on RJ for narcotics crimes. However, certainty regarding who is the victim and who should be involved in the RJ process has not been adequately provided. As a result, the implementation of this norm is highly open to interpretation by law enforcement officials. Investigators, public prosecutors, or judges may have different views regarding which parties should be involved in the resolution process. These differences can ultimately affect the uniform application of restorative justice to cases with similar characteristics (Darmansyah et al., 2026).

### **2. The Unclear Relationship between Restorative Justice and Rehabilitation**

The next problem relates to the relationship between restorative justice and rehabilitation. The Narcotics Law has established specific mechanisms for handling drug abuse through medical and social rehabilitation. Article 54 requires people with an addiction and victims of drug abuse to undergo rehabilitation; Article 55 regulates reporting mechanisms for obtaining treatment and/or care, while Article 103 provides room for judges to order treatment and/or care through rehabilitation. Article 127 paragraph (3) also provides stricter consequences by requiring rehabilitation for abusers who are proven to be victims of drug abuse. On the other hand, the new Criminal Procedure Code, through Article 82 letter i, opens a restorative justice mechanism for drug users or abusers. Both regimes exhibit a recovery orientation, but there are no regulations that explicitly address their relationship (Wiyangga & Laia, 2026).

This ambiguity raises questions about the respective roles of each mechanism. Should restorative justice be implemented first, followed by the abuser's rehabilitation? Is rehabilitation a form of recovery resulting from the restorative justice process? Should restorative justice and rehabilitation proceed concurrently? Or might resolving cases through restorative justice render the rehabilitation mechanism under the Narcotics Law unnecessary? These questions are crucial because each mechanism has a distinct legal basis and consequences. If restorative justice is intended as a pathway to rehabilitation for abusers, there should be a clear normative relationship between the restorative justice process and the obligation to rehabilitate. Conversely, if restorative justice can stand alone, it is necessary to clarify the form of recovery that distinguishes it from the rehabilitation specifically regulated in the Narcotics Law (Fitriany, 2026).

The absence of regulations integrating these two mechanisms has the potential to create overlapping mechanisms in the treatment of drug users or abusers. The Narcotics Law, as a specific regulation, provides recovery instruments directly aimed at people with a substance use disorder and victims of abuse. The introduction of RJ in the Criminal Procedure Code should have a clearly defined function within this system, rather than simply adding a resolution option without defining its legal relationship and consequences. From a legal certainty perspective, this lack of clarity can lead law

enforcement officials to adopt different approaches in determining whether a case is sufficiently resolved through RJ, should be directed to rehabilitation, or requires both mechanisms. However, users or abusers in similar circumstances should receive treatment based on predictable and consistently applied legal parameters (Feriandref et al., 2026).

### 3. Unclear Criteria for Users or Abusers Who Can Receive Restorative Justice

Another issue arises from the use of the term "user or abuser" in Article 82 letter i of Law No. 20 of 2025. This term is important because the status of a user or abuser determines whether a person can obtain an exception from the prohibition on the application of restorative justice for narcotics crimes. The problem is that this provision does not specifically define the parameters that must be used to determine someone as a user or abuser to obtain RJ. In fact, in narcotics cases, a person can be charged under different provisions depending on the actions and accompanying circumstances. Determining that someone is a user or abuser therefore cannot be separated from evidence regarding the purpose of possession, use, quantity and type of narcotics, examination results, and the condition of the person concerned (Wirayadnyani & Novelin, 2026).

The lack of clear parameters also raises questions about who has the authority to determine this status. Is the determination made by the investigator at the initial stage, by the public prosecutor when determining the direction of prosecution, based on the results of an integrated assessment, or can it only be determined by the judge after all the facts of the case have been examined in court? Each stage has consequences for the timing and method of implementing RJ. If the status of a user or abuser can be determined during the investigation stage, RJ can be used earlier as a case resolution mechanism. If the status can only be determined based on evidence presented in court, the scope for implementing RJ differs. The Criminal Procedure Code needs to clarify this matter because the status of a user or abuser is the entry point for obtaining exceptions, as referred to in Article 82 letter i (Budiman, 2026).

From a legal certainty perspective, the lack of clarity regarding the criteria and authority for determining user or abuser status has the potential to create inconsistent legal implementation. Norms granting rights or access to specific mechanisms should ideally be accompanied by a standard that can be used objectively to determine who is entitled to them. Without clear parameters, the application of Article 82(i) can be highly dependent on the judgment of individual law enforcement officials. This situation has the potential to lead to differential treatment of users or abusers in cases with similar characteristics. This issue demonstrates that the problem with implementing restorative justice lies not only in the availability of a legal basis but also in the clarity of the normative framework underpinning its implementation.

## CONCLUSION

The application of restorative justice to drug users or abusers still faces normative problems, primarily because the construction of restorative justice in Law No. 20 of 2025 relies on the involvement of perpetrators and victims. In contrast, in the abuse of narcotics for personal use, abusers can be both perpetrators and victims of abuse. Article 82 letter i has opened up space for restorative justice for users or abusers, but has not provided clarity regarding the party positioned as a victim, the recovery mechanism, and the

criteria and authority for determining who can receive RJ. This problem is further complicated because Law No. 35 of 2009 has provided a mechanism for medical and social rehabilitation as a form of recovery for people with an addiction and victims of drug abuse. The unclear relationship between restorative justice and rehabilitation creates the potential for overlapping mechanisms and opens up room for differences in interpretation in practice. Viewed from a legal certainty perspective, this regulation does not fully provide clear, consistent, and predictable guidelines for law enforcement officers in dealing with drug users or abusers. Therefore, the application of RJ to users or abusers needs to be placed clearly in relation to rehabilitation mechanisms so that the goal of recovery can be achieved without causing uncertainty regarding the mechanisms and legal consequences of its resolution.

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