

The Regulatory Design of Prosecutors' Authority in Terminating Narcotics Cases under Restorative Justice

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ABSTRACT

Narcotics abuse in Indonesia not only generates social and criminological problems but also raises normative challenges within the criminal justice system, particularly concerning the orientation of punishment and the prosecutorial authority of the public prosecutor. Although Law Number 35 of 2009 on Narcotics accommodates a rehabilitative approach for abusers and addicts, law enforcement practices remain dominated by a repressive paradigm that prioritizes imprisonment, thereby creating legal uncertainty. This study aims to analyze the weaknesses in the regulation of prosecutorial authority in the termination of narcotics cases and to formulate a future regulatory design based on restorative justice. The research employs a normative legal method using statutory and conceptual approaches through the examination of primary and secondary legal materials. The findings indicate that Article 65 letter (f) of the Indonesian Criminal Procedure Code remains general in nature, lacks specific juridical parameters for narcotics cases, and has not been harmonized with the Narcotics Law. In addition, the inconsistency of terminology and the elasticity of the provisions in Articles 111 and 112 create room for multiple interpretations. Therefore, a more specific, integrated, and rehabilitation-oriented normative reconstruction is required to ensure legal certainty and enhance the effectiveness of the criminal justice system. Such reformulation is expected to strengthen the legitimacy of prosecutorial authority as *dominus litis* and encourage a shift in narcotics law enforcement from a purely repressive approach toward a more humane, proportional, and sustainable paradigm in line with responsive and inclusive national criminal law reform.

Keywords: Prosecutor, Termination of Prosecution, Narcotics Crimes, Restorative Justice.

1. INTRODUCTION

Narcotics abuse in Indonesia not only generates social and criminological problems but also raises normative issues within the criminal law system, particularly concerning the orientation of punishment and mechanisms for case resolution. Law Number 35 of 2009 on Narcotics has provided a legal basis for a rehabilitative approach through medical and social rehabilitation for narcotics abusers, victims of abuse, and addicts (Syam et al., 2023). Nevertheless, law enforcement practices remain dominated by a repressive paradigm that places imprisonment as the primary instrument of punishment, thereby creating an imbalance between rehabilitation norms and the implementation of prosecutorial policies. This condition gives rise to normative problems in the form of legal uncertainty regarding the limits of rehabilitation and the scope of discretion of law enforcement authorities in determining case settlement (Riyanto, 2021).

Within the framework of the rule of law as mandated by Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, prosecutorial authority constitutes an essential

component of the criminal justice system administered by the Attorney General's Office of the Republic of Indonesia. Based on Law Number 11 of 2021 on the Amendment to Law Number 16 of 2004 concerning the Attorney General's Office, the prosecution service possesses dominus litis authority as the controller of cases, including determining whether a case should proceed to trial or whether prosecution should be terminated. In the development of modern criminal law policy, this authority has been further expanded through the regulation of termination of prosecution based on a restorative justice approach that prioritizes recovery and social reintegration as the main objectives of case resolution (Yusuf & Karso, 2025).

Normatively, the application of restorative justice in narcotics cases raises several juridical issues, particularly concerning the limits of prosecutorial authority in terminating cases and its compatibility with the principles of legality and legal certainty. On the one hand, narcotics crimes are categorized as extraordinary crimes that require strict law enforcement (Sihombing et al., 2023). On the other hand, the characteristics of narcotics abusers—who are often victims of dependency—open the possibility for non-punitive approaches through rehabilitation and restorative justice. This normative tension creates a dilemma for prosecutors as case controllers in determining termination policies that are fair while remaining consistent with the objectives of combating narcotics crimes (Mulya et al., 2022).

Furthermore, the regulation of case termination based on restorative justice still leaves interpretative issues regarding objective parameters, assessment mechanisms, and the limits of prosecutorial discretion in implementing such policies. The absence of uniform standards has the potential to create disparities in law enforcement and even open opportunities for deviations in practice (Attamimi, 2024). Normatively, however, prosecutorial authority in terminating prosecution must be exercised in an accountable and proportional manner and oriented toward the protection of human rights, without neglecting public interests and the objectives of combating narcotics crimes.

Therefore, the study of prosecutorial authority in terminating narcotics cases through a restorative justice approach becomes important to identify normative problems related to the limits of prosecutorial power, the consistency of normative application, and the direction of reform toward a more humane and just criminal law policy. This research is expected to contribute conceptually to strengthening the legal basis for the termination of narcotics cases by the prosecution service, thereby creating a balance between legal certainty, utility, and justice within the Indonesian criminal justice system.

2. RESEARCH METHOD

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This research constitutes a normative legal study. Within the conceptual or doctrinal framework, normative legal research is also referred to as rule-based or dogmatic research, and essentially involves the inventory and analysis of positive law while containing a prescriptive dimension (Marzuki, 2005). In line with this framework, to examine the issues addressed in this study in greater depth, the researcher presents relevant findings derived from primary legal materials originating from statutory regulations as well as secondary legal materials obtained from scientific literature. The research approaches employed in this study are the statutory approach and the conceptual approach (Kristiawanto, 2022).

3. RESULTS AND DISCUSSION

Weaknesses in the Regulation of Prosecutorial Authority in the Termination of Narcotics Criminal Cases

Normatively, Article 65 letter (f) of Law Number 20 of 2025 on the Indonesian Criminal Procedure Code states that the Public Prosecutor has the authority to “terminate prosecution by notifying the investigator.” This provision grants legitimate authority to the Public Prosecutor to terminate prosecution with notification to the investigator. Such formulation confirms the position of the prosecutor as the controller of the case (*dominus litis*) within the criminal justice system (Amalia & Pasa, 2024). However, when examined from the perspective of normative construction, the regulation remains general in nature and does not yet contain specific juridical parameters regarding the limits of terminating prosecution in narcotics cases. The absence of measurable normative indicators causes this authority to stand as an abstract provision without direct linkage to the characteristics of narcotics offenses, which possess differentiated legal subjects and distinctive objectives of punishment (Wirayadnyani & Novelin, 2026).

Furthermore, there is a normative weakness related to the inconsistency of terminology in Law Number 35 of 2009 on Narcotics. The use of the terms “abuser,” “narcotics addict,” and “victim of narcotics abuse” is not arranged within a systematic conceptual framework. In legislative theory, the use of different terminology should reflect distinct legal categories and clear normative consequences (Thohir & Panjaitan, 2025). However, within the structure of the Narcotics Law, such differentiation is not followed by explicit operational limitations, thereby creating ambiguity in determining the position of legal subjects (Hibatullah et al., 2024). This terminological inconsistency potentially weakens the normative basis for the authority to terminate prosecution, as such authority lacks a definite reference point regarding the classification of legal subjects regulated in the substantive law.

More specifically, normative weaknesses also lie in the formulation of Articles 111 and 112 of the Narcotics Law, which employ broad and generic phrases such as “planting,” “cultivating,” “possessing,” “storing,” “controlling,” or “providing.” Such excessively elastic formulations are not accompanied by clear differentiation between acts related to illicit trafficking and acts associated with personal use. From the perspective of the principle of legal certainty, overly broad normative formulations may lead to ambiguity regarding the limits of criminal offenses, as a single act may be interpreted under several different provisions. Systematically, this indicates internal disharmony within the Narcotics Law, since general norms tend to dominate the regulatory structure rather than more specific provisions.

In addition, both vertically and horizontally, the regulation of prosecutorial authority to terminate prosecution under Article 65 letter (f) of the Criminal Procedure Code has not been conceptually integrated with the substantive norms of the Narcotics Law. Vertically, there is no explicit linkage between prosecutorial authority and the principle of protection for abusers or victims recognized within narcotics regulation. Horizontally, systematic harmonization is absent between prosecutorial authority and the classification of criminal offenses within the substantive provisions distinguishing abuse, possession, and illicit trafficking. Consequently, such authority loses its systemic function as an instrument of case selection within the legal framework governing narcotics offenses.

From the perspective of the principle *lex specialis derogat legi generali*, the Narcotics Law as a special criminal law should provide more detailed regulation regarding how prosecutorial authority—including the termination of prosecution—is constructed within the context of narcotics offenses (Kamaluddin & Mukminah, 2025). However, the absence of provisions directly linking prosecutorial authority with classifications of legal subjects and types of conduct indicates a regulatory gap at the technical-substantive level. This condition demonstrates that the authority norm contained in Article 65 remains general and has not yet undergone normative specification consistent with the characteristics of narcotics law as a special legal regime.

Furthermore, from the perspective of legal system theory, the inconsistency of terminology and the elasticity of statutory provisions indicate weaknesses in legislative design in constructing a coherent normative structure. Prosecutorial authority is not accompanied by rigid parameters regarding the legal conditions that justify the termination of prosecution in narcotics cases. The absence of such parameters is not merely a technical drafting issue but reflects an incompleteness in the substance of the law, which ultimately contributes to normative uncertainty (Putra, 2023).

Thus, the main problem in regulating prosecutorial authority concerning the termination of narcotics cases does not lie in the existence of the authority itself but in the weaknesses of the



normative design, including terminological inconsistency, overly broad statutory formulations, and the absence of systematic harmonization between authority norms and the substantive norms of the Narcotics Law (Kristiyawan & Munawar, 2023). Therefore, a more systematic and integrated regulatory framework is required to ensure that the authority to terminate prosecution has a clear, consistent normative basis aligned with the characteristics of narcotics criminal law.

Regulatory Design of Prosecutorial Authority in the Termination of Narcotics Cases Based on Restorative Justice in the Future

The concept of restorative justice essentially emerged as a critique of the classical punitive paradigm that places suffering as the primary objective of criminal law. The ideas advanced by Louk Hulsman suggest that the modern criminal justice system is built upon the assumption that punishment must generate suffering for the offender, a view considered to potentially reinforce repressive and coercive orientations in law enforcement (Rinaldi et al., 2024). Within the development of punishment theory, such criticism has become the conceptual foundation for the emergence of restorative approaches that seek to shift the focus from retribution toward the restoration of social relationships and collective responsibility. Accordingly, restorative justice does not aim to completely abolish criminal sanctions but rather offers more proportional alternatives for resolving certain types of offenses, including cases of narcotics abuse (Sitorus, 2026).

Theoretically, restorative justice positions victims, offenders, and society as active subjects in the process of conflict resolution. Its primary orientation lies in restoring losses and reconstructing social relationships disrupted by criminal acts. Within this framework, offenders are not merely positioned as objects of punishment but as individuals encouraged to acknowledge wrongdoing, assume responsibility, and repair the consequences of their actions (Wicaksana et al., 2025). This approach provides broader participatory space for victims and the families of offenders, so that case resolution is not solely oriented toward the state as the monopolistic authority of punishment. Such analysis demonstrates that restorative justice possesses a normative dimension distinct from the retributive paradigm, as it positions conflict resolution as a means of restoring social balance.

Within the context of Indonesian positive law, restorative justice gains particular relevance in the regulation of narcotics offenses. Law Number 35 of 2009 on Narcotics essentially embodies the spirit of protecting narcotics abusers as individuals requiring rehabilitation rather than merely punishment. Normatively, this policy direction seeks to prevent individuals from experiencing stigmatization as a consequence of criminal proceedings while opening opportunities for constructive social reintegration (Ramadhani, 2021). This development indicates a tendency

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toward a paradigm shift from a rigid penal approach to a health and social approach. Nevertheless, systematically, the provisions within the Narcotics Law have not fully integrated restorative principles explicitly within the framework of prosecutorial authority, so their application largely depends on interpretation by law enforcement institutions.

Restorative justice in narcotics cases not only concerns offenders as individuals but also involves families and the broader social environment affected by the offense. This perspective emphasizes that the impact of crime is not solely individual but collective, and therefore its resolution must consider broader social welfare. Concerns that restorative approaches eliminate deterrent effects actually stem from an outdated paradigm that equates punishment solely with imprisonment (Yasa et al., 2023). From a normative analysis, such assumptions are not always relevant, as modern criminal law also encompasses objectives of rehabilitation and social reintegration. Consequently, restorative justice can be understood as a mechanism to balance the interests of community protection and the protection of offenders who are in vulnerable positions, particularly first-time narcotics abusers (Wurara et al., 2025).

Conceptually, the primary aim of restorative justice is to create a dialogical space that enables offenders to understand the consequences of their actions and encourages constructive responsibility. This process not only resolves conflicts at the individual level but also strengthens social order that may have been disrupted. By involving families and communities in the decision-making process, restorative approaches seek to rebuild social legitimacy toward the law (Gultom & Manalu, 2023). This analysis demonstrates that restorative theory does not reject the existence of sanctions but shifts their orientation from imprisonment toward restoration. In the context of narcotics abusers, such an approach is particularly relevant because the characteristics of the offense often relate to dependency and certain social conditions.

From the perspective of prosecutorial authority, the role of the Attorney General's Office of the Republic of Indonesia becomes highly strategic in implementing restorative principles. As an institution holding the function of *dominus litis*, prosecutors possess the authority to determine whether a case should proceed to court or be terminated at the prosecution stage (Isfarin & Saputra, 2024). The reorientation of prosecutorial policy toward restorative approaches requires consideration of the degree of culpability, the legal interests protected, and the sense of justice within society. Within the broader framework of criminal law reform, this authority reflects a shift from purely formal law enforcement toward a more substantive and justice-oriented approach.

The urgency of regulating termination of prosecution based on restorative justice can also be observed from the perspective of the national legal system. Regulations that are currently only stipulated through prosecutorial regulations possess limited binding force internally and do not



occupy a high position within the hierarchy of statutory regulations. This condition raises issues of normative legitimacy because authority that directly affects individual rights should have a stronger legal basis at the statutory level (Ningrum et al., 2023). Furthermore, the application of restorative justice has the potential to reduce prison overcrowding, decrease the number of cases entering courts, and optimize state budget efficiency within the criminal justice system (Beritno, 2021).

Normatively, Article 65 letter (f) of the Criminal Procedure Code provides legitimacy for the Public Prosecutor to terminate prosecution by notifying investigators. Although this provision strengthens the position of prosecutors as case controllers, its formulation remains general and does not regulate specific juridical parameters related to the termination of prosecution in narcotics cases. Analysis of the normative construction indicates that the absence of clear indicators allows the authority to be interpreted broadly without measurable limitations. In the context of the principle of legal certainty, abstract norms may lead to inconsistency in interpretation and potentially reduce the quality of legal protection for individuals dealing with the criminal justice system.

Another normative weakness lies in the inconsistency of terminology within the Narcotics Law, particularly the use of the terms “abuser,” “addict,” and “victim of abuse.” From the perspective of legislative drafting theory, differences in terminology should reflect differences in legal categories and clear normative consequences. However, the structure of the Narcotics Law has not provided explicit operational limitations for these terms, thereby creating ambiguity in determining the position of legal subjects (Hastuti et al., 2024). This ambiguity directly affects the normative basis of prosecutorial authority to terminate prosecution because prosecutors lack a clear classification reference in determining whether a case is appropriate for resolution through a restorative approach.

Additionally, the formulation of Articles 111 and 112 of the Narcotics Law using generic phrases such as “possessing,” “storing,” or “controlling” reveals weaknesses in the construction of offense norms. Such broad formulations, without differentiation between illicit trafficking and personal use, may lead to multiple interpretations in practice. From the perspective of the principles of legality and legal certainty, elastic formulations create excessive interpretative space, allowing a single act to be qualified under multiple provisions. This internal disharmony ultimately affects the normative legitimacy of restorative justice-based termination of prosecution policies, as no clear boundary exists between offenders eligible for rehabilitative approaches and those who should proceed through conventional criminal justice mechanisms. Based on this analysis, the ideal regulatory framework in the future should move toward a reformulation of prosecutorial authority

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norms that are more specific and integrated with the characteristics of narcotics offenses. The following are the proposed recommendations.

Table 1. Recommended Ideal Arrangements in the Criminal Procedure Code

Article 65 letter f	Weaknesses of the Rules	Recommendations
The Public Prosecutor has the authority to: <i>“Discontinue prosecution by notifying the Investigator.”</i>	Only regulates the authority to terminate prosecution in general. The norm is abstract and does not contain specific criteria for narcotics cases.	It should be added: <i>The Public Prosecutor has the authority to: “Discontinue prosecution based on the concept of restorative justice in order to achieve justice.”</i>

Table 2. Recommended Ideal Arrangements in Articles 111 and 112 of the Narcotics Law

Article 111 and Article 112	Kelemahan Aturan	Rekomendasi
<i>“Any person who, without authorization or unlawfully, plants, cultivates, possesses, stores, controls, or supplies Class I Narcotics in the form of plants shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp800,000,000 and a maximum fine of Rp8,000,000,000 (eight billion rupiah).”</i>	Article 111 prioritizes the imposition of criminal sanctions of imprisonment, which causes another problem in the form of prison capacity that currently exceeds capacity (over capacity). Article 127 is a provision that is in line with the objectives of the Narcotics Law as stated in Article 4 to guarantee the right to rehabilitation for abusers. In practice, prosecutors tend to use Articles 111 and 112 of the Narcotics Law for drug users. Technically, Articles 111 and 112 of the Narcotics Law are easier to prove than the provisions of Article 127 of the Narcotics Law. In practice, prosecutors tend to use Articles 111 and 112 of the Narcotics Law for drug users. Technically, Articles 111 and 112 of the Narcotics Law are easier to prove than the provisions of Article 127 of the Narcotics Law.	It should be added: <i>Provisions regarding rehabilitation sanctions for drug addicts as an option for legal certainty and effectiveness of sanctions in the field.</i>

Source: Legal materials compiled by the author.

In deciding to terminate prosecution, prosecutors essentially do not merely assess whether the formal juridical elements of a criminal offense have been fulfilled, but must also consider the substantive aspects inherent in the case. Such considerations include the subject and object of the offense, the category and severity of criminal sanctions, the background of the conduct, the degree

of culpability of the offender, and the losses or consequences resulting from the act. In addition, the rational dimension of law enforcement is reflected through a cost–benefit analysis of case handling, namely the extent to which the prosecution process contributes to the realization of justice, utility, and efficiency within the criminal justice system.

Within a more recent normative framework, such authority finds its legal basis in Article 65 letter (f) of the Law Number 20 of 2025 on the Indonesian Criminal Procedure Code, which provides room for the Public Prosecutor to terminate prosecution by notifying the relevant parties. This provision opens opportunities for the integration of a restorative justice approach as part of a new orientation of prosecution that is not solely repressive but also directed toward restoration and the balancing of legal interests. Nevertheless, substantively the provision still leaves unresolved issues, as it does not formulate clear parameters regarding the limits, criteria, and juridical construction of restorative justice–based termination of prosecution.

Furthermore, the regulatory design concerning Articles 111 and 112 of Law Number 35 of 2009 on Narcotics should be directed toward a normative reform that is more adaptive to the characteristics of offenders, particularly narcotics addicts and abusers. These provisions have thus far primarily emphasized a repressive approach through cumulative and severe imprisonment sanctions, without providing adequate space for the application of rehabilitation sanctions as part of a proportional legal response.

4. CONCLUSIONS

The regulation of prosecutorial authority to terminate prosecution as stipulated in Article 65 letter (f) of the Law Number 20 of 2025 on the Indonesian Criminal Procedure Code has provided normative legitimacy for the role of the prosecutor as *dominus litis*. However, the provision remains general in nature and does not yet contain specific juridical parameters within the context of narcotics cases. Normative weaknesses become more apparent through the inconsistency of terminology in the Law Number 35 of 2009 on Narcotics, the elasticity of statutory formulations, and the absence of both vertical and horizontal harmonization between authority norms and substantive legal norms. Such conditions generate legal uncertainty and diminish the selective function of prosecutorial authority in terminating prosecution. Therefore, a reconstruction of the regulatory framework that is more systematic, integrated, and aligned with the characteristics of narcotics criminal law as a special legal regime is required in order to achieve legal certainty and the effectiveness of law enforcement.

The future design of prosecutorial authority in terminating narcotics cases based on restorative justice should be directed toward a more specific, integrated, and recovery-oriented

normative reconstruction. Conceptually, the restorative approach offers a paradigm shift from a repressive model toward social recovery, rehabilitation, and the reintegration of offenders, particularly narcotics abusers and addicts. Nevertheless, normative weaknesses remain evident in the general nature of Article 65 letter (f) of the Law Number 20 of 2025 on the Indonesian Criminal Procedure Code, the inconsistency of terminology within the Law Number 35 of 2009 on Narcotics, and the elastic formulation of Articles 111 and 112 which opens space for multiple interpretations. Accordingly, regulatory reform is necessary to clarify the juridical parameters of restorative justice–based termination of prosecution, to define the classification of legal subjects more precisely, and to explicitly incorporate rehabilitation as an available option. Such reform would strengthen the normative legitimacy of prosecutorial authority, ensure legal certainty, and promote a criminal justice system that is more effective, proportional, and humane.

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