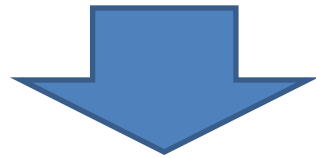


Penerapan *Restorative Justice* Terhadap Tindak Pidana Tanpa Korban:



(Penyalahgunaan Narkotika)

Simplexius Asa
Simplex Sigillum Veri

Tindak Pidana Tanpa Korban ...?

- Dalam literatur dikenal beberapa istilah:
 - *victimless crime* ;
 - *crime without victim*;
 - *consensual crime*;
 - *complainless crime*;
- Semua Istilah di atas, menunjuk pada kejahatan yang tidak secara langsung menimbulkan korban: ***a crime that is considered to have no direct victim***;
- Di negara-negara ***common law*** disebut ***a statutory crime*** yaitu perbuatan yang menurut Undang-undang dapat dihukum, meski pada dasarnya tidak secara langsung dapat menimbulkan korban di pihak lain, ***having no clearly identifiable victim*** seperti: pelacuran atau perjudian.
- Steven H. Gifis menyebut bentuk atau jenis tindak pidana tanpa korban sebagai ***vice crime*** yaitu ***activities such as gambling, prostitution and pornography that are illegal because they offend the moral standard of the community***
- Packer dan Asworth menyebutkan: ***drug abuse offence*** adalah ***victimless crime***.

Apa itu Tindak Pidana Tanpa Korban

- Briyan A. Garner, ed.,: *victimless crime or crime without victim is a crime that is considered to have no direct victim.*
- Merriem Webster: *victimless crime is a statutory crime, such as prostitution or gambling, regarded as having no clearly identifiable victim.*

Tiga Bisnis Paling Besar di Dunia:

Ada tiga hal, yaitu :

- NARKOBA
- Senjata Api
- Perdagangan Orang ; Perempuan & Anak

Cirinya:

- Bersifat transnasional;
- *Modus operandi* didukung teknologi canggih;
- Digerakkan oleh jaringan sindikasi yang luas;
- Dibela oleh Ahli Yang Mumpuni dalam bidang Hukum & Ekonomi/Accounting;
- Disokong dengan dana yang besar;
- Pelaku perbuatan pidana suka menyuap aparat;

Ketiganya: bersaudara kandung, sedangkan sepupu mereka bernama korupsi, *money laundering* dan penipuan - penggelapan pajak

NARKOBA = NAZA = NAPZA

NARKOBA : Narkotika dan **Obat-Obatan (Bahan)** Berbahaya

N A Z A : Narkotika dan Zat Adiktif lainnya

N A P Z A : Narkotika, Psikotropika, Zat Adiktif lain dan Alkohol

NARKOBA = NAZA = NAPZA meliputi :

- Narkotika : *ganja, opioida dan kokain*
- Psikotropika : *stimulansia, halusinogen, sedativa dan hipnotika*
- Zat adiktif lainnya : *inhalansia, salven, nikotin dan kafein*
- Alkohol

Catatan : Narkotika Terdiri Atas Tiga Golongan (Lampiran UU 35/2009)

Psikotropika (Mulanya) Terdiri Atas Empat Golongan (UU 5/1997)

Obat-obatan/Bahan Berbahaya (UU 36/2009)

Miras - Mirah ...?

Konsep Utama Mengatasi Masalah NARKOBA:

Harm Minimizations:

- Supply reduction**
- Demand reduction**
- Harm reduction**

Memahami Masalah Penyalahgunaan

NARKOBA :

1	HEALTH	Physic Psychic	Dependency Addiction
2	ECONOMIC	Livelihood Mental	Poverty Thief
3	SOCIAL	Relationship	Tension Conflict
4	LEGAL	Sanction	Fines Imprisonment
5	SPIRITUAL	Stigma	Social exclusion

Tujuan Pengaturan Narkotika

UU Nomor 22 Tahun 1997 ex Pasal 3:

Pengaturan narkotika bertujuan untuk:

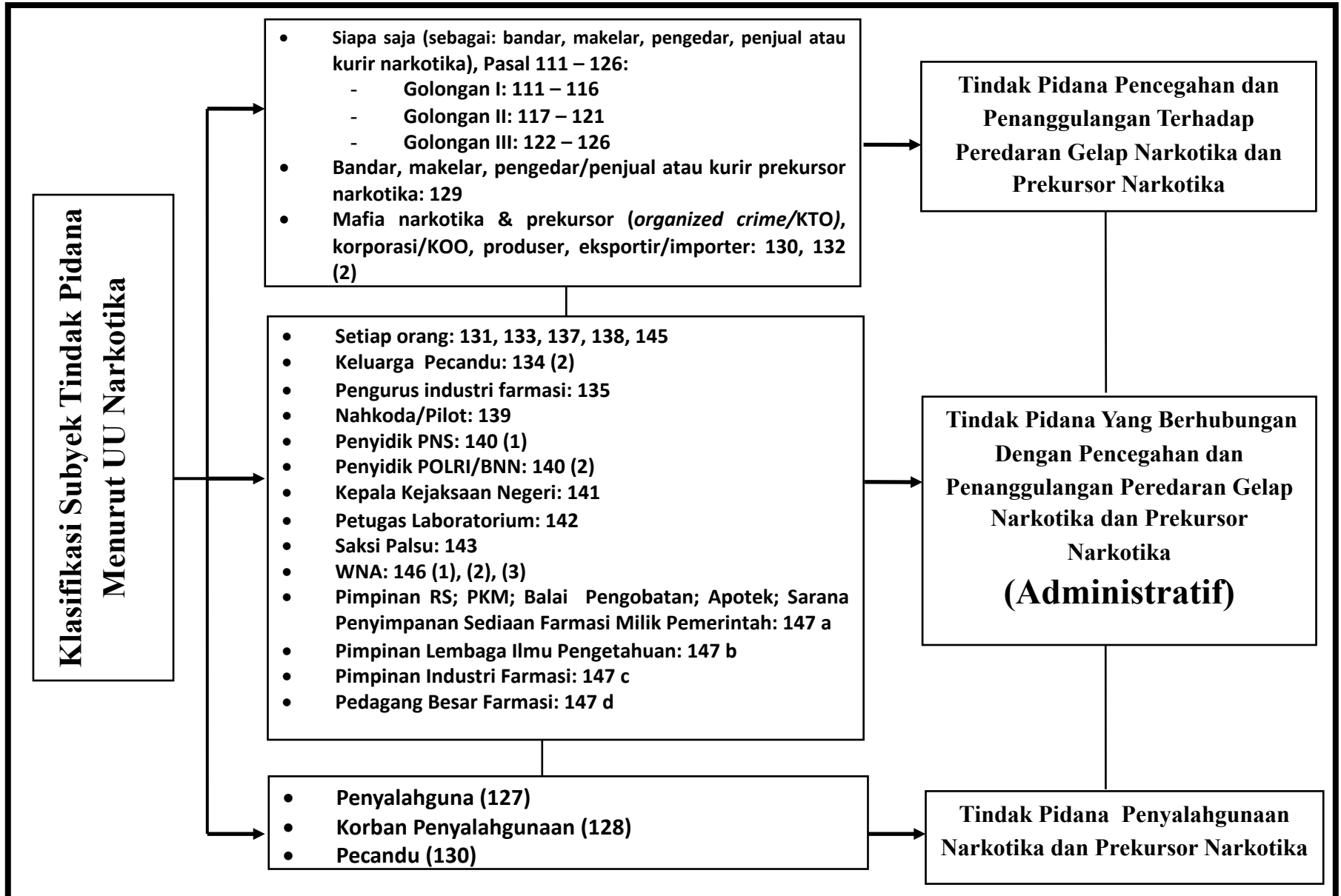
- a. Menjamin ketersediaan narkotika untuk kepentingan pelayanan kesehatan dan/atau pengembangan ilmu pengetahuan;
- b. Mencegah terjadinya penyalahgunaan narkotika ; dan
- c. Memberantas peredaran gelap narkotika;

UU Nomor 35 Tahun 2009 ex Pasal 4:

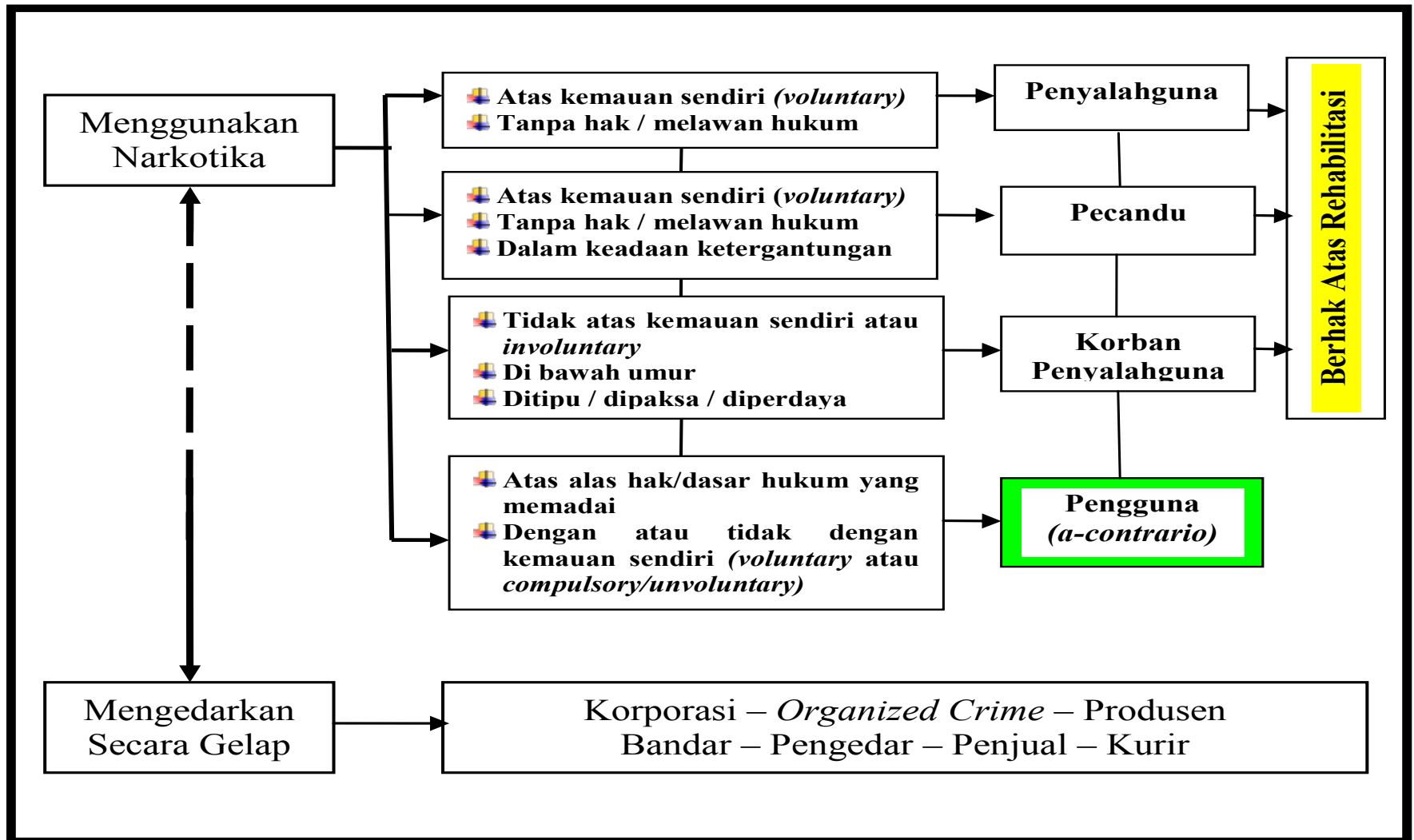
UU tentang narkotika bertujuan untuk:

- a. Menjamin ketersediaan narkotika untuk kepentingan pelayanan kesehatan dan / atau pengembangan ilmu pengetahuan dan teknologi;
- b. Mencegah, melindungi dan menyelamatkan bangsa Indonesia dari penyalahgunaan narkotika;
- c. Memberantas peredaran gelap narkotika dan prekursor narkotika; dan
- d. Menjamin pengaturan upaya rehabilitasi medis dan sosial bagi Penyalah Guna dan Pecandu narkotika;

Subyek Tindak Pidana Narkotika Menurut UU No. 35/2009



Penyalah Guna dan Pecandu Narkotika



Indonesia now is in Narkotic Emergency

President of Indonesia, declared in his speech on Tuesday, December 9th of 2014, at Universitas Gadjah Mada that “**Indonesia is now in drugs emergency situation.**” According to The President, there were four important problem that need to be solved as soon as possible, as follows: narkotic, corruption, state authority, and fuel subsidized. In relation to narkotic problem, The President said:

- **There were 4,5 millions people of Indonesia now abusing narkotic;**
- **1,2 millions among others can't be rehabilitate anymore;**
- **There were 40-50 Indonesian young peoples dying every day because of using drugs;**
- **President promises not to compromise and would reject all the clemency appeals by drug dealers / narcotic traffickers with death penalty;**

<https://ugm.ac.id/id/berita/9555-jokowi:.empat.persoalan.negara.harus.segera.diatasi.>

Note: Even though Indonesia practices ***Deterrence-Intimidation*** policy but in reality it can't reduce drug abuse offences among the (young) people of Indonesia;

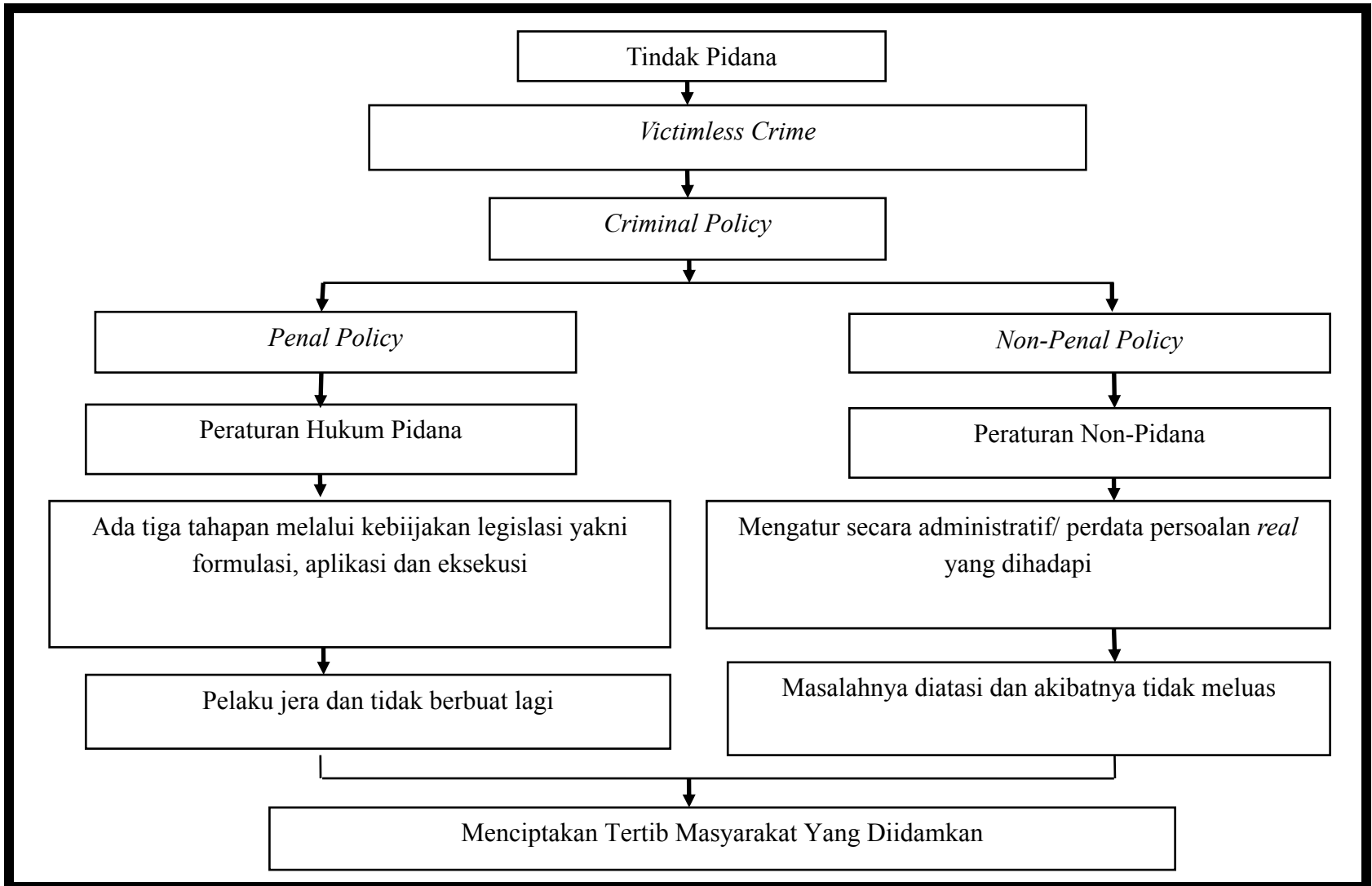
Mencari Alternatif Pemidanaan Bagi Penyalahguna Narkoba

- Kriminalisasi – Dekriminalisasi – Depenalisasi - Regulasi
- Re-regulasi – Legalisasi – Legalisasi Tertentu dan Terbatas
- Dihapus – Moratorium;

Bagaimana dengan Indonesia ...?
“Restorative Justice”

Bagan

Penal Policy & Non-Penal Policy



In reality, most of drug abuser in prison are:

- Street level drug users;
 - Mule as victim of trafficking;
 - Elite and middle class drug user;

Injustice

Is the elite and middle class drug user treated differently ...?

The Development of Restorative Justice and Diversion

Restorative Justice: Adopted by UN-ECOSOC 2002 :

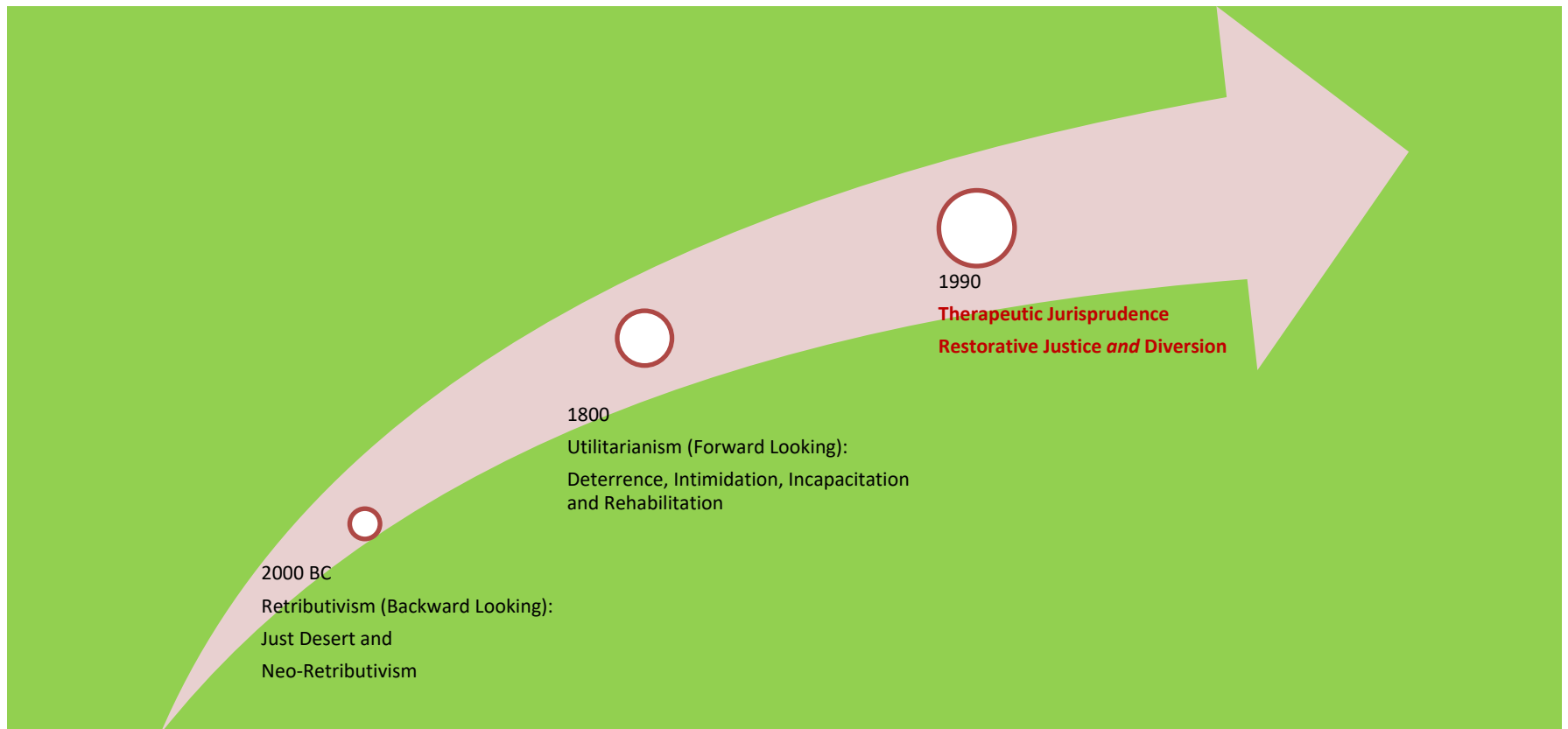
UN Basic Principles On The Use Of Restorative Justice Programmes In Criminal Matters

Diversion is also adopted by UN Resolution Number : A/RES/40/33 - 29 November 1985

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

("The Beijing Rules")

Restorative Justice is a *Philosophy of Punishment*



Tony Marshall: *Restorative Justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future*

Retributive Justice and Restorative Justice

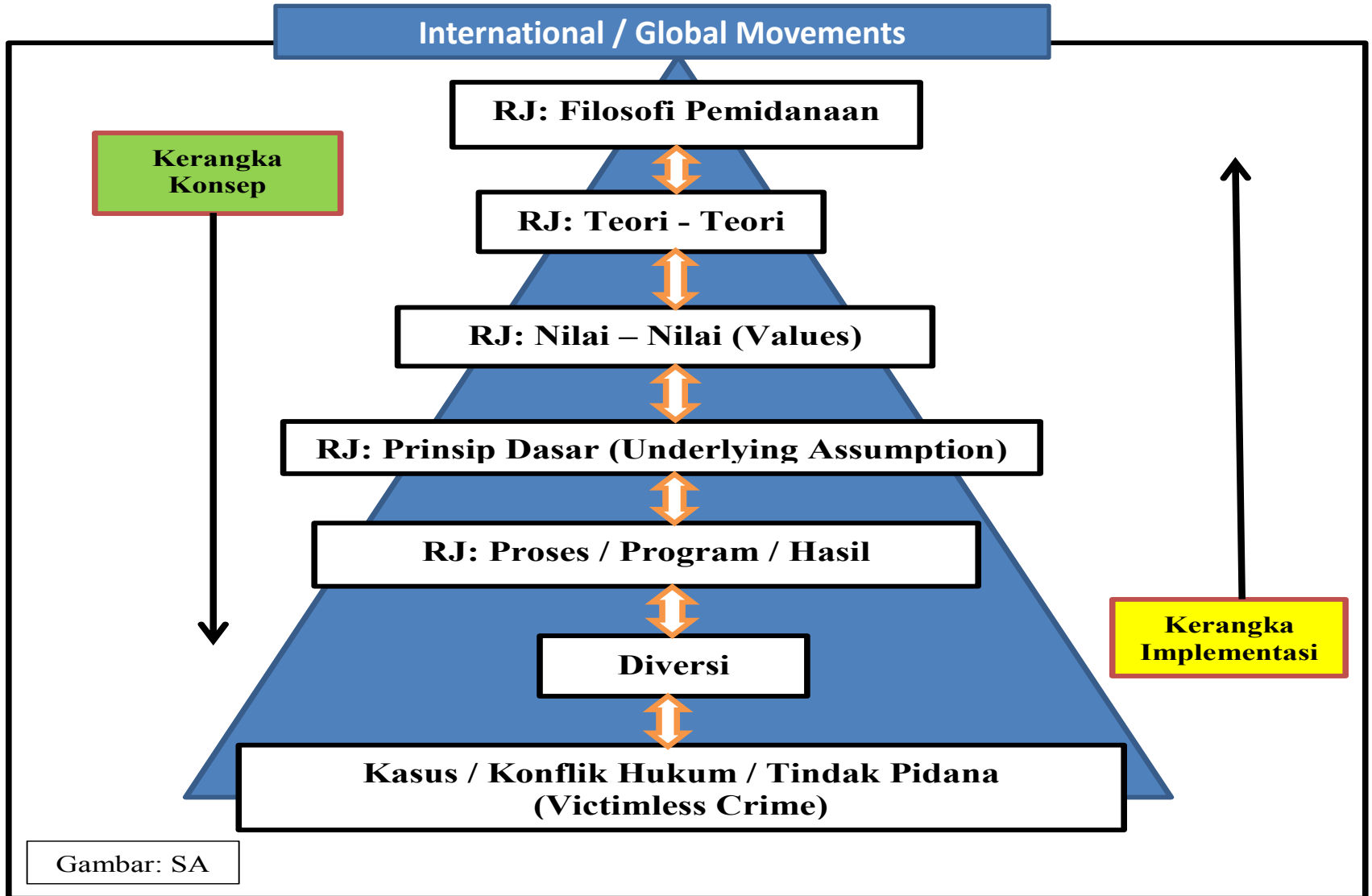
1. What laws have been broken?
2. Who did it?
3. What do they deserve?

Diverted to

1. Who has been hurt?
2. What are their need?
3. Whose obligations are these?

Zehr: There Are Three Different Questions

Bagan 1
Kerangka *Restorative Justice* dan Diversi



Terima Kasih