



Implications of the New Criminal Code on the Narcotics Law: An Analysis of Reformulation Needs

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Abstract

This study analyzes the implications of the enactment of Law Number 1 of 2023 concerning the Criminal Code on the enactment of Law Number 35 of 2009 concerning Narcotics and the urgency of the necessary reformulation. Using normative juridical methods through legislative and conceptual approaches, this study examines the legal substance, legal principles, and doctrines relevant to the harmonization of the two regulations. The results of the study show that the revocation of Articles 111 to 126 of the Narcotics Law by Article 622 paragraph (1) letter w of the new Criminal Code creates a substantial legal vacuum for the regulation of the crime of cultivation, buying and selling and distributing narcotics that is not fully accommodated in the new Criminal Code. There is a significant disharmony between the orientation of restorative punishment in the new Criminal Code and the retributive approach in the Narcotics Law, as well as inconsistencies in the implementation of rehabilitative approaches for narcotics users and addicts. This study concludes that the reformulation of the Narcotics Law is an urgent need to fill the legal vacuum, harmonize the criminal paradigm, strengthen the special investigation mechanism, and implement a balance between the eradication of illicit circulation and the protection of human rights in an integrated and fair criminal justice system.

Keywords: *New Criminal Code, Narcotics Law, Legal Reformulation, Legal Vacancies, Harmonization of Regulations*

Introduction

The dynamics of the development of Indonesia's national criminal law system have entered a transformative phase with the enactment of Law Number 1 of 2023 concerning the Criminal Code which will be effective from January 2, 2026, replacing the codification of the colonial legacy criminal law that has been in effect for more than eight decades. The enactment of the new Criminal Code has fundamental juridical consequences for various sectoral laws and regulations, especially on the enactment of Law Number 35 of 2009 concerning Narcotics which has been the main legal instrument in combating narcotics crimes in Indonesia. The provisions of Article 622 paragraph (1) letter w of the new Criminal Code explicitly repeal and declare that Articles 111 to 126 of the Narcotics Law are not applicable, but only accommodate part of the substance of these regulations into Articles 609 and 610 of the new Criminal Code. This condition raises serious problems in the form of a legal void for ten crucial articles that do not have a replacement regulation, including provisions on the criminal act of offering, selling, buying, being an intermediary in buying and selling, carrying, sending, transporting, and transiting narcotics which have been an important instrument in ensnaring perpetrators of illicit narcotics trafficking. This norm vacuum has the potential to create a legal loophole that can be exploited by narcotics syndicates, as well as create legal uncertainty in Indonesia's criminal justice system (Arafat, 2025).

The problem of disharmony between the new Criminal Code as a *lex generalis* and the Narcotics Law as a *lex specialis* raises complex and multidimensional implications in the national criminal law architecture. Regulatory harmonization is very urgent so that there is no overlap or legal vacuum in enforcement in the field, considering that narcotics crimes today are transnational, organized, and involve a global network that requires a comprehensive and integrated legal response (Handoko et al., 2025). This problem is further complicated by the dualism of regulation that has the potential to cause multiple interpretations in its application, where the narcotics articles in the new Criminal Code which are duplicates of the Narcotics Law basically repeat the same problems, such as excessive criminalization of narcotics users and the potential for overcrowding in correctional institutions without providing adequate rehabilitative solutions. Furthermore, the absence of equivalent articles for the act of selling and buying narcotics in the new Criminal Code creates a very dangerous norm vacuum, because buying and selling activities are the core of narcotics trafficking that should receive serious attention in criminal policies (Lestari et al., 2024).

The need for the reformulation of the Narcotics Law is inevitable in the context of national legal developments, considering that the paradigm of narcotics control globally has undergone a significant shift from a punitive approach to a health and human rights approach that prioritizes rehabilitation for narcotics users and addicts. The new Criminal Code itself has

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explicitly regulated rehabilitation measures as actions that can be imposed on defendants as narcotics addicts through Article 103 and Article 105, which are the result of criminal law policies in order to achieve the goal of protection in the form of recovery for perpetrators who are also victims of criminal acts. However, this rehabilitation arrangement will not be optimal without being supported by a comprehensive revision of the Narcotics Law that focuses on the consistency of legal subjects, harmonization between the health approach and the criminal approach, and the elimination of provisions that overlap or are no longer relevant to the development of science and international standards (Afrizal et al., 2024). The national legal system is required to continue to be adaptive to social changes, scientific advances, and paradigm shifts in narcotics control while maintaining a balance between eradicating illicit trafficking that threatens national security and protecting the community, especially the younger generation through comprehensive prevention and rehabilitation efforts.

Based on the background of these problems, this study was formulated to answer the fundamental problem of how the implications of the enactment of the new Criminal Code on the enactment of the Narcotics Law are reviewed from the perspective of the principle of *lex specialis derogat legi generali*, how the legal vacuum arising from the repeal of articles in the Narcotics Law affects the effectiveness of law enforcement against narcotics crimes, and how the ideal construction of the reformulation of the Narcotics Law is capable of harmonize the provisions with the new Criminal Code while maintaining the effectiveness of eradicating illicit narcotics trafficking and providing legal protection for narcotics abusers and addicts. This study aims to comprehensively analyze the juridical implications of the enactment of the new Criminal Code on the enactment of the Narcotics Law, identify legal vacancies and potential disharmony arising from the partial revocation of the provisions of the Narcotics Law, and formulate the concept of reformulation of the Narcotics Law in line with the paradigm of national criminal law reform and international standards in narcotics control while still paying attention to the balance between repressive approaches against dealers and rehabilitative approaches to users and addicts (Diani, 2023; Yosodiningrat, 2025).

Methods

This research uses a normative juridical method that focuses on the analysis of legal substance through an in-depth study of laws and regulations, legal principles, and doctrines relevant to the problem being studied. The normative juridical approach was chosen because this study examines the implications of the enactment of the new Criminal Code on the enactment of the Narcotics Law, which is a matter of harmonization and synchronization of laws

and regulations in the Indonesian criminal law system. This type of research is based on literature research by analyzing primary legal materials in the form of Law Number 1 of 2023 concerning the Criminal Code and Law Number 35 of 2009 concerning Narcotics and its amendments, as well as secondary legal materials that include scientific literature, legal journals, the results of previous research, and the opinions of criminal law experts (Sari, 2020). The data collection technique is carried out through a documentation study by identifying, classifying, and inventorying all provisions related to narcotics crimes in the two regulations. Data analysis used a qualitative method with a systematic interpretation approach and legal comparison to identify norm vacancies, regulatory inconsistencies, and disharmony between the new Criminal Code as *lex generalis* and the Narcotics Law as *lex specialis*. The analysis process is carried out in a descriptive-prescriptive manner to describe the existing legal conditions as well as formulate the necessary reformulation recommendations to create ideal legal harmonization (Lubis & Margaini, 2022; Marzuki, 2024).

Results and Discussion

Juridical Implications of the Enactment of the New Criminal Code on the Enactment of the Narcotics Law

The enactment of Law Number 1 of 2023 concerning the Criminal Code brings a fundamental transformation in Indonesia's criminal law architecture that replaces the codification of the Dutch colonial heritage (Laws of the Republic of Indonesia, 2023). This transformation is not only substantive in changing the criminal paradigm from a repressive approach to a more humanist and restorative system, but also brings juridical consequences to various special laws and regulations that have been in effect as *lex specialis* (Nugraha et al., 2025). The provisions of Article 622 paragraph (1) letter w of the new Criminal Code explicitly repeal Articles 111 to 126 of Law Number 35 of 2009 concerning Narcotics, which are core provisions in the eradication of narcotics crimes in Indonesia (Law of the Republic of Indonesia, 2009). This repeal raises serious problems in the form of a very substantial legal vacuum, because of the fifteen articles that were repealed, only a small part of the substance was adopted into Articles 609 and 610 of the new Criminal Code. This condition creates a situation of indirect decriminalization of several acts that were previously categorized as narcotics crimes, especially related to the activity of planting Class I narcotics which is the initial link of the illicit circulation of narcotics (Nababan et al., 2025). This gap in norms has the potential to be used by narcotics syndicates to exploit legal loopholes, considering that planting activities are the foundation of the entire supply chain of illegal narcotics that should receive serious attention in national criminal policy. Further juridical implications are the occurrence of legal uncertainty in the application of the principle of *lex specialis derogat legi generali*, where the Narcotics Law, which should be a special law, has actually undergone the revocation of part of its regulatory substance

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by the new Criminal Code which is a general law, thus raising questions about the hierarchy and relationship between laws and regulations in the national legal system (Barasa & Saputra, 2025).

Another juridical implication that needs to be observed is the paradigm shift in viewing the position of special criminal law against general criminal law in the Indonesian legal system. So far, it has been understood that the provisions in the special law will remain valid and set aside the general provisions based on the principle of *lex specialis derogat legi generali*, but the enactment of the new Criminal Code shows that the legislator has the authority to repeal the provisions in the special law through a general law. This condition raises theoretical implications regarding the hierarchy of laws and regulations which are no longer solely based on the special or general nature of a regulation, but also consider the temporality aspect of its enactment where *lex posterior derogat legi priori* becomes a more dominant principle. This paradigm shift has practical consequences for law enforcers who have to reinterpret the provisions that are still in force in the Narcotics Law by taking into account the context of the new Criminal Code as a newer rule. In addition, the partial repeal of the Narcotics Law also raises questions about the systemic consistency of the entire law, considering that the repealed articles are an integral part of the regulatory structure that is interrelated with other articles that are still in force, thus potentially causing fragmentation in the enforcement of narcotics laws in Indonesia.

Disharmony in the Regulation of Narcotics Crimes in the National Legal System

The disharmony between the new Criminal Code and the Narcotics Law creates complex problems in the Indonesian criminal justice system, especially related to the overlap of regulations and inconsistencies in the orientation of criminal law policies. The new Criminal Code adopts a restorative justice paradigm by emphasizing the protection of human rights and non-imprisonment penal alternatives, while the Narcotics Law still tends to apply a retributive approach with punitive and rigid sanctions (Ancient & Palit, 2025). This misalignment of orientation causes confusion in law enforcement practices, where law enforcement officials are faced with the choice between applying lighter sanctions in accordance with the spirit of the new Criminal Code or continuing to use the provisions of the Narcotics Law. This problem is further complicated by the duplication of the same criminal regulation in both regulations, but with different formulations and criminal threats, so that it has the potential to cause disparity in verdicts in cases that have similar characteristics. Furthermore, disharmony can also be seen from the regulation regarding covert purchases as a special investigation technique in Article 79 of the Narcotics Law which is not explained in detail regarding its implementation mechanism, thus creating a legal loophole for abuse of authority by law enforcement (Marta et al., 2024).

This situation is exacerbated by the lack of clarity regarding the status of narcotics evidence obtained through covert purchases, whether it can be categorized as an unlawful act or receive legal protection as part of a legitimate investigation process. The disharmony of this arrangement also has an impact on the uncertainty of the application of administrative sanctions for civil servants involved in narcotics abuse, where there is an inconsistency between the provisions of dismissal as a severe disciplinary sanction and the possibility of reinstatement under certain conditions (Hikmal et al., 2025).

This problem of disharmony also has an impact on the coordination mechanism between law enforcement agencies in handling narcotics cases, especially between the National Narcotics Agency, the Police, and the Prosecutor's Office, each of which has a different interpretation of the applicable provisions. The inconsistency of the arrangement poses a dilemma in investigative practice, where investigators must choose between using provisions that are more favorable to the suspect according to the principle of *lex mitior* or remaining consistent with provisions that are more severe but substantially more appropriate to apply. This situation is exacerbated by the absence of technical instructions or circulars from the Supreme Court that provide guidance for judges in dealing with the clash of norms between the new Criminal Code and the Narcotics Law, so that court decisions become very casuistic and depend on the interpretation of the individual judges handling the case. Disharmony is also seen in the aspect of imposing sanctions, where the new Criminal Code introduces various penal alternatives such as social work, job training, and rehabilitation as an effort to reintegrate socially, but the Narcotics Law does not accommodate these types of sanctions, thus causing limitations for judges in giving more restorative decisions. This condition creates an inefficient criminal justice system and has the potential to cause injustice for justice seekers who expect legal certainty in the process of resolving narcotics cases.

Legal Void After Repeal of Articles of the Narcotics Law

The repeal of Articles 111 to 126 of the Narcotics Law by Article 622 paragraph (1) letter w of the new Criminal Code results in a very significant legal vacuum in the system of countering narcotics crimes in Indonesia. The most crucial norm gap occurs in the regulation regarding the act of planting, maintaining, possessing, storing, controlling, or providing Class I Narcotics in the form of plants that were previously regulated in Article 111 of the Narcotics Law, but do not have an explicit equivalent in the new Criminal Code (Nababan et al., 2025). This condition creates a situation of *de facto* decriminalization of narcotics cultivation activities which is actually the starting point of the entire narcotics illicit trade chain. The practical implication of this legal vacuum is the difficulty of law enforcement to ensnare perpetrators who carry out narcotics cultivation activities, considering that there are no more criminal provisions that

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specifically regulate such acts with the threat of adequate sanctions. Legal voids also occur in the regulation regarding the act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, or handing over Class I Narcotics as stipulated in Article 114 of the Narcotics Law which has been repealed but is not fully accommodated in Articles 609 and 610 of the new Criminal Code. Narcotics buying and selling activities are at the core of narcotics crimes involving organized and transnational networks, so this regulatory vacuum has the potential to create a legal loophole that is very dangerous for efforts to eradicate illicit narcotics trafficking. This situation is contrary to Indonesia's commitment in the international convention on narcotics which requires the state to criminalize the entire illicit narcotics trade chain from production to distribution (Tabiu & Hardiogo, 2023).

Challenges of Implementing Rehabilitative Approaches in the New Criminal Code Era

The new Criminal Code brings a paradigmatic change in the handling of perpetrators of narcotics crimes by introducing a rehabilitative approach as a more humane and recovery-oriented alternative to punishment. Articles 103 and 105 of the new Criminal Code explicitly regulate the rehabilitation measures that can be imposed on defendants as narcotics addicts, which is a manifestation of the principle of *ultimum remedium* in criminal law where punishment must be a last resort after other alternatives are not possible (Ancient & Palit, 2025). This approach is in line with the development of a global paradigm in narcotics control that recognizes that narcotics users and addicts are more appropriately seen as victims who require medical and psychosocial treatment than as criminals who must be punished punitively. However, the implementation of this rehabilitative approach faces serious challenges in the form of inconsistencies with the provisions of the Narcotics Law which still tend to apply imprisonment sanctions dominantly, thus causing confusion for judges in determining the most appropriate type of sanctions to be imposed on perpetrators of narcotics abuse. Technical problems also arise related to the availability of adequate rehabilitation facilities, considering that the existing rehabilitation institutions are still very limited both in terms of quantity and quality of services, so that rehabilitation decisions often cannot be carried out effectively (Tabiu & Hardiogo, 2023). Another challenge is the absence of clear operational standards of procedures regarding the criteria for determining a person as an addict who deserves rehabilitation, the assessment mechanism that must be carried out, and supervision of the implementation of rehabilitation to ensure that recovery goals are achieved and recidivism does not occur.

The Urgency of Reformulating the Narcotics Law in the Framework of National Law Harmonization

The reformulation of Law Number 35 of 2009 concerning Narcotics is an urgent need in the context of harmonizing the national criminal law system after the enactment of the new Criminal Code. The urgency of this reformulation is driven by several fundamental factors, the first is the need to fill the legal void arising from the repeal of Articles 111 to 126 of the Narcotics Law without a comprehensive replacement arrangement in the new Criminal Code, and the second is the need to synchronize the orientation of criminal law policy between a repressive-punitive approach to a rehabilitative-restorative approach in accordance with the spirit of national criminal law reform (Gurusi et al., 2024; Mansyah, Kaswandi, et al., 2024; Mansyah, Nurcahyo, Hasri, et al., 2024; Mansyah, Nurcahyo, Zudin, et al., 2024; Mansyah & Ali, 2024; Muh Sutri Mansyah et al., 2023, 2024)(Nugraha et al., 2023). Reformulation is also needed to overcome the problem of overcrowding in detention centers and correctional institutions which have been dominated by inmates in narcotics cases due to excessive penal policies against drug users and addicts (Tabiu & Hardiogo, 2023). Empirical experience shows that imprisonment of narcotics users is not effective in overcoming the problem of narcotics abuse, in fact, it often worsens conditions with stigmatization and difficulties in social reintegration after serving prison sentences. The reformulation must be directed at a firm distinction between drug dealers and users with a proportionate sanction system, where traffickers are still subject to severe criminal sanctions as a deterrence, while users and addicts are more directed to rehabilitation and social reintegration programs. Another important aspect is the need for more detailed arrangements regarding specific investigative techniques such as covert purchases, controlled surrenders, and wiretapping to prevent abuse of authority by law enforcement (Martua et al., 2024). The reformulation must also consider technological developments and the *modus operandi* of narcotics crimes in the increasingly sophisticated and complex digital era (Fajriansyah et al., 2025).

Conclusion

The enactment of Law Number 1 of 2023 concerning the Criminal Code brings fundamental juridical implications to the enactment of Law Number 35 of 2009 concerning Narcotics through the revocation of Articles 111 to 126 which creates a significant legal vacuum in the eradication of narcotics crimes. This study found that there is a disharmony between the new Criminal Code as a *lex generalis* and the Narcotics Law as a *lex specialis*, especially in the aspect of the orientation of the criminal law where the new Criminal Code carries a restorative paradigm while the Narcotics Law is still retributive-punitive. The norm void that occurs includes crucial arrangements regarding the cultivation, buying and selling and trafficking of narcotics that have the potential to be exploited by organized crime syndicates. The reformulation of the Narcotics Law is an urgent need to harmonize the provisions with the new Criminal Code, fill existing legal

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gaps, implement effective rehabilitative approaches, and balance efforts to eradicate illicit narcotics trafficking with the protection of human rights for narcotics users and addicts within the framework of an integrated and fair national criminal law system.

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