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Paradigmatic Conflict of Law on Narcotics and Legislative Synchronization with the New Indonesia Criminal Code

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Abstract

This study analyzes the paradigmatic dilemma of Indonesia's narcotics law: the necessity of strict prosecution against transnational syndicates versus the humanitarian crisis of prison overcrowding caused by the incarceration of addicts. Law Number 35 of 2009 concerning Narcotics embodies a philosophical dualism (retribution vs. rehabilitation), yet its implementation is dominated by a punitive orientation. The purpose of this research is to analyze the philosophical tension within Law 35/2009 and project the implications of its legislative synchronization with the restorative principles in the new Criminal Code (Law 1/2023). The method used is normative juridical with a prescriptive character, utilizing statutory, conceptual, and comparative approaches. The results conclude that the new Criminal Code risks significant failure in resolving the capacity crisis due to restrictions on alternative sanctions for crimes carrying penalties of over five years, which covers the majority of Narcotics cases. The codification attempt also potentially weakens the prosecution of transnational crimes due to the incomplete adoption of special investigation techniques. The primary recommendation is a firm legislative synchronization that separates jurisdiction: the new Criminal Code as lex generalis for minor users, and the Narcotics Law as a strengthened lex specialis to target dealers, supported by the implementation of factual decriminalization based on public health.

1. Introduction

Narcotics crime in Indonesia has long been a complex dual threat. Externally, this crime is closely related to large transnational criminal networks, demanding strict criminal law enforcement. The intensity of law enforcement by the National Narcotics Board (BNN) confirms this urgency, with BNN successfully uncovering hundreds of national and international narcotics syndicate networks between 2022 and 2024.[1] The fact that Indonesia ranks globally as one of the largest seizure locations for Methamphetamine further underscores the scale of this problem at the level of serious organized crime.[2]

Internally, narcotics law policy faces a structural and humanitarian crisis. Although Law Number 35 of 2009 concerning Narcotics (Law 35/2009) aims philosophically to differentiate between distributors (who must be severely punished) and abusers/addicts (who must be rehabilitated), the practice of incarcerating addicts has caused a severe overcrowding crisis in Correctional Institutions (*Lapas*).[3] Addicts, who should philosophically be treated as victims needing help, are often subjected to sanctions involving deprivation of liberty, an approach deemed inappropriate because it only causes suffering without curing dependence.

This study distinguishes itself not merely by listing differences, but by conducting a dialectical analysis of the philosophical and practical tensions arising from their coexistence. The novelty of this research lies in its prescriptive approach, moving beyond criticism to offer a concrete jurisdictional model. The deep analysis of the impact of punitive narcotics policy on Lapas overcrowding[4] serves as the primary basis for this argument. This article argues for the necessity of a clear legislative division of labor, positioning the new Criminal Code as lex generalis for rehabilitating minor users and the Narcotics Law as a strengthened lex specialis for dismantling trading syndicates.

The urgency of this study increases with legislative dynamics, particularly the ratification of the new Criminal Code (KUHP), Law Number 1 of 2023. The new Criminal Code brings a paradigm of balance and restorative justice, contrasting sharply with the harsh approach characteristic of Law 35/2009. Therefore, this research aims to analyze the philosophical tensions within Law 35/2009, conduct a comparative analysis between the narcotics penal system in the said Law and the restorative principles in the new Criminal Code, and project its implications for enforcement effectiveness and the direction of national criminal policy.

The discussion of narcotics punishment cannot be separated from three pillars of philosophical criminal law theory: Retribution, Rehabilitation, and Restorative.[5]

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1 Akbar Ridwan, "Ini Uang Dari Bisnis Narkotika Yang Disita BNN Sampai 2024," databoks, n.d., databoks.katadata.co.id.

2 Adi Ahdiat, "Indonesia Salah Satu Lokasi Penangkapan Sabu Terbesar Global," https://databoks.katadata.co.id/, 2025.

3 Riris Kusumadewi, "Dampak Kebijakan Punitif Narkotika Terhadap Overcrowding Di Lembaga Pemasyarakatan," *Jurnal Kebijakan Hukum* 15, no. 1 (2021): 1–18.

4 Kusumadewi.

5 Rini Susanti, "Pendekatan Kesehatan Publik Dalam Kebijakan Narkotika: Urgensi Dekriminalisasi Pengguna," *Jurnal Ilmu Kesehatan Masyarakat* 8, no. 2 (2020): 99–115.

Retribution Theory serves as the foundation for Law 35/2009 to impose absolute minimum penalties on dealers and syndicates. Its main objective is retribution and general deterrence, a necessity when dealing with transnational crime. However, the excessive application of retribution without differentiating the role of the perpetrator has sparked sharp criticism from a justice perspective.[6]

Rehabilitation Theory is accommodated through Articles 54 and 103 of Law 35/2009, which mandate addicts to undergo treatment. Although normatively humane, the implementation of this mandatory rehabilitation is heavily criticized because it often fails, primarily due to social stigma and limited infrastructure. Experts argue that this "punishment-based" mandatory rehabilitation contradicts public health principles and human rights.[7]

Restorative Justice (RJ) emerges as a new paradigm in the 2023 Criminal Code. RJ's main goal is conflict resolution outside of court, focusing on victim and perpetrator restoration, rather than retribution. RJ offers a theoretical solution to prison overcrowding by prioritizing non-custodial sanctions, such as Social Work Penalty and Supervision Penalty.[8] However, research indicates that the potential of RJ is limited because the Criminal Code itself restricts its application to cases with high criminal threats.

In addition to philosophical conflicts, this manuscript is grounded in the Legislative Conflict debate between Lex Specialis (Law 35/2009) and Codification (Criminal Code 1/2023). This conflict raises serious concerns about the weakening of the state's ability to combat organized crime. The Narcotics Law explicitly regulates special investigation techniques vital for syndicates (such as controlled delivery). The codification efforts of the Criminal Code, which attempt to incorporate narcotics sanctions, risk omitting or not fully adopting these special techniques, thereby creating a legal loophole that can be exploited by narcotics dealers.[9] In-depth analysis of this conflict is crucial to prevent a regression in transnational law enforcement.

2. Research Methods

This research utilizes a Normative Juridical Research method with a Prescriptive character. This means the research not only aims to explain the existing law (*ius constitutum*) but also provides suggestions or recommendations for actions that should be taken (*ius constituendum*) to overcome systemic problems, such as overcrowding and rehabilitation failure.

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[6] Rezky Syahputra, Mohammad Ekaputra, and Marlina Marlina, "Analisis Putusan Hakim Yang Menjatuhkan Pidana Dibawah Batas Minimum Ancaman Sanksi Pidana Dalam Pasal 112 Ayat (1) UU Narkotika," *Locus Journal of Academic Literature Review* 3, no. 4 (2024): 349–77, https://doi.org/10.56128/ljoalr.v3i4.315.

[7] Tri Wibowo, "Tinjauan Kritis Terhadap Implementasi Rehabilitasi Wajib Bagi Pecandu Narkotika Di Indonesia," *Jurnal Kajian Hukum Dan Kemanusiaan* 5, no. 1 (2020): 45–60.

[8] Haposan Sahala Raja Sinaga, "Penerapan Restorative Justice Dalam Perkara Narkotika Di Indonesia," *Jurnal Hukum Lex Generalis* 2, no. 7 (2021): 528–41, https://doi.org/10.56370/jhlg.v2i7.80.

[9] Bintang Harahap, "Problematika Kodifikasi Tindak Pidana Khusus Dalam KUHP Baru: Studi Kasus UU Narkotika," *Jurnal Konstitusi* 20, no. 1 (2023): 85–104.

The research approaches used including Statute Approach: In-depth analysis of the provisions and norms in Law No. 35 of 2009 and comparison with the framework of the new Criminal Code. Conceptual Approach: Examining the philosophical foundations of criminal law, including the theories of retribution, rehabilitation, and restorative justice in the context of narcotics handling. Comparative Approach: Systematically contrasting the penal system, minimum threats, and criminal policies only between the special narcotics regime (Law 35/2009) and the general framework of the new Criminal Code 1/2023. The secondary data collected (primary, secondary, and tertiary legal materials) are analyzed qualitatively, using deductive logic to draw systematic and prescriptive conclusions. The limitation of this normative method lies in its focus on the doctrinal analysis of legal documents, rather than on empirical field data from interviews or surveys.

3. Results and Discussion

3.1. The Philosophical Dualism of Narcotics Law 35/2009 and Implementation Failure

Law 35/2009 concerning Narcotics is an example of legislation built upon a philosophical dualism, separating harsh treatment for upstream actors (dealers and syndicates) and humane treatment for downstream actors (addicts and abusers).[10]

Table 1. Philosophical Comparison of Narcotics Sentencing Pre and Post Law 35/2009

Aspect	Law No. 22 of 1997 (Purely Retributive)	Law No. 35 of 2009 (Dualistic)
Penal System	Single Penal System (Focus on Imprisonment)	Dualism: Retributive (Dealer) and Rehabilitative (Addict)
Philosophical Basis	Purely Punitive, Absolute Deterrence	Combination: Retribution/Deterrence and Preventive/Corrective (Rehabilitation)
View of Addicts	Considered Full Criminals	Considered Victims Mandated for Rehabilitation (Articles 54/103)
Key Mechanism	Imprisonment Only	Absolute Minimum Criminal Threat (Dealer); Mandatory Rehabilitation (Addict)

Source: Analysis of Law No. 22 of 1997 on Narcotics and Law No. 35 of 2009 on Narcotics.

This implementation failure is not merely philosophical, but has realized a humanitarian and structural crisis within Indonesia's correctional system. Data indicates that Correctional Institutions (Lapas) in Indonesia consistently suffer from extreme overcrowding, where narcotics cases often contribute the largest share, accounting for over half of the total inmates in many regions. This overcapacity not only inhibits

[10] Oci Senjaya, "Perbandingan Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dengan RUU KUHP Indonesia Berkaitan Dengan Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahguna Narkotika," *Jurnal Hukum Positum* 3, no. 1 (2018): 90, https://doi.org/10.35706/positum.v3i1.2708.

rehabilitation programs but also creates an environment susceptible to disease, internal conflict, and potential human rights violations due to inadequate living conditions. Specifically, the neglect of the mandatory Integrated Assessment (Asesmen Terpadu/AT) mechanism, which is supposed to be conducted by the Integrated Assessment Team (TAT) for users, further exacerbates this crisis. The AT is designed to clinically separate pure addicts who must undergo mandatory rehabilitation (Article 127) from dealers. However, in practice, many law enforcement officials (Investigators and Prosecutors) tend to ignore AT recommendations that point towards rehabilitation, and instead opt for charging under Article 112 or 114 (Possession or Dealing) because these carry much higher absolute minimum penalties. This judicial decision effectively blocks minor users' access to mandatory rehabilitation, forcing them into the prison system, which fundamentally contradicts the philosophical dualism promoted by Law 35/2009.

Although the philosophy promoted by Law 35/2009 is dualistic, implementation in the field shows a dominance of the punitive approach, leading to the Lapas overcrowding crisis.[11] This failure is not merely due to a lack of resources, but also caused by structural and non-legal factors:

a. Judicial Discretion and Offender Classification: Law 35/2009 does not provide a clear and rigid definition of the limit of evidence quantity between "Abuser" (Article 127) and "Dealer/Possessor" (Article 112).[12] This grants broad discretion to investigators and judges. In many cases, users with small amounts of evidence (e.g., a few grams of crystal meth) are still charged under Article 112 or 114 (Dealing), which carry very high absolute minimum penalties. This shift in charging automatically closes the opportunity for addicts to receive mandatory rehabilitation, forcing them into the prison system, and perpetuating the Lapas crisis.
b. Mandatory Rehabilitation Failure: Critical reviews indicate that rehabilitation programs often fail to meet evidence-based health principles.[13] Rehabilitation in Indonesia is often institutional and "punishment-based," where the emphasis is more on restraint than on more effective community-based therapy. In fact, international consensus and human rights principles demand that rehabilitation must be devoid of any punitive elements. This failure, coupled with strong social stigma, makes imprisonment the default option.[14]

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[11] Kusumadewi, "Dampak Kebijakan Punitif Narkotika Terhadap Overcrowding Di Lembaga Pemasyarakatan."

[12] Junaidi Junaidi, "Penerapan Pasal 54, 103 Dan 127 Ayat (2) Dan (3) Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika Dalam Penyelesaian Perkara Di Pengadilan Negeri Terhadap Penyalahgunaan Narkotika Bagi Diri Sendiri," *Binamulia Hukum* 8, no. 2 (2019): 191–202.

[13] Wibowo, "Tinjauan Kritis Terhadap Implementasi Rehabilitasi Wajib Bagi Pecandu Narkotika Di Indonesia."

[14] Gunawan Gunawan, "Dekriminalisasi Pecandu Narkotika: Pergeseran Pendekatan Dan Implikasi Kebijakan Penanganan Pecandu Narkotika Di Indonesia," *Sosio Informa* 2, no. 3 (2016): 239–58, https://doi.org/10.33007/inf.v2i3.339.

3.2. Codification Conflict and Alternative Penalties Limitations in the New Criminal Code

The new Criminal Code (Law No. 1 of 2023) presents the paradigm of restorative justice (RJ) and a system of alternative sanctions, which should theoretically be a solution to the Lapas overcrowding. However, this legislative synchronization effort creates a complex normative conflict.

Law 35/2009 operates as a lex specialis, but the new Criminal Code intends to codify and revoke the criminal sanctions for narcotics (Articles 111-126 of Law 35/2009). This raises concerns about the conflict of lex specialis derogat legi generali, where the new Criminal Code effectively weakens the Narcotics Law.[15]

The most crucial conflict lies in the restriction of alternative sanctions.[16] Article 67 of the 2023 Criminal Code regulates types of alternative penalties (Social Work Penalty or Supervision Penalty). However, Article 79 Paragraph (1) and (2) of the Criminal Code explicitly limits the application of these alternative penalties only to criminal offenses threatened with imprisonment for a maximum of 5 (five) years.[17]

The majority of narcotics crimes, such as possession (Article 112 of Law 35/2009), carry a criminal threat of imprisonment with a minimum of 4 years and a maximum of 12 years. Because the maximum threat is 12 years (far above the 5-year limit) and there is an absolute minimum threat, most narcotics cases are automatically ineligible for the application of alternative penalties under the new Criminal Code. This results in the context of systemic Failure to Address Overcrowding: The Criminal Code fails to provide a significant legal exit for thousands of narcotics convicts with high sentences, and continued Punitive Paradigm: Despite the spirit of RJ, this normative restriction ensures that imprisonment remains the dominant sanction for narcotics offenders.

A deeper analysis of the restriction on alternative sanctions reveals that Article 79 Paragraph (1) and (2) of the 2023 Criminal Code is structurally incompatible with the majority of narcotics cases. Article 112 Paragraph (1) of Law 35/2009, for instance, stipulates a minimum threat of 4 years and a maximum of 12 years of imprisonment. With a maximum threat far exceeding the 5-year threshold, most possession crimes (which often entrap minor users due to discretion) are automatically disqualified from the application of Social Work or Supervision Penalties, even though the restorative spirit of the Criminal Code should accommodate this. This pragmatically ensures that imprisonment remains the default sanction for the very cases that contribute most significantly to the Lapas population.

Furthermore, the codification conflict presents a technical risk regarding the prosecution of syndicates. The Narcotics Law (Lex Specialis) explicitly regulates crucial investigation techniques such as Controlled Delivery, Wiretapping (Penyadapan), and Undercover

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15 Harahap, "Problematika Kodifikasi Tindak Pidana Khusus Dalam KUHP Baru: Studi Kasus UU Narkotika."

16 Endah Sardjito, "Sistem Pemidanaan Baru Dalam KUHP 2023 Dan Relevansinya Dengan Penanganan Penyalahgunaan Narkotika," *Jurnal Hukum Dan Peradilan* 12, no. 3 (2022): 450–70.

17 Sardjito.

Buying. These techniques are vital for tracing and dismantling transnational criminal networks in their entirety, rather than just arresting couriers on the ground. The new Criminal Code's attempt to 'take over' or codify narcotics criminal provisions is highly likely to fail to fully adopt the specific procedures and authorization required for these techniques, creating a legal loophole that narcotics dealers can exploit to evade comprehensive prosecution. This weakening risks regressing law enforcement's capability to combat large-scale organized crime.

Table 2. Comparison of Sentencing Principles of Law 35/2009 and the New Criminal Code (Law 1/2023)

Criteria	Law No. 35 of 2009 (Punitive Lex Specialis)	New Criminal Code (Law No. 1/2023 - Restorative Paradigm)
Main Penal Objective	Retribution/Deterrence (Dealer) and Rehabilitation (Addict)	Correction, Conflict Resolution (RJ), and Balance
Minimum Threat	Harsh Minimum Criminal Threat (Absolute Minimum)	Balance System; Restriction on Alternative Penalty Application
Alternative Penalty for Addicts	Mandatory Rehabilitation (Mandatory Treatment)	Supervision Penalty, Social Work Penalty, and RJ for Minor Crimes
Regulation of Special Investigation Techniques	Detailed (e.g., Controlled Delivery, Wiretapping)	Potentially Incomplete, feared to weaken syndicate prosecution

Source: Comparative Analysis of Law No. 35 of 2009 and Law No. 1 of 2023.

3.3. Legal Projection and Implications of Legislative Dynamics on Criminal Policy

Projections indicate that the changes brought by the new Criminal Code will not result in a significant reduction in the use of imprisonment. The Lapas overcrowding crisis will persist.[18]

In the discussion of the Draft Law on Amendments to the Narcotics Law, the concept of "punishment-based mandatory rehabilitation" was proposed as a solution. However, this is merely a pseudo-solution that maintains the punitive approach, heavily criticized for perpetuating the medicalization of punishment and violating public health principles.[19]

Law enforcement efforts are also increasingly directed towards Money Laundering (TPPU) aspects. TPPU prosecution is considered the most effective effort to impoverish

[18] Kusumadewi, "Dampak Kebijakan Punitif Narkotika Terhadap Overcrowding Di Lembaga Pemasyarakatan."

[19] Maidina Rahmawati, "JKRN Ingatkan Solusi Reformasi Kebijakan Narkotika Tidak Tepat Dengan Rehabilitasi Wajib Berbasis Hukuman," https://icjr.or.id/, 2022.

and cut the chain of syndicate networks, in line with the principle of economic retribution.[20] Factual BNN data supports this strategic shift:

Table 3. Dynamics of BNN Narcotics Cases (2009-2024)

Indicator	Factual Data (2009-2024)	Policy Implication
Syndicates/Networks Uncovered	100+ National and International Syndicate Networks (2022-2024)	Justifies the urgency of a harsh Retributive approach against transnational dealers.
Volume of Evidence Seized	15,486 kg Methamphetamine seized (Sept 2024)	Indonesia is a high-level global Methamphetamine seizure location.
Money Laundering Assets Seized	307 billion rupiah Total TPPU Assets Seized by BNN (2022-2024)	Law enforcement increasingly focuses on TPPU (Follow the money) for economic retribution.

Source: Official BNN Data and Statistics (2009-2024)[21]

The strengthening of TPPU must be the main retributive focus upstream. By targeting financial assets, law enforcement not only provides a deterrent effect but also permanently damages the operational infrastructure of syndicates, a form of deterrence superior to mere imprisonment.

3.4. Recommendations for a Synergistic Policy Framework

To overcome the identified contradictions and structural failures, a bold and synchronized legislative framework is necessary.

1. Jurisdiction-Based Legislative Synchronization: Legislation must explicitly separate the jurisdiction of enforcement, in line with the identified conflict risks.[22]
2. The New Criminal Code (as a humane lex generalis) must regulate restorative justice[23] for users, by revoking the alternative penalty restrictions for minor users.
3. The Narcotics Law (as a strengthened lex specialis) must be fully maintained as an instrument for prosecuting dealers, complete with modern special investigation techniques.
4. Factual Decriminalization through Judicial Diversion: There is a need to adopt a public health approach in narcotics policy.[24] Law enforcement officials must be

[20] Toni Purwanto, "Efektivitas Penindakan Tindak Pidana Pencucian Uang (TPPU) Narkotika Sebagai Upaya Pemiskinan Jaringan Sindikat," *Jurnal Hukum Tata Negara* 18, no. 4 (2022): 600–620.

[21] Ridwan, "Ini Uang Dari Bisnis Narkotika Yang Disita BNN Sampai 2024."

[22] Hiariej, "Konflik Normatif Antara Lex Specialis Dan Kodifikasi Dalam Sistem Hukum Pidana Indonesia."

[23] Dewi, "Implikasi Konsep Keadilan Restoratif Dalam KUHP Baru Terhadap Kebijakan Pemidanaan Narkotika."

[24] Susanti, "Pendekatan Kesehatan Publik Dalam Kebijakan Narkotika: Urgensi Dekriminalisasi Pengguna."

mandated to divert minor users away from the criminal justice system. In the context of Factual Decriminalization through Judicial Diversion, the concrete step required is the full adoption of a Public Health Approach. This approach views drug use as a chronic health issue, not a moral or criminal one. Law enforcement officials (especially at the Investigation and Prosecution level) must therefore be mandated to implement diversion, routing minor users who are not linked to syndicates towards community-based rehabilitation or health treatment programs, even before the case reaches the judiciary. This model has proven successful in other jurisdictions, such as Portugal, where the decriminalization of use has significantly reduced incarceration rates, drug use, and the spread of HIV.

5. Public Health-Based Mandatory Rehabilitation Reform: The concept of "punishment-based mandatory rehabilitation" must be abandoned. [25] Rehabilitation must strictly align with public health principles and be evidence-based, devoid of any punitive elements.
6. Strengthening Financial Investigation and Asset Recovery (TPPU): Retribution must be focused upstream. TPPU investigation must be intensified, as it is the most effective form of deterrence against high-level organized crime.[26]

Meanwhile, regarding the Strengthening of Financial Investigation and Asset Recovery (TPPU), the focus of retribution must decisively shift from bodily punishment to economic punishment. Imprisonment for dealers, although harsh, is often insufficient to dismantle a syndicate because new leaders can easily replace the incarcerated ones. Conversely, the Follow the Money approach through TPPU is a superior strategy. By seizing and recovering criminal assets, the syndicate's financial infrastructure is permanently crippled, which serves as a far more effective economic disincentive than mere deprivation of liberty. Intensification of TPPU also necessitates strengthening international cooperation, as transnational crime assets are often concealed outside of national jurisdiction.

4. Conclusion

This study concludes that Indonesia's narcotics law revolution is trapped in a cycle of philosophical conflict and structural failure. The dualistic intent of Law No. 35 of 2009 has been overshadowed by a de facto punitive regime, triggering a severe Lapas overcrowding crisis. The advent of the restorative new Criminal Code, while philosophically aligned with humane treatment, presents a dual risk: its restrictive criteria for alternative penalties make it ineffective in alleviating Lapas density, while its incomplete adoption of special investigation techniques potentially weakens the state's arsenal against transnational dealers. The proposed reforms, such as "punishment-based rehabilitation," merely perpetuate this inertia by medicalizing punishment. To break this cycle, a firm and clear legislative separation is urgently needed. The future of effective narcotics policy lies in a synchronized framework where the new Criminal Code promotes restorative justice for users, and a strengthened Narcotics Law provides targeted retribution against dealers. This, coupled with a firm commitment to factual

[25] Wibowo, "Tinjauan Kritis Terhadap Implementasi Rehabilitasi Wajib Bagi Pecandu Narkotika Di Indonesia."

[26] Purwanto, "Efektivitas Penindakan Tindak Pidana Pencucian Uang (TPPU) Narkotika Sebagai Upaya Pemiskinan Jaringan Sindikat."

decriminalization and a public health approach, is the only viable path to resolving the humanitarian crisis in Lapas while simultaneously safeguarding national security from organized criminal networks.

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