



RELATIONSHIP OF INVESTIGATION AUTHORITY IN DRUG CRIMES AFTER THE RULING OF LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL CODE

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Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Investigative Authority, Narcotics Crimes, Law Number 1 of 2023 concerning the Criminal Code.</i></p>	<p>Handling drug crimes in Indonesia faces significant challenges related to the differences in authority between the National Narcotics Agency (BNN) and the Indonesian National Police (Polri). Differences in arrest times and dualism in investigative authority have legal consequences that affect the human rights of suspects and the effectiveness of law enforcement. The enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) brings major changes in the regulation of special crimes, including narcotics, which raises issues related to the principle of <i>lex specialis</i>. This study aims to identify and analyze changes in investigative authority, the legal implications that arise, and how to improve coordination between law enforcement agencies. Normative legal research methods are used to analyze relevant laws and court decisions. The results of the study indicate that the elimination of Article 111 of Law Number 35 of 2009 and its replacement with new provisions in Law Number 1 of 2023 requires adaptation from law enforcers. In addition, the implementation of rehabilitation as an alternative to punishment marks a shift towards a more restorative justice system.</p>

I. INTRODUCTION

Handling of narcotics crimes is one of the main focuses of the criminal justice system in Indonesia. Given its very detrimental impact on society and the state, various efforts have been made to strengthen law enforcement against this crime. However, in its implementation, there are several differences and potential conflicts in law enforcement authority that affect the effectiveness of handling narcotics crimes.

There is an overlapping authority between investigators from the National Police and the National Narcotics Agency (BNN) in handling narcotics crimes. Based on Article 81 of Law Number 35 of 2009, both the National Police and the BNN have the authority to investigate narcotics abuse and illicit trafficking. However, the difference in legal basis in the time limit for arrest, which is 1x24 hours for the National Police based on the Criminal Procedure Code and 3x24 hours for the BNN based on the Narcotics Law, often gives rise to legal implications in the form of legal uncertainty and differences in treatment of suspects.

First, there is a fundamental difference regarding the arrest time given to the National Narcotics Agency (BNN) and the Indonesian National Police (Polri). Based on Article 76 of Law

Number 35 of 2009 concerning Narcotics, BNN has a maximum arrest time of 3 x 24 hours which can be extended to 3 x 24 hours. In contrast, Article 19 of the Criminal Procedure Code (KUHP) stipulates that Polri only has a maximum arrest time of one day without the option of extension. This difference has different legal consequences in the arrest of perpetrators of narcotics crimes. Differences in the duration of arrest can affect the suspect's human rights, the timeliness of investigations, and the effectiveness of law enforcement as a whole.

Second, there is a similarity of authority between BNN and Polri investigators as regulated in Article 81 of the Narcotics Law, especially in the investigation process. This similarity results in dualism in the investigation of narcotics crimes, which has the potential to cause overlapping authority between the two institutions. This dualism and potential overlap can hinder the investigation process, cause confusion in the implementation of tasks, and reduce the effectiveness of law enforcement in handling narcotics cases. This situation can also affect coordination between law enforcement agencies and impact the final results of the investigation.

Third, the ratification of Law Number 1 of 2023 concerning the Criminal Code (KUHP) brings

significant changes in the regulation of special criminal acts, including narcotics crimes regulated in Chapter XXXV concerning Special Criminal Acts. This new regulation raises legal issues related to the principle of *lex specialis*, which states that special legal provisions override general provisions. In this context, the question arises as to which regulation will be the *lex specialis* in narcotics crimes: whether the regulation in Chapter XXXV concerning Special Criminal Acts of the new Criminal Code or in the Narcotics Law. Determining the limits of the special nature of criminal acts through the principle of *lex specialis* will have implications for the relationship between investigative authority in narcotics crimes after the ratification of the new Criminal Code.

Referring to the above background, this study will discuss in depth the relationship between investigative authority in narcotics crimes after the ratification of Law Number 1 of 2023 concerning the Criminal Code. This study aims to identify and analyze changes in investigative authority, the legal implications that arise, and how coordination between law enforcement agencies can be improved to address potential overlapping authorities. In this context, the study will identify specific changes in investigative authority regulated by the new Criminal Code and evaluate their impact on suspects' rights, the judicial process, and the effectiveness of investigations. In addition, the study will also explore the legal consequences of procedural differences between the BNN and the National Police, and explore strategies to improve coordination between the two institutions to reduce overlapping authorities. The results of the study are expected to contribute to the development of criminal law theory, offer relevant policy recommendations, and improve the effectiveness of law enforcement in handling narcotics crimes, so as to provide better protection for the community from the dangers of narcotics.

II. RESEARCH METHODS

Normative legal research is a type of research that focuses on the analysis of laws and regulations and applicable legal principles to understand, interpret, and evaluate legal rules. In the context of research on "The Relationship of Investigative Authority in Narcotics Crimes After the Enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP)," this

research will explore how changes in laws and regulations affect the authority of investigators.

The research will use a legislative approach to analyze the content and structure of Law Number 35 of 2009 concerning Narcotics and the new Criminal Code, as well as a conceptual approach to understand the legal concepts underlying the division of authority between the National Narcotics Agency (BNN) and the Indonesian National Police (Polri). In addition, a case approach will be used to analyze relevant court decisions in order to understand the application of the law in practice. The data obtained in the research regarding the relationship between investigative authority in narcotics crimes after the ratification of Law Number 1 of 2023 concerning the Criminal Code (KUHP) were analyzed qualitatively. This approach involves the process of interpreting and assessing the relevance and implications of data to the formulation of the problems that have been determined.

III. RESULTS AND DISCUSSION

A. Changes in the Authority to Investigate Narcotics Crimes After the Enactment of Law Number 1 of 2023 concerning the Criminal Code

The regulation of narcotics crimes in Law No. 1 of 2023 concerning the Criminal Code (KUHP) is the state's effort to deal with the increasingly complex narcotics problem in Indonesia. This law includes various provisions that regulate the types of narcotics, classifications based on potential for abuse, and legal sanctions imposed on violators. This regulation is very important to provide legal clarity and enforce order in society, considering the dangers of narcotics to health, security, and social welfare.

Following the ratification of "Law Number 1 of 2023 concerning the Criminal Code (KUHP)", the relationship between the authority to investigate narcotics crimes between the National Police and the National Narcotics Agency (BNN) needs to be aligned with the correctional system, especially in the context of the development of narcotics prisoners. Overlapping authority in investigations can have an impact on the law enforcement and development process in

Correctional Institutions, which aims to rehabilitate perpetrators so that they can return to society. Synergy between investigators and correctional institutions must be strengthened to ensure effective handling, from investigation to rehabilitation, thus supporting the social integration of prisoners after serving their sentences.

Furthermore, Law No. 1 of 2023 classifies narcotics into three groups based on their potential for abuse and medical benefits. Class I narcotics include substances with very high potential for abuse and no medical benefits, such as heroin and cocaine. Class II narcotics include substances that still have medical benefits, but with a high risk of abuse, such as morphine and amphetamines. Meanwhile, Class III narcotics are substances with lower potential for abuse but are still used in medicine, such as codeine.

To regulate sanctions for narcotics-related violations, Article 609 paragraph (1) of Law No. 1 of 2023 stipulates penalties for anyone who without the right possesses, stores, controls, or provides Class I Narcotics. These sanctions include imprisonment for a minimum of 4 years and a maximum of 12 years, as well as a fine of categories IV to VI. If the amount of narcotics involved exceeds 5 grams, the penalty can be increased to life imprisonment or the death penalty, as regulated in Article 609 paragraph (2).

Similarly, for Class II Narcotics, violations can be punished with imprisonment of at least 3 years and a maximum of 10 years, as well as fines of categories IV to VI. If the weight of the narcotics exceeds 5 grams, the penalty can be increased to a minimum of 5 years and a maximum of 15 years in prison. Meanwhile, for Class III Narcotics, sanctions range from 2 to 7 years in prison with similar provisions related to the weight of narcotics exceeding 5 grams.

In addition, Article 610 regulates sanctions for acts of producing, importing, exporting, or distributing narcotics without permission. For Class I Narcotics, the minimum sentence is 5 years in prison and the maximum is 15 years, with a fine of category IV to V. The penalty can

be increased if the weight of the narcotics exceeds a certain limit, including the possibility of the death penalty or life imprisonment.

Law No. 1 of 2023 also stipulates that provisions regarding the classification and quantity of narcotics must refer to laws that specifically regulate narcotics, as regulated in Article 611. This shows harmonization with more specific narcotics laws, which provide a legal basis for the classification and determination of policies related to narcotics.

The provisions in Law No. 1 of 2023 show a firm approach in enforcing narcotics-related laws. Severe and specific sanctions demonstrate the state's commitment to handling narcotics problems seriously. This law enforcement is not only intended to punish perpetrators, but also serves as a deterrent for the wider community not to be involved in narcotics-related activities.

However, even though these regulations are quite clear, challenges remain in the implementation and enforcement of the law. Drug abuse often involves complex international networks, thus requiring good coordination between various law enforcement agencies. In addition, law enforcement must be carried out while still respecting human rights and fair legal processes.

In Law Number 1 of 2023, criminal fines are regulated in several categories that indicate the severity of the violation. Category IV fines include a maximum amount of IDR 200,000,000.00 (two hundred million rupiah), which is usually applied to criminal acts with a significant impact or risk to society or the state. This fine serves as a significant punishment to provide a deterrent effect

Category V, with a maximum fine of Rp500,000,000.00 (five hundred million rupiah), is applied to more serious violations, which may involve major losses or significant threats to the public interest. This indicates the seriousness of the violation and the need for heavier penalties to deter similar actions in the future.

Category VI, which is the highest fine category, sets a maximum fine of Rp2,000,000,000.00 (two billion rupiah). Fines in this category are intended for very serious crimes, which can cause major losses or serious threats to public safety. The application of fines in this amount emphasizes the importance of preventing and controlling crimes that have broad and dangerous impacts.

In addition, the regulation of narcotics crimes in Law No. 1 of 2023 has a significant impact on society. The application of strict sanctions is expected to reduce the prevalence of narcotics abuse and increase public awareness of the dangers of narcotics. However, it should also be remembered that handling narcotics problems cannot only be done through a legal approach alone, but also requires a rehabilitative and preventive approach.

Law Number 35 of 2009 concerning Narcotics is a legal framework designed to regulate various aspects related to the abuse and illicit trafficking of narcotics in Indonesia. The articles regulated in this law cover various unlawful acts, such as planting, possessing, storing, controlling, providing, producing, importing, exporting, distributing, offering, selling, buying, acting as an intermediary in buying and selling, exchanging, handing over, carrying, sending, transporting, transiting, and using narcotics. Any act related to narcotics is categorized as a criminal act with a very severe penalty.

The criminal provisions stipulated in the Narcotics Law have varying levels of sanctions, depending on the type of narcotics and the actions taken. For Class I Narcotics, which are considered the most dangerous and have no medical benefits, the sanctions imposed are very severe. For example, possessing or providing Class I Narcotics without permission can be punished with a minimum of four years' imprisonment to a maximum of 12 years, accompanied by a minimum fine of IDR 800 million to IDR 8 billion. If the violation involves a larger amount than that specified, the penalty can increase to life imprisonment or the death

penalty, with an additional fine of one third of the maximum stipulated.

In addition to Class I Narcotics, this law also regulates sanctions for violations involving Class II and III Narcotics. Although the sanctions are not as severe as Class I, violations involving Class II and III are still subject to significant prison sentences and large fines. For example, for Class II Narcotics, prison sentences range from three to 10 years, with fines ranging from IDR 600 million to IDR 5 billion. Meanwhile, for Class III, prison sentences range from two to seven years, with a minimum fine of IDR 400 million to a maximum of IDR 3 billion.

This law also regulates specific actions such as the use of narcotics against others or the provision of narcotics for use by others, which are also subject to severe sanctions. If the act results in the death or permanent disability of another person, the punishment imposed can be the death penalty, life imprisonment, or a maximum of 20 years in prison, with an additional fine set at a maximum. This shows the government's commitment to suppressing the negative impacts of drug abuse in society.

Furthermore, Article 622 of Law No. 1 of 2023 stipulates that all provisions contained in Article 111 to Article 126 of Law No. 35 of 2009 concerning Narcotics are revoked and declared null and void. With the enactment of Law No. 1 of 2023, a new legal framework is implemented to replace the previous regulations, which include criminal sanctions, investigation processes, prosecutions, and handling of evidence related to narcotics. This has a significant impact on the criminal justice system, where law enforcement officers, prosecutors, lawyers, and other related parties must adjust to the new provisions in force. This transition process also ensures legal certainty by eliminating the potential for confusion due to overlapping between old and new provisions. Thus, this change reflects the government's commitment to regulate and handle narcotics cases more effectively and efficiently within the new legal framework.

Table. Comparison of Narcotics Crime Regulations in Law No. 35 of 2009 with Law No. 1 of 2023

Law No. 35 of 2009	Law No. 1 of 2023	Comparison and Change
Article 112 paragraph (1)	Article 609 paragraph (1) a	Prison sentences and fines for possession of Class I narcotics other than plants remain the same; the 2023 law uses the fine category.
Article 112 paragraph (2)	Article 609 paragraph (2) a	Increased prison sentences and fines if the weight of narcotics exceeds 5 grams.
Article 113 paragraph (1)	Article 610 paragraph (1) a	Criminal penalties for production and distribution of Class I Narcotics, with additional sanctions in Law 2023.
Article 113 paragraph (2)	Article 610 paragraph (2) a	More detailed provisions on the weight of narcotics and adjustments to fines in the 2023 Law.
Article 117 paragraph (1)	Article 609 paragraph (1) b	Fines and prison sentences for Category II narcotics remain similar; fine categories used in the 2023 Law.
Article 117 paragraph (2)	Article 609 paragraph (2) b	The sanctions are heavier if the weight of narcotics exceeds 5 grams in Law 2023.
Article 118 paragraph (1)	Article 610 paragraph (1) b	Same as 2009 Law with updated fine categories.
Article 118 paragraph (2)	Article 610 paragraph (2) b	More detailed adjustments to penalties and fines in Law 2023.
Article 122 paragraph (1)	Article 609 paragraph (1) c	Provisions on fines and prison sentences for Class III Narcotics; changes in fine categories in Law 2023.
Article 122 paragraph (2)	Article 609 paragraph (2) c	Increased sanctions for narcotics weighing more than 5 grams.
Article 123 paragraph (1)	Article 610 paragraph (1) c	The provisions are the same as the adjustment of the fine category in Law 2023.
Article 123 paragraph (2)	Article 610 paragraph (2) c	More detailed regulations regarding sanctions with fine categories in Law 2023.

Source: Law No. 35 of 2009, Law No. 1 of 2023

Previously, Article 111 of Law No. 35 of 2009 regulated sanctions for individuals who illegally or unlawfully plant, maintain, possess, store, control, or provide Class I Narcotics in the form of plants. This provision stipulates that perpetrators can be sentenced to imprisonment for a minimum of 4 years and a maximum of 12 years, and a fine of between Rp800,000,000.00 to Rp8,000,000,000.00. The punishment imposed is heavier if the amount of narcotics involved exceeds 1 kilogram or 5 trees, with the threat of increased punishment up to life imprisonment or the death penalty, and a maximum fine increased by one third of the initial amount. This regulation shows the

government's serious efforts to eradicate drug abuse, especially those related to Class I Narcotics, which have a significant negative impact on public health and social stability. The increased penalties for violations involving large amounts reflect concerns about the potential for large-scale narcotics distribution that can damage society at large.

The elimination of Article 111 of Law No. 35 of 2009 through the provisions of Article 622 of Law No. 1 of 2023 has a significant impact on the legal regulations and authority of investigators regarding the misuse of Class I narcotics in the form of plants. With the revocation of Article 111, the provisions relating to criminal sanctions and fines for the act of planting, maintaining, possessing, storing, controlling, or providing Class I narcotics in the form of plants have been eliminated and replaced by new provisions in Law No. 1 of 2023.

Table. Application of Criminal Penalties for Drug Abusers for Themselves According to the Charges and Application of Special Penalties Below Minimum

Decision Number	Name of Defendant	Evidence	The indictment	Claims	Decision
2597/Pid.B/2009/P.N.Tng	MN, 16 Years	Marijuana 0.3810 grams	Article 111 (1) of Law Number 35 of 2009	4 years imprisonment and a fine of Rp. 800,000,000 subsidiary 1 month of work training	2 years imprisonment and a fine of Rp. 400,000,000 subsidiary to 1 month of work training
297/Pid.B/2010/PN.Tng	JR, 16 Years Old	Marijuana 4.0489 grams	Article 111 (1) of Law Number 35 of 2009	4 years imprisonment and a fine of Rp. 800,000,000 subsidiary 3 months imprisonment	2 years imprisonment and a fine of Rp. 400,000,000 subsidiary to 1 month of work training
904/Pid.B/2010/PN.Tng	YW, 15 Years Old	Marijuana 0.8744 grams	Article 111 (1) in conjunction with 132 (1) of Law Number 35 of 2009	4 years imprisonment and a fine of Rp. 800,000,000 subsidiary to 6 months imprisonment	3 years imprisonment and a fine of Rp. 800,000,000 subsidiary 2 months imprisonment

Source: Dahlan, Dahlan. "Criminal Implementation of Drug Abusers for Themselves." *Journal of Legal Reform* 4.1: 15-23

The legal consequences in the context of changes in investigative authority, all cases previously handled based on Article 111 of

Law No. 35 of 2009 must be adjusted to the new provisions stipulated in Law No. 1 of 2023. This means that investigators can no longer use Article 111 as a legal basis in conducting investigations, prosecutions, or imposing sanctions on violations involving Class I narcotics in the form of plants. They must refer to the relevant articles in Law No. 1 of 2023.

Changes in investigative authority may include adjustments to procedures and operational standards related to evidence collection, arrest, detention, and prosecution. Investigators must update their understanding of the new provisions, including understanding the new fine categories regulated in Law No. 1 of 2023, and ensure that their actions are in line with these new regulations. In addition, if the new provisions provide for heavier or lighter penalties, investigators must adjust their procedures to reflect these changes, both in handling perpetrators and in the process of collecting evidence.

Overall, the elimination of Article 111 and its replacement with new provisions in Law No. 1 of 2023 requires adaptation from law enforcement, especially investigators, to ensure that they act in accordance with the new legal framework, while still protecting individual rights and maintaining public order.

Article 127 of Law Number 35 of 2009 concerning Narcotics regulates criminal sanctions for drug abusers with an emphasis on differences based on the class of narcotics used. Paragraph (1) stipulates a maximum prison sentence of four years for drug abusers of Class I, two years for Class II, and one year for Class III. This provision shows that there is variation in handling cases based on the level of danger and potential for drug abuse. Paragraph (2) instructs judges to consider the provisions of Article 54, Article 55, and Article 103 when making decisions, which may include aspects of rehabilitation and other procedures. Furthermore, the provisions of Article 105 of Law No. 1/2023 emphasize that if defendants who abuse drugs are proven or can be proven to be victims of abuse, they are required to undergo medical, social and

psychological rehabilitation. This reflects a more humanistic approach to dealing with drug abuse, with a focus on recovery and social reintegration rather than mere imprisonment. This article reflects the understanding that addressing drug abuse requires a more comprehensive and recovery-oriented approach, which includes legal protection as well as medical and social support for victims.

In principle, drug abusers for themselves are guaranteed the right to rehabilitation in accordance with Article 4, Article 54 and Article 127 of Law No. 35 of 2009 concerning Narcotics. However, the article also stipulates that drug abusers can be subject to criminal penalties if they are not proven to be victims of drug abuse. Legal practice in the field shows inconsistency in the application of this article, where drug users for themselves who should be viewed as victims can still be subject to criminal sanctions. This occurs because in the indictment, Article 127 is often associated with Article 111 or Article 112 which regulate the possession or storage of narcotics, so that drug abusers fulfill the elements of a criminal act in these articles. As a result, the right to rehabilitation that should be guaranteed is neglected, and abusers are instead punished, creating confusion and uncertainty in the application of the law.

B. Legal Implications for Relations Between Law Enforcement Agencies in the Investigation of Narcotics Crimes Following the Ratification of the New Criminal Code

There are several law enforcement agencies that have the authority to conduct investigations outside the police, especially related to Special Crimes that are not included in the Criminal Code, which have expanded the capacity of law enforcement in Indonesia. One such agency is the National Narcotics Agency (BNN), which was established with the specific aim of combating the abuse and illicit trafficking of narcotics and narcotic precursors. Based on Law Number 35 of 2009, BNN has the same authority as police investigators in terms of investigation, prosecution, and court examination related to narcotics. BNN investigators are given the same responsibility in collecting information and

conducting investigations related to drug abuse and narcotic precursors. BNN's main focus is on cases involving drugs and materials that are their precursors. Although the Criminal Procedure Code allows investigators from the National Police and BNN to continue investigating drug crimes, good coordination and communication between the two agencies are essential to avoid misunderstandings during the investigation process. Thus, the existence of BNN strengthens law enforcement efforts against drug crimes in Indonesia, while emphasizing the need for synergy between various law enforcement agencies.

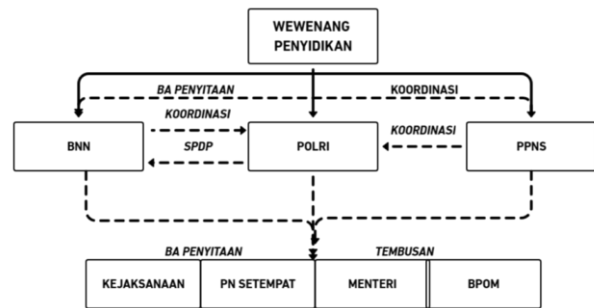
The relationship of investigative authority in narcotics crimes after the ratification of Law Number 1 of 2023 concerning the Criminal Code needs to be aligned with the concept of criminal law that is developing in Indonesia. As explained in the development of the criminal law system, coordination between law enforcers is very important in realizing an effective legal system. The authority between the Police and the National Narcotics Agency (BNN), which previously often overlapped in investigating narcotics crimes, needs to be harmonized within the framework of the new Criminal Code. This includes a clearer division of roles so that each investigation can run more integrated, reduce duplication of tasks, and ensure legal certainty for suspects and victims of narcotics crimes.

In Law Number 35 of 2009 concerning Narcotics, the relationship between the Police and the National Narcotics Agency (BNN) in Indonesia in investigating narcotics crimes has been clearly formulated, showing the distribution of authority and the coordination framework between these institutions. Articles 70 to 76 regulate the authority of the BNN which includes investigation, inquiry, arrest, and confiscation of individuals or corporations suspected of being involved in the abuse or illicit trafficking of narcotics and narcotic precursors. In addition, Articles 81 and 82 emphasize that the Police and civil servant investigators from various ministries or institutions tasked with narcotics have similar authority.

Inter-agency coordination is explained in Article 84, which requires BNN and Police investigators to notify each other in writing when an investigation begins. Article 85 further stipulates that certain civil servant investigators must coordinate with BNN or the Police during the investigation process. Articles 87 and 88 describe detailed confiscation procedures, where

investigators conducting the confiscation must prepare detailed minutes and inform other relevant institutions. BNN is given special authority through investigative techniques such as wiretapping and undercover purchases as stipulated in Articles 75 and 79, indicating a role in more detailed investigative techniques.

Chart. Coordination Relationship of Investigation in Criminal Acts of Narcotics Abuse and Narcotics Precursors Law Number 35 of 2009 Concerning Narcotics



Source: Processed

After the enactment of Law Number 1 of 2023 concerning the Criminal Code, there are changes to the regulations, especially in the section on special crimes, including drug crimes. Article 620 of Law Number 1 of 2023 and its explanation stipulates that law enforcement agencies that have special duties and authorities will implement the provisions in the Chapter on Special Crimes. When this law comes into effect, law enforcement agencies such as the National Narcotics Agency (BNN) will carry out the task of eradicating drug crimes in accordance with the laws that regulate them, including the provisions contained in this new law.

Further explanation in Book Two Number 4 Letter E states that serious crimes against human rights, terrorism, corruption, money laundering, and narcotics are grouped in the Special Crimes Chapter. This grouping is based on the special characteristics of the crime, which requires a law enforcement agency with specific authority and duties. For example, the Corruption Eradication Commission (KPK) handles corruption, while the BNN handles narcotics. Placement in a separate chapter emphasizes the existence of a supporting law enforcement agency that is special in nature and has special authority.

Letter G emphasizes that the provisions in the Special Crimes Chapter do not reduce the authority of existing law enforcement agencies. On the contrary, these agencies still have full authority to handle serious crimes against human rights, terrorism, corruption, money laundering,

and narcotics. This means that even though there are new provisions in this law, the authority of agencies such as the KPK, BNN, and Komnas HAM remains intact and they continue to have the authority to handle cases in accordance with their respective fields of duty.

Based on these regulations, there is basically no change in the authority of the narcotics crime law enforcement agency, however, if analyzed further regarding the main regulations on narcotics crimes in Law No. 1/2023, especially the provisions of Article 622 paragraph (1) letter w, which in essence revokes and declares the provisions in Article 11 1 to Article 126 of Law Number 35 of 2009 concerning Narcotics to be invalid.

If we refer to the provisions of Article 111, Article 112 and Article 114 of Law no. 35/2009 is categorized as an article that often accompanies the provisions in Article 127 of Law No. 35/2009. However, the provisions in Article 112 of Law no. 35/2009 there is a reference to it in Article 609 paragraph (1) letter a and paragraph (2) letter a of Law no. 1/2023.

Source: Article 112 of Law No. 35 of 2009 with Article 609 of Law No. 1 of 2023

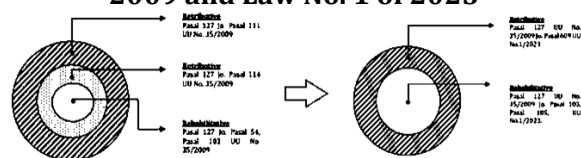
Article 609 of Law Number 1 of 2023 and Article 112 of Law Number 35 of 2009 both regulate the possession, storage, control, or provision of Class I Narcotics other than plants without a permit. Both laws stipulate a minimum prison sentence of 4 years and a maximum of 12 years for these violations. However, there are differences in determining the fines. Law Number 1 of 2023 uses a fine category system from category IV to VI, which offers a more flexible range of penalties compared to Law Number 35 of 2009, which stipulates specific fines ranging from IDR 800,000,000.00 to IDR 8,000,000,000.00.

In addition, both laws also regulate heavier sanctions for cases involving narcotics weighing more than 5 grams. Both laws stipulate life imprisonment or a minimum of 5 years and a maximum of 20 years in prison. Law Number 35 of 2009 adds a provision that the maximum fine in this case can be increased by one third of the maximum fine, making the total maximum fine Rp10,666,666,666.67. Meanwhile, Law Number 1 of 2023 still uses the fine category, with categories V to VI. The difference in approach not only affects the amount of fines that can be imposed but also provides a different framework for judges in sentencing, both in terms of flexibility and sentence limitations.

Table. Reference Article 112 of Law No. 35 of 2009 with Article 609 of Law No. 1 of 2023

Aspect	Article 609 of Law No. 1 of 2023	Article 112 of Law No. 35 of 2009
General requirements	Regulating the ownership, storage, control or provision of Class I Narcotics other than plants without the right	Regulating the ownership, storage, control or provision of Class I Narcotics other than plants without the right
Minimum Prison Sentence	4 years	4 years
Maximum Prison Sentence	12 years old	12 years old
Minimum Fine	Category IV	Rp800,000,000.00
Maximum Fine	Category VI	Rp8,000,000,000.00
Cases with Narcotics > 5 grams	Life imprisonment or 5-20 years imprisonment and a fine of category V-VI	Life imprisonment or 5-20 years imprisonment, maximum fine plus 1/3 of Rp. 8,000,000,000.00
Fine System	Using fine categories (categories IV-VI)	Determine the specific fine amount (Rp800,000,000.00 - Rp8,000,000,000.00)

Diagram. Comparison of Rehabilitative and Retributive Potential between Law No. 35 of 2009 and Law No. 1 of 2023



Source: Processed

Based on the diagram, it is known that the potential for retributive action in Law No. 35/2009 against drug abusers is in three articles, namely Article 111, Article 112 and Article 114 compared to the rehabilitative potential in Article 127. Then in Law Number 1 of 2023, the retributive potential for drug abusers is the provision in Article 609 as the reference article for Article 112 of Law No. 35/2009 and the rehabilitative potential is in Article 127 of Law No. 35/2009, Article 103 and Article 105 of Law No. 1/2023.

Law No. 35/2023, brings a number of important changes, one of which is the addition of

rehabilitation as an alternative form of punishment for several types of crimes. The application of rehabilitation in the Criminal Code marks a shift in the criminal justice system, which previously focused more on retributive punishment to become more restorative and rehabilitative.

The concept of restorative justice in the application of rehabilitation to drug abusers is contained in Perpol 8/2021 and Guideline 18/2021. These two internal regulations provide guidelines for law enforcers, especially prosecutors and the police, to implement rehabilitation as an alternative to resolving cases before entering the trial stage. Guideline 18/2021 in particular is aimed at public prosecutors in handling drug cases, allowing drug abusers to get the opportunity for medical and social rehabilitation.

The mechanism stipulated in Guideline 18/2021 involves several administrative stages starting from notification to the perpetrator about the rehabilitation option, approval through a written statement from the suspect and his/her family, to the preparation of an opinion note by the public prosecutor for the determination of rehabilitation by the chief prosecutor. Meanwhile, Perpol 8/2021 owned by the police covers broader criminal acts and is similar to the previous guideline, Guideline 15/2020, which also emphasizes resolving cases outside the trial.

Article 4 of the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 regulates the handling procedures for addicts and victims of drug abuse who are arrested or caught red-handed without rights and against the law. For those who are arrested without evidence but are proven positive for using narcotics based on test results, they are placed in a government-run rehabilitation institution after investigators make an Examination Report and receive recommendations from the Integrated Assessment Team. If they are arrested with a certain amount of evidence, they can also be placed in a rehabilitation institution during the trial process. However, if the evidence exceeds a certain amount, they will remain detained even though they receive a rehabilitation recommendation. The results of the assessment from the Integrated Assessment Team must be concluded no later than six days after the arrest.

Furthermore, in the Regulation of the Head of the National Narcotics Agency Number 11 of 2014 concerning Procedures for Handling Suspects and/or Defendants of Narcotics Addicts

and Victims of Narcotics Abuse in Rehabilitation Institutions, Article 5 regulates the same procedure for addicts and victims of narcotics abuse who are foreign citizens, with the addition that they will be handed over to the Ministry of Immigration for deportation, accompanied by assessment recommendations, and reported to the local District Court. Foreign citizens who also act as drug dealers are detained in prisons, detention centers, or branches of detention centers but can still receive rehabilitation. Article 6 emphasizes that addicts who also act as dealers are detained in the same place and receive rehabilitation in prisons, detention centers, or branches of detention centers, with coordination between investigators or public prosecutors and rehabilitation institutions. Article 7 states that investigators must report the placement of addicts or victims of narcotics abuse to the local district court to obtain a decision. Article 14 stipulates that an assessment request must be submitted no later than 24 hours after arrest and the assessment results must be provided within six days.

That based on the description and the development of the 2023 Criminal Code, especially Article 132 paragraph (1) letter g and Article 103 paragraph (1), it is emphasized that all forms of case resolution outside the trial must be based on the law, providing a stronger and more explicit legal framework for the implementation of rehabilitation without or with criminal sanctions. Therefore, the legal implications for the legal relationship between law enforcement agencies in the investigation of narcotics crimes, especially for perpetrators and/or victims of drug abuse, the rehabilitation process must go through adjudication in court.

IV. CONCLUSIONS AND RECOMMENDATIONS

Changes in the authority to investigate narcotics crimes after the enactment of Law Number 1 of 2023 concerning the Criminal Code have had a significant impact on the handling of narcotics cases. Previously, Article 111 of Law Number 35 of 2009 regulated sanctions for individuals who illegally planted, maintained, possessed, stored, controlled, or provided Class I Narcotics in the form of plants, with a minimum prison sentence of 4 years and a maximum of 12 years and a fine of between IDR 800,000,000 to IDR 8,000,000,000. The elimination of Article 111

through Article 622 of Law Number 1 of 2023 requires adjustments from law enforcers because they must refer to the new provisions stipulated in Law Number 1 of 2023. These changes include adjustments to procedures and operational standards related to evidence collection, arrest, detention, and prosecution, as well as understanding the new fine categories.

The elimination of Article 111 and its replacement with new provisions in Law No. 1 of 2023 requires adaptation from investigators to ensure their actions are in accordance with the new regulations, while still protecting individual rights and maintaining public order. Article 127 of Law No. 35 of 2009 regulates criminal sanctions for drug abusers with an emphasis on rehabilitation if proven to be a victim of abuse. However, legal practice shows inconsistencies in the application of this article, as it is often associated with Article 111 or Article 112 concerning possession or storage of narcotics. In addition, Law No. 1 of 2023 also introduces rehabilitation as an alternative punishment for several types of crimes, marking a shift towards a more restorative and rehabilitative justice system. Internal regulations such as Perpol 8/2021 and Guidelines 18/2021 provide guidelines for implementing pre-trial rehabilitation, with clear administrative mechanisms to ensure its implementation.

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