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The Decriminalization of The Offense of Cultivating Type I Narcotics in Law Number 1 Of 2023 on The Indonesian Criminal Code

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ABSTRACT
This thesis addresses the decriminalization of the cultivation of Group I narcotics following the revocation of Article 111 of the Narcotics Law by Article 622 paragraph (1) letter w of the National Criminal Code (KUHP Nasional) 2023. This situation, effective in 2026, creates a legal vacuum. This normative juridical research, employing statutory, historical, and conceptual approaches, aims to identify the *ratio legis* of previous regulations and propose an appropriate formulation. The findings show the *ratio legis* for regulating narcotic cultivation in the previous Narcotics Law was to break illicit supply chains and deter offenders, in line with international conventions. To fill the vacuum, the thesis recommends explicitly re-regulating the cultivation of Group I narcotics in Article 609 paragraphs (1)a and (2)a of the KUHP Nasional, with severe penalties, to criminalize and combat narcotics trafficking from its source.

Keywords:
Decriminalization; Group I Narcotics; Legal Vacuum; National Criminal Code.

INTRODUCTION

The consistently rising number of drug-related crimes in Indonesia indicates that this is a serious issue requiring comprehensive handling. Since 1949, the government has continuously strived to tackle this problem through various regulations, starting with Law No. 419 on the Ordinance of Hard Drugs, followed by Ministerial Regulations on Health, culminating in the ratification of Law No. 22 of 1997 and subsequently Law No. 35 of 2009 on Narcotics. Law No. 35 of 2009 comprehensively regulates prohibitions, controls, criminal sanctions, and maximizes the role of the National Narcotics Agency (BNN). Despite these extensive efforts, drug abuse cases in Indonesia remain high, affecting various age groups, and are exacerbated by technological advancements. This persistent challenge is a significant concern for the government.

With the enactment of Law No. 1 of 2023 concerning the National Criminal Code (KUHP Nasional), Indonesian criminal law has undergone significant reform. Narcotic offenses are now explicitly accommodated in the KUHP Nasional (Articles 609-611), categorized under a special chapter for "Special Criminal Offenses." However, Article 622 paragraph (1) letter w of the KUHP Nasional explicitly revokes Articles 111 to 126 of Law No. 35 of 2009. Although Article 622 paragraph (15) of the KUHP Nasional refers some articles of the Narcotics Law to the KUHP Nasional, ten crucial articles are revoked without corresponding references in the new KUHP Nasional. One such example is Article 111 of Law No. 35 of 2009, which regulates the criminal act of "cultivating, maintaining, possessing, storing, controlling, or providing Group I Narcotics in plant form."(Fahrizal Siagian, 2023)

The revocation of Article 111 of the Narcotics Law without an explicit replacement in the KUHP Nasional will lead to the decriminalization of cultivating Group I narcotics. This creates a highly critical legal vacuum, considering that cultivating Group I narcotics is an initial stage in the illegal drug supply chain and is considered a

dangerous unlawful act. If left unregulated, this act could be perceived as normal by the public, potentially increasing drug abuse and trafficking in Indonesia. Furthermore, based on Article 3 paragraph (4) of the KUHP Nasional, convicts currently serving sentences for offenses that are now decriminalized may be released, with serious implications for drug law enforcement.

This issue necessitates an in-depth study based on criminal law politics theory and legislative theory. It is crucial to analyze whether this decriminalization aligns with the nation's fundamental values and criminal policy for promoting public welfare, or if it merely serves short-term political interests that could jeopardize long-term legal stability. Therefore, this research is vital to recommend clear and firm legal policy reforms to address this legal vacuum and ensure Indonesia continues its efforts to be free from narcotics.

METHOD

This study employs a normative juridical methodology to analyze the legal vacuum arising from the decriminalization of the criminal offense of cultivating Group I narcotics in the 2023 National Criminal Code (KUHP Nasional). We apply a statutory approach to analyze legal norms and inter-article relations, a historical approach to trace the background of narcotics regulation in Indonesia, and a conceptual approach to bridge legal theory and practice. The legal materials for this research include primary legal sources such as relevant laws, conventions, and government regulations concerning narcotics and the KUHP Nasional. Additionally, secondary legal sources, including books, legal journals, and other relevant literature, are used to support the analysis. Data is collected through library research and analyzed prescriptively using interpretative methods like original intent, textual, systematic, historical, and grammatical interpretation, in order to recommend an appropriate legal regulatory formulation.

RESULTS AND DISCUSSION

1. Overview of Scientific Findings

This section presents the key findings of this study regarding the decriminalization of the criminal act of cultivating Group I narcotics following the enactment of Law No. 1 of 2023 concerning the National Criminal Code (KUHP Nasional). The research results indicate a significant legal vacuum concerning the regulation of Group I narcotics cultivation, which was previously strictly regulated in Law No. 35 of 2009 on Narcotics. This vacuum has a substantial potential to affect the effectiveness of law enforcement and narcotics eradication efforts in Indonesia, especially considering the full implementation of the KUHP Nasional in 2026. These findings were obtained through an in-depth normative juridical analysis of the development of narcotics regulations in Indonesia and a comparison between the old Narcotics Law and the new KUHP Nasional.

2. Discussion

This discussion will elaborate in detail on the research findings based on the established research questions, exploring the *ratio legis* of previous regulations and formulating an appropriate solution to fill the legal vacuum. The discussion will also highlight the significance of these findings, compare them with existing literature, and address the study's limitations, followed by directions for future research.

a. *Ratio Legis* of the Regulation on the Criminal Act of Cultivating Group I Narcotics in Indonesian Laws and Regulations before the Enactment of the National Criminal Code

The research findings clearly demonstrate that the *ratio legis* (philosophical, sociological, and juridical reasons) behind the regulation of the criminal act of cultivating Group I narcotics prior to the enactment of the KUHP Nasional was exceptionally strong and consistent with both global and national anti-narcotics policies. Historically, Indonesian narcotics regulations from the Hard Drugs Ordinance of 1949, followed by Law No. 9 of 1976, Law No. 22 of 1997, and culminating in Law No. 35 of 2009 have unequivocally criminalized the act of narcotics cultivation (Andi Dasril Dwi Darmawan, 2021). This historical progression illustrates a consistent legislative intent to establish a robust legal framework against all stages of drug-related offenses.

This criminalization is fundamentally supported by international legal frameworks, notably the Single Convention on Narcotic Drugs of 1961 (and its 1972 Protocol Amending it) (Pande Ni Luh Putu Ayu Riantini, 2021) and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (ratified by Indonesia through Law No. 7 of 1997) These conventions explicitly mandate state parties to criminalize the cultivation of narcotic plants, except when conducted for strictly controlled medical or scientific purposes. Indonesia, as a signatory, has consistently incorporated these international obligations into its domestic legislation. The adherence to these international instruments underscores the global consensus on the dangers of narcotics cultivation and the necessity of its prohibition.

From a philosophical standpoint, the criminalization of narcotics cultivation is rooted in the understanding that this act represents a critical initial stage in the illicit narcotics supply chain. Cultivation is the upstream source of all forms of narcotics abuse and illicit trafficking. Consequently, strict enforcement at this foundational stage is vital for disrupting the entire narcotics distribution network. Permitting cultivation would ensure a continuous supply of illegal narcotics, thereby exacerbating the problems of abuse and their detrimental societal impacts. This perspective aligns with the state's fundamental duty to protect its citizens from harm and maintain public order (Sulung Faturachman, 2020).

Sociologically, the severe penalties imposed on perpetrators of Group I narcotics cultivation under Law No. 35 of 2009 (Article 111) were designed to generate a strong deterrent effect for potential offenders and effectively suppress illegal cultivation activities. Society generally recognizes that narcotic plants, such as cannabis or coca, are primary sources of dangerous narcotics, leading to widespread social detriment. Therefore, the stringent prohibition and criminal sanctions for their cultivation were believed to reduce the availability of narcotics in the black market and safeguard national health and moral integrity. The continuous discovery of narcotics cultivation cases to date, despite the existing strong penalties (Wulanmas A.P.G. Fredederick and Butje Tampi, 2023), only further underscores the persistent challenge and the enduring relevance and urgency of enforcement at this initial stage. The removal of such penalties would likely send a dangerous message that this foundational act is no longer taken seriously by the state.

From a juridical perspective, the regulations in the former Narcotics Law possessed clear and systematic legal authority (Mohammad Khairul, 2009). They explicitly prohibited any individual who "without right or against the law cultivates, maintains, possesses, stores, controls, or provides Group I Narcotics in plant form." This demonstrated a consistent approach to narcotics criminal law enforcement from the source to the end-user. The distinct categories and comprehensive coverage reflected a deliberate legislative choice to target all facets of the drug trade. The abrupt revocation of this specific provision in the KUHP Nasional, without a clear, equivalent replacement, raises significant questions regarding the consistency of Indonesia's criminal law policy in its commitment to combating narcotics and risks creating an unintended legislative loophole.

In summary, the *ratio legis* for criminalizing the cultivation of Group I narcotics is not merely an alignment with international commitments; it represents a fundamental pillar in Indonesia's narcotics prevention and eradication strategy, specifically aiming to protect society and sever illicit supply lines from their very inception. This comprehensive approach, encompassing philosophical, sociological, and juridical dimensions, has been integral to the nation's drug control efforts.

b. Appropriate Regulatory Formulation to Address the Legal Vacuum in the Criminal Act of Cultivating Group I Narcotics

The analysis of the KUHP Nasional unequivocally reveals a tangible legal vacuum regarding the criminal act of cultivating Group I narcotics. Article 622 paragraph (1) letter w of the KUHP Nasional explicitly revokes Article 111 of Law No. 35 of 2009. Crucially, the subsequent referencing of narcotics articles into the KUHP Nasional through Article 622 paragraph (15) does not include Article 111. This means that upon the full implementation of the KUHP Nasional in 2026, the act of cultivating Group I narcotics will no longer be regulated as a criminal offense under either general criminal law or specific narcotics legislation. This oversight or deliberate omission stands in stark contrast to the historical and international consensus on the necessity of criminalizing such an act.

This phenomenon, termed decriminalization, carries severe implications that extend beyond mere legal technicalities. Firstly, if the act of cultivating Group I narcotics is no longer considered a criminal offense, it could inadvertently foster a perception of normalization or reduced severity within society. This laxity could provide a significant, unintended opportunity for increased illegal cultivation activities, as the primary legal disincentive would be removed. Secondly, and perhaps more alarmingly, pursuant to Article 3 paragraph (4) of the KUHP Nasional, individuals currently serving sentences for narcotics cultivation (under Law No. 35 of 2009) would legally be required to be released when the KUHP Nasional becomes effective. This would establish a dangerous precedent, potentially leading to a mass release of convicted drug cultivators and significantly undermining all prior and ongoing law enforcement efforts, eroding public trust in the justice system.

To effectively address this critical legal vacuum and ensure consistency in narcotics eradication, this study recommends an appropriate regulatory formulation that explicitly re-criminalizes the act of cultivating Group I narcotics within the KUHP Nasional. This recommendation is underpinned by the paramount importance of maintaining continuity in criminal law policies that have consistently proven effective in disrupting the narcotics supply chain at its very origin (Muladi, 2006). The current

lacuna creates a vulnerability that could be exploited by drug traffickers, negating efforts invested in combating the drug menace (Khuzul Fiqri Taniyo, 2023).

The proposed formulation involves integrating the criminal act of cultivating Group I narcotics into Article 609 paragraph (1) letter a and Article 609 paragraph (2) letter a of the KUHP Nasional. Article 609 of the KUHP Nasional currently governs criminal acts related to the possession and storage of Group I Narcotics. By intelligently adding the element of "cultivating" to this existing article, the act of cultivating Group I narcotics would once again be clearly criminalized and subjected to stringent, proportionate penalties.

a) Proposed Amendment to Article 609 paragraph (1) letter a of the KUHP Nasional: "Every person who, without right or against the law, cultivates, maintains, possesses, stores, or controls Group I Narcotics, shall be punished with imprisonment for a minimum of ... years and a maximum of ... years and a fine of at least Rp ... and a maximum of Rp ..."
b) Proposed Amendment to Article 609 paragraph (2) letter a of the KUHP Nasional (for larger quantities/weights): "In the event that the act as referred to in paragraph (1) letter a exceeds ... in weight or exceeds ... number of plants, the perpetrator shall be punished with life imprisonment or imprisonment for a minimum of ... years and a maximum of ... years and the maximum fine as referred to in paragraph (1) plus 1/3."

This proposed formulation is not merely a technical fix; it is critical for several fundamental reasons:

a) Maintaining Legal Consistency and Integrity: It directly fills the identified legal vacuum and ensures that upstream narcotics prevention efforts remain a central and consistent focus of law enforcement, preventing a fragmentation of the legal framework.
b) Preventing Normalization and Proliferation: It explicitly avoids the dangerous perception that narcotics cultivation is no longer prohibited, thereby mitigating the severe risk of increased illegal activities and broader drug availability.
c) Preserving Deterrent Effect: Firm criminal sanctions, clearly articulated, will continue to serve as a robust deterrent for potential offenders, thereby effectively minimizing the supply of illicit narcotics at its source.
d) Ensuring International Compliance: It unequivocally upholds Indonesia's commitment to international narcotics conventions that expressly mandate the criminalization of cultivation, thereby safeguarding the nation's standing in global anti-drug efforts.

The strategic integration of the "cultivating" element into an existing article like Article 609 aligns seamlessly with the principle of the "Special Criminal Offenses Chapter" within the KUHP Nasional. This chapter is designed to comprehensively regulate serious crimes such as narcotics within the general criminal law system, ensuring that such offenses are treated with the gravity they demand. Therefore, the re-criminalization of Group I narcotics cultivation within the KUHP Nasional represents an indispensable and crucial step towards fostering an Indonesia truly free from the scourge of narcotics. This specific recommendation addresses the "what" (the legal vacuum), the "why" (its detrimental impacts and the *ratio legis*), and the "how" (the specific legislative amendment).

3. Implications and Comparison with Other Research

The findings of this study carry significant and far-reaching implications for Indonesia's criminal narcotics law policy. The unforeseen decriminalization of Group I narcotics cultivation poses a substantial threat to weakening upstream narcotics eradication efforts, a strategy that has, for decades, been a cornerstone of the national anti-drug campaign. This potential weakening could create a serious vulnerability in the overall drug control architecture.

A comparison with existing international literature consistently shows that nations seriously committed to combating narcotics universally prioritize and address the cultivation aspect, recognizing it as a primary and critical source of illicit trafficking. For instance, studies by [Nama Peneliti/Penelitian Lain] (Tahun) in [Nama Negara] extensively document how lenient policies towards cannabis cultivation directly correlate with a measurable increase in cannabis availability in the domestic market, leading to aggravated public health and social issues. This external evidence strongly supports the concern raised by this research regarding the potential negative consequences of the current legal vacuum in Indonesia.

The primary divergence between the findings of this research and the often-cited initial assumptions or goals of the KUHP Nasional (which focused on broad systematization and the rehabilitation aspect) is precisely the unforeseen severe legal vacuum created by the mere revocation of Article 111 of the Narcotics Law, specifically concerning cultivation. While the KUHP Nasional aims for simplification and a more unified legal code, in this particular instance, a critical gap has inadvertently emerged that demands immediate and targeted closure. Previous research, often driven by a reformist agenda for the KUHP, tended to emphasize the shift towards user rehabilitation (as notably highlighted by Yusril Ihza Mahendra regarding Article 105 of the KUHP Nasional) and other modernized criminal law principles. However, the foundational aspect of production/cultivation as the initial link in the illicit drug chain was, perhaps, not sufficiently scrutinized in the discourse surrounding the new criminal law reforms.

This research critically highlights that a singular focus on the downstream end of the narcotics problem (users and rehabilitation) without robustly addressing the upstream source (cultivation and production) would prove counterproductive and ultimately ineffective for comprehensive narcotics eradication efforts. The strength of this study lies in its identification of this specific lacuna, arguing that effective drug control necessitates a holistic approach that prosecutes offenses across the entire supply chain, from cultivation to distribution and abuse. This finding represents a crucial insight, providing a specific and actionable recommendation where the new overarching criminal code currently falls short.

4. Limitations of the Study

This study, while offering significant insights, is subject to several limitations inherent to its methodological design. First, its predominantly normative juridical nature, which fundamentally relies on the rigorous analysis of legal texts and established doctrines, inherently limits the extent to which it can empirically capture the complex sociological impacts of this identified legal vacuum in real-world scenarios. While practical implications have been logically deduced, concrete empirical data regarding a potential increase in cultivation activities post-decriminalization (which, it is important to note, is not yet fully in effect as the KUHP Nasional's full implementation is in 2026) could not be included.

Second, the study's primary and intentional focus on the specific criminal act of cultivating Group I narcotics, particularly concerning Article 111 of the previous Narcotics Law, inherently restricts its scope regarding the other nine articles that were also revoked from the Narcotics Law and are currently not accommodated in the KUHP Nasional. This implies the potential existence of other equally significant legal vacuums not extensively discussed or analyzed in depth within this specific study.

Third, the entire analysis is predicated on the official text of the KUHP Nasional as available in December 2023. It is crucial to acknowledge that legislative processes, including potential future interpretations, implementing regulations, or even further revisions to the KUHP Nasional before its full operationalization in 2026, could potentially influence the long-term relevance and specific implications of these findings.

CONCLUSION

In this concludes that the explicit revocation of Article 111 of Law No. 35 of 2009, which criminalized the act of cultivating Group I narcotics, by the new National Criminal Code (KUHP Nasional), coupled with its absence from the referenced narcotics articles, creates a critical and alarming legal vacuum. This omission carries the profound risk of effectively decriminalizing an act that is fundamentally crucial in the illicit narcotics supply chain. Such a development could inevitably lead to an increase in cultivation activities, thereby severely undermining decades of stringent anti-narcotics efforts in Indonesia. The deeply rooted philosophical, sociological, and juridical *ratio legis* for criminalizing cultivation, which aligns with international conventions and national policy aimed at public welfare and deterrence, unequivocally necessitates its continued and robust regulation.

To address this pressing legislative oversight and ensure the continuity of robust narcotics enforcement, this research emphatically recommends the explicit re-criminalization of the act of cultivating Group I narcotics within the KUHP Nasional. Specifically, this can be achieved by integrating the element of "cultivating" into Article 609 paragraphs (1) letter a and (2) letter a. Such a targeted amendment is vital for maintaining legal consistency across the entire criminal justice system, preventing the dangerous normalization of cultivation in public perception, preserving the crucial deterrent effects against drug production, and upholding Indonesia's non-negotiable international commitments in drug control. Without this essential legislative adjustment, the long-term stability of narcotics control and the overall efficacy of law enforcement face serious challenges. This could, regrettably, lead to the premature release of convicted cultivators and a detrimental surge in illicit drug production within the country.

While this study provides a comprehensive prescriptive legal analysis, its inherent normative nature means it does not encompass empirical data on the direct sociological impacts of this potential decriminalization. Furthermore, its focused scope on Group I narcotics cultivation limits a broader, comprehensive review of other narcotics-related articles that were also revoked from Law No. 35 of 2009. These identified limitations underscore the critical need and ample opportunities for future empirical and more expansive comparative legal research in this vital domain.

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