

Legal Review in Indonesia Positive Law Concerning Marijuana Use for Medical Purposes

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ABSTRACT

The legalization of marijuana varies across countries, with some prohibiting its use while others are starting to legalize it for medical purposes. Despite its potential therapeutic benefits, marijuana use is often stigmatized due to concerns about addiction. In Indonesia, marijuana is classified as a Class I narcotic, prohibiting its use for medicinal purposes under Law Number 35 of 2009, which restricts access to medical marijuana and raises human rights issues for individuals seeking necessary treatments. This study aims to analyze the potential benefits of legalizing medical marijuana in Indonesia and propose regulatory changes that align with the evolving needs of society and human rights principles. The research method used is a normative legal research method, involving the analysis of legal documents, literature reviews, and interviews with experts in law and health to evaluate the impact of regulatory changes on medical marijuana use. The findings suggest that appropriate legal reforms can reduce stigma, ensure access to treatment, and uphold the right to health without the threat of criminal penalties. Therefore, revising narcotic laws to allow the use of marijuana for medical purposes with proper regulations is crucial to provide those in need of treatment the opportunity to access marijuana legally without fear of criminal punishment, and to help reduce the stigma associated with its use.

Keywords: Narcotics; Marijuana; Legality; Medical.

INTRODUCTION

The issue of marijuana legalization in various countries is often perplexing (Wu et al., 2022). Some countries are known to have ties to marijuana but prohibit its use for personal purposes. On the other hand, an increasing number of countries are beginning to legalize marijuana for medical purposes (Mathur & Ruhm, 2023). The use of medical marijuana is often overshadowed by negative stigma due to concerns about potential addiction among users (Wu et al., 2022). However, many supporters argue that marijuana has medical benefits, thus necessitating its legalization for medicinal purposes. By legalizing marijuana for medical use, many benefits can

be obtained, both in the health and economic sectors. Some specific medical conditions can only be addressed with marijuana, and when many countries still prohibit its use, this can be an opportunity for other countries to export marijuana-based health products (Bleyer et al., 2022). It could also be an opportunity for Indonesia to consider the legalization of medical marijuana, especially since marijuana from Aceh is known as one of the best in Southeast Asia (Julian, 2018).

Law has the primary goal of justice and ensuring legal certainty, order, and benefits in society. In the context of Indonesia, the legal system is used as an instrument to enhance the welfare of society, which includes upholding human dignity and rights. An important aspect of legal goals is to create an environment supportive of development in various sectors, including healthcare. Development in the healthcare sector is achieved through various efforts, one of which is the provision of adequate healthcare services. Medicine is a key element in the provision of quality healthcare. With the availability of adequate medicine, public awareness of the importance of health can be enhanced, thereby encouraging the demand for quality medicine and healthcare services. Thus, development in the healthcare sector is an integral part of efforts to achieve legal goals focused on justice, legal certainty, and benefits in society. In this context, law becomes an instrument to create an environment supportive of quality healthcare services, thereby strengthening efforts to enhance the welfare and health of the community as a whole (Sapitri et al., 2022).[2]

Marijuana is known as a remedy for several types of diseases, but in Indonesian legal regulations, marijuana is categorized as a Class I narcotic, meaning its use for medical purposes is prohibited. As a result, the distribution and dissemination of marijuana for medical purposes are not allowed because it contradicts the Narcotics Law. The Narcotics Law, regulated under Law Number 35 of 2009, establishes that narcotics can, on one hand, be beneficial in treatment, healthcare services, and scientific development, but on the other hand, narcotics can cause dangerous dependence if misused without strict control and supervision. With this classification, the use of medical marijuana in Indonesia becomes illegal, although there is potential for medical benefits from its use. However, the high risk of addiction and abuse is the main reason why the law regulates narcotics so strictly. Therefore, the distribution of medical marijuana must comply with applicable regulations to avoid legal violations (Lechuga et al., 2023; Shi et al., 2022).

Law Number 35 of 2009 on Narcotics defines narcotics as substances or drugs derived from plants or synthetic and semi-synthetic materials that can cause a decrease or alteration of consciousness, eliminate pain, reduce or eliminate pain, and can cause dependence. Narcotics are classified into several groups, as regulated in the law (Baggio et al., 2024; Sabia et al., 2024). Marijuana, which is included in Class I Narcotics, is the most widely used narcotic in Indonesia. This is due to the fact that marijuana plants can grow in various regions of Indonesia, and many people in society have used marijuana and experienced its benefits. Some people use it to relax

and relieve stress by smoking it to achieve a sense of calm and relaxation (Boutouis et al., 2024; Sabia et al., 2024).

In the medical field, marijuana is known to have the potential to help treat various conditions such as ALS, HIV/AIDS, epilepsy, and alleviate the side effects of cancer treatment. Therefore, marijuana is considered very beneficial for those in need in the context of health (Amialchuk & Buckingham, 2024; Janes et al., 2023). However, the use of marijuana for medical purposes still contradicts the law in Indonesia because of its status as a Class I Narcotic. This poses challenges in the distribution and utilization of marijuana as medicine in Indonesia, despite evidence of its medical benefits (Janes et al., 2023; Sammataro & Mayes, 2023).

The classification of narcotics is regulated in Law Number 35 of 2009. Article 7 states that narcotics can be used for healthcare services or scientific and technological development. However, in Article 8, paragraph (1), it is stated that Class I Narcotics are prohibited for use in healthcare services. Studies on the legalization of marijuana for medical purposes in the context of health law consider that the Indonesian society's need for healthcare services is constantly increasing, including the need for the use of marijuana plants. Therefore, to allow for the use of marijuana in medical treatment, there is a proposal for Law Number 35 of 2009 on Narcotics to be revised and marijuana plants to be reclassified as Class II Narcotics, making their use for medical purposes legal.

This legal approach considers the increasingly recognized medical benefits of marijuana and suggests changes in narcotics regulations to accommodate the potential use of marijuana in the context of healthcare. Thus, this law revision can pave the way for the use of marijuana for medical treatment with strict supervision and regulations. Recently, the legalization of marijuana for the medical sector has become a controversy, with Vice President Ma'ruf Amin, as the chairman of the Indonesian Council of Ulama (MUI) Advisory Board, instructing the MUI to issue a fatwa (religious edict) regarding the use of marijuana for medical purposes. Therefore, it is emphasized that this fatwa on medical marijuana is necessary, but clarification of the limitations of use for life-saving and health purposes must be clear and explicit because without clear regulations, misuse may occur. The issue that arises in Indonesia is the legalization of marijuana as a medical tool. However, in Indonesia itself, the use of marijuana still clashes with prevailing laws and regulations, especially in the medical sector (Hammond et al., 2024).

Based on the background description above, an interesting thing to research is the legalization of marijuana in the medical sector from a legal perspective. This research looks at how marijuana legalization from the perspective of the medical sector is for health. Looking at what several countries out there have done that have legalized marijuana for health purposes and nothing more than to contribute knowledge to reform existing laws in Indonesia.

RESEARCH METHODS

The research method employed in this study is normative legal research conducted through the analysis of library materials and secondary data. The approach utilized is normative-juridical (statutory approach) with a descriptive-analytical nature. The library materials utilized include legal texts, legal journal articles discussing legal issues, and secondary literature interpreting and analyzing law from a normative perspective (Muhammad Syahrums, 2022).

The normative approach is a method used to examine problems in the context of law and statutory regulations, including rules that can be used as a basis for examining problems and their legal consequences. In this case, an example is Law Number 35 of 2009 concerning Narcotics. A normative approach is taken in certain statutory regulations or written laws relating to the concept of legal review of the legality of marijuana for medical purposes. This research describes the situation of the object being studied, with a focus on regulations and the concept of legality of marijuana for medical purposes (Juliardi et al., 2023).

RESULTS AND DISCUSSION

Regulation of Marijuana Narcotics in Indonesia

According to the 1945 Constitution article 28 H paragraph (1), every person has the right to a life of physical and spiritual prosperity, to have a place to live, and to a good and healthy environment, including health services. Therefore, all Indonesian people have the right to live in a clean environment, which means there are no narcotics in it. Narcotics have a significant negative impact on the life of the nation and state. Narcotics can cause addiction, damage body organs and disrupt the lives of people who consume them. Therefore, human life should be free from narcotics and everything that can damage human health and welfare. Thus, we need to maintain a healthy and safe environment, and prevent the spread and abuse of narcotics. Protection from the dangers of narcotics is an important part of efforts to achieve every individual's basic right to health and well-being.

Narcotics law in Indonesia is regulated in Law No. 35 of 2009 which includes prohibitions and criminal threats for narcotics abuse, both by individuals and corporations. This law contains various terms related to narcotics, such as narcotics addicts, narcotics abusers, and victims of narcotics abuse. Narcotics addicts are defined as people who use narcotics to the point of becoming dependent, while narcotics abuse refers to the use of narcotics that does not cause dependence. Meanwhile, victims of narcotics abuse are individuals who use narcotics due to the influence of other people without realizing that the substance they are consuming is a narcotic.

Marijuana, which is a Class I narcotic, is regulated in Law no. 35 of 2009, which states that marijuana can only be used for scientific research and development of science and technology. The use of marijuana for therapeutic or medical purposes is not permitted in Indonesia, by the provisions of this law. Thus, Law no. 35 of 2009 concerning Narcotics prohibits the use of marijuana for therapeutic or medicinal purposes, and only allows for scientific research and

development. Any violation of these rules may be subject to strict criminal sanctions, by applicable regulations in Indonesia (Raharni et al., 2020).

From a legal or juridical perspective, the existence of narcotics is acknowledged and has a legal basis. Law Number 35 of 2009 concerning Narcotics regulates the use of narcotics, but only for medical and scientific purposes. The prohibition of narcotics for purposes other than those needs has led to rampant abuse, especially as a profitable yet illegal business tool. This narcotics abuse has resulted in psychological, mental, and physical damage to various layers of Indonesian society, ranging from children, adolescents, to adults. The spread of narcotics is no longer limited to major cities but has infiltrated sub-districts and even small villages. To be more effective in eradicating and preventing narcotics abuse, the government established the National Narcotics Agency (BNN) through Presidential Regulation Number 83 of 2007. The BNN plays a key role in supervising and coordinating efforts to prevent and eradicate narcotics abuse across Indonesia. With the existence of the BNN, it is hoped that law enforcement measures against narcotics abuse can be more structured and effective, thus reducing the negative impacts of narcotics on society and creating a healthier and safer environment throughout Indonesia (Navisa et al., 2020).

For individuals who use marijuana without permission, such as planting, nurturing, owning, storing, controlling, or providing in plant form, they can be sentenced to a minimum of 4 years and a maximum of 12 years in prison, as well as fines ranging from IDR 800 million to IDR 8 billion. The punishment can increase if the resulting plants weigh more than 1 kilogram. Criminal provisions related to marijuana in the Republic of Indonesia Law Number 35 of 2009 concerning Narcotics are regulated from Article 111 to Article 116. According to the Republic of Indonesia Law Number 22 of 1997, which classifies marijuana as a Class I Narcotic, the use of marijuana can face a maximum sentence of 10 years in prison. However, according to Law Number 35 of 2009 concerning Narcotics, the punishment can reach 12 years in prison. The government has specifically regulated marijuana cultivation through Government Regulation Number 1 of 1980 concerning the Provisions of Planting Papaver, Coca, and Marijuana. Based on this regulation, educational or research institutions can cultivate marijuana with permission. They are required to report the location, area of cultivation, and its results every six months. If there is any loss of plants, the institution must report it to the police.

Therefore, in the context of Indonesian positive law, marijuana is strictly prohibited for production, distribution, possession, and use, including for medical purposes. Any attempt to change the legal status of marijuana requires a legislative process and approval from the competent authorities.

Positive Indonesian Legal Review of the Legality of Using Marijuana for Medical Purposes

Marijuana or cannabis is an herbal medicine derived from the leaves, flowers, and buds of the Cannabis sativa plant. In addition to having psychoactive substances that can provide

pleasurable experiences for users, marijuana also contains many other beneficial compounds. As many as 66 chemical components in marijuana have been identified as compounds with potential for use as medicine. In Indonesia, there are groups that support the legalization of marijuana, one of which is the Indonesian Ganja Circle (LGN). LGN is the largest organization in Indonesia that focuses its efforts on the utilization of marijuana, arguing that marijuana has potential benefits that can be optimized. However, the Indonesian government enforces Law Number 35 of 2009 concerning Narcotics to protect the public from the dangers of abuse and illicit trafficking of narcotics while ensuring the availability of medicines for those in need. This law prohibits the use of marijuana for non-medical purposes but allows the use of narcotics in the medical field as medicine. Thus, there is a push to reevaluate regulations related to marijuana to determine if its medical potential can be utilized within strict legal boundaries (Alfarizi, 2024).

The use of marijuana as medicine is considered urgent, especially considering that most raw materials for medicines in Indonesia are imported and quite expensive. Inang Winarso, the director of the Sativa Nusantara Foundation, stated that 90% of medicines in Indonesia are made from imported raw materials, making marijuana a more economical alternative. Marijuana is also available in several regions of Indonesia, such as Aceh, Papua, Kalimantan, and Garut. However, in a legal context, the only way to utilize marijuana legally is through legalization in the medical field. Over the past two decades, many countries have started legalizing marijuana, both for industrial and medical uses. However, in Indonesia, marijuana legalization remains a controversial topic. Based on Law No. 35 of 2009 concerning Narcotics, Article 8, Class I narcotics, including marijuana, are not allowed for use in healthcare services or medical treatment. Therefore, despite the potential medical benefits of marijuana, its use in Indonesia remains prohibited based on existing laws.

The development of science and technology in the context of narcotic medicines, especially for treatment and rehabilitation, includes their use for educational, training, research, and development purposes. In addition, the use of narcotic medicines can also be carried out by government agencies with responsibilities and functions in the supervision, investigation, and eradication of narcotics. The importance of education, training, and skills can also be seen in the context of training narcotic detection dogs used by the Indonesian National Police, Customs and Excise, the National Narcotics Agency, and other agencies. The training aims to improve effectiveness in detecting and eradicating the illegal trafficking of narcotics and to ensure that law enforcement in the field of narcotics is conducted efficiently and accurately (Wicaksono & Leonardi, 2023).

With marijuana as a medical tool, many people out there could recover from various illnesses that only marijuana can treat. Marijuana, which contains compounds such as THC (delta-9-tetrahydrocannabinol) and CBD (cannabidiol), has been used in several countries as an alternative or adjunct treatment for various medical conditions. Here are some conditions that,

based on research and medical experience, can be treated or alleviated with the use of marijuana:

1. Chronic Pain: Marijuana has been used to reduce chronic pain in patients with conditions such as arthritis, fibromyalgia, and neuropathic pain. The THC content in marijuana can provide analgesic effects.
2. Epilepsy and Seizures: CBD, a non-psychoactive compound in marijuana, has been proven effective in reducing seizures in some forms of epilepsy, including Dravet syndrome and Lennox-Gastaut syndrome.
3. Nausea and Vomiting: Marijuana is often used to reduce symptoms of nausea and vomiting caused by chemotherapy in cancer patients. THC can help increase appetite and reduce nausea.
4. Multiple Sclerosis: Some studies suggest that marijuana can help reduce muscle stiffness and spasms associated with multiple sclerosis.
5. Anxiety and Sleep Disorders: Although the effects of marijuana on mental health are still controversial, some patients report that marijuana helps reduce anxiety and improve sleep quality. However, it should be noted that the use of marijuana for mental health issues should be done cautiously and under medical supervision.
6. Glaucoma: Marijuana has been used to reduce intraocular pressure in glaucoma patients. However, there is controversy about its long-term effectiveness.
7. Tourette Syndrome: Some studies suggest that marijuana can help reduce tic symptoms in patients with Tourette syndrome.
8. HIV-AIDS: With the presence of marijuana, certain symptoms associated with HIV-AIDS and its treatment can be reduced. However, marijuana is not a cure for HIV/AIDS.

Indonesia could actually legalize marijuana for medical use through criminal law formulation policies that revise the Narcotics Law. In the process of revising Law No. 35 of 2009, many aspects related to the use of marijuana as a Schedule I narcotic were deemed inappropriate. For example, the delegation of responsibilities to Commission IX, which is related to public health protection, does not explicitly guarantee protection for the medical use of marijuana. Ideally, the use of Schedule I narcotics like marijuana for medical purposes should have specific regulations governing its use and limitations as a medicine. In the Criminal Code, only rehabilitation penalties are regulated for users and addicts, but there are no detailed regulations regarding the legal use and limitations of medicine. This lack of regulation encourages people to consume marijuana for medical purposes illegally. Additionally, possessing small amounts of marijuana for medical treatment can risk fines or imprisonment. Legalizing marijuana as a medical treatment requires clear and comprehensive regulations governing its use, limitations, and distribution for medical purposes. Without clear regulations, individuals who

need marijuana for medical purposes may be trapped in illegal activities, face serious legal risks, and lack adequate protection.

When discussing legalization, the legal-political aspect cannot be ignored. Legal politics is a series of concepts and principles that outline and form the basis for planning and implementing actions by the government, especially in the legal field. Thus, legal politics has a close relationship with the laws that will apply in the future. In the context of legalization, clear legal and health policies are needed. The three principles that need to be considered in legal politics are legal certainty, justice, and utility. In the case of legalizing marijuana for medical purposes, legal-political must consider these three aspects. On one hand, there is a need to provide legal certainty and justice for those who need marijuana for medical purposes. On the other hand, there is also a need to maintain utility and avoid abuse.

Special Criminal Code in Law No. 35 of 2009 concerning Narcotics regulates the use of narcotics in the health field, as stipulated in Article 7. However, Article 8 prohibits the use of Schedule I narcotics for treatment; only Schedule II and III narcotics are allowed for medical purposes. With this difference, a deep understanding of legal politics is needed to determine the right direction in revising or updating the law to create a balance between medical needs and protecting society from drug abuse. The steps that need to be taken to address this issue are (Saskara & Arthani, 2021):

Amendment of Law Number 35 of 2009 concerning Narcotics

Law No. 35 of 2009 concerning Narcotics needs to be revised to allow the use of marijuana (Cannabis genus) for medical purposes. One way to revise this law is by removing marijuana from Schedule I and placing it in Schedule II or Schedule III. By moving marijuana and all its parts, such as resin, seeds, fruit, and other processed forms, to lower schedules, marijuana can be legally used for medical purposes. This step is important considering the many studies showing the potential medical benefits of marijuana. Marijuana has been used to treat various conditions, such as chronic pain, chemotherapy-induced nausea, epilepsy, and others. Therefore, providing well-regulated access for medical use can help many patients in need. However, it should be noted that law revisions must be done carefully and accompanied by clear regulations to prevent abuse. The government needs to establish clear boundaries and a strong monitoring system to ensure that marijuana is used responsibly and only for legitimate medical purposes. Thus, law revisions can benefit society without sacrificing legal certainty and public safety.

Reform of Law Number 35 of 2009 concerning Narcotics

The state needs to take bold steps to reform Law No. 35 of 2009 to address the negative impact of banning the use of marijuana for medical purposes. One approach that can be taken is by taking over the production and distribution of narcotics and implementing market regulation policies. Thus, the state can reduce the adverse effects on public health arising from the illegal drug trade. If the state has control over the production, distribution, and sale of marijuana for

medical use, this can ensure better quality, quality, and guaranteed prices. Moreover, it can reduce opportunities for illegal dealers to operate because the state provides legal access for those who need marijuana for medical purposes.

The importance of the role of the Minister of Health

The Minister of Health needs to strictly regulate the dosage and limitations of marijuana use for medical purposes. It aims to ensure that the use of marijuana as medicine can be done safely and only by those who truly need it for treatment. This regulation should also include clear procedures for obtaining medical marijuana, including requirements for an official letter from a doctor stating the patient's medical need for marijuana use. With strict regulations from the Minister of Health, the use of medical marijuana can be regulated in a way that reduces the risk of abuse and ensures that patients who need marijuana for treatment have legitimate access. Moreover, this regulation can also help ensure that the dosage given is appropriate for medical needs and patient conditions, as well as reduce the risk of side effects or overuse.

The Role of BPOM

The National Agency of Drug and Food Control (BPOM) needs to play a crucial role in regulating oversight of the distribution, production, and sale of marijuana for medical purposes. Strict and coordinated oversight will ensure that medical marijuana is only available to patients who need it, in accordance with doctor's prescriptions and applicable regulations.

Changing the regulation of marijuana use as a means of treatment is one way to adjust the law to the evolving needs of society. The use of marijuana as medicine can have a significant impact on Indonesian society, especially because marijuana has medical potential and can grow easily in Indonesia's tropical climate. Moreover, marijuana from Indonesia, known for its best quality, is considered Class A marijuana. Individuals who use marijuana for self-treatment or for their family as part of efforts to obtain health should not be subject to criminal sanctions. Conversely, if someone who tries to obtain the right to health is subject to criminal penalties, this can be considered a violation of human rights, as the state has deprived them of their right to obtain the needed treatment. Therefore, it is important to revise laws regulating narcotics to allow the use of marijuana for medical purposes with appropriate regulations. This will provide an opportunity for those in need of treatment to access marijuana legally without fear of criminal penalties. More flexible regulations and a focus on public health can help reduce the stigma associated with marijuana and ensure that the right to health is not violated.

CONCLUSION

The issue of marijuana legalization in various countries is often confusing. There are several countries known to have ties with marijuana but prohibit its use for personal purposes. On the other hand, more and more countries are beginning to legalize marijuana for medical purposes. The use of medical marijuana is often accompanied by negative stigma due to concerns about

addiction. However, many supporters argue that marijuana has medical benefits, thus requiring legalization for medicinal purposes. By legalizing marijuana for medical purposes, many benefits can be obtained, both in the field of health and the economy. Marijuana is known as a remedy for several types of diseases, but under Indonesian law, marijuana is categorized as a Class I narcotic, meaning its use for medical purposes is prohibited. As a result, the distribution and dissemination of marijuana for medical purposes are not allowed because they contradict the Narcotics Law. Narcotics are regulated under Law Number 35 of 2009.

Changing the regulation of marijuana use as a means of treatment is one way to adjust the law to the evolving needs of society. The use of marijuana as medicine can have a significant impact on Indonesian society. Individuals who use marijuana for self-treatment or for their family as part of efforts to obtain health should not be subject to criminal sanctions. Conversely, if someone who tries to obtain the right to health is subject to criminal penalties, this can be considered a violation of human rights, as the state has deprived them of their right to obtain the needed treatment. Therefore, it is important to revise laws regulating narcotics to allow the use of marijuana for medical purposes with appropriate regulations. It will provide an opportunity for those in need of treatment to access marijuana legally without fear of criminal penalties. More flexible regulations and a focus on public health can help reduce the stigma associated with marijuana and ensure that the right to health is not violated.

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