

Legalization of Marijuana as a Drug Composition Based on the Narcotics Law; Legal Certainty Perspective

Devi Puspita Ningrum¹

¹ Faculty of Law, University of Surabaya

devipuspitapuspita12@gmail.com

ABSTRACT; *In Indonesia, marijuana is a plant that has a function for treatment in Indonesian law number 35 of 2009 Narcotics, marijuana (marijuana) is one of the narcotics in class I. In the legal constitution of Indonesia, the use of marijuana is prohibited and dangerous if it is overused. In the legal constitution in the country of Indonesia that the use of marijuana is prohibited and dangerous if it is overused. The cannabis plant itself in various countries is still categorized as a natural plant that is negative and endangers its users if it is overused, but in Indonesia there are many problems in medical matters that require marijuana as an alternative medical tool or medicinal composition in medical circles. In this study using literature research with a normative juridical approach (not numbers) which analyzes and provides revision input to the government on Narcotics laws aimed at classifying narcotics types of marijuana so that they can make alternative drugs in medical circles in Indonesia and refer to the Constitution Article 9 of Law Number 39 of 1999 concerning Human Rights.*

Keywords: *Urgency of legalization, Medical, Cannabis (Marijuana)*

INTRODUCTION

Drugs and medicines that contain psychoactive substances are called narcotics. This word is called “narce” in Greek which means to feel changes in physical appearance without feeling anything. Another word is narcissus, which refers to a plant whose flowers people don't recognize. In Indonesia it was introduced by the Ministry of Health of the Republic of Indonesia, especially NAPZA which is an abbreviation for Narcotics, Psychotropics and Narcotics.

The authors found publications by Smith Kline and French clinical staff indicating that the drug was the cause of the problem. Difficulty concentrating, hearing loss or dizziness due to adverse effects on the central nervous system. Included in this definition are opiates, opiate derivatives (morphine, codeine, heroin) and synthetic opiates (meperidine, methadone).

Chapter 1 paragraph 1 of the Narcotics Law Number 35 of 2009 states that narcotics are substances or drugs derived from plants, both synthetic and synthetic, which can cause confusion and changes in memory, loss of taste, changes in taste, even elimination. exclaimed It's painful and different to trust another group.

The essence of criminal law is to prohibit and prohibit the distribution or consumption of drugs. In particular, to protect the Indonesian state from drug use and eradicate the illicit trade in illegal drugs and illicit drugs.

Achieving this goal requires pressure. Based on the Narcotics Law, marijuana is classified as a class I drug, used only for scientific purposes, not for medical purposes, and is a true narcotic. Many people go to rehab to get real marijuana. According to Kaplan, marijuana (*Cannabis Sativa*, *Cannabis Indica*) is a plant that is cultivated to produce fiber, but the medicinal properties of its seeds are better known.

The entire cannabis plant contains psychoactive cannabinoids. Marijuana itself is consumed by drying the leaves, cutting them into small pieces and putting them in marijuana cigarettes. Medicines must be used for human benefit, including health. But as time goes by, these drugs are used for bad purposes. The police are part of the government's functions in the areas of maintaining security, public order, law enforcement, protection, guidance and service to the community, as stated in Article 2 of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

The National Police carries out police functions throughout the territory of the Unitary State of the Republic of Indonesia. In this regard, Article 16 of Law Number 2 of 2002 regulates that the police have the right to arrest, detain, search and confiscate as well as other powers. With marijuana, users usually use it as a cigarette to make the body fresher and more relaxed. In several countries, marijuana is misused as a psychotropic drug which makes users relax.

In our country, Indonesia is a country of law, meaning that every government action must be based on law. This is regulated in the 1945 Indonesian Constitution which is the state constitution. However, in Indonesia itself, people want a prosperous life and their rights are fulfilled in all aspects and elements. As applicable regulations often cannot be adapted to the diversity of society.

The government has also restricted the use of several psychotropics and illegal drugs which are used as alternative medicines in the medical world, one of which is marijuana. Discussion of the legalization of marijuana has become a topic of conversation in Indonesia and has drawn pros and cons, some groups in Indonesia consider the legalization of marijuana to be an urgent matter and there are also those who consider marijuana to be dangerous for the Indonesian generation.

One of the regions in Indonesia, Aceh, is one of the provinces that offers delicious dishes made from marijuana, one of which is spicy fried noodles with marijuana vegetables and various additional spices. In general, this dish is very delicious to eat and tastes delicious because of the marijuana mixture.

In the content of the marijuana plant there are several compositions that make marijuana an alternative drug in medical circles, namely *Lodoicea maldivica* Pers, one of the fruits of which is used for diseases that have anti-inflammatory and antipyretic effects, and for scalp conditions that require antibiotics, it is used to treat cholera because Contains antibiotics and anti-diarrhea.

Drynaria sparsisora (Desv) T. Moore (Layang Paku) uses its roots, is often used to increase appetite, can be cooked and dehydrated to lower blood pressure because it contains too much potassium in the blood (for life). Potassium-diuretic sparing, low sodium levels, headaches and dizziness and will cause diuretics. Diuretics are substances used to remove excess salt and water from the body through urine. Atung seeds are used to treat dysentery because they have anti-diarrhea, anti-infection and anti-inflammatory effects.

According to Indonesian criminal law, this negative ideology has long existed and was accepted without our knowledge in our understanding of marijuana (marijuana), but has also been explained in international government policies and has become a reference in the Indonesian legal order. The biggest success story to date is the destruction of cannabis plants and distribution of cannabis.

Marijuana is a class I narcotic, according to Attachment 1 Number 8 of the Narcotics Law. However, in the explanation of Article 6 paragraph (1), this letter is also explained in this regulation. What is meant by narcotics are narcotics whose use is only for the purpose of developing science, is not used for medicinal purposes and has the possibility of causing dependence.

This is explained in Article 7 of the law which stipulates that narcotics may only be used for medical purposes. services, developments in health science and technology Legalize marijuana as a medicinal plant if it can replace drugs as a form of treatment because it is very easy to find and prepare.

According to the author, there are major issues that the government must pay attention to in implementing the Narcotics Law in various aspects, including in the medical community. The author also disagrees with the abuse of marijuana types of narcotics among Indonesia's young generation. Therefore, the author will examine the urgency of marijuana for the need for medical alternatives and the composition of drugs in medical circles.

Examining the history of the Narcotics Law, it has undergone two revisions, firstly Law No. 22 of 1997 and finally Law No. 35 of 2009. Based on the new regulations regarding drugs, Law No. 35 of 2009 was passed taking into account the provisions.

Article 6 paragraph (1) of the Narcotics Law, drugs are classified into:

1. Class I narcotics are drugs that are used only for the purpose of developing science, are not used in therapy, are class M and are highly addictive.
2. Class II narcotics are drugs that have medicinal properties that are used as a last resort and can be used for therapeutic purposes and/or for scientific and potential purposes. highly dependent outcomes; And
3. Class III narcotics are narcotics that have medicinal properties and are widely used for therapeutic and/or scientific purposes and have the potential to cause mild addiction.

The use of Class 1 marijuana as an alternative treatment is also prohibited based on regulations which state "It is prohibited to use Class I drugs for health service purposes, except for the development of science and technology after obtaining approval from the Minister at the request of the Director of the Food and Drug Supervisory Agency.

Thus, the regulations issued have classified marijuana (marijuana) as a class 1 drug, meaning that violators will be subject to heavy sanctions, namely criminal sanctions of 4 to 20 years in prison. Marijuana is currently illegal in Indonesia. Indonesia even enacted a law prohibiting the production, distribution and consumption of marijuana plants. As explained in Article 7 of the Narcotics Law, drugs may only be used for health services and/or the development of science and technology.

In the explanation of Article 7 of the Narcotics Law, it is explained that what is meant by "health services" includes medical rehabilitation services, education, training and skills purposes including the purpose of training sniffer dogs from the police, and training carried out by other agencies.

PROBLEM

1. Why doesn't Indonesian law provide legal protection for people who need marijuana as an alternative medicine?
2. Why is marijuana still a class I narcotic which is strictly prohibited in Indonesia?

RESEARCH METHODS

This research uses library research as the main research method. The author applied a standard legal approach when writing this article. The qualitative approach is a legal approach. This method is used in conjunction with a standard legal approach, namely the study and analysis of derivative laws and regulations that are relevant to this research and is based on the underlying legal literature by examining theories, concepts, legal principles and legal regulations related to the research.

Descriptive analysis method was used to analyze this research. Research using descriptive methods aims to provide as accurate data as possible about the condition of the research subjects. The authors of this study evaluated the data collected, drew some conclusions, and then provided a summary of the results. Through this study, I would like to provide an explanation of relevant legal ideas to answer questions

regarding the legal certainty of criminal use of marijuana as a medicinal composition based on the Narcotics Law and the urgency of the legality of the use of marijuana as a medicinal composition for medical purposes.

The legal materials in this research are primary and secondary, where the content of the written discussion is based on primary legal materials which are Law Number 35 of 2009 concerning Narcotics which are not intended for treatment and can only be used for research and science, including secondary materials, namely previous journals. which is the reference for the literature in this research.

DISCUSSION

Certainty of the Criminal Law on the Use of Marijuana as a Drug Composition Based on the Narcotics Law

A bit of history that has been researched by the author is that Marijuana is currently illegal in Indonesia. Indonesia even enacted a law prohibiting the production, distribution and consumption of marijuana plants. In the Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics (Plate Number 143, Additional Sheet Number 5062), we can see that the criminal law approach is prioritized by including marijuana in the list of class I narcotics, which still does not provide justice because marijuana (marijuana) has now become a group on the Class I narcotics list and is prohibited for medical purposes.

So the criminalization of marijuana for the purposes of health services is felt to be very detrimental to people who need optional medical assistance. Article 8 paragraph (1) of the Narcotics Law reads: "It is prohibited to use class I drugs for the purposes of providing drug-related health services. Interpretation of Article 6 paragraph (1) letter a of the Narcotics Law: "In this article what is meant by "Class I Drugs" is a group of drugs which may only be used for the purpose of developing science and may not be used for medicinal purposes, and which have very high potential. .

Causes dependency. In the interpretation of Article 7 of the Narcotics Law, it is explained that what is meant by "health services" includes medical rehabilitation services, education, training and skills which are included in the aim of training dogs to sniff out drugs or drug dealers. The marijuana plant (marijuana) in Latin, often called *Cannabis Sativa*, is a natural plant that is known to cure several diseases experienced by Indonesian people, with an example of a case in 2022, a mother and her husband went viral by bringing their child in a wheelchair at a CFD activity in Jakarta, carrying writing. "Help my son Need Medical Marijuana".

In the case above, according to the author, there is a lot of controversy regarding the legality of marijuana as a medicinal substance in the medical community, where the sense of justice of the people who need it really needs marijuana plants for health service purposes because of the power of coercion [overmacht] which is certain and cannot be avoided. As has been researched by the author through previous literature, marijuana (marijuana) is a plant that can cure several diseases, such as THC (Delta-9 tetrahydrocannabinol) which can relieve pain or aches and has an analgesic effect, marijuana has anti-inflammatory properties. -spasmodic which is often experienced by people with epilepsy and can eliminate seizures.

And there are several compounds in cannabionids that can actually be obtained from

the human body naturally to help regulate concentration, thought focus, body focus, appetite, and sensations from the five senses. Criminal law deals with various crimes and misdemeanors (crimes). The focus is criminal law or positive law (*ius constitutum*). The actions and consequences referred to are the elements of a crime, the facts about the actions committed and their consequences.

Organizational norms refer to the contextual factors that accompany criminal activity. The causes and consequences of criminal acts that are considered criminal, whether consuming or distributing drugs, are related to the context of the activities carried out by the perpetrator, and are no longer carried out separately. However, many people meet or form groups that have organized, systematic and secret connections, ranging from national to international levels.

The government is also trying to crack down on drug use among the public, therefore the government is making changes to laws and regulations related to drug crimes. This amendment aims to adapt existing laws and regulations to suit the social situation.

It is not without reason that society continues to develop and the law is always behind the development of civilization in society. From a standard legal perspective, the government implemented the Narcotics Law as part of its efforts to eradicate the distribution and use of drugs by implementing the death penalty as the most severe punishment for those who carry out illegal drug trafficking, which is a form of crime.

In this case, it is a form of education about the dangers of drugs and so that people do not use drugs. This seriousness was taken into consideration when the Narcotics Law was promulgated to deal with drug problems in Indonesia comprehensively. The author also found a 2017 case related to his wife's treatment. In the Sanggau District Court decision Number 111/Pid.Sus/2017/PN.Sag, the panel of judges found the defendant guilty of growing marijuana to treat his wife who was suffering from syringomyelia. FAS was arrested on suspicion of cultivating marijuana weighing more than 0.5 kg.

Apart from that, in the past there was also a criminal case according to case file Number 175/Pid.B/2014/PN.Prp with the defendant Alimur Tanjung alias Alimur. Both cases have the same decision to continue to punish the defendant according to the Narcotics Law. The panel of judges makes its decision based on various identified legal considerations. Therefore, in reality it cannot be legally justified that marijuana is a Class I drug. This act is automatically an unlawful act and there is an element of deliberate intent in the form of marijuana cultivation.

The Urgency of the Legality of Using Marijuana Plants as a Medicinal Composition and Human Rights in the Application of Marijuana Legality

The origins of the concept of human rights explained above are based on the theory of natural rights. The concept of natural law originates from natural law theory, which has its roots in modern times through ancient Stoic thought and the natural law writings of Saint Joseph Thomas Aquinas. In his classic works, *Second Treatise on Civil Government* and *Epistle on Toleration*, Locke expressed the view that every person is endowed with the inalienable rights of life, liberty, and property, or the right of annulment.

Through the explanation above, it is clear that natural rights theory has contributed to laying the foundation for a legal system that is considered superior to a country's domestic law, especially international human rights economic standards. However, its emergence as an international standard applicable to all states means that it no longer fully reflects the original conception of natural rights. The essence of the rights contained in it also exceeds the essence of the rights in natural rights (as stated by John Locke).

In this study we will examine to what extent and how the rights of every citizen are guaranteed based on Article 28D paragraph (3) of the 1945 Indonesian Constitution. Indonesia's national activities are being implemented. A country's human rights are its own human rights, including the right to legal protection and equality. State of Law, Rights of Expression, Association and Assembly Based on Pancasila and the 1945 Constitution. If your search is related to Pancasila, please refer to Article 28D paragraph (3) of the Republic of Indonesia Constitution. "Every citizen has the right to equal opportunities in government." In this research, the author seeks to find out how citizens' rights to food safety and health can be affected.

However, is it to achieve social justice if he is convicted as a perpetrator of illegal narcotics trafficking, even though he only needs to tap the government's heart for marijuana and make the marijuana extract, to treat his child?

Is there no solution that can provide a sense of justice in society? Is the abolition of criminal law due to coercive power [overmacht] as formulated in Article 48 of Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations [KUHP] unable to knock the hearts of the Indonesian medical and legal government whose dogmatic juridical view of the implementation of the Narcotics Law for the benefit of health services that prioritize aspects of legal certainty rather than aspects of justice and benefit?

In several legal standard documents, some support efforts to legalize medical marijuana in Indonesia. The Indonesian Marijuana Circle (hereinafter referred to as "LGN") believes that marijuana for some diseases cannot be replaced with other drugs or must be optional due to special requirements such as certain doses. From the results of the research, the author also saw that there are many in Indonesia. Diseases that require medical assistance from marijuana. In short, with scientific research, governments must have policies that respect rights. According to the author, this is reasonable considering the differences in the nature of drugs and the legal structure and culture of society. every country.

In Indonesia, this is also taken into account, namely the number of people who suffer from certain diseases with phenomena that can be "cured" by treatment using certain drugs made from marijuana (marijuana prolapse), which is directly and indirectly proportional to the severity of the disease sick. The consequences of a lack of preparation, especially with regard to the legal structure and corporate culture, including the necessary effectiveness, remain incomplete.

Apart from that, regarding the use of class I drugs, they are classified as drugs that have a very strong addictive effect. Therefore, the use of Class I drugs in Indonesia must be assessed based on the availability of the drugs mentioned above, even though emergencies may arise in their use. The court added that it is important to group drugs into three categories in accordance with the provisions of the Narcotics Law, namely Class I drugs, Class II drugs and Class III drugs, because the properties of these three drugs have different effects.

These restrictions on use cannot be separated from the consideration that this class I drug can cause dependence. As has been explained, the use of Class I drugs for medical and/or therapeutic services has not been the subject of comprehensive and in-depth scientific study or research in Indonesia so it cannot be accepted for reasonable reasons, both medically, philosophically, and sociologically. Drawing a common thread from positive law in Indonesia, there are many pre-aperentives that still do not regulate whether marijuana is allowed to be used as a treatment or as a medicinal composition in medical circles.

To date, the legalization of marijuana has not received approval from the National Narcotics Agency and the government has not made any revisions to the Narcotics Law. Article 41 of the Narcotics Law still requires changes to Class I drugs, which can not only be used for the purposes of scientific development but can also be used as science and technology with very tightly controlled palliative therapy functions.

There are also institutions provided by the Indonesian government that allow Indonesian people to use marijuana for medicinal purposes so that they can directly monitor whether the marijuana used is actually according to the doctor's prescription. According to Selo Soemardjan, the effectiveness of law is associated with influencing factors, namely efforts to instill legal awareness in society, namely making it the main factor, directing human strength, tools, organizations and methods for members of society. know and appreciate, recognize and respect the law.

This is a reaction from society at large based on the dominant value system. According to the author here, society can refuse or oppose compliance with the law to ensure its own interests. Third, the time required for cultivating legal awareness, that is, the time required for cultivating legal awareness, has been taken and will produce results. The next benefit of the marijuana plant is that it can prevent epileptic attacks. Epilepsy is a chronic disease whose symptoms include seizures. Epilepsy sufferers often experience seizures for no apparent reason.

There are various causes of cancer, including head trauma, poisoning, stroke, infection, stroke and brain tumors, so this disease attacks men and women regardless of age and gender. Although the disease affects women and all ethnic groups, 50 percent of cancer cases are idiopathic and have no known cause. This condition is caused by disease of the central nervous system which can cause seizures and memory loss.

A recent study by the US military found that mice given synthetic cannabinoids had a 70 percent lower risk of seizures and brain damage after exposure to nerve gas. Many

studies have also shown that long-term use of marijuana in people with epilepsy increases the body's tolerance to the THC molecule, which is responsible for reducing seizures.

Efforts to use marijuana as medicine are mainly motivated by its benefits. In Jeremy Bentham's utility theory, it is explained that the aim of law is to provide benefits or happiness for as many people as possible.

In compiling legal products or legal regulations, we must pay attention to the legal aim of providing maximum happiness to society. Because the law is for humans, its enforcement or application must be useful or useful for society. The application and implementation of the law must avoid the emergence of conflict of opinion in society. Good laws are regulations that provide benefits to society. Here benefit can also be understood as happiness. Society will obey the law without punishment if society feels the benefits of the law.

CONCLUSION

In terms of problems that we can see in society, there are many perspectives that say that marijuana (marijuana) has many benefits. In Indonesian law there is still no legal protection for people who need marijuana as an alternative medicine. Marijuana itself is still a class I narcotic, therefore marijuana cannot be used as a composition in medicine and therapy, the large number of health cases in Indonesia is still a benchmark for the government to legalize marijuana as an alternative drug. There is a need to revise article 41 of the Narcotics Law so that the government is open to placing marijuana in category II so that it can be used as a medicinal composition in medical circles. Because the aim of law has three principles, namely certainty, justice and expediency. The foundation of unity between the foundation of justice and the foundation of legal certainty is the basis of legal efficiency. In implementing the principle of legal certainty and the principle of justice, it is necessary to pay attention to the principle of expediency.

REFERENCES

- Nurlaelatil Qadrina, M. C. (2022). LEGALISASI GANJA SEBAGAI TANAMAN OBAT: Perlukah? Vol.2 No. 1 tahun 2022, 02, 48-58.
- Lokollo, L., Salamor, Y. B., & Ubwarin, E. (2020). Kebijakan Formulasi Undang-undang Narkotika Dalam Legalisasi Penggunaan Ganja Sebagai Bahan Pengobatan di Indonesia. *Jurnal Belo*, 5(2), 1-20.
- Abbiyyu, M. D. (2016). Strategi Gerakan Lingkar Ganja Nusantara Dalam Memperjuangkan Legalisasi Ganja di Indonesia. *Jurnal Politik Muda*, 5(3), 300-310.
- Alfarizi, M. E. (2024). Gerakan Legalisasi Ganja Medis di Indonesia (Studi pada Lingkar Ganja Nusantara). *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 18(2), 1152-1168.
- Prasetyo, E. D. (2022). Legalisasi Ganja Medis (Analisis Putusan MK Nomor 106/PUU-XVIII/2020). *Jurnal Analisis Hukum*, 5(2), 147-162.

Mukti, L. K. (2022). RELASI GERAKAN LEGALISASI GANJA OLEH LINGKAR GANJA NUSANTARA DENGAN PERILAKU KONSUMSI GANJA (STUDI KASUS: MAHASISWA SLEMAN, DAERAH ISTIMEWA YOGYAKARTA).

Marinda, V. (2023). Urgensi legalisasi ganja sebagai pengobatan di indonesia (Doctoral dissertation, Fakultas Hukum).

Abbiyyu, M. D. (2016). Strategi Gerakan Lingkaran Ganja Nusantara Dalam Memperjuangkan

Legalisasi Ganja di Indonesia. *Jurnal Politik Muda*, 5(3), 300-310.

Malik, S., Manalu, L., & Juniarti, R. (2020). Legalisasi ganja dalam sektor medis perspektif hukum. *Jurnal Rechten: Riset hukum dan hak asasi manusia*, 2(2), 1-9.

Caniago, R., Susilo, A. A., Valensius, J., & Daffa, M. (2023). Pelarangan Penggunaan Ganja Dalam Sektor Medis: Kasus Sirup Anti-Kejang Yang Tak Lagi Aman Bagi Pengidap Cerebral Palsy. *Jurnal Syntax Fusion*, 3(01), 41-57.

WEBSITE

Kurnia.ekaptiningrum. (2022, Juli 06). *Guru Besar UGM Sebut Ganja Tidak Perlu Dilegalisasi Meski Untuk Keperluan Medis*. Retrieved from <https://ugm.ac.id/id/berita/22676-guru-besar-ugm-sebut-ganja-tidak-perlu-dilegalisasi-meski-untuk-keperluan-medis-p/akses> 09 Juli 2024

UNAIR NEWS. (2022, September 25). *Dosen UNAIR Bicara Pro dan Kontra Legalisasi Ganja Medis*. Retrieved from Universitas Airlangga Official Website: <https://unair.ac.id/dosen-unair-bicara-pro-dan-kontra-legalisasi-ganja-medis/akses> 1 Juli 2024

BUKU

S.H.,M.H., P. I. (2022). Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel (Vol. V). Yogyakarta: Mirra Buana Media. Prof. Dr. Irwansyah, S. (2022). Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel (Vol. V). (S. M. Ahsan Yunus, Ed.) Yogyakarta, Yogyakarta: Mirra Buana Media, hlm.40-52.