

Decriminalization Of Medical Hashish Use For The Treatment Of Epilepsy Patients In Indonesia

Hernanda Priambudi, Aan Asphianto, Ahmad Fauzi

Sultan Ageng Tirtayasa University

Email : hernandapriambudi@gmail.com

ABSTRACT

Legal policies in several countries have legalized the use of cannabis for medical purposes, while in Indonesia the law still prohibits the use of cannabis for medical purposes because it is still placed in the type of narcotics Schedule I. This condition shows that the law is not responsive, not adaptive to the needs of society, namely patients with certain diseases who need drugs containing medical cannabis to cure their illnesses. The purpose of the study is: what is the urgency of regulating medical cannabis for the treatment of epilepsy in Indonesia. The research method used is normative legal research with a statute approach and a conceptual approach.

Keywords: Decriminalization, Medical Marijuana, Treatment, Patients, Epilepsy.

INTRODUCTION

Marijuana is a plant belonging to the Cannabis sativa family. It produces fiber that can be abused for narcotic purposes due to its tetrahydrocannabinol (THC) content. Consuming this compound can induce euphoria (a prolonged feeling of pleasure). Marijuana, also known as cannabis, is a narcotic plant divided into several species, namely Cannabis indica and Cannabis ruderalis. In some countries, the cannabis plant is known by different names, based on its chemical compounds and the plant's morphology. These two components vary depending on the environment in each country. However, in general, the cannabis plant consists of several parts: the root, the main stem and branches, the leaves, the flowers, the bhang, and the hashish or resin.

Historical and archaeological records indicate that the cannabis plant has been known since 4,000 BC. During the Han Dynasty, the Chinese used it as food. Over time, cannabis was no longer consumed as food, but as medicine and oil by the people of China and Nepal. The Chinese used cannabis as medicine during the Ts'ao Ching Dynasty to treat rheumatic pain, constipation, female reproductive disorders, malaria, and other ailments. Even in the Hua T'o dynasty era, the Cannabis plant was used to anesthetize patients during surgical operations. In India, the use of marijuana as a medicine and also as a means of relaxation, religious rituals, for medical purposes. In Europe, during the time of ancient Greece and Rome, cannabis was used for medicinal purposes to treat earaches and expel worms and insects from the ear, as a diuretic, a digestive aid, an anti-flatulence agent, a brain-clearing agent, and to soothe earaches. In 1464, cannabis was used by the Greeks and Romans to treat epilepsy. Among the Persians, cannabis was widely used for medical purposes. Meanwhile, historical

records in Indonesia indicate that marijuana was first brought from India to Aceh by Gujarati traders and sailors around the 14th century. The Gujarati people are also thought to have brought marijuana to the eastern parts of the Indonesian archipelago, such as Maluku. Marijuana was used by the Indonesian people for rituals, medicine, food, and agriculture.

In scientific research and laboratory testing, the chemical compounds contained in the cannabis plant are referred to as cannabis derivatives. Laboratory testing has also revealed approximately 500 types of cannabis derivatives. Of these, cannabidiol (CBD) and tetrahydrocannabinol (THC) are the most frequently used compounds in scientific research and laboratory testing related to health research, particularly the treatment of specific diseases.

Currently, cannabis plants can be extracted and processed as medicine or medical therapy to treat a disease or relieve the symptoms of certain diseases. From the results of laboratory tests on cannabis plants, the content of cannabidiol (CBD) and tetrahydrocannabinol (THC) compounds are cannabis derivatives that have many health benefits, so cannabidiol (CBD) and tetrahydrocannabinol (THC) are widely used for healing as drugs or therapy for patients with certain diseases when conventional drugs are no longer able to cure the disease (treatment failure).

Research conducted by O'Shaughnessy and Moreau on the use of cannabis for medical purposes suggests that it can be used as an alternative treatment for infectious diseases such as rabies, cholera, and tetanus. Its use spread from England. Other scientific research published by the Ohio State Medical Society on the therapeutic value of cannabis states that it can cure diseases in three categories:

1. Marijuana can be used as a sedative or hypnotic for symptoms of insomnia, dementia, melancholia, mania, delirium tremens, chorea, tetanus, rabies, fever, bronchitis, lung, cough, paralysis agitation, exophthalmic goiter, bladder spasms, and gonorrhea.
2. Cannabis can be used as an analgesic for symptoms of headache, migraine, eye strain, menopause, brain tumor, tic douloureux, neuralgia, gastric ulcer, gastralgia (digestive disorders), tabes, multiple neuritis, pain not due to lesions, uterine disorders, dysmenorrhea, chronic inflammation, menorrhagia, impending abortion, postpartum hemorrhage, acute rheumatism, eczema, senile pruritus, tingling, formication and numbness in gout, and to relieve toothache.
3. Cannabis can be used to improve appetite and digestion, for the symptoms of anorexia pronounced after exhausting illness, gastric neurosis, dyspepsia, diarrhea, dysentery, cholera, nephritis, hematuria, diabetes mellitus, heart palpitations, vertigo, sexual dysfunction in women, and impotence in men.

In a study conducted by Rayyan Zafar from Imperial College in England, the use of cannabis plants as medicine for patients with certain diseases such as epilepsy was found to reduce the frequency of acute seizures in children under 10 years of age by 86%. Based on the results of the 41st research report compiled by the Expert Committee on Drug Dependence (ECDD) by the World Health Organization (WHO), it was stated that cannabidiol (CBD) can be used as a treatment option for patients with certain diseases who have experienced treatment failure, this is because

cannabidiol (CBD) is not a psychoactive substance that can be abused and make the user dependent.

Cannabidiol (CBD) can treat patients with seizure symptoms and is able to reduce the side effects of conventional drugs in patients with certain diseases, cannabidiol (CBD) can reduce disorders in motor function, cognitive and also emotional instability in patients with certain diseases. The symptoms of emotional instability referred to as side effects of conventional medication include feelings of sadness, irritability and aggression.

Currently, research and laboratory testing on the use of cannabis for medical purposes are starting to be widely carried out. This is inseparable from the development of the 1961 Single Convention on Narcotic Drugs. The World Health Organization (WHO) has provided its recommendation, in recommendation number 5.1. Where in the recommendation it is stated about the removal of cannabis and cannabis resin from class IV to class I. The results of this recommendation also received support from the participating countries of the convention in the results of the vote at the Reconvened 63rd Session of the Commission on Narcotic Drugs (CND) held by the United Nations (UN) on December 2, 2020, in the vote it resulted that the United Nations (UN) has given approval to recommendation 5.1 from the WHO. This means that both the United Nations (UN) and the World Health Organization (WHO) have agreed that cannabis and cannabis resin can be used for medical needs.

Based on the legal provisions as mentioned above, it is certainly a legal issue in Indonesia, marijuana for medical purposes in Indonesia is a prohibited act and can be subject to criminal sanctions because Indonesia still places marijuana as a category I narcotic in Law Number 35 of 2009 concerning Narcotics. This means that the legal policy of dealing with narcotics in Indonesia provides an affirmation that marijuana may not be used uncontrolled which may have negative consequences, the use of marijuana plants for research and scientific purposes remains prohibited in Indonesia.

The prohibition on the use of marijuana for medical purposes in handling legal cases and also requests for judicial review at the Constitutional Court of the Republic of Indonesia for the legalization of marijuana for medical purposes, namely:

1. Dimas Muhammad Akmal uses marijuana with the aim of curing the epilepsy he has suffered from since childhood.
2. Musa Ibn Hassan Pedersen also used cannabis to treat epilepsy which stemmed from his congenital disease, cerebral palsy.
3. Reyndhart Rossy N. Siahaan was arrested by members of the East Nusa Tenggara (NTT) Regional Police for using and consuming marijuana plants to cure his illness.
4. In the case of Fidelis, the Panel of Judges at the Sanggau District Court sentenced him because he was found guilty of possessing 39 marijuana plants which he used to treat his wife, Yeni Riawati, who suffered from the rare disease Syringomyelia.
5. Judicial review of the application Number 106/PUU-XVIII/2020 At the Constitutional Court of the Republic of Indonesia.
6. Judicial Review of Application Number 13/PUU-XXII/2024 at the Constitutional Court of the Republic of Indonesia.

These cases, as well as the Judicial Review Application at the Constitutional Court of the Republic of Indonesia, demonstrate the legal policy of rejecting the use of marijuana as a medical drug. The prohibition of marijuana for medical purposes demonstrates Indonesia's position of rejecting the reclassification of the marijuana plant's status by removing it from the narcotics schedule IV category as proposed by the Commission on Narcotic Drugs (CND). Indonesia therefore continues to enforce the old rules regarding the classification of narcotics in the 1961 Single Convention on Narcotic Drugs, which were amended in the 1972 Protocol before the amendment. While this convention is the international legal standard applicable to guidelines for regulating narcotics at the international level, it also authorizes participating countries to ratify the convention as a guarantee of the right to health for all their citizens. This is explicitly stated in the preamble to the 1961 Single Convention on Narcotic Drugs, amended by the 1972 Protocol, which states, "Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes."

The aforementioned legal provisions can serve as a reference for participating countries in the convention to revise their respective narcotics policies and legal policies to comply with the recommendations of the World Health Organization (WHO) and the results of the vote at the Reconvened 63rd Session of the Commission on Narcotic Drugs (CND) held by the United Nations (UN) regarding legal policies regarding cannabis and cannabis resin. This can provide momentum for participating countries to overhaul their narcotics policies, which have been evidence-based, towards legal policies that address the fifth stage of drug control.

These legal provisions should be the legal basis for the Indonesian government in determining its narcotics legal policy. The legal policy for combating narcotics in Indonesia should follow developments in the international world, especially in the recommendations of the World Health Organization (WHO) and the results of the vote at the Reconvened 63rd Session of the Commission on Narcotic Drugs (CND) held by the United Nations (UN).

The prohibition of marijuana for medical purposes certainly impacts patients with certain diseases who require drugs containing marijuana, one of which is patients with epilepsy. In fact, the disease is one of the most common causes of illness and death, ranking second in the highest mortality rate due to NCDs. Data from Global Cancer Statistics (GLOBOCAN) shows that in 2020 there were 19.3 million new cases and 10 million deaths due to cancer. GLOBOCAN also estimates that by 2040 there will be a global increase of 47% in new cases, to 28.4 million new cases. In 2020, Indonesia experienced an increase of 396,914 new cases with the five most common types being breast cancer (16.6%), cervical cancer (9.2%), lung cancer (8.8%), colorectal cancer (8.6%), and liver cancer (5.4%), which means an increase of 13.8% compared to the increase in new cases in 2018.

In fact, a study placed marijuana as one of the drugs that can be used for patients, marijuana for healing diseases can be diagnosed on symptoms of emesis or vomiting symptoms which are complex phenomena involving the central and

peripheral nervous systems, a number of factors cause patients to vomit or emesis. However, in patients with a history of disease, vomiting or emesis can occur due to chemotherapy induction, in this condition the central role of the central nervous system is more profound, and involves the dorsal vagal complex (DVC) consisting of the area postrema, vagal nerve motor neurons, and the nucleus tractus solitarius. The chemoreceptor trigger zone in the area postrema allows chemotactic and other emetic triggers to cross and stimulate emesis.

In the use of cannabis as a medicine for chemotherapy patients, the cannabis plant contains various receptors such as D1, D2, 5-HT₃, NK1, CB1, and CB2, and these receptors are significantly involved in the induction of emesis. A study has shown that CBD stimulates CB1 and 5HT receptors and inhibits dopaminergic receptors and ACh activity. A trial of 30 patients demonstrated superior antiemetic activity of CBD compared to metoclopramide, chlorpromazine, haloperidol, and domperidone. Another study, which administered CBD/THC to 600 patients with malignant disease, found that it effectively minimized emetic episodes when used as a follow-up therapy for malignant patients.

A large study of 2,970 patients, of which 1,248 were followed up for 6 months, showed a significant reduction in pain after 6 months of cannabis treatment. Another study conducted by the Vincent T. Lombardi Research Center found that cannabis treatment significantly reduced nausea and vomiting in 36 patients undergoing chemotherapy compared to prochlorperazine. THC significantly reduced emesis and nausea in approximately 64% of patients, while prochlorperazine demonstrated an antiemetic effect in only one patient. The drug administered is a cannabinoid, which has lower psychotic activity than conventional drugs in patients.

The process of decriminalizing marijuana in the narcotics law in Indonesia will ultimately provide legal certainty for patients with diseases that require drugs containing marijuana to easily be able to use medical marijuana as a legal medical drug, this is because conventional drugs have failed to provide healing or have been proven to be able to relieve the pain experienced by patients with the disease.

The current legal situation in Indonesia still classifies the cannabis plant as a class I narcotic in the Narcotics Law Number 35 of 2009 concerning Narcotics, indicating a legal policy that is not relevant to current developments. Based on Article 4 and Article 5 paragraph (3) of the Health Law Number 36 of 2009 which states that everyone has the right to health, and everyone has the right to independently and responsibly determine the health services needed for themselves in order to achieve the highest level of health. With the existence of scientific evidence regarding the effectiveness of the cannabis plant for health purposes, the prohibition of the use of the cannabis plant for health purposes is a form of violation of the right to health.

Based on this, in understanding the use of cannabis for medical purposes, the government must also consider health aspects in addition to law enforcement. The Indonesian government should recognize that the right to health is a human right that is the responsibility of the state. It is time for the government to provide an objective response to the development of cannabis for medical purposes internationally by conducting open research involving various parties, including the Ministry of Health,

civil society, academics, and various related agencies. This will allow for clear and transparent policymaking regarding legal reforms for the use of cannabis for medical purposes, especially for patients with epilepsy in Indonesia. So the problem that will be discussed is as follows: How urgent is the regulation of medical marijuana for the treatment of patients with epilepsy in Indonesia??

RESEARCH METHODS

The research method used in this study is a normative legal research method. The approaches used in this study are the statute approach, the conceptual approach, the historical approach, and the comparative approach. The legal materials used in this study are primary, secondary, and tertiary legal materials. The collection techniques/methods for obtaining legal materials in this study are document study or literature study and through internet media. Furthermore, this study uses qualitative data analysis.

RESULTS AND DISCUSSI

The Urgency of Regulating Medical Marijuana for the Treatment of Epilepsy Patients in Indonesia

1. The Urgency of Regulating Marijuana for Medical Purposes in Indonesia

Legalizing cannabis for medical treatment in Indonesia aligns with progressive law, which reflects its position as a liberating force, freeing itself from legalistic-positivistic modes of thinking, principles, and legal theories. Progressive law prioritizes goals over procedures. Therefore, law enforcement requires creative and innovative legal implementation, and, if necessary, legal mobilization and rule-breaking.

Legalization of cannabis or marijuana for medical treatment in Indonesia will create substantive justice, especially for patients with certain diseases who require drugs containing cannabis or marijuana. Therefore, legalization of cannabis or marijuana for medical treatment in Indonesia in line with progressive law will be a rule-breaking initiative because normative law in Law Number 35 of 2009 concerning Narcotics is no longer able to create justice.

The legalization of cannabis for medical use in Indonesia, based on progressive law, will lay the foundation for legal progressivism, creating liberating laws that will realize laws for all. In the legal context of legalizing cannabis for medical use in Indonesia, barriers must be removed and freedoms must be established, both in knowledge, theory, and practice. A progressive legal perspective is not overly pragmatic and rigid, approaching law solely using rules and logic, or legal dogma, with a linear, marginal, and deterministic line of thought.

Legal policy regarding legal reforms regarding the use of cannabis for medical purposes must be based on the therapeutic/medical value of cannabis, which is recognized worldwide. Currently, approximately 40 countries have

implemented policies for the use of medical cannabis, including Thailand, South Korea, Germany, and the Netherlands. This is because hemp (*Cannabis sativa*) contains high levels of Cannabidiol (CBD) and has numerous medical benefits, particularly for neurological disorders and as an anti-seizure agent. Therefore, if cannabis can be used for medicinal purposes, it can be considered an alternative and complementary medicine (CAM) because it is not a conventional therapy. In some countries, approximately 40% of adult patients in the United States use cannabis-containing medications, and their health improves, although some patients also experience side effects. This suggests that cannabis can be applied as a standard therapeutic drug, due to its non-pharmacological properties (e.g., meditation, relaxation techniques, or stress management).

Based on the above facts, the prohibition of cannabis for medical purposes indicates a violation of human rights, because the government cannot provide health care facilities for its citizens in order to achieve the highest level of health. Based on Article 5 paragraph (3) of Health Law Number 36 of 2009 which states that "Everyone has the right to independently and responsibly determine the health services needed for themselves. From this provision it can be interpreted that everyone has the right to determine for themselves what kind of health services are needed for themselves, including using the cannabis plant. With scientific evidence regarding the medical benefits of the cannabis plant, the prohibition of the use of the cannabis plant for medical purposes is a form of violation of the right to health. The Indonesian government tends to only focus on implementing a criminal approach and law enforcement rather than a health approach.

Therefore, an ideal narcotics policy must be pursued considering the potential benefits and risks of narcotics. This means that legal policies related to narcotics, whether through free legalization or strict prohibition, will both bring problems. Within the drug policy spectrum, there is a regulatory model called "responsible legal regulation." With this model, regulated legal narcotics can provide the best social and health benefits compared to other available policy models. This regulatory model can reduce social and health risks and weaken organized crime.

The current legal situation in Indonesia still classifies the cannabis plant as a class I narcotic in the Narcotics Law Number 35 of 2009, this condition is of course no longer relevant. Based on Article 4 and Article 5 paragraph (3) of the Health Law Number 36 of 2009 which states that everyone has the right to health, and everyone has the right to independently and responsibly determine the health services needed for themselves in order to achieve the highest level of health. With the existence of scientific evidence regarding the effectiveness of the cannabis plant for health purposes, the prohibition of the use of the cannabis plant for health purposes is a form of violation of the right to health.

For example, Germany has implemented a medical cannabis policy within its drug law since 2017. In 2017, German legislators amended the national drug law and other related provisions to legalize the cultivation, distribution, and

consumption of cannabis for medical purposes. This provision allows doctors to prescribe medical cannabis based on a medical prescription. During this legislative change, lawmakers also established guidelines and established appropriate bodies to regulate the process, from cultivation to distribution to patients. However, cannabis remains marketable only under strict legal conditions and not for recreational use.

Reflecting on this, in understanding the use of cannabis for medical purposes, the government must also consider health aspects in addition to law enforcement. The Indonesian government should recognize that the right to health is a human right that is a state responsibility. It is time for the government to respond objectively to the development of cannabis cultivation internationally by conducting open research involving various parties, including the Ministry of Health, civil society, academics, and various relevant agencies. This will allow for clear and transparent policymaking regarding the use of cannabis for medical purposes.

2. Pros and Cons of Marijuana Use for Medical Treatment in Indonesia

The Cannabis plant or marijuana is a plant or botanical product, in ancient historical records the cannabis plant has its origins of use more than 5,000 years ago in the area now known as Romania, while the use of the cannabis plant or marijuana as medicine has been known since around 400 AD. In the United States, the use of cannabis or marijuana plants as medicine has been used since the 19th and early 20th centuries. In the United States, historical records for the first time in 1850 indicate that cannabis or marijuana began to be used for medical purposes as a medicine.

In the following decades, the use of cannabis or marijuana as medicine was subject to federal restrictions on the use and sale of cannabis for the first time in 1937 with the enactment of the Marihuana Tax Act. This law is the legal umbrella for the legalization of cannabis or its derivatives, which may only be used for research activities and academic purpose

The use of cannabis in Asia can be traced back to historical records, first appearing in Central Asia. It is one of the most traditional psychotropic drugs in the region. Archaeological records indicate that cannabis was known in China around 4,000 BC. The cannabis plant was then known as marijuana, a term derived from Mexican origins, which initially referred to the cannabis plant as a cheap tobacco product, referring to the dried leaves and flowers of the cannabis plant. Other terms for the cannabis plant include Hashish in Arab countries and Rami in India, where Hashish and Rami refer to the resinous sap of the cannabis plant, which is used as a narcotic.

For hundreds of years the cannabis plant has been used as a source of fiber, food, oil and for religious, recreational and therapeutic purposes. This is because the cannabis plant contains a diverse mixture of structurally active substances, such as cannabinoids, terpenoids, flavonoids, and alkaloids. The primary psychoactive chemical in cannabis is delta-9-tetrahydrocannabinol (THC), commonly known as THC. Other cannabinoids include delta-8-THC, cannabinal,

cannabidiol (CBD), cannabicyclol, cannabichromene, and cannabigerol; however, they are present in smaller amounts and do not have significant psychotropic activity compared to THC. Cannabinoids are currently used for symptomatic treatment, such as:

- a. Neurodegenerative disease.
- b. Inhibits the proliferation of breast cancer cells
- c. Inhibits the growth of glioblastoma multiforme in animals
- d. Suppresses tumor cell proliferation in vitro.
- e. Suppresses prostate, lung, and blood cancer cells.
- f. Treatment of nausea, glaucoma, chronic pain, inflammation, multiple sclerosis, and epilepsy

Despite the benefits of cannabis, its medical use has also sparked debate, as unprescribed cannabis can be addictive. Its use during adolescence can affect mental development, and regular use can also increase the risk of anxiety and depression, especially in people with genetic susceptibility.

The policy of using cannabis for medical purposes in Indonesia continues to generate pros and cons. The National Narcotics Agency (BNN) firmly rejects the discourse of legalizing cannabis for medical purposes, this is due to its adverse effects and the lack of urgency to use cannabis. The economic impact of legalizing cannabis will also cause losses because it will increase use and addiction, which will incur medical and rehabilitation costs for users and abusers

Apart from that, in the long term, saving the young generation of Indonesia is the main aspect of the legalization of cannabis, because cannabis is the type of narcotic that is most abused by teenagers compared to other types of narcotics. With the legalization of cannabis or marijuana, there could be an increase in crime rates, although in the international concept the UN has lowered the status of marijuana as a dangerous drug by removing it from schedule IV and schedule I, but the UN completely leaves its position on the use of this plant to each country. In Indonesia, strong pharmacological evidence for the benefits of using cannabis for medical therapy is still lacking, but on the other hand, cannabis is a dangerous type of narcotic.

On the other hand, although the use of cannabis or marijuana is beneficial for medical purposes, cannabis or marijuana as a drug is only symptomatic, not curative, so its use is more psychoactive which can affect psychological aspects. In addition, although marijuana has been permitted for use in epilepsy therapy in the United States, this still cannot justify this discourse because there are still alternative drugs for this disease.

Another argument in favor of the use of cannabis for medical purposes is made by people who need cannabis for their patients' needs to treat their illnesses. This movement is generally carried out by Non-Governmental Organizations (NGOs) and social organizations concerned with cannabis issues. Several institutions have participated in the advocacy for the legalization of medical cannabis, including the Indonesian Cannabis Circle, the Sativa Nusantara Foundation, Rumah Cemara, the Criminal Justice Reform Institute (ICJR), and

other institutions. Those in favor of this discourse argue that in some countries, the use of cannabis for medical purposes has been legalized. Furthermore, based on data collected from these countries (such as the United States, Canada, the Netherlands, Israel, and Australia), there are few side effects or problems arising from the use of cannabis as a medicinal drug, and many patients require a prescription for cannabis medication.

Cannabis has benefits primarily as a medicinal plant and in the treatment of several chronic illnesses. Studies conducted abroad have found the benefits of cannabis for medical purposes. Research conducted in the United States on patients with chronic illnesses has shown that cannabis is safe and effective for patients, as it can reduce pain, insomnia, and help relieve anxiety.

In addition, cannabis-based medicines have been proven effective in other diseases such as multiple sclerosis, chronic neuropathic pain, nausea and vomiting due to chemotherapy, epilepsy, antiemetics, appetite stimulants in cancer and AIDS, treatment of spinal cord injuries, Tourette's syndrome, and glaucoma.

In addition to its medicinal uses, cannabis has potential industrial and economic applications. Its uses include lighting, rigging, ship anchors, paint and varnish, building materials, t-shirt materials, cosmetics, skin care, and paint and varnish. The cannabis plant also produces fiber that has significant potential as a sustainable source of textile fiber.

Cannabis fiber is also one of the raw materials for hemcrete as an alternative to concrete that is seven times stronger, twice as light, more elastic and more crack-resistant than ordinary concrete. A study conducted in Canada found that industrial hemp can compete with other energy-producing crops in the global market for bioenergy feedstock, making it more economical.

This explanation suggests that the cannabis plant has the potential to be a more profitable industry and could potentially increase state revenue if properly managed. Analysis of the pros and cons of legalizing medical cannabis in Indonesia. In the narrative presented previously, there are several aspects on which there is still no agreement between those supporting and opposing the legalization of medical cannabis. The main debate concerns its benefits and negative impacts on Indonesian society. Currently, both of these issues are difficult to quantify because legalizing medical cannabis in Indonesia is still only a discussion.

In Indonesia, research on the positive and negative impacts of cannabis use is still limited, due to its violation of existing regulations. Furthermore, most research on the positive and negative impacts of this policy comes from countries that have already legalized cannabis. These international studies also yield varying results depending on the specifics of each country's policy, the level of use, and the prevailing norms before legalization.

When used, cannabis has a variety of subjective effects. These effects may vary between light and heavy users and can include feelings of intoxication, euphoria, altered sensory perception, cognitive and perceptual distortions,

anxiety, dizziness, and increased appetite. In acute cases, cannabis use can cause intoxication and tachycardia.

The cognitive effects of cannabis use include impaired memory retrieval, working memory, verbal memory, learning, and executive function. Acute cannabis intoxication in young users can result in slower brain responses, impaired accuracy, and impaired response inhibition. Dysfunctions that can result from cannabis use include decreased information processing speed, poor planning, decreased self-monitoring, and an inability to change behavior, changes in math skills and time perception, along with changes in gross and fine motor skills.

3. Legal Cases Regarding the Use of Marijuana for Medical Treatment in Indonesia

In several cases that have attracted public attention regarding the use of cannabis for medical needs for patients with certain diseases in Indonesia, these are:

- a. Dimas Muhammad Akmal uses marijuana to treat the epilepsy he has suffered from since childhood. He has been taking several medications prescribed by his doctor regularly, such as Depakote, folic acid, and Sohobion. He uses cannabis medicinally by inhaling the burnt marijuana leaf in the form of cigarettes.
- b. Musa Ibn Hassan Pedersen also used cannabis to treat epilepsy stemming from his congenital cerebral palsy. The primary reason was that several prescription epilepsy medications he was taking, such as vaporic acid, phenobarbital, latropil, and stesolid, were no longer effective in managing his seizures. Musa used marijuana by inhaling the smoke from burning marijuana like incense and consuming cannabis oil extracted from the plant while in Australia. However, he was forced to stop using marijuana upon his return to Indonesia due to regulatory restrictions.
- c. Reyndhart Rossy N. Siahaan (37), a resident of East Jakarta, was arrested by members of the East Nusa Tenggara (NTT) Regional Police for using and consuming marijuana plants to treat his illness. Reyndhart was arrested for the alleged use of marijuana-type narcotics to treat a spinal cord disease he has been suffering from since 2015.
- d. The case of Fidelis, a 36-year-old man, was sentenced by the Panel of Judges of the Sanggau District Court, West Kalimantan, for being found guilty of possessing 39 marijuana plants that he used to treat his wife, Yeni Riawati, who suffers from a rare disease Syringomyelia. The panel of judges considered that Fidelis fulfilled the elements in Articles 111 and 116 of Law Number 35 of 2009 concerning Narcotics. Fidelis was sentenced by the panel of judges to eight months in prison and a fine of Rp 1 billion, subsidiary to one month on August 2, 2017. He served the sentence until he was declared free, but a tragic incident befell his wife, she died on March 25, 2017, or exactly 32 days after Fidelis was detained by the National Narcotics Agency (BNN) of Sanggau Regency, due to the interruption of the supply of marijuana extract which at that time was the only hope for his wife to recover and survive.

From the implementation of the cases of the use of cannabis plants above in

patients with certain diseases, it shows the implementation of the law of Law Number 35 of 2009 concerning Narcotics, Article 7 paragraph 1 concerning the Prohibition of Class I Narcotics which is only permitted for research purposes in the context of developing science and technology (IPTEK). The question is if it is true that empirically and scientifically proven that cannabis can be effectively used to fulfill health services and to treat certain diseases, then the position of the Cannabis Plant in the Narcotics Law Number 35 of 2009 which classifies the Cannabis Plant in Class I Narcotics is considered contrary to the principle of legal benefits and norms of the right to health.

The cases above demonstrate the existence of legal politics surrounding drug control policies, embodied in the slogan "war on drugs." However, the legal politics of this "war on drugs" policy are prone to misdirection. This is because the government consistently uses the slogan "anti-narcotics," but never dares to engage with the scientific realm to ensure the interests of the wider public, especially patients with certain illnesses who require cannabis as a medicine or therapy.

The government must begin conducting scientific research on the use of marijuana for health purposes and remove the ban on the use of class I narcotics for health purposes in narcotics policy.

In the provisions of the Narcotics Law, it is indeed prohibited to use class I narcotics for health services, as stated in Article 8 paragraph (1) which states; "Class I narcotics are prohibited from being used for health service purposes." However, it should be remembered that the legislative ratio of Law No. 35 of 2009 concerning Narcotics is actually aimed at guaranteeing the availability of narcotics for health services, as stated in the objectives of the Narcotics Law in Article 4 letter a of the Narcotics Law.

Due to this condition, Law No. 35 of 2009 concerning Narcotics prohibits the use of narcotics for health services, as a result of the prohibition on the use of cannabis or marijuana plants for health purposes for patients with certain diseases, it is clearly contrary to the main objective of the Narcotics Law, which is to guarantee the right to health services for the Indonesian people.

The prohibition of the use of narcotics for health is actually contrary to the existence of the narcotics law itself, research and studies are needed to develop this and must be available and supported by the state. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy living environment and the right to receive health services." From the provisions of this article, it can be interpreted that everyone has the right to health, this is a responsibility borne by the state and must be provided with prime fulfillment for every citizen without exception.

Health is a state of well-being, both physically, mentally, spiritually, and socially, that enables everyone to live productively socially and economically (Article 1, number 1 of Law No. 36 of 2009 concerning Health). Health is the basis for the recognition of human dignity. Without health, a person is conditionally

unequal. Without health, a person will not be able to obtain other rights.

The right to health does not mean that everyone has the right to be healthy, or that the government must provide expensive healthcare services beyond its means. Rather, it demands that the government and public officials develop policies and work plans that aim to ensure the availability and affordability of healthcare services for everyone as quickly as possible. The right to health is understood to mean that everyone has specific freedoms and rights guaranteed by various legal provisions.

In principle, the right to health is as important as the rights to food, housing, employment, education, human dignity, non-discrimination, equality, prohibition of abuse, access to information, and others. Like the other rights mentioned above, everyone has the right to enjoy and receive health services according to standards conducive to their lives.

4. Judicial Review Case at the Constitutional Court of the Republic of Indonesia Regarding the Use of Marijuana for Medical Purposes

a. Decision in Case Number 106/PUU-XVIII/2020

In the application for judicial review of Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution of the Republic of Indonesia, it was submitted by 6 (six) applicants. The applicants each consisted of 3 (three) mothers representing their children who presented themselves as Indonesian citizens who felt their constitutional rights had been violated (Dwi Pertiwi, Santi Warasyuti, Nafiah Murhayanti, S.Md) and there were 3 (three) applicants who presented themselves as private legal entities (Perkumpulan Rumah Cemara, Institute for Criminal Justice Reform (ICJR), and Perkumpulan Lembaga Bantuan Hukum Masyarakat). Overall in the legal standing examination, the 6 (six) applicants who presented themselves as applicants in the examination were declared to have fulfilled the legal standing requirements and had the rights and interests in submitting the application.

Based on the examination of the a quo case, in its ruling, the Constitutional Court judge rejected the applicant's petition in its entirety and stated that the petitions of applicants V and VI were inadmissible due to their legal standing. In the judge's consideration, it was explained that the Constitutional Court, according to statutory regulations, has the right to adjudicate at the first and final instance, therefore the Constitutional Court has the authority to adjudicate the applicants' petitions.

b. Decision in Case Number 13/PUU-XXII/2024

That in this case, the applicant in the a quo case is Pipit Sri Hartanti, Supardji who is the parent of Shita Aske Paramitha, a patient who has suffered from Cerebral Palsy since childhood, the lawsuit is related to the legality of marijuana for treatment in Article 1 number 2 of Law number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and the Protocol that Amends It. The applicants argue that medical marijuana can be used as a treatment therapy whose use is hindered by the existence of provisions prohibiting the use of Class I Narcotics for health services.

Therefore, the applicants request that Article 1 Article 1 number 2 of Law number 8 of 1976 be declared contrary to Article 28H paragraph 2 of the 1945 Constitution and have no binding legal force.

The Petitioners stated that they have made efforts to help their child recover. Of the various treatments undertaken, numerous studies have shown that cannabis oil formulations containing cannabidiol and THC are effective for children suffering from complex motor disorders. In short, the use of these medicinal cannabis compounds can reduce the impact of dystonia and seizures, while improving motor function and quality of life.

However, Indonesia classifies marijuana and its derivatives as Schedule I or dangerous substances in Law Number 35 of 2009 concerning Narcotics. The applicant argues that the classification of narcotic substances is the right of every country as long as it is done with good intentions for the development of health services and the ability to control substances by ensuring distribution permits are in accordance with their intended use. States have full authority to change the classification or determine the classification by reviewing the objectives of the Convention and the laws in their countries, including Indonesia. This classification of substances should not be done as a subservience to the politics and geopolitics at the time the 1961 Single Convention was formed, but must consider the availability and access to health services that are urgently needed by Indonesia today. This is to ensure the fulfillment of the need for drugs included in Schedule I and the country's independence in better quality health services.

The Petitioners requested that the Constitutional Court declare the material content of Article 1 paragraph (2) along with its Explanation as well as the material content of Paragraph 7 and Paragraph 8 of the judicial review of Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and the Protocol Amending It along the sentence 'Protocol Amending the 1961 Single Convention on Narcotics' declared contrary to the 1945 Constitution and has no legal force considering that as long as it is not interpreted as 'Protocol Amending the Single Convention on Narcotics up to the protocol of the 63rd session including the document of the Commission on Narcotic Drugs Sixty-third session Vienna, 2-6 March 2020, which uses document E/CN.7/2020/CRP.19. In the decision, it stated that there was no evidence of comprehensive assessment and research on the use of marijuana or cannabis substances for health services.

The impact of this ruling can be broadly divided into four parts: first, the creation of legal certainty because the use of class I narcotics remains prohibited for health services. Second, as a result of this ruling, the legalization of marijuana for medical purposes is closed due to the final nature of the Constitutional Court's decision. Third, the government is required to immediately conduct research into the use of class I narcotics for health services. Fourth, with the Constitutional Court's decision deeming this an open legal policy, the direction of determining legal policy now shifts to the

legislators, namely the House of Representatives (DPR), and confirms that there are still legislative review efforts to encourage the use of class I narcotics in Indonesia.

CONCLUSION

Based on the discussion outlined above, it can be concluded that The use of drugs containing cannabis for medical purposes is currently prohibited in Indonesia, and this can result in criminal sanctions. The prohibition on the use of cannabis for medical purposes is stipulated in the Law Number 35 of 2009 concerning Narcotics shows a legal policy prohibiting cannabis for medical treatment, even though in reality the use of drugs containing... The decriminalization of cannabis for medical purposes has become urgent, given the numerous benefits of the cannabis derivative, cannabidiol (CBD), as a treatment option for patients with certain illnesses. This ensures the health rights of patients requiring cannabis-containing medications are met. Legal comparisons are essential in Indonesia, as many countries have legalized the use of cannabis for medical purposes, particularly for patients with specific illnesses. A legal comparison of the United States, Australia, and Thailand reveals that in these countries, the legalization of cannabis for medical purposes is limited to specific illnesses, is only available for pediatric patients, is prescribed on the advice and recommendation of a physician, and prescriptions must be made by a specialist, and there are strict controls on the administration of cannabis-containing medications..

REFERENCES

- Abrahamov A, Abrahamov A, Mechoulam R. An efficient new cannabinoid antiemetic in pediatric oncology. *Life Sci.* 1995, Page 102, <https://pubmed.ncbi.nlm.nih.gov/7776837/>.
- Achmad Nasrudin Yahya, Reyndhart Consumed Marijuana to Treat Illness. His Arrest is Considered a Violation of the Right to Health Norms. <https://nasional.kompas.com/read/2020/06/10/11455761/reyndhart-konsumsi-ganja-untuk-obati-penyakit-penangkapannya-dinilai-langgar?page=all>.
- Ahmad Nasrudin Yahya and Reyndhart Consumed Marijuana to Treat Illnesses. Their Arrests Are Considered Violations of the Right to Health. <https://nasional.kompas.com/read/2020/06/10/11455761/reyndhart-konsumsi-ganja-untuk-obati-penyakit-penangkapannya-dinilai-langgar?page=all>
- Afandi, Dedi, The Right to Health in a Human Rights Perspective, *Journal of Medical Sciences*, Volume 2, Number 1, Faculty of Medicine, University of Riau, Pekanbaru, 2008, Page 1, <https://dediafandi.staff.unri.ac.id/files/2010/05/Hak-atas-kesehatan-dalam-perspective-HAM.pdf>.

- Amank Raga, The Benefits of Marijuana in Malay Books, <https://mediaaceh.co/2016/04/23/khasiat-ganja-dalam-kitab-melayu/>.
- Amar MB. Cannabinoids in medicine: a review of their therapeutic potential. J Ethnopharmacol. 2006, Pg 105, <https://pubmed.ncbi.nlm.nih.gov/16540272/>.
- Anastasia S. Suraev, et. al., An Australian Nationwide Survey on Medicinal Cannabis Use for Epilepsy: History of Antiepileptic Drug Treatment Predicts Medicinal Cannabis Use, Epilepsy & Behavior Journal, Vol. 70, 2017, <https://pubmed.ncbi.nlm.nih.gov/28238865/>.
- Anderson BM, Rizzo M., Block RI, Pearlson GD, O'Leary DS Sex, drugs, and cognition: effects of marijuana. J. Psychoactive Drugs. 2010, Vol. 42, no. (4), Pg 413, <https://pubmed.ncbi.nlm.nih.gov/21305906/>.
- National Narcotics Agency of the Republic of Indonesia, <https://bnn.go.id/bnn-tegas-menolak-legalisasi-ganja/>.
- Ben Amar M, Leonard L. Chapter 16: Cannabis. Les Psychotropes: Pharmacologie et Toxicomanie. Montreal: Les Presses de l'Université de Montréal; 2002, Pg 571, <https://www.erudit.org/en/journals/dss/2004-v2-n2-dss718/008535ar/abstract/>.
- Byrne T, Poling A. Introduction to Behavioral Pharmacology. New Harbinger Publications; 2000.
- CNN Indonesia, <https://www.cnnindonesia.com/nasional/20220712205444-12-820713/kepala-bnn-tolak-legalisasi-ganja-lebih-baik-selamatkan-generasi-muda>.
- CW Webb and SM Webb, "Therapeutic benefits of cannabis: a patient survey," *Hawaii. J. Med. Public Health*, vol. 73, no. 4, p. 109, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3998228/>.
- Camilo Espinosa-Jovel, Cannabinoids in Epilepsy: Clinical Efficacy and Pharmacological Considerations, Neurologia (English Edition), 2020.
- Curtis Fowler, The Use of Marijuana Derivatives in Primary Cases ; An Evidence-Based Approach to Cannabidiol, The Journal for Nurse Practitioners, Vol 17 (9), 2021, <https://www.sciencedirect.com/science/article/abs/pii/S1555415521003329>.
- Enik Isnaini, The Use of Marijuana in Medical Science According to Law Number 35 of 2009 Concerning Narcotics, Jurnal Independent Vol 5 No.

2,<https://jurnalhukum.unisla.ac.id/index.php/independent/article/view/71/69>.

Fred F. Ferri, *Ferri's Clinical Advisor*, (Philadelphia, Elsevier, 2022).

Grinspoon L, *Marihuana reconsidered*, (Cambridge, MA: Harvard University Press), 1971.

ICJR, 2020, Commemorating National Health Day, the Civil Society Coalition "Drug Advocacy for Health Services" Files a Request for Judicial Review of the Narcotics Law (online),<https://icjr.or.id/memperingati-hari-kesehatan-nasional-koalisi-masyarakat-sipil-advocacy-narkotika-untuk-pelayanan-kesehatan-ajukan-permohonan-uji-materil-terhadap-uu-narkotika/>.

JP Szaflarski & EM Bebin, "Cannabis, Cannabidiol, and Epilepsy – From receptors to clinical response". *Epilepsy & Behavior*, Volume 41., 2014.<https://pubmed.ncbi.nlm.nih.gov/25282526/>.

Katrien Vandepitte, Hemp (*Cannabis sativa* L.) for high-value textile applications: The effective long fiber yield and quality of different hemp varieties, processed using industrial flax equipment,*Industrial Crops and Products* Volume 158, December 15, 2020,<https://www.sciencedirect.com/science/article/abs/pii/S0926669020308864?via%3Dihub>.

Civil Society Coalition for Narcotics Advocacy for Health, One More Reyndhart Rossy N Siahhaan *Victim Campaign*,<https://leip.or.id/rilis-media-koalisi-masyarakat-sipil-advokasi-narkotika-untuk-kesehatan-satu-lagi-reyndhart-rossy-n-siahhaan-korban-kampanye-buta-anti-narkotika-pemerintah-indonesia/>.

Linda Parker, *Cannabinoids and the Brain*, (London, The MIT Press), 2017.

Lubman DI, Cheetham A., Yucel M. Cannabis and adolescent brain development. *Pharmacol. Ther.* 2015;Vol. 148, no. 1, Pg 16.
<https://pubmed.ncbi.nlm.nih.gov/25460036/>.

M. Ben Amar, "Cannabinoids in medicine: A review of their therapeutic potential,"*J.Ethnopharmacol.* Vol. 105, No. 1-2, Pg. 25, DOI:[10.1016/j.jep.2006.02.001](https://doi.org/10.1016/j.jep.2006.02.001),

Constitutional Court of the Republic of Indonesia,
<https://www.mkri.id/index.php?page=web.Berita&id=17459&menu=2>.

Malmo-Levine D. Recent history. In: Holland J, editor. *The Pot Book: A Complete Guide to Cannabis*. Rochester, Vermont: Park Street Press; 2010.

- Margret Knitter, 10 Q&A's Related To Medical Cannabis In Germany,<https://www.lexology.com/library/detail.aspx?g=e7866f0c-b20d-4b68-a994-b04baab96a0a>,
- Mary Lynn Mathre, RN, Cannabis in Medical Practice: A Legal, Historical and Pharmacological Overview of the Therapeutic Use of Marijuana, (New York, McFarland, 1997).
- Max Daly, Through a Historic Vote, the UN Designates Cannabis as a Medicinal Plant,<https://www.vice.com/id/article/93w39d/lewat-voting-bersejarah-pbb-tetapkan-ganja-sebagai-tanaman-obatan>.
- National Compass,<https://nasional.kompas.com/read/2022/06/28/16375051/pro-kontra-upaya-legalisasi-ganja-untuk-kepentingan-medis-di-indonesia>.
- Noorwati Sutandyo, Reducing the Incidence Rate in Indonesia Through Prevention Efforts and Recognizing Risk Factors in the Entire Community, Speech at the Inauguration Ceremony as Professor in Internal Medicine, Faculty of Medicine, University of Indonesia, Jakarta, August 6, 2022,<https://dgb.ui.ac.id/wp-content/uploads/123/2023/04/pidato-Penguksuhan-GB-Noorwati.pdf>.
- Preamble to the Single Convention on Narcotic Drugs 1961 as amended by the Protocol of 1972,
https://www.emcdda-europa-eu.translate.goog/drugs-library/single-convention-narcotic-drugs-1961_en?_x_tr_sl=en&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=tc.
- Piluzza G, Delogu G, Cabras A, Marceddu S, Bullitta S. Differentiation between fiber and drug types of hemp (*Cannabis sativa* L.) from a collection of wild and domesticated accessions. Genet Resort Crop Evol. 2013, Pg 42,<https://link.springer.com/article/10.1007/s10722-013-0001-5>.
- Pinho AR. Social and medical aspects of the use of cannabis in Brazil. In: Rubin V, eds. Cannabis and culture. (Paris: Mouton Publishers; 1975).
- Semarang District Court Decision Number 611/Pid.Sus/2021/PN Smg.
- King Eben Lumbanrau, History And Cannabis Culture in the Archipelago: Rituals, Medicine and Food Spices,<https://www.bbc.com/indonesia/indonesia-51441909>.
- Rayyan Zafar, et al. "Medical Cannabis for severe treatment resistant Epilepsy in children: a case series of 10 patients", (Lpndon, BMJ Paediatrics Open, 2022).

- Sara Anna Bonini, Marika Premoli, Simone Tambaro, Amit Kumar, Giuseppina Maccarinelli, Maurizio Memo, Andrea Mastinu, Cannabis sativa: A comprehensive ethnopharmacological review of a medicinal plant with a long history, *Journal of Ethnopharmacology*, Volume 227, December 5, 2018, DOI: [10.1016/j.jep.2018.09.004](https://doi.org/10.1016/j.jep.2018.09.004)
- Satjipto Rahardjo, *Dissecting Progressive Law*, Kompas, Jakarta, 2006.
- Indonesian Marijuana Circle Team, *The Tale of the Marijuana Tree 12,000 Years of Fertilizing Human Civilization*, (Jakarta, Gramedia, 2011).
- Touw M., The religious and medicinal uses of Cannabis in China, India and Tibet. *J Psychoactive Drugs*, Volume 13, Issue 1, 1981. <https://doi.org/10.1080/02791072.1981.10471447>.
- Tu L, Lu Z, Ngan MP, Lam FFY, Giuliano C, Lovati E, et al. The brain-penetrating, orally bioavailable, ghrelin receptor agonist HM01 ameliorates motion-induced emesis in *Suncus murinus* (house musk shrew), *Br J Pharmacol*. 2020, Pg 177, <https://pubmed.ncbi.nlm.nih.gov/31722444/>.
- United Nations, 2020, UN Commission Reclassifies Cannabis, Yet Still Considered Harmful, <https://www.who.int/news/item/04-12-2020-un-commission-on-narcotic-drugs-reclassifies-cannabis-to-recognize-its-therapeutic-uses>.
- Volkow ND, Compton WM, Weiss SR. Adverse health effects of marijuana use. *N Engl J Med*. 2014, Pg 24, <https://www.nejm.org/doi/full/10.1056/nejmra1402309>,
- World Health Organization, WHO Expert Committee on Drug Dependence: Forty-first Report (WHO Technical Report Series, No. 1018), World Health Organization, 2019, <https://www.who.int/publications-detail-redirect/9789241210270>.
- Yohanes Kurnia Irawan, The End of the Struggle of a Husband Who Treated His Wife with Marijuana, Fidelis is Freed from Prison, <https://regional.kompas.com/read/2017/11/16/14505631/akhir-perjuangan-suami-yang-obati-istrinya-dengan-ganja-fidelis-bebas-dari>.
- Zias J, Stark H, Sellman J, et al. Early medical use of cannabis. *Nature*, United States Of America, 1993, Pg 215, <https://pubmed.ncbi.nlm.nih.gov/8387642/>.