



Legal Problems and Implications of Cannabis Plants in Indonesia

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Abstract

Legal protections regarding the cultivation and use of cannabis for medicinal purposes remain ambiguous. So that there are a lot of discoveries of prohibited Cannabis plants (ganja) in Indonesia that do not have clarity on the procurement of these prohibited trees. Therefore, the Government of Indonesia needs to reform the implementation of narcotics policy in accordance with the human rights principles contained in the Constitution of the Republic of Indonesia. The purpose of this research is for readers to get a complete picture of the reasons behind the criminalization, decriminalization or legalization of cannabis plants. The method used is The type of data used in this study is normative research Normative law research has a tendency to image law as a prescriptive discipline where only looking at law from the perspective of its norms which of course is descriptive, this research is carried out in real conditions with the aim of being able to find existing facts to be used as data filler in this study so that later it will also be found the point of solving the problem.

Keywords: cannabis plant, implications, law, problems

Introduction

In an era where the understanding of the medical benefits of cannabis is growing, the debate over the legality and regulation of its use in Indonesia is becoming increasingly urgent, especially given that Law Number 35 of 2009 concerning Narcotics expressly categorizes marijuana as a class I narcotic that is prohibited for use, so that people involved in the cultivation of marijuana for medical purposes risk facing severe legal consequences, including prison sentences and fines, although many studies show the therapeutic potential of this plant in treating a variety of chronic diseases and other health conditions. Drug abuse does not only mean taking drugs. However, management, including the illegal cultivation of marijuana trees, can be confirmed to be a criminal offense based on the Narcotics Law Number 35 of 2009 (Ambarwati & Irawan, 2025). The legal consequences that will be received by people involved in the cultivation of cannabis for medical purposes in Indonesia are very complex and influenced by the applicable legal provisions, especially Law Number 35 of 2009 concerning Narcotics, which classifies marijuana as a class I narcotic, so that any activity of cultivating, distributing, or using marijuana, including for medical purposes, can lead to severe criminal consequences. Criminal sanctions for perpetrators who commit Class 1 Narotika crimes have been determined in articles 111 to 116 and 127 of Law Number 35 of 2009 concerning Narcotics. Criminal sanctions for perpetrators who maintain, possess, store, control, or provide

class 1 narcotics in the form of plants are regulated in article 111 of Law Number 35 of 2009 concerning *Narotika*.

Legal protections regarding the cultivation and use of cannabis for medicinal purposes remain ambiguous. So that there are a lot of discoveries of prohibited Cannabis plants (*GANJA*) in Indonesia that do not have clarity on the procurement of these prohibited trees. Therefore, the Government of Indonesia needs to reform the implementation of narcotics policy in accordance with the human rights principles contained in the Constitution of the Republic of Indonesia (Benartin & Fransiska, 2021). As explained earlier, as a state of law we essentially guarantee human rights in its constitution. There are at least three reasons to explain why cannabis 1 should get its primary special attention in our literature. First, globally and especially nationally, cannabis and active substances (THC) are the psychoactive substances that have the most victims of abuse. In addition, because Indonesia and many countries still consider recreational and medical marijuana consumption to be a criminal offense, marijuana is a factor causing prison overcrowding in several countries (Pangaribuan, 2024).

For these reasons, this paper tries to discuss marijuana and its consumption, especially from a legal perspective in general. The purpose of this article is for readers to get a complete picture of the reasons behind the criminalization, decriminalization or legalization of cannabis plants. To achieve this goal, this paper, mainly, tries to summarize the literature on cannabis and then place it in the Indonesian context. Indonesia rejected the WHO's recommendation on the Cannabis Legalization plan with the consideration and reason that cannabis or cannabis grown in Indonesia is different from cannabis grown in other countries such as Canada and Italy. To the public, do not use marijuana other than for health with the supervision of a doctor, if used excessively and without medical supervision, it will be very dangerous for health (Rukhmana, 2021). The urgency of this research is so that readers get a complete picture of the reasons behind the criminalization, decriminalization or legalization of cannabis plants. To achieve this goal, this paper, mainly, tries to summarize the literature on cannabis and then place it in the Indonesian context. Indonesia rejected the WHO's recommendation on the Cannabis Legalization plan with the consideration and reason that cannabis or cannabis grown in Indonesia is different from cannabis grown in other countries such as Canada and Italy. To the public, do not use marijuana other than for health with the supervision of a doctor, if used excessively and without doctor's supervision, it will be very dangerous for health.

Methods

This research is normative juridical law research has a tendency to image law as a prescriptive discipline where only looking at law from the perspective of its norms which of course is descriptive, this research is carried out in real conditions with the aim of being able to find existing facts to be used as data fillers in this research so that later the problem solving point will also be found. This research is focused on analyzing how the Legal Problems and Implications of Cannabis Plants (*Ganja*) in Indonesia (Rifa'i, 2023).

Results and Discussions

A. Legal Framework for Cannabis in Indonesia

There is a purpose for the law. Additionally, the law serves a purpose in safeguarding human interests. Cannabis is still classified as a group I narcotic, which is specified in Law Number 35 of 2009 about Narcotics, and its objective is to regulate the order and behavior of the community in order to achieve the goals that the law is intended to achieve. All plants of the cannabis genus, as well as any of their parts, such as seeds, fruits, straw, processed cannabis plant products, or plant parts like hashish and resin. The same claim is also made in the Health Minister's Regulation Number 30 of 2023 on Modifications to the Narcotic Classification. Although the regulations of International Law on Narcotics, especially cannabis plants, have

changed, the change in the classification of cannabis in Indonesia remains on the principle that cannabis cannot be used as medicine. in the regulations of the narcotics law do not specifically explain to users in an emergency to maintain their lives (Haris et al., 2024). The regulations of the narcotics law in the provisions of article 1 only mention abusers, addicts, and dependence, this is a question of what if a person is in an emergency/critical condition of the disease he suffers from to be able to use class I narcotics of the type of marijuana to be able to recover from the disease he suffers in order to maintain his life.

There were laws governing narcotics prior to Indonesia's independence. The Verdoovende Middelen Ordonnantie (VMO) of 1927 contained regulations governing it. Since marijuana is included by the 1925 International Opium Convention, it is prohibited by this law and must abide by the import certification and export authorization procedures. With reference to the Dutch East Indies' opium monopoly, VMO seeks to both manufacture and use opium. Cannabis is frequently used in place of opium. Two narcotics and psychotropics treaties were ratified by Indonesia upon its independence. Specifically, the 1971 Psychotropic Convention and the 1961 Single Convention on Narcotics. "Law No.8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961" ratified the Single Convention and its Amendment Protocol. In the meantime, "Law No. 8 of 1996 concerning the Ratification of the Psychotropic Convention of 1971 has ratified the Psychotropic Convention of 1971". In order to address the issue of drugs and create Indonesia's Narcotics Law, the two measures may serve as the foundation for political legislation. The drug law itself has undergone three revisions. "Law No. 9 of 1976 concerning Narcotics" is the initial one. Following that, "Law No.22 of 1997 concerning Narcotics" took its place. "Law No. 35 of 2009 concerning Narcotics" eventually took its place. The 1961 Single Convention on Narcotics and its Amendment Protocol demonstrate that, under specific restrictions, cannabis can be used for research and treatment (Jamaludin et al., 2023).

So it is clearly described above that marijuana cannot be used for any needs, even for medical purposes, except for the sake of science and technology. So far, cannabis has had a pretty bad reputation, especially in health issues. The use of marijuana in improper and careless doses can indeed cause many health problems. Suppose addiction, anxiety, or brain damage related to memory. One study even found that the risk of heart attack increased within an hour of a person smoking marijuana. Even so, it feels unfair to look at marijuana only based on the adverse effects it causes. Marijuana also has a good side and can be used in terms of health if used appropriately (Syamsul Malik et al., 2022).

Marijuana prohibition in Indonesia has more negative effects than beneficial ones. The government disregards the possibility of a balloon effect from this type of prohibition by adopting this strategy. Making marijuana illegal will merely spur production and lead to the emergence of potentially more harmful strains. Furthermore, the fact that marijuana is still illegal in Indonesia accounts for the majority of the hazards associated with its usage. In practice, the decriminalization and regulation of marijuana circulation has been implemented in Uruguay; This also makes Uruguay the first country in the world to regulate cannabis in the market, from seeds to cannabis trade (Tarigan & Collins, 2019). It is different with Indonesia which provides a strict ban on the entry of marijuana into Indonesia, starting from the prohibition on growing, buying, trading and so on.

The Comparative Law Theory (*comparen de rechts theorie*) is used as an analytical knife, to compare the criminal law system in the Republic of Indonesia which takes a more criminal approach to the use of cannabis for the benefit of health services, with countries that have already legalized and regulated cannabis for the benefit of health services such as in the Netherlands and in the majority of states in the United States (Gumilang et al., 2023). Then Indonesia is a country of law, which means that every action taken by must be based on the law. This is regulated in the Constitution of the Republic of Indonesia, the constitution contains

three contents, including the guarantee of human rights, the limitation of power and the fundamental structure of the state. Among the 3 above, Indonesia also has various other legal rules, for example the crime of drug use. Drugs or narcotics themselves refer to a substance that can risk causing the effects of opium, for example, marijuana-type drugs (Syarif, 2025). The prospect of cannabis in Indonesia for the benefit of health services has actually gained international legitimacy, after the United Nations Narcotics Commission removed marijuana from its list of the most dangerous medicinal plants. Thus, it can encourage the Republic of Indonesia to immediately reform the criminal law by changing criminal policies that prioritize restorative justice related to the decriminalization of the use of Indonesian marijuana for the benefit of health services with several alternatives in terms of the latest law reform. Juridically, the provisions for the use of marijuana for medical purposes in Indonesia are specifically not regulated in Law Number 36 of 2009 concerning Health, but are only limited to the regulation of narcotics in general. This means that access to the use and cultivation of Cannabis is not given (Firdausi et al., 2022).

B. Legal Implications of Cannabis Plants (*Ganja*) in Indonesia

Indonesia is a country of law, which means that every action taken by the government must be based on the law. This is regulated in the 1945 Constitution of the Republic of Indonesia which is the constitution of the Indonesian state. The Constitution contains three material contents, including the guarantee of Human Rights, the limitation of power and the fundamental structure of the state. The Indonesian people want a prosperous life and their rights are fulfilled in all aspects. Regulations that apply dynamically are often unable to adapt to the plurality of society. The government has limited the use and availability of psychotropics and drugs that can be used for health. The narcotics law restricts the use of psychotropics for health purposes, one of which is marijuana.

Article 7 of Law No. 35 of 2009 concerning Narcotics is "Narcotics can only be used for the purposes of health services and or the development of science and technology" but many people in the world, especially in Indonesia, are abused in its use. In actuality, there is a vast drug trade. From a legal perspective, drug distribution in Indonesia is acceptable; the Narcotics Law only forbids using drugs without a license granted by the relevant legislation. Then Indonesia is also considered a narcotics emergency with several facts, including: a) Drug-related crimes involve trafficking groups as indiscriminate suppliers and abusers as demand; b) the number of Indonesian abusers is rising, a trend that is increasing year after year; c) the need for prison construction is growing, with the majority of prisons currently housing drug-addicted inmates; e) the community lacks enthusiasm for treating or rehabilitating families with drug addiction diseases; f) rehabilitation facilities do not grow in tandem with the growing number of abusers; g) society is misinformed about abusers (Nur Arfiani & Indah W.U, 2022).

The main reason why cannabis is known as an "Prohibited items" is due to the influence of global legal political policies. Only then, the global political policy reached Indonesia through international conventions. Originally in 1925, the first opium convention was held in The Hague which was attended by 13 countries. In the talk of the convention, the issue of cannabis plants and cannabis sap (hashish) was also discussed. At the time, cannabis plants were not the main topic of the convention. The subject of the convention was the opium plant, which at that time triggered many conflicts between countries. In essence, this set of global norms (especially in 1961) included marijuana as a class four narcotic in Schedule I along with deadly substances such as heroin and other opioid derivatives (Collins, 2020). The purpose of this classification is that marijuana is considered a substance that has no medical benefits and is therefore very susceptible to abuse because it contains psychoactive substances.

Despite the dynamics in global politics, the form of control over marijuana use is still the domain of each country. This means that even though the United Nations has reclassified

cannabis plants, the move does not mean changing national laws in various countries. The UN decision is only a symbol that there has been a change in perspective in global politics. The final decision remains the sovereignty of each country because each country may have a special reason to carry out strict control of cannabis plants. Therefore, if we look at the regulatory framework regarding the use of marijuana in various countries, broadly speaking, there are different variations and characteristics. In general, in the global literature, we can see that there are three types of regulatory frameworks for cannabis use. Every country has a reason behind the policy against the control of the cannabis plant. This paper tries to describe the variety of policies and the logic behind the choice of a country's policy on cannabis plants. These three types of frameworks are not absolute (dynamic) and there is a possibility of finding countries that fall into the category between the three slices. There are countries that are still tough on the use of marijuana. In this case, marijuana is still considered a very dangerous substance, following the logic of the 1961 convention, so strict control must be carried out for its circulation and use. The strict control includes the use of criminal law instruments, where marijuana users are threatened with a short prison sentence (between 3-6 years). Most countries in the world still follow harsh marijuana regulatory regimes. Based on 2023 data, at least most countries in the world (around 121, including Indonesia) are still using a harsh approach to cannabis plants. In addition to following the 1961 convention, the root of the argument for these countries to continue imposing harsh penalties on marijuana users mostly has to do with aspects of morality and communitarian values, rather than purely positive law. In this case, the use of marijuana that makes a person drunk will make a person unproductive. In fact, as individuals, the marijuana user has an obligation both to himself and his community (obligation to society). As a result of the use of marijuana, he will become a useless individual. This is where the role of the state is needed to control these substances to protect their citizens. This similar logic was then also embraced by Southeast Asian countries and even the United States in the 1930s (Chalermphanupap, 2023).

The existence of guarantees and obligations for the implementation of rehabilitation is not solely used as a result of narcotics abuse. The implementation of rehabilitation is the most important solution in reducing the number of narcotics trafficking cases by curing dependence to consume narcotics, so that the graph of narcotics abuse is expected to show a significant decrease (Farhan & Rustamaji, 2024). Actually, we can see the basic logic of the new Narcotics Law in the national Criminal Code (KUHP) which will only take effect in 2025. In the new Criminal Code, narcotics crimes are part of a special crime. Most of the articles on narcotics (including marijuana) that began in article 609 are still similar to the construction of article 112 of the Narcotics Law. Then the criminal approach in the new Criminal Code is still evident through Articles 103 and 105, where this article also does not remove the authority of a person to be subject to criminal punishment in addition to carrying out rehabilitation. This means that this logic is still the same as the old Narcotics Law, namely that prison and rehabilitation can be imposed simultaneously (Farhan & Rustamaji, 2024). This means that just to get a rehabilitation decision, a person can be detained first until there is a judge's decision to get rehabilitation. In fact, the power to deprive a person of independence is a fertile field for corrupt acts. It will still be very easy for law enforcement officials to sell this power. once again, the paradigm shift in the narcotics law will face severe challenges. The only possible reason that could justify the easing of marijuana law enforcement is the overcapacity itself and not due to a paradigm shift. However, the logic and stigma of evil against cannabis users will continue to be inherent because there is no paradigm shift.

The criminal sanctions imposed on narcotics addicts as self-victimizing victims are in the form of serving a sentence in prison, while the action sanctions given to narcotics addicts as victims are in the form of treatment and/or treatment organized in the form of rehabilitation facilities. The implementation system is that the period of treatment and/or treatment is counted

as the period of serving the sentence. "Law No. 22 of 1997 and Law No. 35 of 2009 concerning Narcotics have adhered to a double track system in the formulation of sanctions for the crime of narcotics abuse", although it is still free for judges to impose their verdicts/verdicts in handling cases of narcotics users/addicts, based on the judge's conviction in terms of sanctioning actions. "This can be proven by looking at and also understanding the criminal provisions against perpetrators of narcotics abuse for themselves which are contained in the provisions of" "Article 85 of Law No. 22 of 1997"...

Drug abuse can be categorized as a crime without a victim. According to Fletcher, victimless crime does not mean that this crime does not cause any victims at all, but the perpetrator is a victim. Crimes, which are criminally defined as crimes without victims, are very difficult to know, because they can carry out their actions very secretly and only known to certain people, therefore it is very difficult to eradicate the crime. This naming actually refers to the nature of the crime, namely the existence of two parties who make a transaction or relationship (which is prohibited) but the party who makes the transaction feels that he does not suffer losses to the other party. According to some criminal law experts, there are three fundamental problems. Solehuddin, argues that it is related to *onrecht*, *schult*, and *strafe*. Meanwhile, Packer and Chairul Huda mentioned the three problems related to crime, responsibility and punishment. Rehabilitation of narcotics addicts adheres to treatment theory because rehabilitation of narcotics addicts is a process of integrated treatment activities to free addicts from dependence. This is in accordance with the punishment intended in the treatment theory school, which is to provide treatment and rehabilitation to the perpetrator of the crime as a substitute for punishment. Criminals are people who are sick and need treatment and rehabilitation. The intended punishment in this school is to provide treatment and rehabilitation to the perpetrator of the crime in lieu of punishment (Putri, 2022). If cannabis plants are legalized, the social aspects that will arise in society, especially the younger generation, will become lazy. Juridically, the provisions for the use of marijuana for medical purposes in Indonesia are specifically not regulated in Law Number 36 of 2009 concerning Health, but are only limited to the regulation of narcotics in general. This means that access to the use and cultivation of Cannabis is not given (Murdomo et al., 2021).

Conclusions

That Indonesia is one of the countries that until now still does not allow the use of marijuana and is considered a dangerous plant. The main reason why marijuana has become an illegal item cannot be separated from the influence of global politics through international conventions. However, at this time, there is a paradigm shift in looking at the problem of cannabis plants. Starting from several countries that legalized and decriminalized to the UN decision in 2020 that removed cannabis plants from substances considered very dangerous. Opposition to the legalization of medical marijuana is guided by the adverse effects and lack of urgency for the use of this plant. The economic reasons behind the marijuana legalization policy are considered wrong because if it is legalized, there will be an increase in use and cause accidents that will cause various health problems that are fatal. Judging from the legal aspect, the legalization of marijuana will be contrary to the UN Single Convention 1961 and the UN Convention 1988 which discusses narcotics and illegal drugs. The convention states that acts related to the marijuana issue are criminal acts and must be subject to appropriate punishment, namely imprisonment. So that the legalization of marijuana in Indonesia has been confirmed to be impossible because the legalization of cannabis plants is considered to be contrary to legal, psychological, physical, social and order, security aspects. Not only that, but that prohibited plants are not legally allowed access to be consumed, meaning that they are only intended for health reasons, here it is clear that legal and moral aspects are still being fought for in making decisions about the legalization of cannabis laws and regulations in Indonesia.

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