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Legal Analysis of the Use of Medical Marijuana Against Indonesian Citizens Undergoing Marijuana Treatment Outside Indonesia

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Article

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Abstract

Legalization of medical marijuana in Indonesia, what are the legal consequences for Indonesian citizens who undergo marijuana treatment outside Indonesia. This study is intended to answer a fundamental question, namely whether Indonesia can legalize the use of marijuana for medical purposes when viewed from the existing legal framework, especially Law No. 35 of 2009 concerning Narcotics. This study will analyze the provisions of the Narcotics Law, including Article 8 paragraph (1) which prohibits the use of marijuana for medical purposes, and evaluate the potential for policy changes through instruments such as Permenkes No. 16 of 2022 which opens up opportunities for research and development of class I narcotics for scientific and pharmaceutical purposes. This study uses a normative legal research method in the form of normative legal analysis, namely finding doctrines, norms, and legal principles to overcome legal problems and is a way to answer the legal issues discussed. Regulation of Medical Marijuana Use in Indonesia The use of medical marijuana is still considered illegal in Indonesia based on Article 8 paragraph (1) of Law No. 35 of 2009 concerning Narcotics. This is contrary to medical developments in various countries that have legalized medical marijuana for health purposes. However, Minister of Health Regulation No. 16 of 2022 opens up opportunities for research and development of medical marijuana within the scope of science and technology.

INTRODUCTION

Assault constitutes one of the most prevalent forms of criminal offenses in Indonesia. This assertion is supported by data from the Central Statistics Agency (Badan Pusat Statistik), which reported a total of 51,106 assault cases in 2023—an increase from 34,542 cases in the previous year (Statistika 2023). The high incidence of assault cases suggests that this type of crime is relatively easy to perpetrate and transcends age boundaries. Both perpetrators and victims may come from various age groups, including children, adults, and the elderly. Assault is frequently motivated by emotions such as resentment, anger, hatred, or jealousy, and may result in either minor

or serious physical and psychological harm. Although Indonesian legislation does not explicitly define the term "assault" or criminal acts against the human body, legal scholars and judicial interpretations provide clarity. In particular, R. Soesilo, through jurisprudential analysis, asserts that assault encompasses any act that causes discomfort, pain, or injury to another person (UTAMI 2021)

Indonesia has carved its name as a nation that upholds the law. The basic idea of the Indonesian state is the rule of law , which is based on the belief that justice for a country must be upheld on the basis of fair and good law. To ensure legal security, a state of law requires that all government activities be carried out on the basis of equality, support democracy, and meet rational expectations. Therefore, it is the government's duty to control and monitor drug use through laws. In an effort to provide a deterrent effect and protect the public from the risk of uncontrolled drug use, drug abuse can be subject to legal consequences according to applicable regulations, including imprisonment and fines, as explained in Article 116 of the Narcotics Law which reads "Any person who without rights or against the law uses class I narcotics against another person or provides class I narcotics for use by another person. The minimum prison sentence is 5 years and the maximum is 15 years and a fine of at least IDR 1 billion and a maximum of IDR 10 billion".

Apart from the negative impacts of using narcotics, from another perspective narcotics are substances that can be useful as a treatment and for developing science, however on the other hand narcotics can also be very detrimental if used carelessly and without strict supervision in their use. (JEMMY ANANTHA CANIAGO 2019)

Cannabis sativa , or what we know as marijuana in medicine, is a plant that can traditionally be used as a treatment for a number of ailments such as pain, nausea, and seizures. Cannabis is recognized as a source of active components for modern medicine, especially because it contains cannabinoids such as tetrahydrocannabinol (THC) and cannabidiol (CBD). According to scientific studies, THC and CBD have a positive impact on the endocannabinoid system , which controls a number of body functions such as pain, sleep, and mood. As a result, cannabis and its active components are used as medicine to treat a number of diseases, including epilepsy, glaucoma, and schizophrenia in various countries.

The majority of people in the world often have a bad opinion of the marijuana plant. Although the marijuana plant has a bad reputation, marijuana also has a variety of extraordinary benefits even though it is less appreciated. In Indonesia, the legalization of marijuana as a medicine is a debated issue in society. (Syamsul Malik, Luriana Manalu, and Rikajuniarti 2022)

Marijuana in Indonesia is categorized into group 1 based on Law No. 35 of 2009 concerning Narcotics (Narcotics Law). Article 8 of the Narcotics Law, explicitly states that "marijuana is prohibited for use even for medical purposes." (Paoki and Hanafie 2021)

The cannabis plant not only provides health benefits, but also has benefits for use in industry. The cannabis plant called "Hemp" can be used in the production of textiles, paper, food, plastics, and building materials. This type of cannabis is known for its adaptability, strength, and long-lasting stability. This type of "Hemp" cannabis plant is a plant that is easy to produce and does not require the use of chemicals for its maintenance.

According to the Historical Dictionary of Indonesia , marijuana was present in Java in the 10th century and was used as a source of fiber and alcohol. However, the use of marijuana was not as widespread as the use of tobacco, opium, or betel. There were four marijuana-producing areas in the Dutch East Indies at that time: Batavia (Jakarta), Buitenzorg (Bogor), Ambon, and the northern part of Sumatra Island. In his writings on the use of Cannabis Indica and Cannabis Sativa in his book Herbarium Amboinense , German-Dutch botanist GE Rumphius was tasked with regulating the use of marijuana in Ambon (1741). The use of marijuana was first reported in Dutch East Indies newspapers around the end of the 19th century. The advertisements promoted marijuana cigarettes as a treatment for a variety of conditions, including asthma, cough and throat conditions, breathing difficulties, and insomnia. (Wahyu Andrianto, S.H. 2022)

Several provinces in Indonesia, especially Aceh, Minangkabau, and Bali, have long used marijuana in traditional medicine. Marijuana has been used in traditional medicine in Aceh, for example, since the 16th century. Marijuana leaves are combined with spices and used to cure various diseases. Marijuana is used as medicine in Minangkabau to cure stomachaches, toothaches, and headaches. Marijuana is also used as a traditional medicine in Bali to treat anxiety and pain.

The legalization of marijuana in Indonesia has become a topic of conversation in society, with some supporting it and others opposing it. Those supporting it argue that it is for medical purposes, while those opposing it consider marijuana to be dangerous for the younger generation. (Lokollo, Salamor, and Ubwarin 2020)

The Narcotics Law prohibiting the abuse of marijuana clashes with the perception of some people who know the benefits of marijuana as a treatment. They are forced to use it secretly. Like what happened in Sangau, West Kalimantan in 2017 when a civil servant named Fidelis Arie Sudewarto was arrested by the BNN because it was discovered that he was growing marijuana at home to treat his wife who was seriously ill. (Ayunda and Vina 2021)

Although the legality of its use is still questionable, traditional medicine using marijuana is still practiced by people in several provinces in Indonesia. The potential use of marijuana as a more advanced and scientific treatment has also been the subject of research, but still requires special approval from the government to be used.

This normative research looks at the perspective of how the legalization of marijuana from the perspective of the medical sector for health in law in Indonesia.

Seeing what has been done by several other countries that have legalized marijuana for medical purposes and to contribute knowledge for legal reform in Indonesia. So the author is interested in analyzing more deeply the legal perspective of the legalization of marijuana in Indonesia as a medical drug.

From the background of the problem, the following problem formulation can be drawn:

1. If Indonesian citizens undergo cannabis treatment abroad, can they still continue using it as medicine after returning to Indonesia?
2. What are the legal consequences for patients who undergo marijuana treatment abroad after returning to Indonesia?

This research is a form of development of previous research that discussed the legalization of medical marijuana in Indonesia in accordance with the Narcotics Law .This research will examine several aspects of the Narcotics Law and process them into normative data as a result of the research.

Several comparisons of similarities and differences in legal issues that will be discussed in this research compared to previous research are presented in the following.

1. "THE PERCEPTION OF STUDENTS OF THE FACULTY OF MEDICINE IN PEKANBARU ON THE IDEA OF LEGALIZING MEDICAL MARIJUANA IN INDONESIA"
   From the results of the research and discussion, it can be concluded that the awareness of students of the Faculty of Medicine Pekanbaru towards the idea of legalizing medical marijuana in Indonesia can be seen that the Learning about the idea of legalizing medical marijuana throughout Indonesia provides an illustration that the majority of students agree with the idea of legalizing medical marijuana in Indonesia.
2. "USING OF MARIJUANA AS A DRUG FROM THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW AND ISLAMIC CRIMINAL LAW (Analysis of Articles 7 and 8 of Law Number 35 of 2009 concerning Narcotics)" By: Agus Nuryadi
   Article 7 and article 8 have contradictory rules between the two, so they have many interpretations. The Use of Marijuana as a Drug in Indonesian Criminal Law, Law Number 35 of 2009 Concerning Narcotics in article 7 "Narcotics can be used for health service purposes". In article 8 "Narcotics class 1 are prohibited from being used for health service purposes", and Article 8 paragraph 2 "in limited quantities can be used by obtaining the approval of the minister on the recommendation of the head of the food and drug supervisory agency.

3. "COMPARATIVE ANALYSIS OF LEGAL SYSTEMS TOWARDS THE LEGALIZATION OF CANNABIS IN SEVERAL COUNTRIES" by : ANHAR ASWAN
   The results of this study indicate that changes to the legalization of marijuana will be quite difficult if not initiated by the government.
   This is in contrast to liberal countries, such as the United States, where most changes are initiated by civil society and then implemented by legislative bodies.
   Therefore , in the near future, we probably won't see any changes in marijuana regulations in socialist countries like China and Cuba, whose governments still have skeptical views on the benefits of marijuana legalization.

METHOD

The following research is a normative legal research, because in this research it will evaluate the derivative laws and regulations related to the research problem and based on theories, concepts and legal principles relevant to the research. (Zulfikri and Jaman 2022)

This research uses a normative legal research method. According to Peter Mahmud Marzuki, normative legal analysis is finding doctrines, norms , and legal principles to overcome legal problems and is a way to answer the legal issues discussed. (Marzuki 2007)

According to the previous definition, the type of research conducted is, because the author did not conduct field research and only relied on library materials as primary data for case analysis, then this thesis research is included in the category of normative legal research. Research on legal principles, legal systematics, legal synchronization, legal history, and comparative law are topics that are usually discussed in legal research with a normative approach, which is also carried out by utilizing secondary materials from library materials using a descriptive analysis approach, facts and data that have been collected are analyzed, described and summarized. (Ayunda and Vina 2021)

The Statute Approach is an approach that uses legislation and regulations. The statute approach according to Peter Mahmud Marzuki " Statue Approach is carried out by examining all relevant regulatory laws related to the problem being handled". (Prof. Dr. Peter Mahmud Marzuki, SH., M.H. 2022)

The sources of legal materials in this study use primary legal materials and secondary legal materials, in the form of writings, previous research and legal materials on regulations governing the use of marijuana for medical purposes.

Primary legal materials consist of several laws and regulations arranged hierarchically, the contents of which have binding legal force for the Indonesian people, namely legislation. Primary legal materials in this study include several laws and regulations related to this study, some of which are as follows:

1. "LAW OF THE REPUBLIC OF INDONESIA NUMBER 35 OF 2009 CONCERNING NARCOTICS";
2. "LAW OF THE REPUBLIC OF INDONESIA NUMBER 36 OF 2009 CONCERNING HEALTH";
3. "REGULATION OF THE MINISTER OF HEALTH OF THE REPUBLIC OF INDONESIA NUMBER 5 OF 2020 CONCERNING CHANGES TO THE CLASSIFICATION OF NARCOTICS";
4. "REGULATION OF THE MINISTER OF HEALTH OF THE REPUBLIC OF INDONESIA NUMBER 16 OF 2022 CONCERNING PROCEDURES FOR IMPLEMENTING THE PRODUCTION AND/OR USE OF NARCOTICS FOR THE INTERESTS OF DEVELOPING SCIENCE AND TECHNOLOGY."

Secondary legal materials are supporting legal sources that come from journals, books, texts, scientific studies, legal cases, relevant expert symposiums, and other reading materials that can be used as references for writing. Secondary legal sources in this study refer to legal documents that are not binding but are substantive laws that can explain primary legal sources.

Here are some ways to collect legal information for normative legal analysis on the legalization of marijuana for medical use in Indonesia in accordance with the laws in force in Indonesia:

1. Analysis of research and supporting literature documents and collecting information data on narcotics and drug laws, health laws relating to the use of narcotics, and material on the legalization of marijuana as a medicine and for other medical purposes;
2. Case studies and reviewing cases of the use of marijuana as medicine in Indonesia and other countries;
3. Comparative research study, by comparing Indonesian laws and policies with other countries that have approved the use of marijuana as a medicine.

The form of normative legal material analysis technique for the legalization of marijuana for medical purposes in Indonesia according to applicable regulations:

1. Identification of laws and regulations related to narcotics and drugs: Searching for and identifying laws and regulations related to narcotics and drugs, including regulations governing the use of marijuana as a medicine in Indonesia;
2. Content analysis of regulations: Conducting content analysis of the regulations found and identifying matters relating to the legalization of the use of marijuana as a medicine in Indonesia;
3. Legal doctrine review: Reading and reviewing legal doctrines, such as books and articles related to the legalization of the use of marijuana as a medicine;

4. Comparative approach: Comparing regulations and policies related to the use of cannabis as medicine in Indonesia with other countries that have legalized the use of cannabis as medicine;
5. Compliance with human rights: Analyzing the compatibility of the legalization of the use of marijuana as a medicine with the principles of human rights and public health principles applicable in Indonesia;
6. Compliance with national development goals: Analyzing the compatibility of legalizing the use of marijuana as a drug with national development goals and government programs related to health and drug control in Indonesia.

RESULTS AND DISCUSSION

The use of marijuana for medical purposes is still a controversial topic in Indonesia, raising debates between medical needs, legal considerations, and social values. Although several countries, such as Canada, Israel, and several states in the United States, have legalized medical marijuana for its therapeutic potential in treating conditions such as epilepsy, cancer, and chronic pain, Indonesia remains consistent in prohibiting the use of marijuana in any form . This is based on the provisions of Article 8 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, which expressly states that "Class I narcotics are prohibited from being used for health service purposes." The classification of marijuana as a Class I narcotic reflects the government's concerns about the potential for abuse and its negative impact on public health, as well as efforts to maintain morality and social order. However, on the other hand, there are demands from various parties, including health activists and patients, to consider the legalization of medical marijuana on humanitarian grounds and scientific evidence showing its benefits. Therefore, an in-depth study is needed involving medical, legal, and social aspects to evaluate whether the current policy is still relevant or needs to be revised to accommodate scientific developments and community needs." (Wulandar 2023)

Some Indonesian citizens choose to undergo medical cannabis-based treatment abroad, such as in Thailand, Australia, or Canada, where the use of cannabis for medical purposes has been legalized and strictly regulated. This decision is often made by patients or families of patients who are facing serious medical conditions, such as refractory epilepsy, cancer, or chronic pain, which have not responded adequately to conventional treatment. However, the main question that arises is whether they can continue the therapy after returning to Indonesia, considering that the applicable legal provisions in the country are still very strict and prohibit the use of cannabis in any form. Based on Article 8 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, cannabis is categorized as a class I narcotic, which means that its use for medical purposes is also prohibited. This raises a legal and ethical dilemma, because patients who have felt the benefits of medical cannabis therapy abroad are potentially facing legal sanctions if they try to bring or use medical cannabis in Indonesia. In addition,

the absence of a legal mechanism that accommodates this kind of medical need complicates the situation, so dialogue is needed between the government, legal practitioners, medical personnel, and the community to evaluate existing policies. Should Indonesia consider medical exemptions in its drug regulation, or should it maintain a zero-tolerance approach? This question is becoming increasingly relevant as science advances and awareness of the therapeutic potential of medical cannabis grows.(Asrori and AstutI 2021)

Under the law in force in Indonesia, there is no exception for patients who have undergone medical cannabis therapy abroad to continue the treatment in the country. This is emphasized by the provisions of Article 127 paragraph (1) of Law No. 35 of 2009 concerning Narcotics, which states that narcotics users can be subject to criminal sanctions, unless their use is based on a permit for the purposes of research and scientific development. Cannabis, which is categorized as a class I narcotic, is not recognized as part of health services in Indonesia, so the use or possession of medical cannabis, even for medicinal purposes, is still considered unlawful. Indonesia's legal approach to medical cannabis is still very repressive and does not accommodate the medical needs of patients, in contrast to countries such as Thailand or Canada that have adopted progressive regulations. This strictness of the law creates a dilemma for patients who depend on medical cannabis therapy, because they are forced to choose between stopping effective treatment or facing legal risks. Therefore, policy reform is needed that takes into account scientific evidence and medical needs, while maintaining the principle of preventing drug abuse. Some researchers suggest that Indonesia study the regulatory models of other countries that have successfully integrated medical cannabis into the health system without sacrificing strict legal controls. (Ningsih 2022)

Minister of Health Regulation (Permenkes) No. 16 of 2022 concerning Amendments to Permenkes No. 7 of 2018 concerning Production and Research Facilities for Class I Narcotics for Scientific and Pharmaceutical Interests opens up new opportunities for research and production of class I narcotics, including cannabis, for scientific and pharmaceutical purposes. This change marks a progressive step in Indonesian health policy, as previously class I narcotics, such as cannabis, were completely prohibited for use in health services. According to Article 2 of Permenkes No. 16 of 2022, research and production facilities for class I narcotics can be permitted with strict requirements, including intensive supervision and a clear purpose for scientific and pharmaceutical development. This highlights the importance of a strict yet flexible regulatory framework to enable cannabis-based medical research, while minimizing the risk of abuse. This means that there is a possibility of future policy revisions, allowing for the use of medical cannabis in Indonesia in a more controlled context. However, its implementation requires coordination between institutions, including the National Narcotics Agency (BNN), the Ministry of Health, and research institutions, to ensure that the use of medical marijuana is truly limited to medical and

scientific interests. The successful integration of medical marijuana into the health system depends on public education, training of medical personnel, and a transparent monitoring system. Thus, Permenkes No. 16 of 2022 can be the foundation for a paradigm shift in Indonesia's narcotics policy, towards a more evidence-based and public health-oriented approach. . (Ramadhani 2021)

Changes in medical cannabis regulations in several countries, such as Canada, Israel, and several states in the United States, have opened up wider access for patients seeking alternative treatments for certain medical conditions, such as refractory epilepsy, multiple sclerosis, and chronic pain. Countries that have legalized medical cannabis tend to adopt an evidence-based approach to evaluating the benefits and risks of medical cannabis use. Regulations in these countries typically involve a strict legal framework, including prescription requirements, patient monitoring, and dose restrictions, to ensure that medical cannabis use remains safe and controlled. For example, in Canada, medical cannabis is regulated by requiring approval from licensed medical personnel and purchase through official channels overseen by the government. Flexible yet structured regulations can reduce abuse while ensuring access for patients in need. In Indonesia, although cannabis is still categorized as a class I narcotic under Law No. 35 of 2009, Minister of Health Regulation No. 16 of 2022 has opened up opportunities for cannabis research and development in scientific and pharmaceutical contexts. This change shows the potential for Indonesia to learn from regulatory models from other countries to create a balanced policy between preventing abuse and fulfilling medical needs. Thus, an evidence-based approach and measured regulation can be key to integrating medical cannabis into the health system responsibly. (Hasnabila and Rasji 2023)

An Indonesian citizen who has undergone medical marijuana treatment abroad and returns to Indonesia remains subject to national law. Article 113 paragraph (1) and (2) of the Narcotics Law stipulates that anyone who produces, imports, exports, or uses class I narcotics without a permit can be subject to criminal penalties with a maximum penalty of 15 years in prison and a fine of up to IDR 10 billion. (Ramadhani 2021) Article 127 paragraph (1) also states that narcotics users for personal gain can be punished with a maximum of 4 years in prison. However, there is an alternative rehabilitation for users who meet the requirements based on a court decision. (Pasaribu 2024)

In terms of legal practice, the case of Fidelis Arie Sudewarto in 2017 is a clear example of how the use of medical marijuana in Indonesia still faces strict and inflexible regulatory obstacles. Fidelis was arrested for growing marijuana to treat his wife's chronic illness, despite evidence that the marijuana provided significant medical benefits for his wife's condition.

This case illustrates the tension between urgent medical needs and existing legal provisions, particularly Articles 111 and 113 of Law No. 35 of 2009 concerning

Narcotics, which prohibit the cultivation, possession, and use of marijuana without exception for medical purposes. Cases like this demonstrate the need for policy reform that takes into account humanitarian aspects and scientific evidence, while maintaining the principle of preventing drug abuse. In addition, the Fidelis case also highlights the absence of a legal mechanism that allows the use of medical marijuana in emergency situations or as a last resort for patients who do not respond to conventional treatment.

Minister of Health Regulation No. 16 of 2022, which opens up opportunities for research and production of class I narcotics for scientific and pharmaceutical purposes, can be an initial step towards a more comprehensive policy revision. However, deeper changes are needed, including amendments to the Narcotics Law, to accommodate the medical needs of the community without violating existing legal principles. The case of Fidelis Arie Sudewarto is a reminder that Indonesia's narcotics policy needs to balance law enforcement and protection of the right to health. (WIKY FINALDI PUTRA 2022)

More open regulation of medical cannabis use could reduce the criminalization of patients seeking alternative treatments for certain medical conditions, such as epilepsy, cancer, or chronic pain. Countries such as Thailand and Canada have implemented regulatory systems that allow patients to legally access medical cannabis, with strict oversight to ensure the safety and effectiveness of the treatment.

Thailand revised to allow medical cannabis use for therapeutic purposes (the desired outcome of medical treatment , commensurate with the intended purpose of treatment, both anticipated and unanticipated), including government-supervised production and distribution. Canada regulates medical cannabis use through a system of prescriptions issued by licensed health care providers, allowing patients to obtain medical cannabis without the risk of criminalization. A more open and evidence-based regulatory approach has reduced the social and legal stigma against patients who rely on medical cannabis, while creating a more equitable and humane system.

Indonesia, where marijuana is still categorized as a class I narcotic based on Law No. 35 of 2009, cases such as Fidelis Arie Sudewarto (2017) show that the absence of regulations that accommodate medical needs can result in the criminalization of individuals who act on humanitarian grounds. Therefore, learning from countries such as Thailand and Canada can be a reference for Indonesia to develop a balanced regulatory framework, which allows legal and controlled access to medical marijuana, while still preventing abuse. Thus, more open regulations can not only reduce the legal burden on patients, but also improve their quality of life through safe and effective treatment . (Nur Arfiani and Indah Woro Utami 2022)

The right to adequate medical treatment is part of human rights recognized internationally and nationally, as stated in various legal instruments and constitutions. Internationally, Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of every person to enjoy the highest

attainable standard of physical and mental health. At the national level, Article 28H paragraph (1) of the 1945 Constitution explicitly 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 environment and has the right to obtain health services." This provision is reinforced by Article 4 of Law No. 36 of 2009 concerning Health, which emphasizes that everyone has the right to health, including access to comprehensive health services. However, in the context of the use of medical marijuana, this provision conflicts with Law No. 35 of 2009 concerning Narcotics, which prohibits the use of marijuana for medical purposes.

Restricting access to alternative treatments, such as medical cannabis, can be considered a violation of human rights, especially for patients who do not respond to conventional treatment. Therefore, harmonization is needed between drug regulations and the constitutional right to health, so that existing policies not only fulfill the principles of law enforcement, but also guarantee the fulfillment of citizens' basic rights to receive adequate treatment. Thus, policy revisions that take into account human rights aspects and scientific evidence are important to create a more inclusive and equitable health system. (ARFILA 2023)

In addition, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has been ratified by Indonesia through Law No. 11 of 2005, emphasizes that every individual has the right to the highest attainable standard of health. This right includes access to effective medical services, medicines and treatment, as stipulated in General Comment No. 14 of the UN Economic, Social and Cultural Committee, which states that the right to health is not only limited to basic health services, but also includes the availability of essential medicines and alternative treatments that have been scientifically proven.

Ratification of the ICESCR requires Indonesia to align its domestic policies with international standards, including in terms of fulfilling the right to health. However, this provision is in conflict with Law No. 35 of 2009 concerning Narcotics, which prohibits the use of medical cannabis despite scientific evidence showing its therapeutic benefits. Limited access to medical cannabis-based treatment can be considered a violation of the right to health, especially for patients with serious medical conditions who do not respond to conventional treatment. Therefore, a policy revision is needed that takes into account the principles of the ICESCR and the latest scientific evidence, so that Indonesia can fulfill its international obligations while guaranteeing the constitutional right of its citizens to health. Thus, harmonization between national law and international standards is key to creating a fair and inclusive health system. (Ramadhani 2021)

Human rights related to access to treatment need to be clarified in the Indonesian legal system, considering that current provisions still create uncertainty and injustice for patients who need alternative treatments, such as medical cannabis. The right to

health, including access to effective treatment, is an integral part of human rights guaranteed by the constitution and international instruments, such as Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which has been ratified by Indonesia through Law No. 11 of 2005. However, Law No. 35 of 2009 concerning Narcotics still classifies cannabis as a class I narcotic, the use of which is prohibited for medical purposes, thus creating legal barriers for patients who need medical cannabis to treat conditions such as refractory epilepsy, cancer, or chronic pain.

Criminalization of patients who use medical cannabis not only violates the right to health, but can also worsen their physical and psychological condition. Therefore, legal reform is needed to ensure that patients who need medical cannabis do not face legal risks, while still maintaining the principle of preventing abuse. Permenkes No. 16 of 2022, which opens up opportunities for research and production of class I narcotics for scientific and pharmaceutical purposes, can be the first step towards more humane and evidence-based regulations. Thus, the Indonesian legal system needs to integrate human rights principles into health policies, so that patients can obtain the treatment they need without fear of legal consequences.

Discussion of Related Regulations

1. Republic of Indonesia Law Number 35 of 2009 concerning Narcotics :
    - Article 4 : Guaranteeing the availability of narcotics for medical and research purposes.
    - Article 7 : Narcotics may only be used for health services and research.
    - Article 8 paragraph (1) : Class I narcotics are prohibited for health services.
    - Article 113 and Article 127 : Regulate criminal sanctions for illegal narcotics users.(Republik Indonesia 2009a)
2. Republic of Indonesia Law Number 36 of 2009 concerning Health :
    - Article 5 paragraph (1) : Everyone has the same rights to obtain health services.
    - Article 8 : Everyone has the right to safe and quality health services.(Republik Indonesia 2009b)
3. Regulation of the Minister of Health of the Republic of Indonesia Number 5 of 2020 concerning Changes to the Classification of Narcotics :
    - This regulation updates the classification of narcotic drugs and allows for evaluation of their use in medical research.(REPUBLIK INDONESIAKEMENTERI KESEHATAN 2020)
4. Regulation of the Minister of Health of the Republic of Indonesia Number 16 of 2022 concerning Procedures for Organizing the Production and/or Use of Narcotics for the Interests of Science and Technology :
    - Article 2 paragraph (1) : Class I narcotics may only be used for research.

- Article 3 paragraph (1) : Production of narcotics for research may only be carried out by certain institutions.
- Article 4 : The use of class I narcotics must obtain permission from the Minister of Health.(Republik Indonesia 2022)

The use of medical marijuana has become a complex topic of debate in various countries, including Indonesia. As a legal writer and researcher, it is important to understand that developing regulations that allow the use of medical marijuana within strict limits requires a comprehensive and multidisciplinary approach. These regulations must not only consider medical and public health aspects, but also legal, social, and moral aspects. In the legal context, these regulations must be designed to ensure that the use of medical marijuana is not misused for non-medical purposes, such as recreation or other illegal activities.

The regulation in question must include a clear definition of what is meant by "medical cannabis". Legally, medical cannabis can be defined as a product derived from the Cannabis sativa or Cannabis indica plant that is used for medicinal purposes, with the content of active compounds such as cannabidiol (CBD) and tetrahydrocannabinol (THC) strictly regulated. The regulation must also specify strict limitations, such as the types of diseases or medical conditions that can be treated with medical cannabis, the permitted dosage, and the method of use, for example, in the form of oil, tablets, or inhalation.

From a legal perspective, this regulation must contain clear provisions regarding who is authorized to issue permits for the use of medical marijuana, both for patients and for medical institutions that provide it. In addition, there needs to be a strict monitoring mechanism to ensure that medical marijuana does not leak into the black market or is used illegally. This can be done through cooperation between health institutions, the police, and the food and drug regulatory agency. Violations of this regulation must be subject to strict legal sanctions, either in the form of fines, revocation of permits, or criminal action.

It is important to understand that encouraging further research into the benefits and risks of medical cannabis is a crucial step in creating a fair, effective, and evidence-based regulatory framework. This research is not only important from a medical perspective, but also has significant legal implications. Good regulation must be based on strong empirical data, so that legal decisions can balance the potential therapeutic benefits of medical cannabis with the potential risks to both individuals and society.

Medical cannabis research should be clear about what constitutes medical cannabis and how it differs from recreational cannabis use. Legally, medical cannabis can be defined as a product derived from the Cannabis sativa or Cannabis indica plant used for medicinal purposes, with strictly regulated levels of active compounds such as cannabidiol (CBD) and tetrahydrocannabinol (THC). This research should explore a range of aspects, including the effectiveness of medical cannabis in treating specific

conditions such as epilepsy, chronic pain, or multiple sclerosis, safe dosages, methods of use, and short-term and long-term side effects.

It is important to understand that amending the legislation to provide space for the use of medical marijuana on a limited and controlled scale is a strategic step that requires a holistic approach. This amendment is not only intended to accommodate the medical needs of patients who require marijuana as part of their therapy, but must also ensure that the use of medical marijuana is not abused or has a negative impact on society. In the legal context, the amendment must be carefully designed to create a balance between the individual's right to receive treatment and the public interest in maintaining order and security.

Legally, medical cannabis can be defined as a product derived from the Cannabis sativa or Cannabis indica plant used for medicinal purposes, with the content of active compounds such as cannabidiol (CBD) and tetrahydrocannabinol (THC) strictly regulated. The amendment must set strict limitations, such as the types of diseases or medical conditions that can be treated with medical cannabis, the permitted dosage, and the method of use (for example, in the form of oil, tablets, or inhalation). In addition, the amendment must include provisions regarding who is authorized to issue permits for the use of medical cannabis, both for patients and for medical institutions that provide it.

Amendments to allow for limited and controlled use of medical marijuana are an important step in balancing medical needs with legal and social interests. These amendments must be carefully designed, involve various stakeholders, and be continuously evaluated to ensure their effectiveness. In this way, medical marijuana can become a useful tool in the world of health without causing significant negative impacts on society.

This education should include information about the benefits of medical marijuana in treating specific conditions such as epilepsy, chronic pain, or multiple sclerosis, safe dosages, methods of use, and short-term and long-term side effects. It should also explain the risks of abuse, including mental health impacts, dependence, and the potential for recreational use.

Education should include efforts to reduce the negative stigma surrounding medical cannabis, while still upholding the precautionary principle. In addition, there needs to be ethical consideration of the patient's right to receive accurate and comprehensive information, while still protecting the interests of the wider community. This education should involve a variety of stakeholders, including patients, health care providers, regulators, and the general public.

Taking the above recommendations into account, Indonesia can take a progressive step in drug policy, without neglecting the aspects of safety and strict supervision. Overall, taking the above recommendations into account, Indonesia has the opportunity to take a progressive step in drug policy. This step can provide benefits

to patients, encourage research, and open up new opportunities in the pharmaceutical industry. However, this policy must be balanced with a strong commitment to the aspects of safety and strict supervision, as well as consideration of social and ethical impacts. With a balanced approach, Indonesia can create a more humane, effective, and sustainable drug policy, without neglecting the interests and safety of the community.

CONCLUSION

Based on the discussion outlined in Chapter IV, it can be concluded that the Regulation of Medical Marijuana Use in Indonesia The use of medical marijuana is still considered illegal in Indonesia based on Article 8 paragraph (1) of Law No. 35 of 2009 concerning Narcotics. This is contrary to medical developments in various countries that have legalized medical marijuana for health purposes. However, Minister of Health Regulation No. 16 of 2022 opens up opportunities for research and development of medical marijuana within the scope of science and technology.

Patients who receive medical marijuana treatment abroad can still be subject to legal sanctions if they continue to use it in Indonesia, because the provisions of Law No. 35 of 2009 concerning Narcotics do not provide an exception for the use of medical marijuana. Article 113 and Article 127 of the Narcotics Law explicitly stipulate penalties for those who use, possess, or distribute class I narcotics, including marijuana, without official permission from the government.

The use of medical marijuana abroad is done legally and based on a medical prescription, it is not recognized by Indonesian law, so patients who bring or use medical marijuana domestically are still at risk of facing criminal charges.

The case of Fidelis Arie Sudewarto (2017) is a clear example of how Indonesian law still does not accommodate the use of medical marijuana, even in a humanitarian context. Fidelis was arrested for growing marijuana to treat his wife who suffered from a chronic illness, despite evidence that the marijuana provided significant medical benefits. Cases like this demonstrate the need for policy reform that takes into account humanitarian aspects and scientific evidence, while maintaining the principle of preventing drug abuse.

Changes to the Narcotics Law are needed to accommodate the use of medical marijuana within certain limits, as well as legal mechanisms that allow patients to access alternative treatments without facing the risk of criminalization. In this way, Indonesian law can be more in line with human rights principles and the medical needs of the community.

In line with Article 12 of the ICESCR which states that state parties must take steps to ensure access to effective health services, medicines and treatment. Article 28H paragraph (1) of the 1945 Constitution also guarantees the right of every citizen

to live in physical and spiritual prosperity, including the right to obtain adequate health services and treatment.

The policy of prohibiting medical marijuana in Indonesia, which is based on Law No. 35 of 2009 concerning Narcotics, still leaves serious debate in the context of human rights. Restricting access to alternative medicine, such as medical marijuana, can be considered a violation of the right to health, especially for patients with serious medical conditions who do not respond to conventional treatment.

The prohibition policy on medical marijuana in Indonesia needs to be reviewed to ensure that citizens' constitutional rights to health are not sacrificed for the sake of compliance with rigid regulations. Thus, harmonization of national law and Indonesia's international obligations is needed to create a policy that is fairer and oriented towards the welfare of the community.

Countries such as Thailand, Australia, Canada, and the Netherlands have legalized medical marijuana by implementing strict and structured regulations, so they can be a valuable reference for Indonesia in developing related policies.

Thailand revised regulations in 2019 to allow for the use of medical marijuana for therapeutic purposes, including government-supervised production and distribution. Thailand also allows patients with certain medical conditions, such as epilepsy and cancer, to access medical marijuana through a doctor's prescription.

Canada regulates the use of medical cannabis through a strict licensing system, in which patients must obtain approval from a licensed health care professional and purchase medical cannabis through official channels overseen by the government.

Australia has also adopted a similar model, where medical cannabis can only be accessed through a special scheme involving medical approval and strict monitoring by authorized health agencies.

The Netherlands, known for its progressive cannabis policy, has long allowed the use of medical cannabis through specialty pharmacies with a doctor’s prescription. The success of these countries in integrating medical cannabis into their healthcare systems is supported by a clear regulatory framework, public education, and transparent monitoring systems. Indonesia can learn from these models to develop a balanced policy that allows access to medical cannabis for patients who need it, while preventing abuse and ensuring strict controls.

Thus, the experiences of these countries can be a valuable reference for Indonesia in creating regulations that are evidence-based and oriented towards public welfare.

The lack of regulations that accommodate the use of medical cannabis in Indonesia means that patients with certain medical conditions, such as refractory epilepsy, cancer, or chronic pain, do not have access to alternative treatments that have been proven effective in various countries. This is mainly due to the provisions of Law No. 35 of 2009 concerning Narcotics, which classifies cannabis as a class I narcotic and prohibits its use for medical purposes. As a result, patients who need medical

cannabis are often forced to seek treatment abroad or even take legal risks by using cannabis illegally. Therefore, a policy is needed that can balance drug control to prevent abuse and the patient's right to receive the best treatment.

Minister of Health Regulation No. 16 of 2022, which opens up opportunities for research and production of class I narcotics for scientific and pharmaceutical purposes, can be an initial step towards more inclusive regulations. However, further reforms are needed, including a revision of the Narcotics Law, to accommodate the medical needs of the community without sacrificing the principles of drug control. Thus, a balanced and evidence-based policy can ensure that patients get access to the treatment they need, while maintaining public safety and order.

SUGGESTION

Based on the research results obtained, basically this research went well. However, it is not a mistake if the researcher wants to put forward some suggestions that are hopefully useful for the progress of Indonesian law. The government needs to develop regulations that allow for the use of medical cannabis in a strict and controlled context, to ensure that patients with certain medical conditions have access to effective alternative treatments, while preventing potential abuse. These regulations could include a special licensing mechanism for patients who require medical cannabis, where the use of medical cannabis is only permitted with a prescription from a licensed medical professional and based on a clear diagnosis. In addition, authorized medical and research institutions also need to be given permission to conduct research, production, and distribution of medical cannabis for the purpose of scientific and pharmaceutical development.

Strict yet flexible regulations, such as those implemented in Canada and Thailand, have succeeded in ensuring access to medical cannabis for patients in need, while maintaining tight control over its production and distribution. Ministerial Regulation No. 16 of 2022 has opened up opportunities for research and production of class I narcotics, including cannabis, for scientific and pharmaceutical purposes. Further steps are needed to develop comprehensive regulations, including the establishment of a special regulatory body responsible for monitoring and evaluating the use of medical cannabis, as well as ensuring that its distribution is carried out only through official channels supervised by the government.

Structured and transparent regulations can create a balance between fulfilling patients' rights to health and controlling narcotics to prevent abuse. Further in-depth research into the benefits and risks of medical cannabis use should be developed to provide a comprehensive, evidence-based understanding. These studies should cover the pharmacological, clinical, and socioeconomic aspects of medical cannabis use, including its effectiveness in treating specific medical conditions such as refractory

epilepsy, chronic pain, and chemotherapy side effects, as well as potential long-term risks to mental and physical health.

Evidence-based research is essential to separate facts from myths and the social stigma that often surrounds marijuana. The data generated from this research can provide a solid foundation for policymakers in designing regulations that are more adaptive, inclusive, and responsive to the medical needs of the community. In addition, this type of research can also help reduce public and political resistance to the legalization of medical marijuana by presenting objective and accountable evidence.

These research efforts can be supported through collaboration between research institutions, universities, and medical personnel, as well as utilizing the regulatory framework that has been opened by Permenkes No. 16 of 2022 concerning research on class I narcotics for scientific and pharmaceutical purposes. Thus, the resulting policies will not only be more evidence-based, but can also ensure that the decisions taken truly consider the best interests of patients and society as a whole.

Amendments to Law No. 35 of 2009 on Narcotics need to be seriously considered to allow for the use of medical cannabis within certain limits, as has been successfully implemented in several other countries. Currently, the Narcotics Law classifies cannabis as a Schedule I narcotic, the use of which is prohibited for medical purposes, thereby blocking patients from accessing alternative treatments that have proven effective in various countries. Countries such as Canada, Thailand, and Israel have adopted strict but flexible regulatory frameworks, allowing for the use of medical cannabis for certain medical conditions, such as epilepsy, cancer, and chronic pain, while preventing abuse through a strict licensing and monitoring system.

Amendments to the Narcotics Law could include the addition of a clause that permits the use of medical marijuana for health purposes, with the condition that its use must be based on a medical prescription, supervised by an authorized institution, and limited to certain medical conditions that cannot be treated with conventional methods. In addition, the revision of the Narcotics Law also needs to consider the principles of human rights, especially the right to health as guaranteed by Article 28H paragraph (1) of the 1945 Constitution and Article 12 of the ICESCR which has been ratified through Law No. 11 of 2005. Thus, amendments to the Narcotics Law will not only open up access to more inclusive treatment, but also ensure that the policies taken remain in line with the principles of justice and public welfare.

Governments, academics, and medical personnel need to actively educate the public about the clear differences between medical marijuana and marijuana for abuse. Medical marijuana refers to the use of active components in the marijuana plant, such as cannabidiol (CBD) and tetrahydrocannabinol (THC), in controlled doses and under medical supervision to treat certain health conditions, such as epilepsy, chronic pain, or chemotherapy side effects. Meanwhile, marijuana for abuse is usually associated

with uncontrolled recreational use and has the potential to cause negative impacts on health.

A better understanding of these differences can reduce the negative stigma attached to cannabis, as well as increase public awareness of its therapeutic potential. Comprehensive education can also encourage policies that are more based on medical needs, as has been done in countries such as Canada and Thailand, where strict regulations are in place to ensure that medical cannabis is used safely and effectively. Indonesia must already undertake these educational efforts, which can be done through public campaigns, seminars, and collaborations between government agencies, universities, and health organizations. In doing so, a better understanding of medical cannabis will not only reduce public resistance, but also pave the way for more inclusive and patient-oriented policy reforms.

There needs to be a special agency or body that oversees the production, distribution, and use of medical marijuana. This agency can ensure that the use of medical marijuana is truly for health purposes and is not misused.

With more adaptive, research-based regulations that are in line with human rights principles, Indonesia can create a system that allows access to medical cannabis for patients in need, without neglecting the aspects of safety and strict supervision.

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