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## Decriminalizing Marijuana Use as an Alternative Medical Treatment

Bima Guntara<sup>1</sup> Nandang Sambas<sup>2</sup> Oksidelfa Yanto<sup>3</sup>

<sup>12</sup>Universitas Islam Bandung, Indonesia

<sup>3</sup>Universitas Pamulang, Indonesia

Correspondent: [dosen02148@unpam.ac.id](mailto:dosen02148@unpam.ac.id)<sup>1</sup>

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**ABSTRACT:** The discourse surrounding the legalization of Class I narcotics, particularly marijuana (*Cannabis Sativa*), as one of the alternative medical treatments, has been continuously debated for the past few years. Various studies have been advancing with technological progress, prompting some other countries to start legalizing marijuana for medical purposes with certain restrictions. In Indonesia, there is a clear law, namely Law Number 35 of 2009 concerning Narcotics, which imposes restrictions and prohibitions on the use of various narcotics. Violators of these regulations are subject to criminal sanctions. In this legal research, the author will conduct a literature study using a statutory approach, which involves examining all relevant laws and legal regulations related to narcotics and the legality of the policy on the use of Class I narcotics as alternative medical treatments, such as the 1945 Constitution of the Republic of Indonesia (UUD 45), Law Number 35 of 2009 concerning Narcotics, Law Number 17 of 2023 concerning Health, and Law Number 39 of 1999 concerning Human Rights. The research findings indicate that juridically, the Narcotics Law, especially Article 6 paragraph (1) letter a and Article 8 paragraph (1), prohibits the use of Class I narcotics for medical purposes, which is clearly contradictory to Article 28C paragraph (1) of the 1945 Constitution where every person has the right to develop themselves through the fulfillment of their basic needs, the right to education, and to benefit from science and technology, arts, and culture, for the purpose of improving their quality of life and the welfare of humanity. Furthermore, the Health Law does not specifically regulate the use of marijuana for medical purposes, but only addresses general regulations regarding the use of narcotics. It is hoped that the results of this research can become a reference for policy makers to legalize the use of marijuana as an alternative treatment.

**Keywords:** Decriminalization, Marijuana, Medical Treatment



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## INTRODUCTION

The discussion regarding the legalization of Class I narcotics, particularly marijuana (*Cannabis Sativa*), as one of the alternative medical treatments has been ongoing and widely debated in recent

years. It is commonly known that in the public perception, marijuana is viewed negatively, and there are regulations prohibiting its misuse as a narcotic substance. However, with the advancement of science and technology over time, there has been rapid progress leading to numerous research studies on the medical benefits of marijuana. Consequently, medical marijuana is no longer perceived as an illegal and harmful substance (Ismansyah, 2023).

One of the studies related to marijuana in the medical field is found in the journal *Molecular Cancer Therapeutics*, which explains that marijuana contains cannabidiol (CBD) and  $\Delta^9$ -Tetrahydrocannabinol (THC) that can kill a gene called "Id-1" which spreads cancer cells throughout the body. This research was later approved by the United States Food and Drug Administration (FDA), which stated that cannabidiol indeed provides benefits in the medical world with specific conditions and formulations, such as THC-based pills like ronalinol (marinol) and nabilone (cesamet) for treating post-chemotherapy nausea, and liquid epidiolex for epilepsy, Dravet syndrome, and Lennox-Gastaut syndrome (Wu, 2019).

Moreover, in several European countries and in the United States itself, the use of marijuana is not limited to recreational purposes but is also used in the treatment of serious diseases such as Alzheimer's and arthritis (Jeong et al., 2023; Teeple et al., 2023; Venetis et al., 2023). People in these countries understand that marijuana contains compounds believed to alleviate post-operative pain (Petzke, 2022).

The continuous development of these studies, supported by technological advancements, has led several other countries to begin legalizing marijuana for medical use with certain limitations. It is noted that as of 2022, more than 40 states in the United States have legalized the use of marijuana within medical boundaries and other specific limitations (Maciver, 2017). Some regions in certain countries also provide specific research facilities or spaces related to the use of marijuana as a medical treatment. However, amidst the many states and UN Single Convention signatories legalizing marijuana for medical use, in Indonesia, the use of marijuana and other types of narcotics remains highly restricted both in terms of regulation and research. This can be seen in how narcotics in Indonesia are classified into several categories, each with its own usage limitations (Shimamoto et al., 2023; Thakkar-Samtani et al., 2023; Yoon & Kim, 2022).

As is known, Indonesia's foundational principle is the rule of law, as articulated in Article 1 paragraph (3) of the 1945 Constitution. This article states that "Indonesia is a State based on the rule of law." As a country based on the rule of law, laws must be implemented on the basis of fairness, justice, and benefit to society. Every action taken by the state in upholding the law should be beneficial to society, ensuring that the state's existence in enforcing the law holds significance. Society requires this for the betterment of their lives (Yanto, 2020).

In Indonesia, narcotics refer to substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, that can cause a decrease or alteration in consciousness, loss of sensation, reduction or elimination of pain, and can lead to dependence. These substances are categorized into groups as specified in the law. Legally, regulations regarding all matters related to narcotics are governed by Law Number 35 of 2009 concerning Amendments to Law Number 22 of 1997 concerning Narcotics (Tlali et al., 2022; Wyder et al., 2015).

The mentioned groups refer to the classification of narcotics in Indonesia into three categories. Group 1 includes substances whose use is only permitted for scientific research and development purposes and cannot be used for health purposes. Group 2 comprises substances that can be used as a last resort in medical practice and for scientific research and development purposes. Group 3 is designated for medical needs, therapeutic purposes, and scientific research and development.

The classification of narcotics in Indonesia serves to separate their usage methods and mitigate potential risks associated with their use. This classification system aims to identify narcotics with the highest risk of dependence to those with the lowest risk, ensuring safe usage.

Legally, Class 1 narcotics are indeed intended for research and knowledge purposes. However, obtaining legal permission from the National Narcotics Agency (BNN) and the Ministry of Health to obtain samples of marijuana for research purposes is still necessary. Obtaining such permission is often challenging from the relevant authorities. Additionally, researchers must carefully consider potential side effects in the future when deciding to research narcotics for their potential legalization as medical alternatives, as well as other legal regulations regarding narcotics and their penalties.

The difficulties in obtaining permission to access samples of marijuana and other narcotics have led to a scarcity of studies related to the use of Class 1 narcotics in medical treatment in Indonesia. There is a lack of literature and research related to marijuana and other narcotics in Indonesia, resulting in various discussions questioning whether marijuana can be used for medical purposes or not. The lack of clarity due to insufficient literature on marijuana has led some parties to demand the official recognition of the use of narcotics, especially marijuana, as an alternative approach in medical treatment.

An effort to pursue the legalization of narcotics as an alternative treatment was submitted through a request for Material Testing to the Constitutional Court in 2020. In the state system, the Constitutional Court has the authority to test existing laws in Indonesia to ensure they align with the mandates of the 1945 Constitution and are adapted to the sociological conditions of societal and state life, considering that the legal framework in Indonesia often evolves in response to social developments. The request for Material Testing was submitted by several parties seeking legal permission to use Class 1 narcotics, specifically marijuana, for medical treatment of certain diseases. The applicants argued in their request that Article 6 paragraph (1) letter a and Article 8 paragraph (1) had restricted their constitutional rights to access healthcare. In the court's ruling, the judges of the Constitutional Court decided to reject the request for Material Testing submitted by the applicants.

The term "constitutional rights" refers to rights that are clearly regulated by law and guaranteed by the state. Article 28C paragraph (1) of the 1945 Constitution states that "Every person has the right to develop themselves through the fulfillment of their basic needs, the right to education, and the right to benefit from science, technology, arts, and culture to improve their quality of life and advance the welfare of all people." Article 28H paragraph (1) of the 1945 Constitution also explains that "Every person has the right to live prosperously, both physically and mentally, to have a place to live, to have a good and healthy living environment, and to receive health services." Additionally, Article 34 paragraph (3) of the 1945 Constitution states: "The state is responsible for providing adequate healthcare facilities and public service facilities."

On the other hand, the right to health is a fundamental part of constitutional rights that should be accessible to every individual and protected by the laws in place (Ardinata, 2020). Fulfilling the right to health is a fundamental task of the government that carries the risk of affecting the continuity of other human rights. The phrase "right to health" is not just about every person's right to live healthily and prosperously, but also about the need for every individual to access and enjoy the highest health standards comprehensively, as it is known that every human is born with the same inherent nature (Hartono, 2021).

The submission of a request for Material Testing regarding Article 6 paragraph (1) letter a and Article 8 paragraph (1) of the Narcotics Law indicates that the restriction on the use of Class 1

narcotics for health purposes has encroached upon the freedom of society to access healthcare facilities and services maximally, especially for individuals with specific medical conditions.

The debate over the status of Class 1 narcotics, specifically marijuana, in the medical field has sparked numerous opinions regarding the War on Drugs. Juridically, Indonesia clearly has Law Number 35 of 2009 concerning Narcotics, which imposes restrictions and prohibitions on the use of various narcotics in Indonesia, with criminal sanctions for violators. However, in reality, there are segments of society with specific medical conditions who, under compelling circumstances, require narcotic substances such as cannabis oil or other types for medical treatment to alleviate their medical conditions.

The Constitutional Court's decision to reject the request for Material Testing regarding Article 6 paragraph (1) letter a and Article 8 paragraph (1) of the Narcotics Law continues to be an issue that requires further in-depth research regarding the medical necessity of marijuana.

The problems that will be studied in this research are what is the history of the use of marijuana as a narcotic and how to use marijuana as an alternative medicine.

### **METHOD**

In conducting this research, the author has chosen to employ a type of library research known as normative juridical research. This means that the research will focus on analyzing law as norms, rules, legal principles, legal doctrines, and legal theories. This method also involves gathering data from various literature and previous studies to address the legal issues under investigation (Muhaimin, 2020).

Normative juridical research is often referred to as doctrinal research. By utilizing this approach, it is expected that the analytical results will uncover legal issues and the effectiveness of a law within its context as legislation that serves as the primary basis for human behavior.

In this legal research, the author will conduct a literature study using a statutory approach. This approach involves examining all laws and related legal regulations concerning narcotics and the legality of using Class I narcotics as alternative medical treatment. The laws that will be examined include the 1945 Constitution of the Republic of Indonesia (UUD 45), Law Number 35 of 2009 concerning Narcotics, Law Number 17 of 2023 concerning Health, and Law Number 39 of 1999 concerning Human Rights.

A child with cerebral palsy whose parents are members of the Wahana Keluarga Cerebral Palsy community in Yogyakarta used CBD oil, namely oil extracted from marijuana, to their child while living in Australia, 2016. Apart from that, there is also Ridanto Busono Raharjo, who uses marijuana extract to relieve chronic neuropathic pain in his right hand. He has suffered from this condition since he had a traffic accident in 1995. According to David Casarett, a medical marijuana researcher at the University of Pennsylvania, the majority of medical marijuana products and CBD oil generally contain high concentrations of CBD and very low THC so they do not cause a high.

## **RESULT AND DISCUSSION**

### **1. The History of Marijuana as a Narcotic**

The inclusion of marijuana in the same category as heroin, morphine, and cocaine can be traced back to the International Opium Convention of 1911-1912 in The Hague, Netherlands. This convention focused primarily on opium and its derivatives such as morphine, codeine, and heroin. Italy proposed a strict regulation of opium circulation, presented by the French delegate Henri Brenier, which would impose sanctions on its owners. He also requested that these rules be extended to the use and possession of marijuana. However, because Professor Rocco Santoliquido, the Italian delegate, was absent, this proposal was not further discussed (LGN, 2011).

Indonesia began enforcing the ban on marijuana use in 1927. The colonial government of the Dutch East Indies, influenced by international developments in controlling marijuana, issued a decree that prohibited its cultivation, import, export, production, and use, except for medical and scientific purposes with government authorization. Although the main focus was on opium and its derivatives, the decree also banned the cultivation of Indian hemp (marijuana) and outlined several restrictions on its use, possession, and distribution, some of which carried fines and/or short-term imprisonment. After declaring independence, the Indonesian government opted to continue using colonial regulations, even though marijuana did not pose a significant issue domestically.

The next stage involved the Single Convention on Narcotic Drugs, 1961, which resulted from the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs held in New York from January 24 to March 25, 1961. It was opened for signature on March 30, 1961.

The policy to combat drug crime was initially outlined in The United Nations' Single Convention on Narcotic Drugs 1961. This convention was essentially intended to (Muhammad, 2014):

- a. Create a single international convention that could be accepted by countries worldwide and replace separate international regulations on the control of drug abuse, which were previously covered by 8 different international agreements.
- b. Enhance methods of monitoring the circulation of narcotics and limit their use specifically for medical purposes and scientific development.
- c. Ensure international cooperation in monitoring the circulation of narcotics to achieve the aforementioned goals.

Based on that, it can be concluded that cooperation between countries in combating the illicit drug trade must be enhanced because it is extremely difficult for a single country to eradicate this global illicit drug trade alone. In this regard, transnational crime in the field of narcotics is increasing, leading to investigators facing different bureaucracies and legal systems that hinder the investigation process and even prevent prosecution. Various bilateral and multilateral agreements have been made between countries to address these issues, especially in handling drug-related crimes.

The Single Convention of 1961 lasted for 11 years before amendments were made from March 6 to March 24, 1972 in Geneva, resulting in a Protocol that was opened for signature on March 25, 1972, including by Indonesia. Indonesia transformed its commitment by ratifying it through Republic of Indonesia Law Number 7 of 1997 concerning the Ratification of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. This

decision was made considering that the Government of the Republic of Indonesia saw the need to actively participate alongside other global community members in efforts to combat illicit trafficking of narcotics and psychotropic substances. Therefore, Indonesia signed the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, in Vienna, Australia on March 17, 1989, and also ratified the Single Narcotic Convention of 1961 with Law Number 8 of 1976 and the Psychotropic Convention of 1971 with Law Number 8 of 1996, as well as enacting Republic of Indonesia Law Number 9 of 1976 concerning Narcotics (Hartanto, 2017).

The Republic of Indonesia signed the aforementioned Convention on July 28, 1961, with a reservation regarding Article 48 paragraph (2) on the obligation of dispute settlement in the International Court and a declaration concerning Article 40 paragraph (1) regarding which countries can participate in the Convention, as well as Article 42 which regulates territorial application. Similarly, Indonesia also signed the Protocol Amending the Single Convention on Narcotic Drugs of 1961 on March 25, 1972 (Kansil, 1991).

Considering the developments in domestic politics in Indonesia, the declaration regarding Article 40 paragraph (1) and Article 42 above needs to be withdrawn. Our country is currently fostering a just and prosperous society. To achieve this, it requires the full effort and thought of every Indonesian citizen. This goal will soon be achieved when the people are in good physical and spiritual health, free from the negative influences of narcotics, stimulants, sedatives, and alcoholic beverages (Kansil, 1991).

Therefore, especially the use of narcotics needs to be closely monitored, and preventive measures against narcotics abuse need to be implemented. Additionally, addicts in our country need to receive care, treatment, and rehabilitation to reintegrate them into society. Efforts to provide care and treatment for narcotics addicts can be carried out by the government or private entities that have obtained permission from the Minister of Health.

By Indonesia's participation in the Single Convention on Narcotic Drugs of 1961 and its amending Protocol, and ratifying them into law, international cooperation in the prevention and eradication of narcotics crimes can be ensured and strengthened. Furthermore, the provisions in the Single Convention and its amending Protocol generally do not conflict with Indonesia's interests and therefore can be accepted and used as a basis for formulating national legislation in the field of narcotics.

## **2. The Use of Cannabis as an Alternative Medical Treatment**

The issue of drug abuse in Indonesia is currently felt to be in a worrying state. As an archipelagic country with a strategic location, both economically, socially, and politically in the international arena, Indonesia has been contributing knowledge to prevent drug abuse and psychotropic substances, as well as combatting the illicit trafficking of narcotics and psychotropic substances (Sambas, 2022).

Utilizing the abundant growth of cannabis plants in Indonesia to prevent them from falling into the hands of the black market or being seized by enforcement agencies is crucial. This is because every confiscated item must be promptly destroyed, aligning with the realization of national policies and strategies that emphasize the swift destruction of evidence as a key effort in combating drug abuse in Indonesia (Taufik, 2021). Research on the compounds found in cannabis has shown two substances with potential medicinal benefits, namely Cannabidiol (CBD) and delta-9 tetrahydrocannabinol (THC) (Anwar, 20201).

On the other hand, marijuana use in Indonesia it is also used for purposes others, not just medical. In the Aceh region, local residents report forms primary use of marijuana, starting from cook or mix food, to mixed with coffee or used as herbal medicine for diabetes (Putri, 2016)

The health conditions in Indonesia are not significantly different, making the urgency of legalizing cannabis a consideration in meeting medical needs such as glaucoma, lung health, epilepsy, cancer cells, chronic pain, mental health, Alzheimer's, acne, diabetes, and HIV/AIDS (Andini, 2022).

A child with cerebral palsy whose parents are members of the Wahana Keluarga Cerebral Palsy community in Yogyakarta used CBD oil, namely oil extracted from marijuana, to their child while living in Australia, 2016. Apart from that, there is also Ridanto Busono Raharjo, who uses marijuana extract to relieve chronic neuropathic pain in his right hand. He has suffered from this condition since he had a traffic accident in 1995. According to David Casarett, a medical marijuana researcher at the University of Pennsylvania, the majority of medical marijuana products and CBD oil generally contain high concentrations of CBD and very low THC so they do not cause a high.

The Ministry of Health issued a cannabis research permit in 2015, through a letter signed by the Head of the Health Research and Development Agency number LB.02.01/III.03/885/2015 concerning Research Permits Using Cannabis. However, this research has not been carried out.

Up until now, Indonesia has established Law No. 35 of 2009 concerning Narcotics as the legal framework to address issues related to narcotics. To tackle the problem of drug abuse, Indonesia also formed a specialized organization in this field in 2002 called the National Narcotics Agency (BNN), governed by Law No. 35 of 2009 concerning Narcotics. Previously, the BNN was a non-structural organization established in accordance with Presidential Decree No. 17 of 2002, which was later revoked by Presidential Decree No. 83 of 2007.

To address the serious drug issues at present, People's Consultative Assembly Decree No. VI/MPR/2002 was enacted based on the General Session of the People's Consultative Assembly of the Republic of Indonesia's recommendation to the House of Representatives and the President of the Republic of Indonesia to amend Law No. 22 of 1997 concerning Narcotics.

The essence of the formation of Law No. 35 of 2009 concerning Narcotics has a noble purpose, which is to protect society from drug abuse and promote health-related objectives. However, the implementation of this law has not been able to effectively address the issue of using marijuana for medical purposes. Whether consciously or not, with the passage of time, society continues to undergo rapid progress and development, often outpacing the legal system itself. Consequently, laws sometimes struggle to accommodate emerging issues.

Law No. 35 of 2009 concerning Narcotics, specifically Article 6 paragraph (1) letter a and Article 8 paragraph (1), which prohibit the use of Schedule I narcotics for medical purposes, is clearly in conflict with Article 28C paragraph (1) of the 1945 Constitution, which states: "Every person has the right to develop themselves through the fulfillment of their basic needs, the right to education, and the right to benefit from science and technology, arts and culture, for the purpose of improving their quality of life and the welfare of humanity."

Furthermore, in Law No. 17 of 2023 concerning Health, Article 139 paragraph (2) states that "The use of drugs containing narcotics and psychotropics can only be done based on a prescription from Medical Personnel and is prohibited from being misused." Even though it is stated that with a doctor's prescription, someone is allowed to consume narcotic drugs, it will be difficult to implement when faced with the fact that cannabis is still classified as a Schedule I narcotic. As a neuroscience expert named Dr. Ryu Hasan once mentioned, the prohibition on the use of cannabis

for healthcare services makes doctors who know its benefits reluctant to prescribe it because they believe that if they use it, they indirectly violate the provisions in the regulation (Yoga, 2020).

According to the theory of progressive law proposed by Prof. Satjipto Rahardjo, the law should be formed for humans, not humans for the law. Therefore, when there is an issue where the law no longer serves the principles of justice, it is the law that should be reviewed and improved, not humans forced into that law. The pillars of progressive law include: Law for humans and Law is always in process. Upon review, it is evident that the presence of the Narcotics Law has not been able to realize the pillar of law for humans, as observed by the fact that individuals are forced into a legal framework that clearly has caused constitutional losses regarding the right to health.

Therefore, the legal step that can be taken for the legalization of marijuana use for medical purposes in Indonesia is to revise the Narcotics Law and remove marijuana from Schedule I narcotics. This is because the current implementation of the Narcotics Law is no longer relevant to the present reality, where marijuana is highly needed as a treatment alternative and has been proven to have tremendous benefits in the medical field. Additionally, considering the recent developments such as the removal of marijuana and cannabis resin from Schedule IV of the Single Convention on Narcotic Drugs by the United Nations and the Commission on Narcotic Drugs, it is crucial for the government to revise the Narcotics Law promptly.

As proposed by the theory of progressive law, law, in this case, the Narcotics Law, should be viewed as a process (Law as a process, law in the making). It should not be absolute but should evolve to adapt to the dynamic nature of human life and continuously change towards improvement. When we accept the law as a final scheme, it no longer serves as a solution to human issues. Therefore, revising the Narcotics Law to accommodate the changing needs and circumstances regarding marijuana for medical purposes is imperative to uphold justice and human rights.

## CONCLUSION

From a legal perspective, the Narcotics Law, especially Article 6 paragraph (1) letter a and Article 8 paragraph (1), which prohibit the use of Schedule I narcotics for medical purposes, clearly contradicts Article 28C paragraph (1) of the 1945 Constitution. The latter states that every person has the right to develop themselves through the fulfillment of their basic needs, the right to education, and to benefit from science and technology, arts and culture, for the purpose of improving their quality of life and the welfare of humanity.

Furthermore, the Health Law does not specifically regulate the use of marijuana for medical purposes but only provides general regulations regarding narcotic use. Research on the benefits of marijuana has been extensively conducted and published, with support from organizations like the WHO and the UN, recognizing marijuana's medical benefits. However, despite this, the government has maintained its stance and has not taken action on this matter. Legalizing the use of marijuana for medical purposes can be achieved by amending the Narcotics Law and removing marijuana from Schedule I narcotics.

The Ministry of Health issued a cannabis research permit in 2015, through a letter signed by the Head of the Health Research and Development Agency number LB.02.01/III.03/885/2015 concerning Research Permits Using Cannabis. However, this research has not been carried out.



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