

Legalization of Medical Marijuana Use in Legal Perspective and Human Rights

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Abstract. Provisions in Law Number 35 of 2009 concerning Narcotics regulate that marijuana is included in class one. Marijuana is a narcotic which is categorized as an addictive substance with a very high scale of danger to health. Marijuana is a substance/drug that can cause a decrease or change in consciousness, loss of taste, reduce pain and is addictive (dependence). Marijuana is included in a group that cannot be used in general, but in certain doses and with the permission of the government, in this case the Minister, it can be used for the development of science. Researchers say that Marijuana makes a positive contribution, and is generally safer to consume than drugs other than Marijuana which contain many chemical ingredients, thus causing side effects in the medical world. What is discussed in this research is how the use of marijuana is regulated by law in Indonesia and whether the use of medical marijuana violates human rights in Indonesia. The research method in this writing is normative research, using a statutory approach, case approach and conceptual approach. This research concludes that regulations on the use of marijuana are contained in Law No. 35 of 2009 and the use of medical marijuana does not violate human rights.

Keywords: *Marijuana, benefits of medical marijuana and human rights.*

I. INTRODUCTION

Marijuana as an alternative in the medical world has been implemented by several countries, and its existence is recognized. Georgia In 2018, the Georgian Constitutional Court legally recognized that marijuana can be consumed and possessed by many people for entertainment and medicinal purposes. South Korea is the first country in Asia to claim marijuana for medicinal purposes since November 2018; followed by Thailand, then Sri Lanka which can easily be purchased at the Ayurveda alternative medicine shop. This is also followed by the countries of Israel, Lebanon, Turkey, Bermuda, Jamaica using marijuana for treatment. The consumption of marijuana for medical purposes in these countries is recognized, but is still under very high supervision by countries that allow it and there are regulations regarding consumption so that its functions and uses are not misused illegally (Dominic Corva, 2022).

United Nations Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 is an organization that we know as an organization that makes rules prohibiting narcotics from circulating internationally. This is the United Nations (also known as UN) Convention on the Eradication of Illicit Traffic in Narcotics and Psychotropic Substances, 1988 (Matthew Paul-André DeCloedt & Buxton Mathias Möschel, 2022).

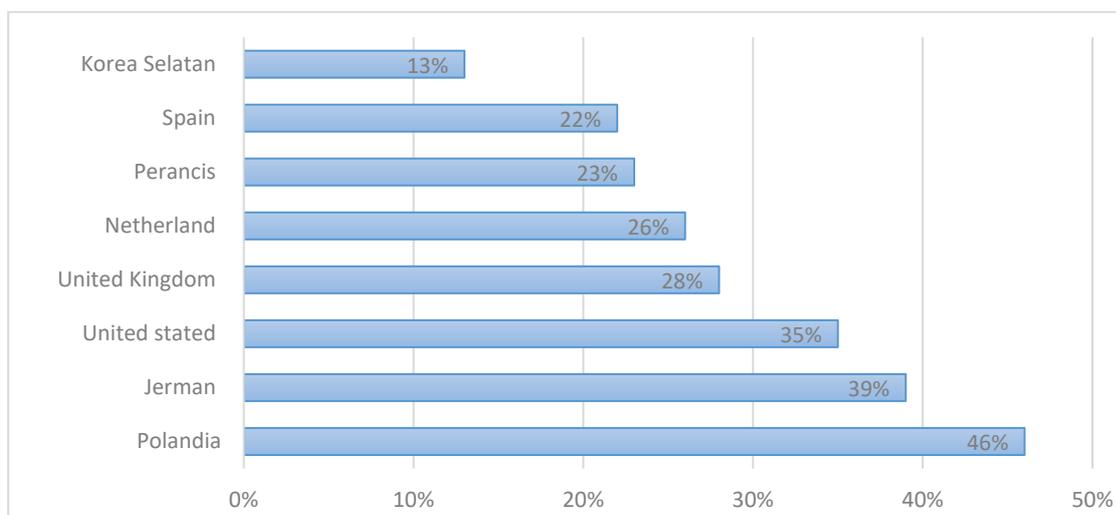


Figure 1. Countries willing to use medical marijuana as medicine

Figure 1 shows the number of people in certain countries who are willing to use medical marijuana for treatment. Cultural and individual views regarding the use of medical marijuana vary by country. Based on a Consumer Insight survey conducted by Statista, in Spain and France, only 22 and 23 percent of respondents respectively said they were willing to try the medical version of the drug. This figure is even lower in South Korea, where only 13 percent would consider using it.

Germany and Poland were among the countries that were more receptive than the countries surveyed, namely 39 percent and 46 percent. In Germany, this topic has been in the public spotlight recently, as the country is considering whether to fully legalize cannabis for adults, including recreational ones, with plans to draft a cannabis law by the end of 2023 (Król-Całkowska & Jaroszyński, 2023). Marijuana for medical purposes has become a public concern recently. It has been legal in the country since 2017 for seriously ill patients.

Before discussing marijuana in Indonesia, you need to know that in Indonesia, marijuana is cultivated illegally in Aceh. Usually marijuana is planted at the beginning of the rainy season, before the dry season the results can be harvested (Davis & Buchman, 2018; Gorman & Charles Huber, 2007). The results of the marijuana harvest are leaves along with twigs and flowers and the fruit is small seeds. This mixture of dried leaves, twigs, flowers and fruit is usually rolled into cigarettes. If the female flowers are extracted, a thick resin called hashish will be produced (Putranto & Mangesti, 2024).

Deputy for Prevention at the National Narcotics Agency (BNN), Inspector General of Police, Ali Djohardi Wirogiotoanja, said that marijuana grown in Indonesia has the highest levels of tetrahydrocannabinol in the world. Minister of Home Affairs (Mendagri), Tjahjo Kumolo said that the best quality marijuana in the world comes from Aceh. Apart from Aceh as the first producer of marijuana, there is Bengkulu as the second rank, Jambi as the third rank, and North Sumatra as the province with the fourth rank as the supplier of marijuana in the world. Bengkulu Police Chief Brigadier General M. Ghufron said Bengkulu has very fertile land for growing marijuana. In fact, the marijuana produced has the best quality compared to similar plants from other regions.

The regulations regarding marijuana in Indonesia can be found in Law No. 22 of 1997 concerning Narcotics, including Marijuana in the category 1. Then Indonesia also made a special law, namely Law No. 22 of 1997 concerning Narcotics and was amended by Law No. 35 of 2009 concerning Narcotics. The threat given to marijuana abuse is a maximum sentence of 10 (ten) years, but in Law No. 35 of 2009, it is 12 years.

Government Regulation No. 1 of 1980 contains regulations regarding the cultivation of papaver, coca and marijuana, which the Government has specifically issued. Based on this PP, educational institutions can cultivate marijuana after a permit is issued, a report is made every 6 months, plant area and yield. If there is something untoward, you must report it to the authorities. Minister of Health Decree No. HK.02.02/MENKES/188/2015 concerning Permits to Obtain Permits to Plant, Store and Use Papaver, Marijuana and Coca Plants from the Ministry of Health's Center for Research and Development of Medicinal Plants and Traditional Medicines.

Based on the explanation above, the research question in this study is:

1. How is medical marijuana used in Indonesia
2. How is the use of medical marijuana in Indonesian legal aspects
3. How does the use of medical marijuana relate to human rights?

The latest in this research is how the juridical review of the legalization of marijuana is from a legal perspective and what are the inhibiting factors in monitoring marijuana abuse and human rights in the wider community, even though there are already regulations that prohibit it. Based on the description above, it can be seen that marijuana has many positive and negative benefits. However, in Indonesia itself, the use of marijuana still conflicts with applicable laws and regulations, especially in the medical sector.

Literature Review

Definition of Medical Marijuana

Medical marijuana is different from recreational marijuana or marijuana which is usually used for drugs, in that there are many types of marijuana. "Medical marijuana is widely used for health-related matters (Woro et al., 2022). It contains cannabidiol (CBD) which can be a therapeutic drug for various diseases (Myran et al., 2024). Meanwhile, regarding recreational marijuana, recreational marijuana contains high levels of tetrahydrocannabinol (THC). (Mital et al., 2024).

Human Rights Theory

Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity. Human rights are norms that aim to protect all people everywhere from serious political, legal,

and social violations. Examples of human rights are the right to freedom of religion, the right to a fair trial when accused of a crime, the right not to be tortured, and the right to education (Bone & Seddon, 2016).

In Indonesia, a shift in the need to have regulations regarding Human Rights in order to protect its citizens has occurred; The struggle to uphold human rights in Indonesia not only started after the amendment to the Constitution, but after Indonesia was founded. This is proven by the sentence "that in fact independence is the right of all nations, and therefore colonialism in the world must be abolished because it is not in accordance with humanity and justice" in Paragraph 1 of the preamble to the 1945 Constitution.

All human rights are equally important and they cannot be taken away under any circumstances. Human Rights are important because they protect our right to live with dignity, which includes the right to life, the right to liberty and security. Living with dignity means that we must have things like a decent place to live and enough food. This means that we must be able to participate in society, to receive an education, work, and practice our religion, speak our own language, and live in peace. Human rights are a tool to protect people from violence and abuse. Human rights develop mutual respect between humans. Human rights encourage actions based on awareness and responsibility to ensure that the rights of other people are not violated. For example, we have the right to live free from all forms of discrimination, but at the same time, we have the responsibility not to discriminate against others.

II. METHODS

In writing this research the author used a normative juridical approach. The normative juridical approach is a qualitative approach (not in the form of numbers). This approach is carried out based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research.(Huarng et al., 2018). The method used in this research analysis is the analytical descriptive method, the descriptive research method is research that intends to provide data that is as accurate as possible about the state of the research object. In this research, the author analyzes the data that has been collected, then draws conclusions and provides an overview of the results that have been analyzed (Israel et al., 2005).

III. RESULTS AND DISCUSSION

a. Use of Medical Marijuana in Indonesia

The increasing number of countries that have legalized marijuana, including: Chile, Canada, Italy, the Netherlands, Turkey, Thailand, the United States, Sri Lanka, South Korea, and several other countries, is due to WHO recommendations to reclassify marijuana and its derivatives. Marijuana, which was originally included in the category of the most dangerous drugs, has since been reclassified and can be used as a medical drug.

It is controversial that several countries classify this plant as a narcotic, even though it has not been proven that users become addicted, unlike other types of illegal drugs which use synthetic or semi-synthetic ingredients that damage brain cells. Among marijuana users, a variety of effects are produced, especially euphoria. Although the impact of marijuana use on health still requires further research, the levels of tetrahydrocannabinol in marijuana which are increasing from year to year are worth paying attention to. Tetrahydrocannabinol levels in marijuana leaves used to range from 1% to 4%, now the levels can reach 7%. The increasing levels of tetrahydrocannabinol can make it easier for someone to become dependent on marijuana.

The general negative effect is that the user will become lazy and the brain will be slow in thinking. However, this is still controversial, because it is not completely agreed upon by certain groups who support medical marijuana and recreational marijuana. Apart from being claimed as a pain reliever and treatment for certain diseases (including cancer), many people also claim that there has been a surge in creativity in thinking and in creating, especially among artists such as painters and musicians.

The surge in creativity is also influenced by the type of marijuana used. The resulting effects also vary for each individual. There are those who feel the effects make them lazy, while there are groups who become active, especially in creative thinking (not physically active like the effects produced by methamphetamine). It all depends on the levels of tetrahydrocannabinol contained in marijuana. The higher the levels of tetrahydrocannabinol in marijuana, the greater the brain changes that occur and the risk of addiction increases.

The National Narcotics Agency, through Public Relations and the Deputy for Law and Cooperation, stated that the Indonesian government continues to refuse to legalize marijuana for both medical and recreational purposes. The firm stance taken by BNN as the leading sector in handling drug problems in Indonesia states that with the situation and conditions of abuse and illicit trafficking of narcotics, especially marijuana, which is very high in Indonesia, efforts to legalize marijuana are an unlawful act that can be subject to sanctions in accordance with Narcotics Law Number 35 of 2009.

In a press conference, the government through BNN hopes that the Indonesian people who take part in this discussion process will be able to respond wisely to the issue of medical marijuana because Indonesia is still a sovereign country that has its own laws and regulations to regulate the use of marijuana.

The government's policy of rejecting recommendations from the Expert Committee on Drug Dependence of the World Health Organization (ECDD WHO) regarding the use of marijuana for medical purposes has several fundamental reasons, including that research results show that the content of marijuana in Indonesia has THC (the content in marijuana plants that very dangerous because it is psychoactive) which is high at 18% compared to CBD which is only 1%. The next reason is that the marijuana used as therapeutic treatment is marijuana from genetically engineered cultivation which can produce high CBD content and low THC content.

b. Legality of Medical Marijuana in Indonesia

In Indonesia, marijuana is included in the category of prohibited narcotics. However, there are several efforts being made to legalize the medical use of marijuana. In 2016, the government issued Government Regulation in Lieu of Law (Perppu) Number 1 of 2016 concerning Amendments to Law Number 35 of 2009 concerning Narcotics. The Perppu regulates the use of class I narcotics (including marijuana) for certain medicinal purposes. The National Narcotics Agency (BNN) also issued Circular Letter Number 3 of 2017 which gives special permission to certain hospitals to use class I narcotics for certain medical purposes, including marijuana. However, the use of medical marijuana in Indonesia is still very limited and is closely monitored by the government.

In May 2020, the Indonesian Minister of Health also issued Minister of Health Regulation Number 9 of 2020 concerning the Implementation of Health Research and Development. This regulation provides a legal basis for research into marijuana and other narcotics for drug development

c. What are the Inhibiting Factors in Controlling Marijuana Abuse and Human Rights

Negative stigma against marijuana and its use, as well as public opinion that does not support medical or recreational marijuana use, can be an obstacle to implementing policies that support medical marijuana use and protect the human rights of individuals in need of treatment (Ladegard & Bhatia, 2023). Uncertainty in the law regarding marijuana use, especially in a medical context, can be a deterrent as it can create fear of legal consequences for individuals who need medical marijuana (Alfarizi, 2024).

Political and economic factors may also influence the control of cannabis abuse and the implementation of human rights related issues (Bogdanoski, 2009). For example, certain political or economic interests may influence policies regarding medical marijuana. The lack of adequate research and scientific evidence regarding the benefits and risks of medical marijuana use may also be an obstacle to implementing policies that support medical marijuana use and protect the human rights of individuals in need (Zulfikri & Jaman, 2022).

d. Use of medical marijuana and its relationship to human rights

The use of medical marijuana and its relationship to human rights (HAM) is a complex topic and often gives rise to various debates. On the one hand, the use of medical marijuana is considered a fundamental human right, especially for individuals who experience certain medical conditions that can be treated or alleviated by marijuana use. Human rights, including the right to health, guarantee that every individual has the right to access adequate health care, including medically recognized alternative treatments (Bogdanoski, 2009; Lapham et al., 2022).

However, on the other hand, the use of medical marijuana also involves complex considerations related to drug regulations, narcotics abuse, and public health impacts. Many countries still consider marijuana to be an illegal substance and to have the potential for abuse. Therefore, efforts to legalize the use of medical marijuana are often faced with a dilemma between individual human rights and the interests of society as a whole (Ismansyah, 2023; Zulfikri & Jaman, 2022).

In this context, several countries have taken steps to legalize or at least allow the use of medical marijuana by strictly regulating its use so that it is not abused. Such an approach can be considered an attempt to find a balance between individual human rights and the interests of society at large. In this regard, it is important to consider scientific evidence, public health approaches, as well as human rights principles in formulating policies regarding the use of medical marijuana.

IV. CONCLUSIONS

The findings show that exposure to information related to things that support the legalization of marijuana in Indonesia has strengthened the narrative regarding the justification for the legalization of marijuana. Information that is considered reliable through the Journal of Scientific Communication, that both directly and indirectly regarding the information discussed by

communities that support the legalization of medical marijuana for treatment, is often not accompanied by the negative impacts of marijuana and the things presented can provide the influence on a person's cognition and affection towards marijuana and its legalization. The media plays an important role as the main source of information and education that can be trusted.

That basically human rights have been regulated in the 1945 Constitution of the Republic of Indonesia Articles 28A-28J and are further regulated and clarified in Law no. 39 of 1999 concerning Human Rights. Law no. 39 of 1999 regulates the classification of human rights, this functions to group rights and to make it easier to analyze human rights violations that occur. The classification is (Law Number 39 of 1999 concerning Human Rights), including the right to life, the right to obtain justice and the right not to be treated discriminatorily. All human rights are equally important and they cannot be taken away under any circumstances. Human Rights are important because they protect our right to live with dignity, which includes the right to life, the right to liberty and security.

Some countries legalize marijuana, however, this activity is limited to certain amounts for personal consumption. Marijuana legalization must have regulations that control the rate of use. Apart from that, marijuana consumers are only allowed to purchase certain quantities. There are several reasons for the legalization of marijuana, namely that the use of drugs is permitted with strict regulations and the use of marijuana in the health sector is the main focus in the reasons for its legalization. In Indonesia, the problem is how the juridical review of the legalization of marijuana is carried out from the perspective of health law and what are the inhibiting factors in controlling marijuana abuse in the wider community, even though there are already regulations prohibiting it. Based on the description above, it can be seen that marijuana has many positive and negative benefits. However, in Indonesia itself, the use of marijuana still conflicts with applicable laws and regulations, especially in the medical sector.

Implications

The scientific contribution in this research is that in the Indonesian context, the scientific contribution regarding the use of medical marijuana in laws linked to human rights (HAM) is very relevant, because it revises existing regulations to allow the use of medical marijuana in a more controlled and safe manner, so that patients who need it can access it more easily, and guarantee that new regulations relating to medical marijuana do not violate human rights, including the right to health, the right to information, and the right to autonomous medical decisions, as well as encouraging collaboration between legal experts, doctors, researchers, and other stakeholders in developing regulations and policies related to medical marijuana, so that a holistic approach can be taken.

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