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Reformation of Cannabis Legalization Policy for Medical Purposes: A Criminal Law Perspective

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ABSTRACT

This research examines the imperative for reforming cannabis legalization policies in Indonesia, specifically for medical purposes, from both juridical and criminal law perspectives. Employing a normative legal research methodology with a tripartite approach encompassing statutory analysis, comparative jurisprudence, and case study examination, this study critically analyzes the current legal framework governing cannabis in Indonesia and its juxtaposition with international trends. Findings reveal that while medical cannabis legalization is gaining momentum globally, demonstrating positive impacts on patient health, public health, and economic development, Indonesia's regulatory approach remains mired in ambiguity and inconsistency. This dissonance stems from a conflict between the restrictive provisions of Law Number 35 of 2009 and the growing body of scientific evidence supporting the therapeutic potential of cannabis in treating various conditions, including autism spectrum disorder, epilepsy, Tourette syndrome, and multiple sclerosis. This research argues for a more humane and progressive policy framework that aligns with scientific advancements and prioritizes public health. It proposes two primary pathways for reform: judicial review challenging the constitutionality of existing prohibitive legislation and legislative amendments to Law Number 35 of 2009. Crucially, any reform effort must be grounded in rigorous scientific evidence and accompanied by the development of comprehensive regulatory protocols and public education campaigns to ensure the safe and responsible use of medical cannabis. This research critically analyses the legal and policy landscape surrounding medical cannabis in Indonesia, offering evidence-based recommendations to guide policymakers towards a more just and effective regulatory framework.

Keywords: Cannabis Legalization; Criminal Law; Medical Cannabis; Policy Reformation; Public Health.

INTRODUCTION

The history of narcotics in human civilization embodies a fundamental paradox: the tension between their potential therapeutic benefits and the inherent risks of abuse and addiction (Lestari et al., 2023). This duality is evident throughout history, beginning with the early use of opium, derived from the poppy plant. Cultivated for millennia, opium was employed as far back as 5000 BCE for pain relief (Kumar, 2022), and even incorporated into sacred rituals by certain Native American tribes (Meyers, 2022). However, the extraction of morphine from opium in the 19th century marked a turning point. While lauded for its analgesic properties, morphine's widespread use revealed its addictive potential, leading to widespread dependence (Kiranlar & Çıtır, 2024). This pattern was mirrored in the 20th century with the development of heroin, a morphine derivative initially marketed as a non-addictive cough suppressant but ultimately proving far more addictive (Dunn, 2023). These examples underscore the complexities surrounding narcotics, substances capable of providing relief yet simultaneously posing significant risks to individual and societal well-being (Prasetya et al., 2023). This inherent tension is perhaps nowhere more apparent than in the controversial trajectory of cannabis, a substance whose history, fraught with both promise and peril, mirrors the broader dilemmas surrounding narcotic use.

This inherent tension is perhaps nowhere more apparent than in the controversial trajectory of cannabis. While its historical use in China dates back to 4000 BCE, encompassing diverse applications such as textiles, food, and medicine (Charitos et al., 2021), the 19th century witnessed a dramatic shift in its perception and legal status (Koram, 2022). Increasingly categorized as a dangerous narcotic, cannabis faced growing stigmatization fueled by concerns about its potential adverse effects on health, including cognitive impairment and mental health disorders. Furthermore, societal anxieties linking cannabis use to deviant behaviour and marginalized groups exacerbated its negative image. This prohibitionist trend was further amplified by economic and political interests, as the pharmaceutical and alcohol industries perceived the potential profitability of cannabis as a threat. The global War on Drugs in the mid-20th century solidified this approach, creating substantial barriers to acknowledging and utilizing the potential therapeutic benefits of cannabis (Brewster, 2022).

In Indonesia, the regulation of cannabis reflects this complex global narrative. Beginning in the 1970s with Law Number 9 of 1976, cannabis was classified as a Schedule I narcotic, reflecting the prevailing view that it possessed a high potential for dependence and required strict control. This policy was revoked and replaced by Law Number 35 of 2009, which granted the National Narcotics Board authority over the supervision and enforcement of narcotics regulations. However, despite mandating the improvement of public health through the provision of certain narcotics for medical use, Law Number 35 of 2009 explicitly prohibits the use of cannabis for healthcare services. This prohibition stands in stark contrast to growing international scientific evidence supporting the therapeutic potential of cannabis, sparking public discourse and prompting advocacy movements demanding policy reform. Lingkar Ganja Nusantara (LGN), for instance, actively challenges the validity of cannabis prohibition policies, arguing that they lack a foundation in objective scientific research and are unduly influenced by international political pressure and economic interests (Malik et al., 2022).

The case of Fidelis Arie Sudewarto, who utilized cannabis to treat his wife suffering from syringomyelia, poignantly illustrates the urgent need for cannabis policy reform in Indonesia. This case exposes the inherent conflict between legal rigidity and humanitarian concerns in law enforcement (Busthami, 2022). Despite the proven efficacy of cannabis in alleviating his wife's suffering, Fidelis was convicted for cultivating the plant. This tragic outcome raises profound questions about the extent to which the law should accommodate humanitarian considerations, particularly in cases of medical necessity. It compels policymakers to critically evaluate and reform existing regulations to ensure they are humane and aligned with the people's interests. The Fidelis case is a stark reminder that rigid policies disregarding compassion can have devastating consequences.

Based on the aforementioned exposition, this research aims to analyze the reformation of cannabis legalization policies for medical purposes from a juridical review and criminal law perspective. This analysis will encompass a critical examination of the historical development of cannabis regulation in Indonesia, a comprehensive assessment of the potential benefits and risks of cannabis use for medical purposes, and the formulation of policy recommendations grounded in robust scientific evidence. This research is expected to provide a valuable contribution to the ongoing efforts to establish narcotics policies that are just, humane, and prioritize public health.

METHOD

This research utilizes a normative legal research methodology, employing a tripartite approach encompassing statutory analysis, comparative jurisprudence, and case study examination. This methodological framework suits the research objectives, emphasizing the critical analysis of legal norms articulated in legislation and judicial pronouncements (Qamar & Rezah, 2020). Statutory analysis will involve reviewing relevant legislation about narcotics and cannabis legalization across multiple jurisdictions. This comparative approach will facilitate the identification of commonalities, divergences, and best practices in the regulation of cannabis for medical purposes. Furthermore, the case study examination will provide in-depth insights into the practical application and interpretation of these legal norms in specific factual contexts. In addition to primary legal sources, this research will draw upon various secondary legal materials, including legal doctrines, scholarly journals, and relevant literature identified through comprehensive library research. Data analysis will employ a qualitative approach, specifically content analysis, to systematically examine and interpret non-numerical data such as legal texts and judicial decisions. This technique will facilitate identifying, classifying, and interpreting key themes, patterns, and arguments within the collected data, enabling a nuanced understanding of the legal and policy issues surrounding cannabis legalization for medical purposes. This rigorous methodological approach will ensure a comprehensive and systematic analysis of the research questions, ultimately contributing to developing informed and well-supported policy recommendations (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Comparative Study of Medical Cannabis Legalization Policies

The growing phenomenon of medical cannabis legalization across various countries reflects a dynamic legal landscape responsive to scientific advancements and societal needs. Analysis of these policies can be framed within the perspective of legal pluralism, where interaction and mutual influence occur between various

legal sources, both national and international (Tamanaha, 2021), in responding to complex issues such as the use of cannabis for medical purposes.

As one of the pioneers, Canada enacted the [Marihuana Medical Access Regulations](#) in 2001, which were subsequently repealed by the [Cannabis Regulations](#) in 2018, aligning with the principles of human rights and the right to health recognized in international legal instruments (Bruno & Csiernik, 2023). This regulation provides legal access for patients with specific medical conditions to obtain and use cannabis with a doctor's prescription, a step that can be analyzed through the theory of utilitarianism, which prioritizes the most significant benefit for the greatest number of people (Coskuner-Balli et al., 2021). Over 200,000 patients in Canada have enrolled in the medical cannabis program (Gelberg et al., 2024), and a 2018 study indicated that medical cannabis use correlated with a decrease in opioid use (Nguyen et al., 2023), supporting the argument for effectiveness and efficiency in managing chronic pain.

In contrast to the decentralized approach in Canada, the Netherlands implements a more centralized regulatory system rooted in an intense legal positivism tradition. The use of medical cannabis in the Netherlands is permitted under the [Opiumwet](#) (Opium Act), as amended in 2003 and most recently in 2024. The production and distribution of medical cannabis are managed by pharmaceutical companies and dispensed through pharmacies with a doctor's prescription, reflecting a structured regulatory approach. Although official data on the number of patients using medical cannabis is unavailable, studies indicate the effectiveness of cannabis in reducing spasticity symptoms in multiple sclerosis patients and nausea in chemotherapy patients (Ekhart et al., 2023). This aligns with the theory of legal realism, which emphasizes the actual effects of law in society (Morrill & Edelman, 2021), where medical cannabis legalization provides concrete solutions for needy patients.

While the Netherlands focuses legalization on medical aspects, Uruguay takes a step further by legalizing cannabis for both medical and recreational purposes through [Ley N° 19.172](#) (Law Number 19.172) in 2013. This policy can be analyzed through socio-legal studies, which view law as an instrument of social change. The Uruguayan government controls the entire cannabis supply chain, from cultivation to sale, with strict regulations to maintain product quality and safety (Taylor, 2020). A study found that cannabis legalization did not lead to increased cannabis use among adolescents and even correlated with a decrease in drug-related crime rates (Trajtenberg & Menese, 2019), indicating that proper regulation can minimize feared negative impacts.

This comparative analysis reveals that medical cannabis legalization is a complex global phenomenon with various legal and social implications. Legal theories provide diverse analytical frameworks for understanding the dynamics of this policy in different countries. Evaluation of policy implementation shows positive impacts on patient health, public health, and the economy. Nevertheless, potential challenges and risks must be anticipated and managed wisely through comprehensive regulation, effective law enforcement, and ongoing research.

B. Ambiguity in Law Enforcement Regarding Cannabis Distribution and Abuse in Indonesia

Cannabis regulation in Indonesia is caught in an ambiguity that creates a complex dilemma between health interests and law enforcement. This dilemma can be examined through legal pluralism, where various sources of law, national and international, interact and even clash. On the one hand, the Annex of [Regulation of Minister of Health Number 7 of 2018](#) explicitly classifies cannabis as a Schedule I Narcotic, encompassing all parts of the plant, from root to leaf, in both natural and processed forms. The logical consequence of this classification is the prohibition of cannabis use for healthcare services, as affirmed in Article 8, section (1) of [Law Number 35 of 2009](#).

On the other hand, Article 54 of [Law Number 35 of 2009](#) mandates rehabilitation for people with an addiction and victims of narcotics abuse. A narcotics addict is defined as someone who continuously uses or misuses narcotics and experiences dependence, both physically and psychologically. Drug dependence is inherently a component of addiction. It indicates a recognition of the health aspects associated with narcotics use, including the potential of cannabis in therapeutic contexts. However, the penal provisions in Articles 111 and 116 of [Law Number 35 of 2009](#) demonstrate a repressive and inconsistent stance towards cannabis use. The disproportionately harsh penalties create legal uncertainty and hinder potential research and development of cannabis for medical purposes. This ambiguity is further evident in the inconsistency of legal implementation and sentencing, particularly in the tragic case of Fidelis.

Turning to the case of Fidelis, who utilized cannabis to treat his wife suffering from syringomyelia, this case highlights the conflict between rigid legal rules and humanitarian concerns, including the right to health. Despite the proven effectiveness of his alternative treatment, offering a glimmer of hope for his wife's recovery, Fidelis was convicted of cultivating cannabis. Ironically, the cannabis extract that served as a life-saving medicine was destroyed by law enforcement. This decision culminated in his wife's death, creating profound grief and sparking public outrage over the injustice ([Farisa, 2022](#)).

This case challenges the conventional criminal law paradigm, particularly in assessing the criminal liability of an individual acting under duress. From the perspective of *rechtvaardigingsgronden* (justification grounds), Fidelis's actions should be justifiable due to a state of emergency (*overmacht*) stipulated in Article 48 of the Penal Code. This concept is rooted in the theory of utilitarianism, which prioritizes the most significant benefit for the greatest number of people (Ihsan et al., 2024). Fidelis, having exhausted various medical options without success, had no other choice but to save his wife but to utilize cannabis. His actions fulfil the elements of *overmacht* as proposed by Tirtaamidjaja (1955): an explicit consideration of interests, the absence of alternative treatments, and not being part of an inherent occupational risk.

In the Fidelis case, the Panel of Judges in Decision Number 111/Pid. Sus/2017/PN Sag disregarded the *overmacht* argument and imposed a prison sentence and fine. This verdict sparked public debate and raised critical questions regarding justice and the purpose of the law, a central theme in legal realism (Qamar & Rezah, 2022). Considering the principle of *lex favourable*, the Penal Code offers a more humane approach than Law Number 35 of 2009, suggesting that the state of emergency (*overmacht*) defense should have been accepted (Handayani et al., 2024), exonerating Fidelis. The rejection of this defense highlights disparities in legal interpretation and application (Nasrullah, 2020), and a lack of protection for individuals acting under duress to save the lives of loved ones.

The Fidelis case reignites the discourse on the ideals of law, where justice and legal certainty must be complemented by utility, a concept resonating with the theory of living law. Good law provides happiness for humanity, not merely creating certainty but also delivering benefits and justice for society (Rezah & Muzakkir, 2021). Furthermore, the Fidelis case vividly illustrates the discriminatory implementation of narcotics law against the medical use of cannabis, a crucial issue relevant to socio-legal studies. Patients who require cannabis as an alternative treatment, like Fidelis and his wife, are forced to live under the shadow of criminalization while access to justice and information remains limited. Inconsistent and ambiguous narcotics policies create confusion within society and hinder research and innovation in healthcare.

The negative impacts of this cannabis prohibition are extensive and multidimensional, ranging from limited patient access to potential alternative treatments and the criminalization of medical cannabis users acting on humanitarian grounds to the loss of potential for developing a medical cannabis industry in Indonesia that could provide economic and health benefits for society. The Fidelis case and the ambiguity in narcotics law enforcement demonstrate the urgent need for policy reform that is more humane, just, and oriented towards public health

interests. The law should not merely function as a rigid and oppressive instrument of social control but also protect human rights, ensure access to healthcare for all citizens, and encourage the advancement of science and technology in the health sector.

C. Potential and Challenges of Utilizing Cannabis for Medical Purposes in Indonesia

[Law Number 35 of 2009](#), enacted within the spirit of legal paternalism, regulates the use of Schedule I Narcotics, including cannabis, within a rigid and restrictive normative framework. Although Article 8 section (1) explicitly prohibits the use of cannabis for healthcare services, Article 8 section (2) of this law provides limited space for its utilization in the development of science and technology. The use of cannabis in this context is permitted with the approval of the Minister and the recommendation of the Head of the National Agency of Drug and Food Control, indicating an implicit acknowledgement—albeit minimal—of the potential of medical cannabis. Therefore, research and investigation into cannabis-based treatments become crucial and must be conducted intensively and comprehensively, aligning with the principles of a welfare state that prioritizes the well-being of its people, including access to treatment ([Hallén & Tryselius, 2024](#)). Ideally, this research should focus on the development of medical science as a strategic initial step towards broader medical cannabis legalization in Indonesia.

In line with this urgency, numerous international scientific studies have yielded significant empirical evidence regarding the potential of cannabis in treating various diseases. These findings support the argument that the total prohibition of cannabis contradicts the principle of utilitarianism, which prioritizes the most significant benefit for the greatest number of people. For instance, research by [Esfahani \(2022\)](#) indicates that medical cannabis can be an effective alternative treatment for patients with autism spectrum disorder (ASD), epilepsy, and Tourette syndrome. Medical cannabis has been reported to alleviate various ASD symptoms, such as anxiety, aggression, and self-injurious behaviour, which are often challenging to manage with conventional treatments. In epilepsy cases, the anti-inflammatory component of cannabis, Cannabidiol (CBD), has proven effective in reducing seizure frequency, with some patients even experiencing complete remission after receiving CBD therapy. Furthermore, patients with Tourette syndrome also exhibit significant improvement after using medical cannabis, with a decrease in the severity of symptoms like outbursts and tics and an overall enhancement in quality of life. Research by [Mustafa et al. \(2021\)](#) provides further empirical evidence regarding the potential of cannabis in alleviating symptoms of multiple sclerosis (MS), such as pain, muscle spasms, and

fatigue. Cannabis has also been reported to modulate the immune system in MS patients by influencing cytokine profiles.

Based on these scientific findings, Indonesia should conduct a comprehensive review of the potential of medical cannabis, aligning with the principle of a scientific approach to law, which advocates for the use of scientific methods in forming and developing law (Wardhani et al., 2022). This review must involve disciplines such as medicine, pharmacology, sociology, and law to produce holistic and evidence-based recommendations. The legalization of medical cannabis in Indonesia must be grounded in accurate scientific data and facts, not on unfounded stigma and myths.

However, the journey towards medical cannabis legalization in Indonesia is not without obstacles. Various complex and multidimensional challenges need to be addressed wisely. *Firstly*, social and cultural challenges persist, coloured by a negative stigma towards cannabis, a historical legacy and social construct that is difficult to change in a short time. It indicates that the government needs to make extra efforts to change public perception and educate the public about the potential benefits of medical cannabis. *Secondly*, concerns regarding the potential for cannabis abuse and its impact on public safety are legitimate and need to be anticipated with strict regulation and effective law enforcement. *Thirdly*, ensuring the safety and effectiveness of medical cannabis use requires rigorous research and monitoring. The successful implementation of medical cannabis legalization policies in Indonesia depends on the government's and relevant stakeholders' ability to formulate comprehensive strategies and effectively address these challenges.

To address these challenges, comprehensive and balanced policy reform is crucial in accommodating the potential of medical cannabis in Indonesia. This reform can be achieved through various avenues. *Firstly*, through judicial channels by filing a judicial review request with the Constitutional Court to examine the constitutionality of Article 8 section (1) of Law Number 35 of 2009, which prohibits cannabis use for healthcare services. This judicial review can be pursued by arguing that the Article contradicts Article 28H section (1) and Article 34 section (3) of the 1945 Constitution. In this case, citizens have a constitutional right to health, and the state must uphold the principle of social justice (Rezah & Sapada, 2023). *Secondly*, legislative channels can be utilized by drafting an academic text proposing amendments to Law Number 35 of 2009. This academic text must include a comprehensive review holistically considering legal, medical, social, and economic aspects (Saa & Bajari, 2024).

Thirdly, the Ministry of Health needs to develop a strict, structured, and evidence-based protocol for the use of medical cannabis. This protocol must regulate in detail access requirements, types of permitted medical cannabis products, dosage and methods of administration, and monitoring of side effects. *Fourthly*, the National Narcotics Board needs to intensify education and outreach programs to change negative perceptions of cannabis, increase understanding of its potential benefits in medical contexts, and prevent harmful abuse. This program can be conducted through various media, such as social media campaigns, seminars, and outreach to schools and the general public. By implementing these comprehensive and multifaceted strategies, Indonesia can harness the potential of cannabis to improve public health responsibly and sustainably.

CONCLUSIONS AND SUGGESTIONS

Based on the findings and discussion, it can be concluded that medical cannabis legalization is a complex and multifaceted global phenomenon with various legal and social implications. Comparative studies of policies in Canada, the Netherlands, and Uruguay demonstrate that medical cannabis legalization, albeit with varying approaches, positively impacts patient health, public health, and the economy. Conversely, cannabis regulation in Indonesia remains entangled in ambiguity and inconsistency, creating a dilemma between health interests and rigid law enforcement. The case of Fidelis Arie Sudewarto, who was convicted of using cannabis to treat his wife, reveals the failure of the legal system to accommodate emergencies and the right to health. This case highlights the urgent need for policy reformation that is more humane, just, and aligned with the people's interests.

Meanwhile, scientific studies have demonstrated the potential of cannabis in treating various diseases. However, the journey towards medical cannabis legalization in Indonesia faces social, cultural, and security challenges. Policy reformation can be pursued through judicial channels by filing a judicial review request with the Constitutional Court to examine the constitutionality of the article prohibiting the use of medical cannabis. Alternatively, legislative channels can be utilized by amending [Law Number 35 of 2009](#). These efforts should be accompanied by drafting a comprehensive academic text and developing strict protocols by the Ministry of Health. Additionally, the National Narcotics Board needs to intensify public education programs to change negative perceptions and enhance public understanding of the potential of cannabis in medical contexts. The success of cannabis policy reformation in Indonesia depends on the ability of the government and policymakers to formulate comprehensive strategies to address these challenges effectively.

Based on the aforementioned conclusions, it is recommended that the Government, particularly the Minister of Health and the House of Representatives

Health Commission, initiate amendments to [Law Number 35 of 2009](#) by formulating a comprehensive academic text that considers the latest scientific studies on the potential of medical cannabis. The Constitutional Court is expected to provide progressive considerations that favour the right to health when adjudicating judicial review requests related to medical cannabis legalization. The National Narcotics Board needs to shift its paradigm from a repressive approach to a more humane approach oriented towards public health by intensifying education and outreach programs on the potential of medical cannabis and supporting research and development of cannabis for medical purposes. The Indonesian Institute of Sciences and academics are encouraged to conduct in-depth and ongoing scientific research on the potential of medical cannabis, encompassing pharmacological, clinical, and social aspects. The public needs to play an active role in supporting medical cannabis policy reformation by enhancing knowledge and understanding of medical cannabis through credible sources and participating in constructive and data-driven public discourse.

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