



The Formulation of Act 35 Year 2009 About Narcotics in Legalizing Medical Marijuana Use in Indonesia

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Abstract

The uses of cannabis (*cannabis sativa*) goes back in time. This was featured in medicine books from China, India, even in mesopotamian times. In these records, *cannabis sativa* (*cannabis sativa*) USES not only as a drug but also as a food and ritual agent. In Indonesia, it is a type of illegal narcotic, it is arranged in the appendix to act no. 35 in 2009 on narcotics, it is a class I narcotic that cannot be used for medical purposes. There are even some who use as medical agents to manage their illnesses when not yet legal in Indonesia. The writing used normative juridical methods for the purpose of providing input to both the government of the republic of Indonesia and the people's representative council on the importance of marijuana as a medical agent. A discussion of this writing found that studies have shown that marijuana medicinal drugs for patients and has shown that such illnesses as Alzheimer's disease, cancer, HIV/AIDS, glaucoma, Parkinson disease, hepatitis C and glaucoma, even in the city of Ambon, use marijuana as an herbal remedy for some cannabis is already recognized and legal in some countries. For this it needs to be added to a class II or class III narcotic in order to be used as a medical agent. This can be a reference to the development and deployment of medical marijuana in Indonesia.

Keywords: *Criminal Law Policy; Cannabis*

Introduction

The legalization of marijuana is a growing discourse in recent decades. The legalizing notion of marijuana became a talk in Indonesia, with its issues of controversy, some in Indonesia wanted to legalize marijuana, and some assumed it was overpaid for the Indonesian generation. Aceh is a province with a culinary flavor based on cannabis, such as the curry from which the duck curry tasted differently with the customary curry sauce and the duck meat being cooked with marijuana seeds.

Not only did cannabis grow in Aceh, but it also grew and flourished in Ambon, and in the book Rumphius, he did research in Ambon and then found an herbal and medicinal Ambonese commonly used to treat disease. Among these are *Iodoicea maldivica* press (coconut sea) the fruits used for anti-inflammatory and antipyretic, while the coconut skin is used for cholera because it contains antibiotic,

antidiarrheal. *Drynaria sparsisora* (desv.) T Moore (the common nail) was used for its roots to increase appetite, so kites could be cooked and the water could lower blood by having a diuretic side effect. Mineral seeds are used for dysentery medicine because they contain anti-diarrheal, anti-infective, anti-inflammatory.¹

Health is a human right and one of the elements of welfare that should be realized in accordance with the goals of the Indonesian government in Pancasila and the 1945 constitution of the Republic of Indonesia has been explained in the 36-year 2009 rule on health. Health is a healthy state of being, whether physically, mentally, spiritually or socially that allows everyone to live a socially and economically productive life. Health is predicated on within the terms of the law, as are the laws of health.

Health effort activities (preventive, promoted, curative, and rehabilitative) require adequate legal tools. Adequate kit of health laws is intended to ensure a comprehensive legal certainty and protection for both the health-care provider and the health care community. Article 3 of act no.29 in 2004 determined that the provision of medical practice served to provide protection to patients, maintaining and improving the quality of medical care given by both physicians and dentists; And give legal certainty to the people, doctors, and dentists.

The problem arose when the use of these drugs was not based on medical purposes and became a commercial enterprise. In Indonesia, drug abuse is a felony established under the act of no. 35 in 2009 on narcotics under which it is also regulated on drug dealers and narcotics users.

When it comes to drug problems that are unrelated to age limits, economics, education, genre, and other things and are constantly increasing over time, it is certainly not easy to deal with. It's just, if you look at how this is done from the criminology side, then the motivation that arises in a person to use narcotics is the starting point of a mental foundation collapse and eventually lead to narcotics users and even dealers. Doing so requires the proper effort to solve the drug problem.

As for the regulation on the use of medical marijuana for rational treatment, there remains a debate to this day. Given the foregoing information, it would require a criminal law policy to regulate marijuana use. Penal policy (penal policy) penal policy contrary to Soedarto's opinion, has understanding:²

- a. Trying to make better rules according to the situation at some point in time.
- b. Policies from the state, through authorized agencies set forth desired regulations that are thought to be used to express what is contained in society and to achieve shared goals.
- c. Contrary to such understanding, implementing politics of criminal law would mean holding elections to achieve the best legal results in the sense of satisfying a sense of justice and witchcraft.
- d. Implementing criminal law politics can also mean efforts to implement criminal rules that conform to rules and situations at some time and time to the future.

Formulation of the Problem

1. What is the Formulation Policy of Law No.35 In 2009 On Narcotics in Legalizing Medical Use of Marijuana in Indonesia at The Moment?
2. What is the Formulation Policy of Law No.35 In 2009 On Narcotics in Legalizing Drug Use in Future Indonesia?

¹ E.J. Buenz, H.E. Johnson, E.M. Beekman, T.J. Motley, B.A. Bauer, *Bioprospecting Rumphius's Amboinese Herbal: Volume I*, Journal of Ethnopharmacology. (2004)

² Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*. Bandung. Sinar Baru.1983.hal 3

Research Methods

The study was used academically so that researchers chose to take a neutral stand. The study is a normatiative law study (yuridis normative) or study of literature law, it USES library data of books, regulations, expert opinions, and the study of various scientific journals. An article used is an original article about the benefits and side effects of medical marijuana (cannabis sativa) in the English language of rational medicine, the approach used in a normative study, would enable a researcher to utilize the results of its findings for the benefit and excavation. The study consists of research on legal products as well as a conceptual approach as there is no positive rule of law in the matter adopted by normative law can and should make use of other scientific discoveries and interact positively with other sciences. A qualitative approach descriptively USES primary data to get a systematic, factual and accurate overview of facts, of the properties and links of investigated phenomena. In analyzing data of studies relating to research, qualitative analysis is used. Qualitative analysis is intended for researchers to get clarity from the problem screened under guidelines to the conditions of conformity to literature and facts and data studies obtained in the field. As for the results of a data analysis of sentences.

Discussion

1. The Formulation of Act 35 Year 2009 About Narcotics in Legalizing Medical Marijuana Use in Indonesia Today

The policy of narcotics to be made available before Indonesia's independence, under the 2009 no. 35 act on narcotics (then called the law of narcotics), says that in order to improve the health of Indonesia's human resources in order to achieve the welfare of its people should be called for increased efforts in the field of medicine and health services. Among other things, the availability of certain drugs which are so desperately needed as drugs and the prevention and fight against the dangers of abuse and illicit circulation of narcotics and narcotics precursors, if marijuana is to be used as a drug, why should they be banned.

Indonesia is considered a drug emergency with several facts:

1. Narcotic crimes are made up of fringe groups as supplant drug dealers as impurities both groups are sent into custody and end up in prison;
2. The number or prevalence of Indonesian abuse is increasing, traction goes up over the years, the number of these growing misuses is causing a flourishing drug business;
3. The death toll from drugs is about 15,000 a year;
4. The need for prison development is increasing and the majority is currently occupied by convicts;
5. The public is not eager to cure or rehabilitate families with drug-addicted diseases;
6. Rehabilitation is not developing according to the increasing number of abusers;
7. Communities mistakenly view abusers³

The author also disagrees that drugs are being misused for dependence use, and that it needs to be formulated policies that govern, as mentioned in the context of the narcotic law, That narcotics on the one hand is a beneficial drug or substance in medicine or in health care and in the development of science and on the other hand can also lead to a high degree of dependence if abused or used without strict and careful control and supervision;

³ Nur afriani, *Penggunaan Ganja Medis Dalam Pengobatan Rasional Dan Pengaturannya di Indonesia*, jurnal, universitas mulia <https://jhek.hangtuah.ac.id/index.php/jurnal/article/view/45> Di akses pada tanggal 19 juni 2022

Sudarto says that a crime treated as a crime must be committed through the politics of the law:

- a. Strive to implement good rules of rules according to circumstances and circumstances at some time.⁴
- b. Policies from the country through bodies that are authorized to enforce the desired regulatory regulations that are thought to be used to express what is contained in society and to achieve what is assayed.⁵

This is the above, that policy formulations of criminal laws which seek to achieve their aims through criminal policy using penal devices, which are used as approaches to the countermeasures of the crime. It is the creation of a new law that criminalizes or decriminalizes (criminalization or decriminalization) an act that can serve as a crime. Decriminalization for a crime that once was a crime, now no longer a crime.⁶

Formulation policies at the moment in drug use are governed in the 2009 no. 35 act on narcotics divide narcotics into a few categories:

- a. Class i narcotics, it's a narcotic that can only be used for the purposes of scientific development and is not used in therapy, and has a very high capacity for dependence.
- b. Class ii narcotics, is a narcotic used as a last resort and can be used as a therapy and/or for purposes of observation of science charts and a high capacity for dependence.
- c. Class iii narcotic, it is medicinal efficacious and widely used in therapies and/or for the purposes of scientific development and has a slight potential for dependence. (vide explanation chapter 6 verses (1).

In the 2018 health minister's rule on a change in drugs states that: "marijuana plants, all plants of the genus cannabis and all parts of plants including seeds, fruits, straw, processed marijuana or plant parts including cannabis and hashish.

Marijuana is an I narcotic, which means it cannot be used as a drug or therapy in patients who need it. As for some diseases that in research have proven to be cured by using marijuana:

1) *Glaukoma*

Glaucoma is the nerve damage of the eye as a result of increased pressure on the eyeball. Increased pressure on the eyeball results from a breakdown in the fluid delivery system. A person suffering from this condition can experience symptoms of vision disorders, eye pain, to headaches. The American ophthalmological society and Canada ophthalmological society released the writing in 2010 that there was a cure for medicinal marijuana. Mendis lower pressure on the eye and protect the nerve of the retina from damaging it. It contains active tetrahydrocannabinol (THC), which helps to reduce stress and protect the retina from the damage caused by glaucoma, if therapy is done well, it can cure glaucoma. But in Indonesia it is impossible for doctors to buy marijuana.

2) *Alzheimer's Disease*

Memory impairment is something we see in parents who are 65 years of age, our parents are known to be a disease, it's an alzheimer's disease, it's a brain disease that causes memory loss, thinking ability and speech. V.A. Campbell and A. Gowran in his research found that cannabis has an enpresence

⁴ Sudarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 1981, hal 15

⁵ Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, Sinar Baru, Bandung 1983 hal. 20

⁶ Erwin Ubwarin, *Kebijakan Formulasi Hukum Pidana Dalam Melanggulagi Kejahatan Skimming ATM*, Jurnal Sasi, Vo. 21. No.2, Tahun 2015. Hal 17-20

called cannabinoid or THC, cannabinoid is believed to assist in treatment of memory impairing because of human age. Smoking marijuana helps patients sleep well, increases appetite.⁷

3) *Fibromyalgia*

Fibromyalgia is a rheumatic disorder, such as arthritis. It is characterized by pain throughout the body, high response and painful stress, insomnia, muscle stiffness in the morning, and fatigue of a number of factors involved, including neurological and endocrine disorders, genetic factors.⁸ Cannabinoid makes patients with fibromyalgia suffer pain relief and makes those with difficulty sleep easier.

Indonesia is one of the countries that has not legalized marijuana. On the other hand, there are several countries that have legalized marijuana for medical use, including Chile, Canada, Italy, Turkey, Thailand, the United States, Sri Lanka, South Korea, and several others.

That state in America has legalized marijuana as a medical plant that is Alaska 1998, Arizona 2010, California 1996, Colorado 1998, Connecticut 2012, Washington, DC 2010, Delaware 2011, Hawaii 2000, Illinois 2013, Maine 1999, Michigan 2008, Maryland 2014, Massachusetts 2012, Minnesota, 2004, Montana 2004, Nevada 2000, New Hampshire 2013, New Jersey 2010, New Mexico 2007, New York 2014, Oregon 1998, Rhode Island 2006, Vermont 2004, Washington 1998.⁹

The arrangement in 22 states is not the same as the amount of disease that marijuana can use as treatment. In Arizona, where marijuana was legalized in 2010, Nevada has a 2.5-ounce limit on marijuana and Nevada has a one-ounce medical limit in America, for example, with Washington's twenty-four ounce medical marijuana limit in America, for example, has detoxed marijuana as a medicinal plant that has the greatest benefit of treating many diseases, but surveillance on drugs has also become unregistered, Arizona used a card to a patient his doctors recommended for medical marijuana, so when he went to the pharmacy he showed.

2. The Formulation of Act 35 Year 2009 About Narcotics in Legalizing Medical Marijuana Use in The Future Indonesia

By looking at the results of the research and application of the medical marijuana setting above, the writer came to the initial conclusion that a formulating policy of criminal law ought to revise law no. 35 year 2009 on narcotics. Policy formulations of criminal law speak not only of the current criminal law policies but of the future as well.¹⁰

In the first half of 2008, there was no possible way to reduce the poverty rate, he said. The goal set out in the opening of the 1945 constitution was briefly "to protect the whole of Indonesia and to advance the public welfare by Pancasila." This is the general policy line which is both the basis and the political direction of law in Indonesia. This is also the basis and goal of any law renewal, including criminal law and law enforcement policies in Indonesia.¹¹

The need for criminal law was crucial to execution, the criminal law had to contain legal rules that bound certain qualified actions to a consequence.¹² How can a deed be said to be criminal if it is not

⁷ V. A. Campbell and A. Gowran, "Alzheimer's Disease; Taking the Edge Off with Cannabinoids?," *British Journal of Pharmacology* 152, no. 5 (November 2007): 655–62. doi:10.1038/sj.bjp.0707446.

⁸ Laurence A. Bradley, "Pathophysiology of Fibromyalgia," *American Journal of Medicine* 122, no. 12 (2009): hal 22–30

⁹ Sumber: <http://medicalmarijuana.proncon.org/view.resoure.php?resourceID=000881> di akses pada tanggal 19 juni 2022

¹⁰ Erwin Ubwarin, *Kebijakan Formulasi Hukum Pidana Dalam Melanggulagi Kejahatan Skimming Atm*. Jurnal Sasi Vol.21 No.2 Bulan Juli - Desember 2015.hal 19

¹¹ Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, GENTA, Yogyakarta, 2010. Hal 1-2.

¹² Teguh Sulista dan Aria Zunetti, *Hukum Pidana Horizon Baru Pasca Reformasi*, Raja Grafindo Persada 2002, Hal 5

regulated yet, legislation is strongly relevant to the legislation/formulation policy.¹³ Need to be managed to legalize marijuana as a medicinal agent, as the arrangement now continues to place it as a legitimate narcotic material.

Article 37 act number 35 in 2009 provided that only class II and III narcotics can be used as a drug. Further in article 53 of the penal code 35 in 2009 set limited use of narcotics ii and iii to be used as treatment.

Article 117 of the law no. 35 in 2009 has established about owning, storing, controlling, or providing class II narcotics under threat of prison crime, while section 118 set about producing, importing, exporting, or administering class II narcotics was convicted. Article 122 to section 126 under section 126 act 35 in 2009 set about criminal offenses for section iii.

According to the authors attached to act number 35 in 2009, it must be revised by removing marijuana plants, all plants of the genus cannabis and all parts of plants including seeds, fruits, straw, processed marijuana or marijuana plant parts including cannabis and hashish weed, and transferring to class ii narcotics in order to be used as a medical agent.

Conclusion

Marijuana has a high potency in medicine. Limited research on marijuana in Indonesia is in the background of poorly equipped law umbrellas. Research and use of medical marijuana requires structured legal regulation to provide protection from researchers to related health kits. And so it is necessary to formulate a policy of criminal law to revise legislation for the year 35, 2009 on narcotics. Policy formulations of criminal law speak not only of the current criminal law policy but of the future, the legalizing of medical marijuana policies will make a significant contribution to the science of health. Nevertheless, to appoint ius constituendum medical marijuana use in treatment, it must weigh many aspects of this matter so as not to boomerang at a cost to the state and to society.

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¹³ Erwin Ubwarin, *Kebijakan Formulasi Hukum Pidana Dalam Penanggulangan Tindak Pidana Perjudian Melalui Internet (Internet Gambling.)* Jurnal Sasi Vol.21 No.1 Bulan Januari - Juni 2015. Hal 48.

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