

## Legal Politics of Medical Cannabis in Indonesia

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### Abstract

*Cannabis is one type of narcotics that is prohibited from use in Indonesia. The prohibition of Cannabis can be found listed in the Attachment to Law Number 35 of 2009 concerning Narcotics as amended. Cannabis is included in Category I of narcotics that cannot be used for research and medical purposes. However, history proved Cannabis can be used as a medical ingredient for treatment in many cases, even though Cannabis is prohibited in Indonesia. This research discusses the legal politics of medical Cannabis in Indonesia in view of the possibility to legalize the use of medical Cannabis. This study is normative legal research using secondary data. The historical and comparative approach is used to support the research. The research showed that historically, Indonesia and Thailand were among many countries that were suffered from the prohibition to use Cannabis for medicine. Indonesian legal politics proved that it is actually open for interpretation dan discussion over the use of Cannabis medical. The study recommends that cannabis medical research must be further encouraged.*

### Introduction

Political law is a tool or means and steps used by the government to create a national legal system to achieve the nation's ideals and the state's goals (Hartono, 1991). The use of marijuana is prohibited in Indonesia. It can be found in the list of Category I drugs in Law No. 35 of 2009 concerning Narcotics (Narcotics Law) as may be amended. The amendment according to the Narcotics Law may be made in the Regulation of the Ministry of Health. Based on the latest list of the Narcotics Law, the use of all genus of Cannabis and all parts of the plant are prohibited. It includes the use of the resin, tetrahydrocannabinol (THC), all the isomers and chemical stereo forms, delta-9 THC and cannabidiol (CBD). They were classified as narcotics group I. (Widjaja, 2018). This classification is based on the United Nations Single Convention on Narcotics Drugs 1961, where marijuana is categorized the same as other types of psychoactive substances such as cocaine, heroin and methamphetamine. It is related to zero tolerance and the effects of narcotics that arise, dangerous marijuana and addiction to the use of Cannabis and other class I drugs (Parama et al., 2015).

The use of marijuana as a medicinal ingredient in Aceh has been long written. It can be found in the *Mujarabat* and *Tajul Muluk* books. This book provides a religious foundation for the medicinal use of marijuana. The book was from the 16th century using the ancient Malay language. In this book, the marijuana plant is a herbal medicine used to treat several diseases such as diabetes. (Lingkar Ganja Nusantara, 2015). The cannabis plant can be used as a spice in cooking, a protective plant for coffee, and tobacco as a cigarette. In addition, Rumphius, in Ambon's research, found that marijuana can treat gonorrhoea, hernia. The leaves of marijuana are used with tea to treat asthma (Buenz et al., 2004). The NGO Lingkar Ganja Nusantara (LGN) has been trying to fight for the legalization of marijuana because the cannabis plant has benefits for humankind. The LGN movement was initiated by a discussion of University of Indonesia students exploring the benefits and existence of marijuana in Indonesia. LGN's real action was manifested in Facebook's social media accounts in 2009 under the name "support the legalization of marijuana". This action received a positive response. In 2010 LGN became the official organization "Lingkar Ganja Nusantara". LGN started to inform and educate about the cannabis plant, types of Cannabis, the benefits and impacts of using marijuana (Abbiyyu; 2017).

There were many examples of the use of marijuana as medicine in Indonesia. In 2017, Cannabis was used by Fidellis in Kalimantan for the treatment of syringomyelia. In 2019, Sutikno and Iqbal Munafi in Banyumas used Cannabis to treat the diabetes of their mother. In 2020, Reyndhart used Cannabis to treat his suffering from nerve pain.

### Research problem

Even Narcotics Law stated the prohibitions of the use of Cannabis for medical and research purpose; researchers argue that the legal politics of medical Cannabis in Indonesia is still conducive to support the possibility to allow the use of medical Cannabis.

## Method

This research is normative legal research. It studies laws and regulations. It used secondary data. Data were obtained through literature research using google machine. Normative legal research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials from each normative law (Marzuki, 2016). These materials are arranged systematically, compared, reviewed, analyzed before a conclusion is drawn to answer the problem of the study (Soekanto & Mamudji, 2019). The study also used historical dan comparative approach. The historical approach is used to support the fact that the legal policy of Cannabis can be rooted down to the will of the Dutch Indie policy before independence. The fact that Cannabis is good for the medical purpose was rejected at that time. The comparative approach is conducted using Thailand as an example. Thailand experienced the same prohibition based on the USA mandate through the Office of Narcotic Control Board (ONCB). It will compare and prove that the national legal policy actually supports the research and use of medical Cannabis

## Results and Discussion

As stated in the preamble to the 1945 Constitution, the objective of Indonesian legal politics is "to protect the entire Indonesian nation and promote public welfare based on Pancasila." Regulation of Narcotics can be found before Indonesian independence. It was regulated in the Verdoovende Middelen Ordonnantie (VMO) of 1927. This regulation prohibits marijuana because marijuana is included in the International Opium Convention in 1925, thus making marijuana subject to a system of export authorization and import certification. VMO aims to consume and produce opium, more specifically regarding the opium monopoly in Dutch Indies. Marijuana is often used as a substitute for opium. After Indonesia's independence, Indonesia ratified two conventions on narcotics and psychotropics. They are the 1961 Single Convention on Narcotics Drugs and the Convention on Psychotropic Substances of 1971. The Single Convention was ratified by Law No.8 Year 1976 concerning the Ratification of Single Convention on Narcotics Drugs 1961, including the Amending Protocol. Meanwhile, the 1971 Convention on Psychotropic Substances was ratified by Law No.8 Year 1996 concerning the Ratification of Convention of Psychotropic Substances 1971. Both the ratification may become the basis for legal politics in dealing with narcotics problems and the making the Narcotics Law in Indonesia. The law on narcotics itself was amended three times. First is Law No.9 of 1976 concerning Narcotics. It was then amended by Law No.22 of 1997 concerning Narcotics. Latest it was amended by Law No.35 of 2009 concerning Narcotics (the Narcotics Law). The content of the Single Convention on Narcotics 1961, including the Amending Protocol, proved that Cannabis could be used for research and medicine, subject to certain conditions. It cannot be understood that the Narcotics Law prohibit the same; even as shown below, narcotics, in general terms, can be used for medical treatment (Paoki, & Haniah, 2021).

Article 4 paragraph (1) Narcotics Law stated that the law is made "to ensure the availability of Narcotics for the benefit of health services and/or the development of science and technology". The article provides space for the use of narcotics in health services and/or the development of science and technology. Meanwhile, marijuana is included in Category I in the Attachment to the Narcotics Law. The prohibition on the use of narcotics group I for health services is written in the Narcotics Law Article 8 paragraph (1), "Narcotics Category I is prohibited from being used for the benefit of health services". Article 8 paragraph (2) Narcotics Law stated that "In a limited amount, Narcotics in Group I can be used for developing science and technology and diagnostic reagents, as laboratory reagents with the approval of the Minister of Health based on the recommendation from the Head of the Food and Drug Supervisory Agency". On Group II dan Group III Narcotics, Article 37 of the Narcotics Law mentioned that it would be regulated further by the Ministry of Health. The regulation will guide the use of the raw materials, both natural and synthetic for use in drug production". Therefore, it can be said that Narcotics can be used for medical treatment.

Historically, marijuana in Southeast Asia has been used as a kitchen spice, fibre source, medicine and muscle relaxant. Thailand was once the strongest "cannabis" country in the world (Blair, 2011). Marijuana in Thailand can be found in bars and restaurants. In Thailand, history proved that the use of marijuana is inherent as traditional medicine. The cannabis plant in Thailand came from India. In the 1930s, Cannabis was prohibited for medicinal purposes (Phongpaichit, 2003). Until 1979, the Cannabis plant in Thailand was still considered illegal. It can be found in Thailand narcotics act B.E 2522 in 1979. However, Thailand Parliament has always supported the amendment of Thailand Narcotics Act B.E 2522 in 1979 to Thailand narcotics act B.E 2562 in 2019. In Thailand, on 1 January 2019, marijuana was legalized for medical purposes. The Thai government will strictly regulate marijuana as a medical interest through production and sales licenses. Individual marijuana ownership in certain amounts is allowed. But it shall have a prescription and certification recognized by the government. The Thai government insists that the law also applies to Kratom, which is a stimulant plant. Thailand Narcotics Act B.E 2522 in 1979 was made on the mandate of the USA through the Office of Narcotic Control Board (ONCB) with the "war on drugs" program with the implementation of a zero-tolerance attitude (Quinley, 2018). The pros and cons of this regulation emerged among the Thai leaders that the cannabis ban policy by the Thai government would not work effectively (Aroonsrimorakot et al., 2019). However, the politics

of prohibiting narcotics by the Thai government has the full support of the U.S. government. This support form is funding, training for law enforcement, training for experts in Thailand, financing of the royal army, border police and provincial police in Thailand (Kanato, 2020).

One of the interesting issues during the war on drugs program in Thailand is on 28 August 2013, the Minister of Justice officially announced the consideration to move criminal sanction for the use of Kratom. Kratom, or *mitragynia speciosa korth*, is a traditional plant used by the Thai's indigenous as ingredients mixed in tea and others drinks. Thailand Narcotics Act B.E.2522 has put Kratom and Cannabis in Category V of the drug's list. It explains that there was a misunderstanding in mosts national laws and policies regarding the use of drugs and the dependency on drugs. The laws and policies were never made based on evidence. It quoted that based on UNDOC finding, only ten per cent of those people who used drugs are drugs' dependent (Macdonald & Nacapew, 2013).

According to Windle (2016), Thai drug policy is a paradox. It should be a model for humane drug crop control to reduce illicit drugs production. Still, it appears to be against international human rights law, especially during the "war on drugs" year in 2003. It became the criminalization and abuse of power by the polices to drugs users. It can be said that during the "war on drugs," the Thai government suffered many losses, such as the large budget for investigations, arrests, protection of law enforcement, and maintenance costs for marijuana users who went to jail (Costs, 2013). In 2018, the Thai government started to open universities and health experts to research marijuana. It resulted in the acknowledgement that the cannabis plant has clinical benefits. There were publications from the National Academy Press that prove cannabinoids can relieve pain, nausea, vomiting and increase appetite. Marijuana is not dangerous when compared to chemical drugs because the side effects given by marijuana can be tolerated in the human body and are all-natural in contrast to chemical drugs that can cause organ damage due to their side effects (Meera, 2019). The Thai Minister of Public Health, Anutin Chanvirakul, has positive thinking about using marijuana as a medical ingredient to treat diseases that many Thai people suffer from, namely cancer, dravert syndrome, epilepsy (Baker & Peerapan, 2019). Thai people also get treatment at a lower cost and affordable because they are produced in their own country. On 18 February 2019, Thailand enacted a law that entitled the use of medical Cannabis, even there were still debates. (Sornpaisarn et al., 2019).

The lesson learned from Thailand has proven that many aspects must be considered, reviewed, and discussed. First, there must be a strong political will to change what has happened in the past. Second, further research must be conducted to support that there must be a change in laws and legislations. What has happened in Thailand was mostly similar to what happened in Indonesia. Similarly, in Indonesia, history has proven that the banned on Cannabis was made during Dutch Indies. There was never a clear reason of whether Cannabis must be prohibited from daily use by Indonesian people. It was then carried forward along with the ratification of the Single Convention on Narcotics Drugs 1961, including the Amending Protocol. If it was to be looked carefully, Article 3 paragraph (1) Law No.9 Year 1976 regarding Narcotics stated that "Narcotics can only be used for medical treatment and or scientific purpose." Further article 4 paragraph (1) Law No.9 Year 1976 regarding Narcotics clearly refers that for medical treatment and scientific research, the Minister of Health may grant the license to scientific institutions and or educational institutions to buy, plant, store to own or for stock, or control Cannabis plants.

Under the current Narcotics Law, the research on Cannabis actually has been opened since 2015. However, until now, it has not been carried out. Nevertheless, there were statement, decree and regulation from the Ministry of Health that supported the research of Cannabis for medical purpose. The Ministry of Health's letter No: LB.02.02/III.3/885/2015 allows research using Cannabis in Indonesia. Ministry of Health Decree No.132/Menkes/SK/III/2012 regulated permits to obtain, store, plant papaver, marijuana and coca plants. There is also Ministry of Health Regulation No.26 of 2014 concerning the annual need plan for narcotics, psychotropic substances and precursors (Abbiyyu, 2017).

## Conclusion and Recommendations

For some cultural and habituation reasons, Indonesia and Thailand were using Cannabis for medical purposes a long time ago until today. However, because of history, the use of Cannabis was totally prohibited. After independence, the regulation was still maintained. Today by incorporating Cannabis in Category I of Narcotics Law, the use of Cannabis for medical research and treatment seems to be prohibited. However, we shall note the purpose of the issuance of Narcotic Law that narcotics can be used for medical research and treatment. We shall also consider the ratification of the Single Convention on Narcotics Drugs 1961, including the Amending Protocol that allowed research and use of medical Cannabis, and the listing of drugs Category that may be amended by the Regulation of the Ministry of Health. From such a point of view, it can be said that actually legal politics on medical Cannabis is not that hard. The provision that allows amendment of the Category I drugs in the Narcotics Law list is good proof of the legal politics that may support the research and use of medical Cannabis. Learning from Thailand, further research and discussions on the benefit of medical Cannabis and the preparedness of supervision over medical Cannabis will be fruitful to swing the legal politics

in favour of the legalization of the use of medical Cannabis. Lastly, researchers would like to say that legal politics must not forget history, cultural and educational aspect.

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### References

- Abbiyyu, M. D. (2017). The Strategy of the Lingkar Ganja Nusantara in fighting for the legalization of Cannabis in Indonesia. *Young Political Journal*, 5(3), 300-310.
- Aroonsrimorakot, S., Laiphrakpam, M. & Metadilogkul, O. (2019). Social, religious, recreational and medicinal usage of Cannabis in India and Thailand. *Journal of Thai Interdisciplinary Research*, 14, 43-50.
- Baker, M., & Peerapan T, (2019), Thailand's cannabis legalization.
- Blair, E. (2011). History of cannabis use and anti-marijuana laws in Thailand.
- Buenz, E., Johnson, H. E., Beekman, E., & Bauer, B. (2004). Bioprospecting Rumphiu's Ambonese Herbal. *Journal of Ethno-pharmacology*.
- Costs, C. T. (2013). The War on Drugs: Wasting Billions and Undermining Economies. Count the Costs.
- Hartono, S. C. F. G. (1991). *Legal Politics Towards One National Legal System*. Bandung: Alumni.
- Indonesian Law No. 22, 1997. regarding Narcotic. State Gazette Year 1997 No.67, Add. No.3698.
- Indonesian Law No. 35, 2009 regarding Narcotic. State Gazette Year 2009 No.143, Add. No.5062.
- Indonesian Law No. 8,1976 regarding Ratification of the 1961 Single Convention on Narcotics, including the Amending Protocol. State Gazette Year 1976 No.36, Add. No.3085.
- Indonesian Law No. 9, 1976 regarding Narcotic. State Gazette Year 1976 No.37, Add. No.3086.
- Kanato, M. (2020). Impacts of Medical Cannabis Law in Thailand. *ONCB Journal*, 36(2), 27-36.
- Lingkar Ganja Nusantara. (2015). Terms of Reference Brainstorming Ethnobotany Hikayat Cannabis Nusantara.
- Macdonald, V & Nacapew, S. (2013). Drug Control and harm reduction in Thailand. *IDPC Briefing Paper*.
- Marzuki, P. M. (2016). *Legal Research*. Jakarta: Kencana
- Meera, N. (2019). Thailand's First Batch of Medical Marijuana is Ready for Roll-Out.
- Paoki, V., & Haniah, H. (2021). Research with the title LGN as an Interest Group (study of Indonesian Cannabis Circularity Efforts (LGN) in Amending Law No.35 of 2009 on narcotics). *Independent Journal*, 2(1), 32-40.
- Parama, I. S., Ranteallo, I., & Kebayantini, N. (2015). The Role of Lingkar Ganja Nusantara in Legalizing Cannabis. *Sociology Scientific Journal (SOROT)*, 1(03), 1-12.
- Phongpaichit, P. (2003). Drug policy in Thailand. *Proceedings of the 2003 Lisbon International Symposium on Global Drug Policy*, 23-25 October 2003.
- Quinley, C. (2018). Thailand's Plans to Legalize Medical Marijuana Could Impact Southeast Asia.
- Soekanto, S., & Mamudji, S. (2019). *Normative Legal Research*. Jakarta: RajaGrafindo Persada.
- Sornpaisarn, B., Rehm, J. & Manthey, J. (2019). Think Clearly about the Medical Cannabis Policy in Thailand. *Journal of Health Science*, 28(4), 755-766.
- Widjaja, G. (2018). Should Cannabis as Medicine be Specifically Regulated?. *Pharmacology and Clinical Pharmacy Research*, 3(3), 76-79.
- Windle, J. (2016). Improving Global Drug Policy: Comparative Perspectives and UNGASS 2016. *Drugs and Drug Policy in Thailand*.

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