



RESEARCH ARTICLE

Marijuana as A Health Therapy is Associated with Human Rights and the Potential Legality of Future Use of Marijuana in the Health Field Based on Local Indonesian Wisdom

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The use of marijuana in Indonesia is not something new. It has been recorded that since the 10th century AD, marijuana has been known in trade, religious rituals, and as a means of medicine in the archipelago. Marijuana is even referred to as "green gold" because it has commodity value and usefulness for society. This was even recorded in the nation's history. The rise in marijuana use has even triggered several historical events, including the 1st and 2nd opium wars, up to the anti-marijuana declaration. The Law on Narcotics in Indonesia currently still prohibits the distribution and use of marijuana in Indonesia. Marijuana is classified into Group I narcotics. Thus, any reason does not allow marijuana to be consumed. The cannabis plant was previously assessed as having medicinal potential by more than 50 countries; causing these countries to have adopted medical and recreational marijuana programs in their legal arrangements. The method used in this research is normative juridical research with a statutory regulation approach. To obtain research data (secondary data) is done through document study. Data analysis in this research uses a qualitative method where the presentation of research results is carried out descriptively. The results of this research are the rationale for the need to legalize the use of marijuana for medical treatment. The current Narcotics Law is considered to be no longer relevant to the development of science and technology. The legal construction regulating the legalization of marijuana plants for use in medical treatment, viewed from a health law perspective in this study, can be seen from the increasing need of Indonesian people for health services, namely the use of marijuana plants. Therefore, the Narcotics Law needs to be revised and the marijuana plant needs to be moved to class II narcotics so that it can be used for medical treatment.

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1. INTRODUCTION

In 1971, Medical World News said that marijuana or hashish was probably one of the most powerful anti-epileptic drugs known in medicine today. A study using animals found that the content of marijuana, namely several types of active substances such as cannabinoids, can control epileptic seizures very well. Marijuana is one of the sources of cannabinoids from the plant world.

American military research also shows that in experiments mice given synthetic cannabinoids were 70% less likely to suffer epileptic seizures and brain damage after exposure to nerve gas. Cannabinoids are often associated with epilepsy if treatment is resistant. Pamplona states that CBD is effective and safe, at least in the patient population with treatment-resistant epilepsy, considering

the risks, and benefits inherent in treating this severe neurological condition. Most patients benefit from this treatment and if side effects occur they are still quite mild.¹

Medical marijuana is the term for a derivative of the *Cannabis sativa* plant that is used to relieve symptoms caused by certain medical conditions. Medical marijuana contains many active compounds. Reporting from the Mayo Clinic, the most well-known types of medical marijuana are delta-9 tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is the main ingredient in marijuana which makes people feel "floating".²

As research on the use of marijuana as a medical therapy increases, many countries have legalized the use of marijuana, especially as a medical therapy. The countries in question are Australia, Chile, Turkey, Canada, Denmark, Italy, England, Finland, Argentina, and most recently, Thailand became the first country in Southeast Asia to legalize the use of marijuana for medical needs in 2018. The government of the White Elephant Country even has legalized marijuana for recreational purposes.

In Indonesia, Marijuana and several other types of narcotics are prohibited in Indonesia. According to Law Number 35 of 2009 concerning Narcotics Article 112 paragraph (2), in the event that the act of possessing, storing, controlling or providing non-plant Class I Narcotics as referred to in paragraph (1) weighs more than 5 (five) grams, the perpetrator shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as intended in paragraph (1) plus 1/3 (one third). Then Article 113 paragraph (2) also states that the act of producing, importing, exporting or distributing Class I Narcotics as intended in paragraph (1) in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) trees or in non-plant form weighing more than 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).³

The view that marijuana can be used as medical therapy in Indonesia has begun to emerge significantly since the story of a husband named Fidelis Arie Sudewarto who was caring for his wife, Yeni Irawati. In January 2016, Yeni Irawati was diagnosed by a doctor as suffering from syringomyelia or the growth of a fluid-filled cyst or syrinx in the spinal cord. Yeni's body condition became increasingly worrying due to the syringomyelia disease, and she even had difficulty sleeping for days. Since then, the husband has been taking care of Yeni at home. The husband, Fidelis, is a civil servant (PNS) within the Sanggau Regency Government and has read several guidelines for treating syringomyelia from various literature. Fidelis has attempted several treatments for his wife's recovery, ranging from medical drugs, herbal medicines, even smart people, but his efforts did not produce good results. Armed with literature obtained from abroad, Fidelis finally applied marijuana extract treatment to Yeni, the marijuana Fidelis planted in his own home. Fidelis' older sister, Yohana LA Suyati, testified that the condition of her sister-in-law, Yeni, gradually improved after receiving marijuana treatment.

On February 19 2017, officers from the National Narcotics Agency (BNN) arrested Fidelis because they were caught planting 39 marijuana trees at his house. The marijuana extract for Yeni was also destroyed so that Yeni's marijuana treatment stopped. Since then, Yeni, who was initially getting better, experienced a setback, the wounds on Yeni's body opened again, even appearing in new

¹Nabila Takeshita Dewi, "The Effect of Giving Cannabinoids on Treatment-Resistant Epilepsy", *Journal Medika Hutama*, Vol 02, No 01, (October 2020), p. 358.

² <https://gaya.tempo.co/read/1607003/pro-kontra-useran-ganja-medis-untuk-pengbahan-cek-besarnya>, accessed on February 1 2023, at 21.00 WIB.

³ Vissilius Geraldi Kristiawan, *Case Study of Constitutional Court Decision Number 106/PUU-XVIII/2020 Regarding the Use of Marijuana and the Fulfillment of the Community's Sense of Justice in the Health Sector in Indonesia*, FH UK Thesis. Maranatha Bandung, 2022, p. 7.

places, Yeni's stomach also slowly swelled until finally on March 25 2017 or exactly 32 days after Fidelis was arrested by the BNN, Yeni exhaled. last breath.

In 2020, Santi together with other applicants, namely Dwi Pertiwi, Nafiah Murhayanti, A.Md., Perkumpulan Rumah Cemara, Institute for Criminal Justice Reform (ICJR), Association of Community Legal Aid Institutions or Community Legal Aid Institute (LBHM), filed a lawsuit material review of Law Number 35 of 2009 concerning Narcotics Article 6 paragraph (1) letter a and Article 8 paragraph (1) to the Constitutional Court (MK) because it was motivated by the condition of his son who suffers from cerebral palsy and was motivated by similar sufferers in Australia who His condition was better after receiving marijuana therapy. The Constitutional Court issued a decision rejecting the petition because the Constitutional Court considers that research on the use of marijuana as a medical therapy has not yet been valid in Indonesia and Indonesian culture has tended to view the negative effects contained in marijuana. The Constitutional Court's decision confirms the provisions in the Law Number 35 of 2009 concerning Narcotics is considered by some groups to violate human rights, especially regarding the right to obtain a degree of health which is actually recognized in the Indonesian Constitution.

Based on the case description above, the main issue in this research is the potential use of marijuana as a health therapy for Indonesia in the future in relation to human rights and local Indonesian wisdom. For this reason, it is hoped that this research can contribute to the development of legal science, especially health law.

Major legal steps are needed to legalize the use of marijuana for medical purposes in Indonesia. The major legal steps in question include, among other things, revising the Narcotics Law. The important revision is to remove marijuana from class I narcotics. This is based on the fact that the implementation of the Narcotics Law is no longer relevant to the conditions of society that need marijuana as medicine. Marijuana can be used as an alternative treatment. In the medical world, marijuana has been proven to have good benefits in helping patients relieve pain. On the other hand, there is the fact that the UN and the drug commission have removed marijuana and marijuana resin from schedule IV of the single convention on narcotics. Therefore, the Indonesian government should immediately revise the Narcotics Law. This revision of the Narcotics Law can also be done by using comparisons with other countries that previously had Narcotics Laws which legalized the use of marijuana for medical purposes.

In this research, the Writing Team took a comparative approach and a statutory approach to Narcotics Laws in the United States, Thailand and Indonesia. This approach is carried out by comparing the laws of a country with the laws of one or more countries.⁴ A comparative approach is carried out by comparing regulation of narcotics laws in Indonesia, the United States and Thailand by comparing the material side and the regulatory side. Gutteridge further stated that descriptive legal comparisons aim to obtain information and applied legal comparisons that have certain suggestions, for example the desire to improve existing Narcotics laws.⁵

Comparative legal studies are activities to compare certain laws a country with the laws of another country or the laws of a certain time with the laws of another time. This activity is useful for addressing the background to the occurrence of certain legal provisions for the same problem from two or more countries. This revelation can be made recommendations for drafters or changes to statutory regulations.⁶

Based on the author's research, research related to marijuana as a health therapy has been discussed in several studies, but the point of view is seen from the aspects of legal certainty, legal benefits, legality and others. There has been no discussion regarding the potential use of marijuana from a

⁴ Peter Mahmud Marzuki, *Legal Research*, Kencana: Jakarta, 2009, p. 15

⁵ *Ibid*, p. 17

⁶ *Ibid*, p. 173

human rights perspective and local Indonesian wisdom so this research can be considered as a discussion from a different point of view.

2. IDENTIFICATION OF PROBLEMS

Based on the background above, the following problems can be identified:

1. How is the use of marijuana as a health therapy in Indonesia from a human rights perspective?
2. What is the potential for future use of marijuana as a health therapy in Indonesia from the perspective of local Indonesian wisdom?

3. THEORETICAL FRAMEWORK

Human rights theories consist of natural rights theory, positivist theory, and cultural relativist theory.

1. Natural rights theory states that human rights are rights that all people have at all times and in all places because humans are born as humans. These rights include the rights to life, liberty and wealth/property. According to this theory, recognition is not necessary for human rights, either from the government or from a legal system, because human rights are universal. Based on this reason, the source of human rights actually comes solely from human nature.
2. Positivism theory (positivist theory). According to this theory, not all parties agree with the view of natural rights theory, one of which is the theory of positivism. This theory firmly rejects the view of natural rights theory. Adherents of this theory argue that they are widely known and believe that rights must come from somewhere. Then, rights should be created and granted by constitution, law or contract. The main objection to this positivism theory is that the source of natural rights is considered unclear. According to positivism, a right must come from a clear source, such as from legislation or a constitution made by the state.
3. The theory of cultural relativism (cultural relativist theory). which views the theory of natural rights and its emphasis on universality as an imposition of one culture on another, which is called cultural imperialism. According to adherents of the theory of cultural relativism, there is no universal right. They feel that natural rights theory ignores the social basis of the identity that individuals have as human beings. Humans are always the product of several social and cultural environments and different cultural traditions and civilizations which contain different ways of being human living in different cultural settings.
4. TheoryComparative law or legal transplanted by Alan Watson. According to Alan Watson, Legal transplanted is "the transfer of legal regulations from one country to another another, or from one society to another."⁷The transfer of these rules must be accompanied by reasons why it is necessary compared with other countries. This research compares the Narcotics Laws of the United States, Thailand and Indonesia, because the United States is a country with a Common Law system which uses precedents as the basis for deciding decisions. cases and the flow of information in the country is freer. Meanwhile, Thailand is a country with a democratic monarchical system of government which once removed the use of marijuana in its national Narcotics Law, then re-included the legalization of the use of marijuana in 2022. The writing team chose these two countries as comparisons for the Indonesian Narcotics Law in Indonesia This writing.

Local wisdom is a part of a culture that exists in a society that cannot be separated from the society itself. Local wisdom can be said to be a value that local wisdom in Indonesia has been proven to determine or play a role in the progress of its society. According to Sibarani (in Daniah) Local Wisdom is a form of understanding that exists in the m to regulate people's lives or what is usually called local wisdom. Local wisdom is a set of views on life, knowledge and life strategies that are manifested in activities that carried out by local communities, who are able to answer various problems in meeting their needs

⁷ Alan Watson. *Legal Transplants: An Approach To Comparative Law*. 2nd ed. 1993, 1st ed. 1974. (Athens, Georgia: University of Georgia Press, 1974).

Local wisdom is the basic knowledge of life, obtained from experience or the truth of life, can be abstract or concrete, balanced with nature and the culture of a particular community group. Local wisdom can also be found, both in community groups and in individuals. Local wisdom is used by the community to control daily life in family relationships, with fellow relatives, and with people in the wider environment. Because the scope is local knowledge, culture and intelligence, local wisdom is also known as local knowledge, local wisdom or genius local.

The characteristics of local wisdom are:

- (1) It must combine virtuous knowledge that teaches people about ethics and moral values.
- (2) Local wisdom must teach people to love nature, not to destroy it.
- (3) Local wisdom must come from older community members. Local wisdom can take the form of values, norms, ethics, beliefs, customs, laws, customs, and special rules.

1. Use of marijuana in the medical field from a human rights perspective

If we talk about Narcotics in general, the Indonesian Government has ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (UN Convention on Eradicating Illicit Traffic in Narcotics and Psychotropic Substances 1988) through Law no. 7 of 1997. This also shows that the government is very committed to playing an active role in efforts to eradicate narcotics abuse and distribution.

One type of narcotics that has been very widely discussed in the last 30 years is marijuana, which is also known as marijuana. Marijuana is a type of plant that is prohibited in most countries in the world which has the effect of making users potentially commit criminal acts.

Marijuana is the most widely used drug in the world, with an estimated 4% of the global population aged 15-64 years in 2019 having used marijuana in the past year. Currently, Canada and Uruguay are the only two countries in the world that allow the nationwide sale of non-medical cannabis for people's recreational use and although the trend of cannabis use has increased by 18% between 2010 and 2019 and the highest annual prevalence of cannabis use is in North America (14.5%), Australia and New Zealand (12.1%), and West and Central Africa (9.4 %), a Lower prevalence of marijuana use has been observed in Asian countries (2.0%).⁸

David Nutt, one of the lecturers at Imperial College London Drug Science, stated that for certain diseases, marijuana can be used as medical therapy (medical cannabis). This can be seen from several practices in several countries that use marijuana as a therapy to cure epilepsy. The results of this therapy show that the negative impacts resulting from the use of marijuana as medical therapy can be reduced to a minimum so that the aim of medical therapy can be said to be successful.⁹

There are 4 things that are often associated with the marijuana problem, namely the prohibition of marijuana consumption, discrimination related to marijuana, the use of marijuana in the medical field and finally the legalization of marijuana. The prohibition on consuming marijuana is very closely related to the basic effects that arise from using marijuana, especially with uncontrolled doses. Many criminal acts are often caused by the use of narcotics, including marijuana, so in general, many countries still prohibit the legal use of marijuana because of the side effects in the social sector. This is very visible from several cases both in the community and from several facts where many marijuana users have been sentenced to prison.

Narcotics are closely related to the right to health. According to the International Covenant on Economic, Social, and Cultural Rights General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) in 2000 states that health is a human right that is fundamental to the

⁸UNODC . : World Drug Report 2021. In. United Nations publications; 2021.

⁹ [Kompas.com](https://nasional.kompas.com/read/2022/06/28/16375051/pro-kontra-usaha-legalisasi-ganja-untuk-kecepatan-medis-di-indonesia) with the title "Pros and Cons of Efforts to Legalize Marijuana for Medical Purposes in Indonesia", Click to read: <https://nasional.kompas.com/read/2022/06/28/16375051/pro-kontra-usaha-legalisasi-ganja-untuk-kecepatan-medis-di-indonesia>.

implementation of other human rights, and every human being has the right to enjoy the highest standard of health attainment that is conducive to living a dignified life. .¹⁰

Health is a fundamental right that every human being has. Therefore, through its various policies, the Government plays an active role in realizing the health of its citizens. These policies cannot be separated from human rights, especially the right to life and the right to health.

The state's policy of enforcing a ban on the abuse and illicit trafficking of narcotics, as well as legalizing marijuana for medical purposes, is actually a concrete form of implementing the state's obligations in matters of human rights, namely fulfilling the right to health and the right to life. In a broader scope, this policy was of course made to improve the health status of Indonesia's human resources.

The use of marijuana (marijuana, cannabis, poopy) for medical or therapeutic activities is still illegal in Indonesia. This is due to the laws and regulations in force in Indonesia. The Indonesian government still classifies marijuana in class 1 of narcotics. This means that marijuana is as dangerous as cocaine, heroin, etc., because it causes extreme dependence. Furthermore, it is explained in Law No. 35 of 2009 concerning Narcotics, that marijuana and other class 1 narcotics are only permitted for the purpose of developing science and are not used in therapy.¹¹

Countries that have legalized the use of marijuana are:

1. United States of America

In the United States, medical marijuana is legal in 38 states and still provides limitations that recreational use remains illegal. American states that legalize medical marijuana are Colorado, Washington, Alaska, Oregon, Washington DC, California, Maine, Massachusetts, Nevada, Michigan, Vermont, Guam, Illinois, Arizona, Montana, New Jersey, New York, Virginia, New Mexico, Connecticut, and Rhode Island.¹²

Meanwhile, in the United States, which adheres to a state government system, the laws governing marijuana for medical purposes are regulated in the Controlled Substances Act of 1970, then added to the 2014 Agricultural Act. This describes the marijuana plant in a certain classification which is only allowed to be used for medical treatment. The United States categorizes marijuana as "hemp" which can be used as a medical therapeutic tool.¹³ Use of Marijuana outside of "hemp" for recreational purposes (not medical purposes) is punishable. Misuse of "hemp" within unreasonable limits, not through a licensed doctor's prescription, will result in a fine.

The legal arrangements in the United States are considered "freer" than those in Thailand. However, what needs to be noted is that the United States basically still very much restricts the use of marijuana (and oil extracts and derivatives). This can be seen from various scientific journal literature, which illustrates that the United States Government is trying to control the use of marijuana by trying to categorize marijuana with natural narcotics (opium, etc.). Marijuana is "judged" to still have positive potential when used for medical purposes. On the other hand, the United States Government chose to free each state to regulate the type, quantity and use of marijuana or other narcotic content in medicines. Regulation of medical marijuana should be carried out by considering many aspects of society. Medical purposes do require marijuana as a medicinal ingredient. However, the use and licensing arrangements for the use of medical marijuana require further research. Especially research in the field of law that comprehensively covers aspects of health, culture and legal patterns that exist in Indonesian society itself.

¹⁰ Goddess, Nabila Takeshita. 2020. "The Effect of Cannabinoid Administration on Treatment-Resistant Epilepsy." *Hutama Medika Journal* 02 No 1.

¹¹ General explanation of law number 35 of 2009 concerning Narcotics, further in this section the pattern of Indonesian legal politics towards Narcotics is explained, which still adheres to a conventional anti-narcotics enforcement system based on the 1960 anti-narcotics Convention.

¹² <https://heylaw.id/blog/pengaturan-ganja-dalam-perspektif-Hukum-kesehatan>.

¹³ Harrison J. VanDolah, BA; Brent A. Bauer, MD; and Karen F. Mauck, MD (2019). Clinicians' Guide to Cannabidiol and Hemp Oil. *Mayo Clinic Proc.* n September 2019;94(9):1840-1851 n <https://doi.org/10.1016/j.mayocp.2019.01.003> www.mayoclinicproceedings.org

2. Thailand

Thailand has officially become the first country in Asia to legalize marijuana for medical purposes. Medical marijuana was officially legalized on June 9, 2022. The aim of this legalization is to improve the health industry in Thailand. The strategy used by the Thai Government is to provide Thai citizens with the opportunity to grow marijuana on their home land. This is not meant to be negative, but the opposite. According to the Thai Minister of Health, Anutin Charvirakul, he said that Thailand would re-regulate regulations regarding marijuana plants and provide opportunities for all people in Thailand to participate and grow marijuana for commercial purposes. The results of the harvest of the marijuana plants will later be sold to the Thai Government.¹⁴ Previously, Thailand in 2013 adopted the War On Drugs policy. This policy is a form of "war" with the government and society to fight drugs. This policy was first initiated by the United States. Thailand, because of this policy, takes a firm stance against drug dealers and smuggling of goods in its country. However, every year after the war on drugs policy, the number of drug abuse cases has actually increased. The implementation of the War on Drugs policy has a negative impact on community welfare, security and state development. Many Thai people have been punished for smuggling and the illegal trade in marijuana. Therefore, the rate of convicts due to marijuana in Thailand is quite massive in its prisons. Thailand has long been known as a Golden Triangle country. This area is a transit area for narcotics marketing which can be traded to international markets, such as Europe, Asia, America and Africa.¹⁵

Approaching 2019, the Thai government legalizes the use of marijuana for medical purposes. The Thai government is using the momentum of the general election. The political party that won the general election made a priority policy of legalizing medical marijuana. Medical marijuana was officially legalized in Thailand on 18 February 2019 through Law No.7 BE 2566 (2021) concerning Narcotics. This policy makes Thailand the first country to legalize medical marijuana in Southeast Asia. Law No. 7 BE 2566 (2021) concerning Narcotics is a modification of Law BE 2522 (1979) concerning Narcotics. In this law, marijuana is still classified as a class 5 narcotic. This means recreational use of Marijuana remains illegal.¹⁶ People in Thailand are now allowed to apply for cannabis treatment for medical conditions they suffer from. Research, cultivation and processing, as well as import and export of cannabis are also carried out under certain permits.¹⁷ Government and research organizations, medical practitioners, including doctors, dentists, pharmacists, veterinarians, traditional health practitioners and patients are granted limited licenses to consume, possess, research, or produce and trade cannabis according to certain guidelines. Marijuana plants in Southeast Asia have been used as a kitchen spice, source of fiber, medicine and muscle relaxant. Thailand was once the strongest "marijuana" country in the world.

In Thailand, history proves that the use of marijuana has been embedded as a traditional medicine. In the 1930s, Marijuana was banned for medicinal purposes. Until 1979, growing marijuana in Thailand was still considered illegal. This can be found in the Thai Narcotics Law BE 2522 of 1979. However, the Thai Parliament has always supported the amendment of the Thai Narcotics Law BE 2522 of 1979 to become the Thai Narcotics Law BE 2562 of 2019. ⁸ In Thailand, on January 1 2019, marijuana was legalized for medical purposes. Since the enactment of Law No. 7 BE 2562 (2019) the Thai Government has made further changes to its Narcotics Law. Thailand's latest narcotics law BE 2564 (2021) strictly regulates marijuana for medical purposes through production and sales permits. Individual possession of marijuana in certain amounts is permitted. A medical marijuana

¹⁴ Wahyu Andrianto, "The Use of Marijuana in the Medical Sector from the Perspective of Legal Certainty and Benefits", accessed via <https://law.ui.ac.id/besar-ganja-di-besar-medis-dari-perspekti-kepastian-dan-kebesaran-Hukum-oleh-wahyu-andrianto-shmh/> on September 26, 2023.

¹⁵ Basyir, M. (2022). Legalization of cannabis in Thailand a challenge for Malaysia to curb drug abuse, smuggling. Kuala Lumpur: New Straits Times. Retrieved from <https://www.nst.com.my/news/nation/2022/10/837717/legalisation-cannabis-thailandchallenge-malaysia-curb-drug-abus> downloaded on March 26 2023, at 18:35 WIB

³ Eswaranathan Ehambaranathan, (2023). The Effect of Thailand's Subcultures on Other Southeast Asian States' Countercultures. *Journal of Advanced Research in Social Science*. Vol. 6 no. 3. <https://doi.org/10.33422/jarss.v6i3.1079>, downloaded on 13 July 2023, at 13:24 WIB

¹⁷ Based on the provisions of article 26/3 of Law No.7 BE 2564 (2021) concerning Narcotics, no one may distribute or possess class V narcotics, unless permission to do so is obtained from the licensing authority.

prescription and certification recognized by the government is the main requirement for a medical marijuana permit.¹⁸

This pattern of Thai government policy shows that to overcome the problem of marijuana abuse is not only through prisons. Regulation of the use of marijuana for medical purposes and other positive purposes is still permitted. The exception to this policy is that Thai people can still be imprisoned if they are found selling, exporting and using marijuana without approval from a licensing regulatory body. Additionally, growing this plant for personal use is also permitted if you obtain licensing permission from the licensing authority. Individual possession of marijuana in certain amounts is regulated by having a prescription and certification recognized by the government. Possession of class V narcotics in the amount of ten kilograms and above is considered the same as possession for distribution. Applications for permits and issuance of permits must comply with the basis, procedures and requirements stipulated in the Ministerial Regulation. In general, the manufacture, import, export, sale, possession and use of narcotics in Thailand is prohibited, unless a permit has been obtained. Any party wishing to do the above may apply for permission from the Minister of Public Health of Thailand, the Secretary General of the Food and Drug Administration or a person appointed by the latter based on the rules, procedures and provisions specified in the ministerial regulations. Permits can be obtained for educational, medical, scientific and industrial purposes.

3. South Korea

South Korea legalized marijuana for medical purposes in November 2018.¹⁹In contrast to Thailand, which has re-regulated and become quite free regarding the cultivation of marijuana, South Korea only allows certain marijuana derivatives to be consumed. These marijuana derivative drugs are found in drugs called Sativex and Epidiolex. For recreational purposes, South Korea balks at the threat of prison sentences or heavy fines.²⁰

One country that is still considering the use of marijuana for medical purposes is Malaysia. In Malaysia, the legalization of marijuana for medical purposes is still being studied. In 2022, Malaysia permitted the use of marijuana for medical purposes with several conditions. The Dangerous Narcotics Act 1952, the Poisons Act 1952 and the Sale of Narcotic Drugs Act 1952 do not prohibit the use of products containing cannabis for medical purposes. The use of hemp or medical marijuana as an alternative for patients, its use has been recognized by the international medical community which is another consideration for Malaysia. Retail sales and procurement of medical treatments in Malaysia must be carried out by a medical practitioner registered with a type A license or registered under the Medical Act 1971.²¹

Law must be dynamic, which is the view of some legal experts who see law as a means and justice as an end. Therefore, law should not be static because it must be able to protect society. In its development, there are two views regarding legal changes in society, namely the modern view and the conventional view.

According to schools that adhere to modern understanding, law must be able to adapt to developments and conditions in society. The law is changing, not because the law is out of date, but indeed in society there is a need for changes in the law to support human benefit, especially in

¹⁸Article 26/2 of Law No.7 BE 2564 (2021) Concerning Narcotics, states that the cultivation of industrial hemp and the cultivation of licensed hemp, for the purposes of research and scientific investigation, are legal.

¹⁹It can be seen in the provisions of Article 34 of the Law of the Republic of Korea concerning Narcotics Control No. 14019 of 2016 and also in Article 23 of the Law of the Republic of Korea concerning Additional Laws Concerning Specific Crimes (Psychotropics) No. 11690 of 2013, where marijuana is permitted as a substance for treatment and health research. However, there are still several strict regulations, where South Korean citizens are actually prohibited from using narcotics (marijuana) for recreational purposes. It can be seen further in Article 54 of Law of the Republic of Korea No.14019 of 2016.

²⁰ Syamsul Malik, Luriana Manalu, Rika Juniarti. 2020. "Legalization of Marijuana in the Medical Sector from a Legal Perspective". *Rechten Journal: Legal and Human Rights Research* Vol. 2 No. 2.

²¹ Afra Nafiul Ilma Qubra, "Judicial Analysis of Medical Marijuana Legality Policy", accessed via [https://etd.umm.ac.id/id/eprint/7497/1/Tesis%20Afra fix final last completed w watermark.pdf](https://etd.umm.ac.id/id/eprint/7497/1/Tesis%20Afra%20fix%20final%20last%20completed%20w%20watermark.pdf) on September 26, 2023.

relation to the rights that exist in society. Of course, all of this is based on various problems that occur in society.

According to schools that adhere to conventional understanding, the law changes if society has changed first, meaning, when a society has experienced changes in thought patterns and culture, then the law then comes to legalize these changes. Law is seen as a means of justifying what has happened and is always behind an event.

In connection with this, Soedikno Mertokusumo stated that the law regulates events but often the events have developed far, while the law has not changed. Therefore, it is not surprising that there is the expression *het recht hinkt achter de feiten aan*, which means that the law lags behind the event. The law referred to here is written law or statute. Changes to the law must go through a procedure, so they cannot be made at any time to adjust to circumstances.²²

According to M. Solly Lubis, the process of forming laws in a democratic perspective requires that the input which is taken into consideration for determining the law comes from and is the aspirations of the citizens/people which cover their various life interests.²³

2. The potential for future use of marijuana as a health therapy in Indonesia from the perspective of local Indonesian wisdom

Local wisdom according to the Indonesian legal dictionary based on Law No. 32 of 2009 concerning the Environment, are noble values that apply in community life, including protecting and managing the environment in a sustainable manner. Meanwhile, according to PP No. 23 of 2021 concerning Forestry Organizers, it is stated that local wisdom is noble values that apply in the governance of local community life, among other things, to protect and manage the environment and natural resources sustainably. Meanwhile, local wisdom means something that is wise in local or local traditions. Because local wisdom can also be interpreted as something that arises from local traditions, such as marijuana in Aceh and perhaps in several other areas, it can be said to be the local wisdom of the Acehnese people.

Marijuana as a type of class 1 narcotics based on Article 6 of Law No. 35 of 2009 concerning Narcotics. Where type 1 can only be used for scientific development purposes and is not used in therapy, and has a very high potential for causing dependence. Marijuana is also a type of narcotic that is often abused in Indonesia. Abused use of marijuana will cause side effects, such as: the mouth and throat feel very dry, difficulty remembering, increased appetite, euphoria or excessive feelings of happiness, pulse and heart beat faster.²⁴

Marijuana for the Indonesian people, it has been known since ancient times in Indonesia, used for medicinal and ritual purposes since the time of the Nusantara kingdom, before the Indonesian state was formed. In an article in the journal *Vegetation History and Archae botany*, marijuana originally came from the Tibetan plateau, precisely in Lake Qinghai. According to the Indonesian historical dictionary, marijuana originates from the Caspian Sea and existed in Java in the 10th century. However, there is no accurate information about where marijuana came from and how it spread.

Executive Director of the Sativa Nusantara Foundation, Inang Winarso, said that historically marijuana was first brought by Gujarati traders and sailors from India to Aceh around the 14th century. This marijuana was used as a means of trade transactions, in exchange for coffee, quinine, pepper, vanilla and other spices. . From Aceh, it is estimated that marijuana was brought by the Gujarat tribe to Eastern Indonesia, such as Maluku, which is the center of spices. In Western Indonesia, a relief of marijuana leaves was found at Kendalisodo Temple, which is a three-story Shiva Temple. On the second level of the temple there are carvings of marijuana leaves, which means that marijuana leaves have spiritual and ritual meaning in Hinduism. If this is true, then the origins of marijuana on the island of Java are much older than in Aceh.

²²Mertokusumo, Soedikno. 1996. *Getting to Know the Law An Introduction*. Yogyakarta: Liberty, p. 15.

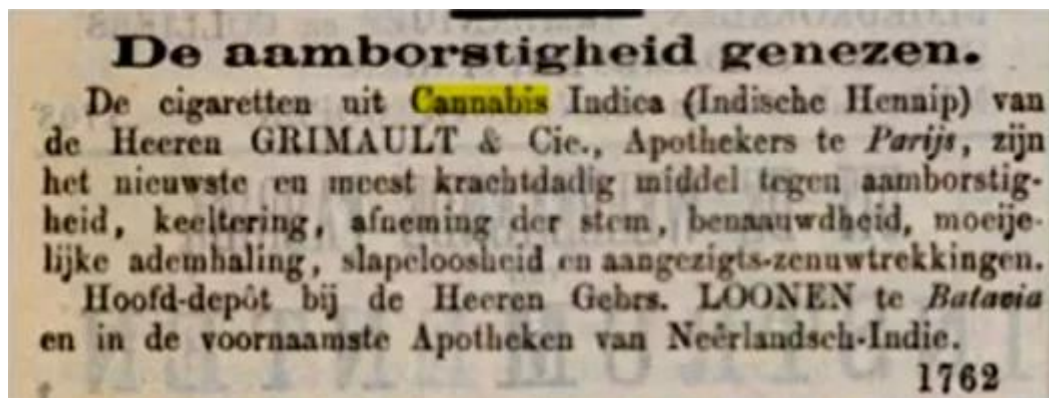
²³Lubis, M. Solly. 2020. *Politics and Law in the Era of Reform*. Bandung: Mandar Maju, p. 26.

²⁴ <https://www.klikdokter.com/info-sehat/kesehatan-umum/kenali-golongan-dan-jen-narkotika>, Recognize Classes and Types of Narcotics, January 12 2022

Proof that marijuana was used as part of religious rituals is stated in the manuscript of the ancient book *Tajul Muluk* in Aceh. In this book it is stated that marijuana is used as medicine, where marijuana is used as a cure for diabetes or diabetes. The *Tajul Muluk* Book is an ancient manuscript originating from Arabia, brought to Aceh by traders from Persia. Initially the manuscript was written in Arabic handwriting, which was then translated into Malay. In Aceh itself, marijuana is used to flavor dishes and to increase appetite, such as beulango soup, duck curry and other spiced foods. Marijuana in Aceh is also used as a coffee mixture, even marijuana trees also function as a pest repellent because the aroma of the flowers and seeds is so strong that animals don't like it.

In Maluku, especially Ambon, a German-Dutch botanist, GE Rumphius, in 1741 in his book entitled *Herbarium Amboinense* stated that marijuana was used by the people of Maluku for ritual and medicinal purposes. This was also confirmed by Dania Putri and Tom Blickman in their book entitled "*Cannabis in Indonesia: consumption patterns, production and policies*", that Maluku people use marijuana to cure gonorrhoea or gonorrhoea. Some Maluku people smoke marijuana to induce a trance (relaxed state) during meditation and performing rituals. There are also those who brew marijuana such as tea to treat asthma, pleuritic chest pain and bile secretion.

Dania Putri further wrote in her book that the Dutch government advertised marijuana in several Dutch-language newspapers in the 19th century.



Marijuana advertisements that appeared in Dutch newspapers at the end of the 19th century, Dania Putri.



Advertisement of marijuana cigarettes as a medicine for asthma, coughs and throat diseases, Dania Putri.

The development of marijuana abroad, apart from the Netherlands, has historically been used as a tool for racial politics and economic interests in the United States. It started with the large-scale migration of Mexicans to America, many of whom worked on landowners' plantations. The hardworking Mexicans had a habit of brewing marijuana every afternoon, displacing the Native Americans from working on the plantations. The Americans launched a smear campaign against the central government and said that Mexicans were drinking and raping American women every afternoon. This was used to drive Mexicans out of America, including American businessmen who influenced American politicians to ban hemp fibers and advocate the use of synthetic fibers. All of these efforts are tools of certain racial politics and in the economic interests of a group of American

businessmen, thereby obscuring the benefits of marijuana. The prohibition of marijuana became an international issue and in 1961 gave birth to the Single Convention on Narcotic Drugs, which included marijuana as a narcotic on a par with opium (papaver) and cocaine (coca).

In Indonesia ratifying international conventions related to the prohibition of marijuana, 15 years later, namely through the Narcotics Law No. 8 of 1976. As a result, all cultural, spiritual and historical issues regarding marijuana became prohibited. This is unfortunate for some parties because there is no scientific research on the benefits of marijuana but following international conventions, where the initial prohibition was colored by nuances of racial politics and economic interests. One of the integrative and functional medicine doctors, Widya Murni, said that there are 33 countries that have legalized marijuana for medical purposes. Among them are Canada, Australia, Finland, Germany, the Netherlands, South Korea, England, India and Malaysia which are in the process of legalizing it. Even though according to the National Narcotics Agency (BNN) there are 3.6 million narcotics users and 63% are narcotics addicts, there are types of marijuana that can be used medically and psychoactively, of course with appropriate levels and dosages. Further research is needed regarding the medical use of marijuana.

Because The belief that marijuana has long been used by Indonesian people, such as the people of Aceh, has made the Chairman of Lingkar Ganja Nusantara (KLGN) Dhira Narayana state that he will provide support for advocacy efforts to the Constitutional Court regarding the prohibition of marijuana in Indonesia, because in Law No. 35 of 2009 concerning Narcotics, It has been regulated that there is a prohibition on the use of marijuana even for medical purposes. KLGN's considerations in advocating to the Constitutional Court were citizens' rights to obtain health services and the local wisdom of the Indonesian people with a history of marijuana use.²⁵

There is The term local wisdom, local wisdom is defined as part of a society's culture which cannot be separated from the language of the society itself. When viewed from a legal understanding, local wisdom according to Law No. 32 of 2009 concerning Environmental Management, is defined as noble values that apply in the way of life of local communities, among other things, to protect and manage the environment and natural resources sustainably. Meanwhile, according to PP No.22 of 2021 concerning Forestry Implementation, it is stated that local wisdom is noble values that apply in the way of life of local communities, among other things, to protect and manage the environment and natural resources sustainably. So when we talk about local wisdom, it is something that arises from the noble values of the community which is useful for protecting and managing the environment so that it continues to preserve the life of the community itself.

Marijuana In Acehnese tradition, it has positive and negative values depending on how it is used. If marijuana is used properly, marijuana plants can have high economic value and can contribute to Acehnese society. But on the other hand, if marijuana is misused, the marijuana plant can become the main ingredient in drugs that can damage the younger generation.²⁶ From the results of scientific research conducted by Prof. Dr. Syamsul Rizal, M.Sc, Chair of the Syah Kuala Research Institute, said that the marijuana plant and several products produced aside from having a negative impact, there are also many positive impacts, both on the surrounding environment and as a raw material for the industrial sector with better quality. For example, paper from marijuana plants has better quality than wood, the raw material for paper is 1 ha of marijuana plants is the same as 4.1 ha of wood. This really helps the exploitation of nature and helps preserve the environment. Clothing produced from marijuana plants can absorb 95% of ultraviolet radiation so it is cooler and suited to the tropical climate in Aceh and Indonesia. Apart from the fibers from the marijuana plant which are processed as textiles and paper, the leaves and flowers can be processed as vaccines or medicine.

²⁵ https://www.kompasiana.com/gurusabar/603d018c8ede482529188152/kearifan-lokal-leksi-legalitas-ganja-atau-miras?page=2&page_images=1, Local Wisdom: Choose the Legality of Marijuana or Alcohol, March 1 2021.

²⁶ <https://rumahcemara.or.id/wp-content/uploads/2022/10/Tradisi-Masyarakat-Aceh-dan-Kebijakan-NAPZA-Nasional.pdf>, Acehnese Community Traditions and National Drug Policy, 2008

Aceh is known as one of the regions that has the largest marijuana fields in Southeast Asia after Thailand, and Aceh is also known as a producer of the best quality marijuana.²⁷This is what makes Aceh marijuana much sought after by drug dealers and bosses because if it is sold the price will be very expensive. In fact, it is not only Aceh that uses Indonesian marijuana, there are other areas in Sumatra, but also in Ambon, Jakarta (Batavia), and Bogor. This was stated in the Fact Sheet on Marijuana in Indonesia released by the Transnational Institute.²⁸One way to use marijuana is to consume the roots to treat gonorrhea. The leaves are sometimes mixed with nutmeg and brewed as tea to reduce asthma, pleuritic chest pain and bile secretion. People use marijuana in a variety of preparations, both for recreational use, cooking spices and medical use. This shows that marijuana, with its various uses, has existed since ancient times. Marijuana is also used in the form of ritual use, which can be seen from the relief carvings at Kendalisoso Temple on Mount Penanggungan, Mojokerto.

If marijuana associated with local wisdom, it has become something that is part of people's lives, especially part of everyday life. Like the use of marijuana to mix chili sauce in Acehese society. Because it has been going on for a long time and before independence, and there is no prohibition in the law, so as long as it has not been regulated in the law, then it can become local wisdom that must be respected. Some groups want to continue fighting for marijuana as part of local wisdom and want it to become legal for some uses. But this must be strictly regulated by the government so that the use of marijuana is not misused.

Seeing the connection between marijuana and Aceh, the National Narcotics and Addictive Substances Agency has provided a policy to bridge the existence of marijuana as a part of local wisdom that cannot be separated from the readiness and welfare conditions of the community. Indicators of welfare and development achievements are very broad. In Acehese society, welfare means physical well-being and mental well-being. Physical welfare includes economic dimensions, while non-physical welfare includes social, political, intellectual, spiritual and spiritual dimensions. The hope is that if Indonesian regulations legalize marijuana plants in Aceh, they can be developed to support the welfare of the Acehese people. Because this is one of Aceh's local wisdom that cannot be ignored.

Marijuana as a form of local wisdom and the potential that in the future it can be used as a health therapy, the government still needs to think about it, including in terms of regulatory arrangements. Juridically, the use of marijuana for medical purposes in Indonesia is not specifically regulated in Law No. 36 of 2009 concerning health, but is only limited to the general regulation of narcotics as regulated in the Health Law concerning the safety and use of pharmaceutical preparations and medical devices in Article 102 it is said that:

1. The use of pharmaceutical preparations in the form of narcotics and psychotropic substances can only be done based on a doctor's or dentist's prescription and misuse is prohibited.
2. Provisions regarding narcotics and psychotropic substances are implemented in accordance with statutory provisions.

So, if you study more deeply, the use of narcotics must be based on the doctor's recommendation. Then in paragraph 2 it is made clear that the use of narcotics must be carried out in accordance with statutory regulations, which means that in this case we must refer back to the provisions of the Narcotics Law where marijuana cannot be used for medical purposes as stated in Article 8 paragraph 1 of Law no. 35 of 2009 concerning Narcotics.²⁹This means that if it is discovered that marijuana as a local wisdom of an area becomes a health therapy, there must be regulations that accommodate it, so

²⁷ BNN Riau Islands, Marijuana Dilemma: Culture and Legal Review, 04 September 2021, <https://kepri.bnn.go.id/dilema-ganja-kultur-tinjauan-Hukum/> September 11, 2023 at 10.00 WIB.

²⁸Editorial Team, "History of 420 Traditions in Indonesia and Indonesian Marijuana Culture from Aceh, Ambon, to Java", 20 April 2021, <https://voi.id/memori/45823/histori-tradisi-420-di-indonesia-dan-kultur-ganja-nusantara-dari-aceh-ambon-besar-jawa> September 11, 2023 at 11.00 WIB.

²⁹Mir'atul Firdausi, Aufi Imaddudin, Faridatul Ulya, Dilematic of the Use of Medical Marijuana in Indonesia (Review of Perspective Analysis of Constitutional Law in Indonesia and Islamic Law), Institute of Islamic Religion Nadhatul Ulama Tuban Darussalam Gontor University, The Indonesia Journal of Islamic Law and Civil Law, Vol.3 No.2, October 2022, p 173

that the legality of marijuana does not become a conflict. For this reason, further research is needed regarding this matter.

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