

Original Article

Justice A Legal Analysis of Medical Marijuana Regulation

Bambang Sugeng Rukmono¹, Sandi Yudha Prayoga^{1,*}

¹ Sekolah Tinggi Ilmu Hukum Adhyaksa, Jakarta, Indonesia.

*Corresponding author: sandiyudhaprayoga@stih-adhyaksa.ac.id

Abstract

Indonesia currently prohibits marijuana under its classification as a Category I narcotic, which disallows any form of medical use. However, various studies have shown that marijuana can potentially treat up to 36 different diseases. This research aims to analyze the appropriate regulatory model for medical marijuana based on the principle of justice as rooted in Pancasila. The study adopts a normative legal research method, relying on secondary data comprising primary, secondary, and tertiary legal materials. The findings reveal three key points. First, current legal provisions in Indonesia do not specifically regulate the use of marijuana for medical purposes, and existing regulations address narcotics only in general terms. Second, global research, including positions taken by the World Health Organization and the United Nations, supports the medical benefits of marijuana, yet the Indonesian government maintains a restrictive stance. Third, legalizing medical marijuana could be achieved through revising the Narcotics Law and removing marijuana from the list of Category I narcotics. In conclusion, the development of a regulatory model for medical marijuana based on Pancasila justice requires balancing scientific evidence, legal reform, and ethical considerations in public health policy.

Keywords: Justice; Marijuana; Medical;

Introduction

Narcotics are natural, synthetic, or semi-synthetic substances or medications that cause a loss in consciousness, hallucinations, and excitability. Narcotics are among the oldest drugs known to the general public.¹ Marijuana, or cannabis by its scientific name, is one of the drugs that has long been known and used as a therapy. The history of marijuana's usage as a cure began in China in 2737 B.C., when it was utilized not only as medicine and therapeutic therapy but also as oil lamps and materials for sacred rites.² The cannabis plant is one of the rare plants that has garnered special attention throughout the world. Cannabis is seen as a very hazardous plant; in the human mind, the plant is synonymous with a negative predicate.³ The existence of negative doctrines that have been provided and understood for a very long time, without our knowledge, has not only tainted our perspective on marijuana, but has also resulted in an international policy of which we are always proud. Destroying marijuana trees and distributing marijuana seems to be the biggest achievement that has been done.⁴

¹ Julia Nakamura, Ratana Chuenpagdee, and Mostafa El Halimi, 'Unpacking Legal and Policy Frameworks: A Step Ahead for Implementing the Small-Scale Fisheries Guidelines', *Marine Policy*, 129 (2021), 104568 <<https://doi.org/10.1016/j.marpol.2021.104568>>.

² Holly E. Erskine and others, 'Measuring the Prevalence of Mental Disorders in Adolescents in Kenya, Indonesia, and Vietnam: Study Protocol for the National Adolescent Mental Health Surveys', *Journal of Adolescent Health*, 2021, 1–8 <<https://doi.org/10.1016/j.jadohealth.2021.05.012>>.

³ Sunny Ummul Firdaus, 'The Urgency of Legal Regulations Existence in Case of COVID-19 Vaccination Refusal in Indonesia', *Journal of Forensic and Legal Medicine*, 91.October 2021 (2022), 102401 <<https://doi.org/10.1016/j.jflm.2022.102401>>.

⁴ Sandra Dewi Arifiani and others, 'Assessing Large-Scale Violence against Children Surveys in Selected Southeast Asian Countries: A Scoping Review', *Child Abuse and Neglect*, 93.December 2018 (2019), 149–61 <<https://doi.org/10.1016/j.chiabu.2019.05.005>>.



The Indonesian government continues to view marijuana as a prohibited and hazardous plant. Based on Attachment 1 point 8 of Law Number 35 of 2009 about Narcotics, marijuana is classified as a narcotic of class one. Article 7 of the law specifies that narcotics may only be used for the benefit of health services and the advancement of research and technology.⁵ In the Elucidation of Article 6 paragraph (1) letter a, however, it is clarified that the term "Narcotics Group I" refers to substances that can only be used for the development of science and not in therapy, and that have a very high potential to cause dependence. Furthermore, Article 8 paragraph (1) clarifies that class one narcotics cannot be used for the benefit of health services.⁶

Some industrialized and emerging nations have allowed the use of cannabis-type narcotics for medical purposes or in small quantities. In China, for instance, cannabis consumption for recreational purposes is outlawed, but official research studies on medical characteristics and the cannabis plant industry undertaken by authorities or the private sector are permitted.⁷ Even the Chinese government has already obtained over 300 patents for medical or industrial marijuana. Taking doctors' recommendations into account, New York City in the United States has approved medical marijuana for the treatment of cancer, AIDS, and other chronic conditions.⁸ Thailand is the Asian nation that has legalized the usage of marijuana. Thailand is an Asian nation that permits the medical and recreational use of marijuana. Even the nation provides cannabis plants to its citizens.⁹

Some Indonesians have considered the medicinal value of the cannabis plant. LGN (Lingkar Ganja Nusantara) is one of the organizations involved in this field through its efforts of advocating and delivering information about the medical advantages of marijuana. A number of Indonesians have utilized cannabis plants for therapeutic purposes.¹⁰ The incarceration of Reynhardt Siahaan, who used marijuana to treat his condition, and Fidelis, a husband who used marijuana to treat his wife. In addition to Fidelis, Santi Warastuti is the biological mother of a 12-year-old girl named Pika Sasikirana alias Pika. From the time she was conceived until she was born, Pika's health was normal. However, when Pika was in kindergarten, her health began to deteriorate, as evidenced by frequent unconsciousness, vomiting, and convulsions. Masayu Keynan Almeera P. suffers from Epilepsy and Spastic Diplegia, both of which are types of Cerebral Palsy. Masayu Keynan Almeera P, who was born prematurely with a birth weight of 1,4 kilograms and a birth weight of 34 milligrams, has been diagnosed with Cerebral Palsy at the age of two months, which causes fine and gross motor abnormalities and daily seizures.¹¹

In light of this trend, the Constitutional Court seeks to clarify Article 6 paragraph 1 letter an of Law No. 35 of 2009, which specifies that "Narcotics Group I" refers to substances that can only be used for development. Article 8 paragraph (1) of Law Number 35 of 2009,

⁵ Márcia R.O. Pedroso and Franciéle M.C. Leite, 'Physical Violence against Children in Espírito Santo, Brazil: Prevalence and Associated Factors', *Jornal de Pediatria*, 000.xxx (2022) <<https://doi.org/10.1016/j.jpmed.2022.07.009>>.

⁶ Elisa Simó-Soler and Eloy Peña-Asensio, 'From Impact Refugees to Deterritorialized States: Foresighting Extreme Legal-Policy Cases in Asteroid Impact Scenarios', *Acta Astronautica*, 192.December 2021 (2022), 402–8 <<https://doi.org/10.1016/j.actaastro.2021.12.015>>.

⁷ Ben Mathews, 'A Taxonomy of Duties to Report Child Sexual Abuse: Legal Developments Offer New Ways to Facilitate Disclosure', *Child Abuse and Neglect*, 88.December 2018 (2019), 337–47 <<https://doi.org/10.1016/j.chiabu.2018.12.003>>.

⁸ Ansie Fouché, Daniël F. Fouché, and Linda C. Theron, 'Child Protection and Resilience in the Face of COVID-19 in South Africa: A Rapid Review of C-19 Legislation', *Child Abuse and Neglect*, 110.August (2020) <<https://doi.org/10.1016/j.chiabu.2020.104710>>.

⁹ Maila D.H. Rahiem, 'COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia', *Child Abuse and Neglect*, 118.95 (2021), 105168 <<https://doi.org/10.1016/j.chiabu.2021.105168>>.

¹⁰ Malin Joleby and others, 'Offender Strategies for Engaging Children in Online Sexual Activity', *Child Abuse and Neglect*, 120.July (2021) <<https://doi.org/10.1016/j.chiabu.2021.105214>>.

¹¹ Julie Toft and others, 'Oral Health History in Children Referred to a Child Advocacy Center in Norway', *Child Abuse and Neglect*, 132.July (2022) <<https://doi.org/10.1016/j.chiabu.2022.105789>>.



which prohibits the use of Narcotics Group I for the benefit of health services, prohibits the knowledge and use of the substance in therapy, and it has a very high potential for dependence.¹²

However, these progressive measures have not been accompanied by progressive endeavors. Progressive is a word whose origin is in a foreign language (English) and whose meaning is progress. Progressive is an adjective, which indicates that it describes something that is advanced, hence Progressive Law denotes progressive law. Satjipto Rahardjo coined the phrase progressive law based on the fundamental premise that law is for humans and law is an institution that tries to bring humanity to a just, prosperous, and happy life.¹³ The decision is also viewed as a violation of Article 28C, paragraph 1, of the Constitution of 1945, which states that everyone has the right to develop themselves through the satisfaction of their basic needs, the right to education, and the right to benefit from science and technology, art, and culture, in order to improve their quality of life and for the good of the people. mankind. In addition, Article 28H, paragraph 1 of the Constitution of 1945 declares that everyone has the right to live in bodily and spiritual prosperity, to have a place to dwell, to have a decent and healthy environment, and to have access to health care.¹⁴

The law is not everything, but rather a tool or method utilized to bring the welfare of society, and not the other way around, where humans are more concerned with the law's reasoning. In this theory, the presence of law is not for its own sake, but rather for a greater purpose. Therefore, if there is a problem with the law in practice, it is the legislation that is evaluated and amended, not the inclusion of humans in the legal structure.¹⁵

Method

This is a normative legal study utilizing secondary data from primary, secondary, and tertiary legal sources. Primary Data, or data received or collected directly from the data source by researchers. Primary data is also known as original data or new data with the attributes Current. For researchers to access primary data, they must collect it firsthand.¹⁶ For this study, data were collected as narrative conceptions. Secondary Data, or data gathered from several literatures, government documents, rules and regulations, as well as other sources of supporting literature. Tertiary data consists of supplementary data derived from numerous reference dictionaries, journals, articles, encyclopedias, and newspapers, as well as other supplementary material that helps supplement the research data.¹⁷ The data of this research as a whole pertain to library sources consisting of relevant books, legal books, and other library items that can provide direct or indirect information on the problem's subject and topic. Compiling and analyzing qualitatively the data received from the outcomes of this

¹² Robin Sen and others, “‘When You’re Sitting in the Room with Two People One of Whom... Has Bashed the Hell out of the Other’: Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence’, *Children and Youth Services Review*, 88.March (2018), 441–49 <<https://doi.org/10.1016/j.childyouth.2018.03.027>>.

¹³ Paula Andrea Valencia Londoño and others, ‘The Exacerbation of Violence against Women as a Form of Discrimination in the Period of the COVID-19 Pandemic’, *Heliyon*, 7.3 (2021) <<https://doi.org/10.1016/j.heliyon.2021.e06491>>.

¹⁴ Dr Karolina La Fors, ‘Legal Remedies For a Forgiving Society: Children’s Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities’, *Computer Law and Security Review*, 38 (2020), 105430 <<https://doi.org/10.1016/j.clsr.2020.105430>>.

¹⁵ Sadhvi Kalra and Devin K. Joshi, ‘Gender and Parliamentary Representation in India: The Case of Violence against Women and Children’, *Women’s Studies International Forum*, 82.July (2020), 102402 <<https://doi.org/10.1016/j.wsif.2020.102402>>.

¹⁶ Tri Hartini, ‘Legal Policy of Protection COVID-19 Patients in Hospitals’, *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 45–57 <https://doi.org/10.53955/jhcls.v2i1.25>

¹⁷ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, ‘Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia’, *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <https://doi.org/10.53955/jhcls.v2i1.31>



investigation, then describing the data descriptively in order to generate a picture that can be properly understood and oriented toward solving the problems examined.¹⁸

Results and Discussions

Existing Medical Marijuana Use in Emergencies Conditions

In recent years, the conversation about cannabis in Indonesian media and public opinion has been more open and experimental, particularly in terms of cannabis' medicinal potential. On November 20, 2020, three mothers of sick children filed a petition for judicial review with the Constitutional Court regarding the Elucidation of Article 6 paragraph (1) letter a, Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics [Gazette Republic of Indonesia Year 2009 Number 143, Supplement to the State Gazette of the Republic of Indonesia Year 2009 Number 5062] to Article 28C paragraph (1) and Article 28H paragraph (1) of the 1945 Constitution.¹⁹ Mrs. Dwi Pertiwi of the Kampung Musmus Therapy Center, a child development clinic she developed exclusively for her Cerebral Palsy-affected son, Musa, is one of the three mothers (CP). According to him, Musa's usage of cannabis-based medications was "very helpful (...) in daily life" for both Musa and him as a single father. Marijuana use has improved Musa's sleeping patterns, reduced muscle stiffness, decreased breathing issues, decreased seizure frequency, and enhanced his cognitive ability.²⁰

Media platforms are progressively reporting a variety of testimonies and comparable experiences relating to the benefits of marijuana therapy. The experience of the late widow of Fidelis Arie Sudewarto is a popular example. However, as stated by Ryu Hasan, "the problem is that very few sick patients have access to marijuana because it is still illegal." It resembles a vicious cycle. Doctors are permitted to prescribe morphine, but not marijuana because it is illegal. What needs to be changed first in Indonesia is how doctors wish to try or define cannabis compounds if they lack the authority.²¹ On the other hand, Indonesia and other tropical, subtropical, and temperate nations are recognized for their agricultural potential, notably in the medical cannabis farming industry.²² Indonesia is one of the largest cannabis-producing countries on the Asian continent, according to the UN agency. In the context of Aceh, Samsul Rizal stated, "Eight districts in Aceh are cannabis-producing regions."²³

Legally, the provisions on the use of marijuana for medical purposes in Indonesia are not specifically regulated in the Health Law, but rather are limited to the regulation of narcotics in general as regulated in the Health Law concerning the Security and Use of Pharmaceutical Preparations and Medical Devices in Article 102 of the Narcotics Law, which states that the

¹⁸Muhammad Ridwansyah and Asron Orsantnutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 55–65 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.27>

¹⁹ Shalini Mittal, Tushar Singh, and Sunil K. Verma, 'Exploring the Trauma of Acid Attack Victims: A Qualitative Enquiry', *Women's Studies International Forum*, 88, July (2021), 102507 <<https://doi.org/10.1016/j.wsif.2021.102507>>.

²⁰ Andala Yakubu and Soma Chaudhuri, 'Potential Opportunities and Challenging Realities: Organizations' Experiences While Accessing Resources and Advocating on Behalf of Survivors of Domestic Violence in Ghana', *Women's Studies International Forum*, 94, July (2022), 102620 <<https://doi.org/10.1016/j.wsif.2022.102620>>.

²¹ Takako Tsujimura-Ito, 'State of Damage to and Support for Victims of Motor Vehicle Accidents in Japan', *IATSS Research*, 43.2 (2019), 97–107 <<https://doi.org/10.1016/j.iatssr.2019.06.001>>.

²² Sandra Barinda and Dumilah Ayuningtyas, 'Assessing the Food Control System in Indonesia: A Conceptual Framework', *Food Control*, 134 (2022), 108687 <<https://doi.org/10.1016/j.foodcont.2021.108687>>.

²³ Christiaan Röell and others, 'Managing Socio-Political Risk at the Subnational Level: Lessons from MNE Subsidiaries in Indonesia', *Journal of World Business*, 57.3 (2022) <<https://doi.org/10.1016/j.jwb.2022.101312>>.



use of pharmaceutical preparations in the form of narcotics and psychotropics may only be carried out basing on a prescription.²⁴

These laws stipulate that the use of narcotics requires a prescription from a physician. Then, in paragraph 2, it is specified that the use of narcotics must be in compliance with the law, which in this case requires a reference to Article 8 paragraph 1 of the Narcotics Law, which specifies that marijuana cannot be used for medical purposes. Given that marijuana is currently classed as a narcotic of class I, it will be difficult to implement the legalization of narcotic narcotics. As a neuroscientist by the name of Ryu Hasan once stated, the prohibition on the use of marijuana for health services discourages doctors who are aware of its benefits from writing prescriptions, as he believes that if the doctor in question uses it indirectly, he is in violation of the law.²⁵

Article 103 specifies that everyone who makes, stores, distributes, and uses narcotics and psychotropics is obligated to follow particular norms and/or requirements. Consequently, manufacturing and distribution cannot be carried out arbitrarily.²⁶ The implementation of the provisions addressing the production, storage, distribution, and use of narcotics and psychotropic substances referred to in subparagraph (1) shall be in compliance with applicable laws and regulations. According to the preceding article, narcotics (marijuana) production is restricted to parties that have obtained a government license, namely the pharmaceutical industry, which has obtained permission from the minister of health and the head of the investment coordination agency by meeting certain conditions.²⁷

Then, cannabis narcotics can only be distributed by state-owned PBF with a special import authorization to the Institute of Sciences, including for laboratory purposes, based on an order letter from the responsible pharmacist and/or the Head of the Institute of Sciences. Then, in paragraph 2, the provision must be carried out in line with the Narcotics Law, which specifies that controlled substances of class I may only be produced in limited amounts.²⁸

Justice A Legal Analysis of Medical Marijuana Regulation

In Indonesia, the usage of cannabis as a medication dates back thousands of years, when it was employed by ancient healers as herbal medicine. Cannabis was also utilized for religious, culinary, and agricultural uses. According to an ancient manuscript from Tajul Muluk in Aceh, cannabis roots are boiled and used as a therapy for diabetes and diabetes in the community. Based on the results of research, it is known that an organization called Lingkar Ganja Nusantara, which was founded in 2010, initially proposed research on the benefits of cannabis in Indonesia.²⁹ This organization later established a research institute

²⁴ Masri Sembiring Maha and others, 'Outcome and Extent of Disability Following Japanese Encephalitis in Indonesian Children', *International Journal of Infectious Diseases*, 13.6 (2009), 389–93 <<https://doi.org/10.1016/j.ijid.2009.01.009>>.

²⁵ Herry Purnomo and others, 'A Political-Economy Model to Reduce Fire and Improve Livelihoods in Indonesia's Lowlands', *Forest Policy and Economics*, 130 (2021), 102533 <<https://doi.org/10.1016/j.forpol.2021.102533>>.

²⁶ Cristina Georgiana Safta and others, 'Counseling and Assistance for Women Victims of Domestic Violence in Romania - Case Study', *Procedia - Social and Behavioral Sciences*, 5 (2010), 2034–41 <<https://doi.org/10.1016/j.sbspro.2010.07.409>>.

²⁷ Subramaniam Jeevasuthan and Zulkarnain Ahmad Hatta, 'Behavioural Problems of Children Exposed to Domestic Violence in Rural Villages: A Micro Social Work Inquiry in Piranpattu Village at Chankanai Divisional Secretariat, Jaffna, Sri Lanka', *Procedia - Social and Behavioral Sciences*, 91 (2013), 201–7 <<https://doi.org/10.1016/j.sbspro.2013.08.418>>.

²⁸ Ferry Fathurokhman, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <<https://doi.org/10.1016/j.proenv.2013.02.115>>.

²⁹ Yati Afianti and others, 'Unmet Supportive Care Needs Survey among Male Partners of Gynecological Cancer Survivors in Indonesia', *Asia-Pacific Journal of Oncology Nursing*, 8.6 (2021), 662–69 <<https://doi.org/10.4103/apjon.apjon-2113>>.



called Yayasan Sativa Nusantara, which has been granted permission to conduct research by the Ministry of Health based on Ministry of Health license number: LB.02.01/III.3/885/ in investigating the context of medical marijuana (D. T. B. Putri, 2016). However, the research had to be postponed until now due to the fact that it was quite expensive and was not a top priority. Therefore, in terms of policy changes regarding marijuana in Indonesia, it appears that the country is still behind other nations, such as Uruguay, which legalized the use of marijuana for medical purposes in 2013, Turkey in 2016, England in 2018 because children with epilepsy cannot access cannabis treatment, and South Korea in 2019 by permitting the use of cannabis-based drugs.³⁰

The use of cannabis as a drug is not a recent phenomenon in human history; there are now numerous references to proof of its usage in the medical world that have been published in scientific journals and books that can be accessed on the internet at any time. According to the study, there is one class of cannabinoid chemicals in marijuana that have medical benefits (Fauzan Harun, 2017). THC (Tetrahydrocannabinol) and CBD (Cannabidiol) are the principal cannabinoid components researched (cannabidiol). THC is a psychoactive substance that can allow users to feel euphoria; nevertheless, this compound molecule also delivers medical benefits, specifically as an antibiotic and painkiller (Dr. Joseph Rosado, 2018). While CBD is a non-psychoactive substance that does not induce euphoria when eaten, it does have a number of therapeutic applications. This chemical has several uses in the treatment of disorders, including anticonvulsants and antiemetics to alleviate nausea and seizures, respectively.³¹

Musri Musman, a chemist at Syiah Kuala University in Aceh, has also undertaken a 25-year literature review on marijuana. From the research he has gathered, he has compiled a list of 36 ailments that marijuana can treat. On the basis of these data, it is clear that negative perceptions about marijuana have not always been accurate, since there have been many modifications in the world's perception of the drug, leading to its gradual acceptance as a medical medicine in Austria, Uruguay, Canada, and other U.S. states.

As a result of what actually transpired in Indonesia, some individuals continue to have an unfavorable opinion of marijuana, and vice versa. Even in 2020, when the WHO released a recommendation on the legality of using marijuana for medical purposes, our government continued to reject the proposal, believing that marijuana has no medical value.³² The main objective of the Narcotics Law Number 35 of 2009 is to safeguard the community from narcotics usage, in addition to health-related objectives. In reality, however, the implementation of the Narcotics Law is incapable of addressing problems relating to the medical use of marijuana, whether or not it is understood that, over time, society will continue to experience processes and develop faster than the law, making it common for the law to be unable to accommodate the problems that arise appear.³³

According to Satjipto Rahardjo's progressive legal theory, the law should be made for humans, not humans for the law; therefore, when there is an issue where the law no longer serves the principles of justice, it is the law that must be evaluated and revised, not the individuals. the. As for the defining pillars of progressive law, they are: law for humans and

³⁰ Khaerul Umam Noer, Siti Chadijah, and Endang Rudiantin, 'There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia', *Heliyon*, 7.12 (2021), e08552 <<https://doi.org/10.1016/j.heliyon.2021.e08552>>.

³¹ Siti Nurbayani, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <<https://doi.org/10.1016/j.heliyon.2022.e10194>>.

³² Ali Maksum, 'Indonesian Post-Migrant Workers: A Challenging Problem for Human Security', *Social Sciences & Humanities Open*, 4.1 (2021), 100223 <<https://doi.org/10.1016/j.ssaho.2021.100223>>.

³³ Debora de Souza Santos and others, 'Domestic Violence against Women during the Covid-19 Pandemic: A Scoping Review', *Forensic Science International: Reports*, 5.November 2021 (2022) <<https://doi.org/10.1016/j.fsir.2022.100276>>.



law's constant evolution. As was the case in the case of Fidelis Ari Suderwato, it appears that the presence of the narcotics legislation has not been able to realize the pillars of law for humans.³⁴ In fact, it appears that they are forced to enter into a legal scheme that has caused clear constitutional harm to their health rights. who was sentenced to eight months in prison for attempting to treat his sick wife with marijuana, and Reyndhart Rossy, who was convicted for attempting to treat himself with marijuana-infused boiled water, based on the above verdicts, it was obviously very unfair because what they did is a necessary survival strategy. The restriction also led to the suspension of treatment for children who required marijuana as an alternative treatment for ailments, such as Musa, who was unable to continue treatment with marijuana due to the present drugs law.³⁵

In order to legalize the use of marijuana for medical purposes in Indonesia, the Drugs Legislation must be revised and marijuana must be removed from narcotics class I, as the enforcement of the narcotics law is no longer relevant to the current situation where marijuana is concerned. It is critically needed as an alternative medication, and cannabis itself has proven to have enormous medical benefits, as evidenced by the removal of cannabis and cannabis resin from schedule IV of the single narcotics agreement by the United Nations and the drug commission.³⁶

Criminal law must contain legal principles that bind activities that meet certain prerequisites for a result in the form of a crime. Criminal law reform is vitally important. When the Constitutional Court's decision No. 106/PUU-XVIII/2020 is pronounced in a trial open to the public, it will have a number of repercussions covering many areas. Impact is a legal consequence resulting from all legal activities taken by legal subjects against legal objects, or other legal consequences resulting from certain legal events.³⁷

The first effect of the judgement is the establishment of legal clarity. Legal certainty is a condition in which the application of unambiguous, permanent, consistent, and conclusive legal principles, whose implementation cannot be altered by subjective conditions, is guaranteed. Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics remain legitimate and have binding legal force after the Constitutional Court's public announcement of its ruling. The entire populace of Indonesia must obey and abide by this ruling. The use of opioids of class I for medical purposes is still forbidden in Indonesia. Class I narcotics may only be used for scientific and technological advancement. The general population, including Ms. Dwi Pertiwi, Santi Warasyuti, and Nafiah Murhayanti, were not permitted to use class I drugs for the treatment of their children.³⁸

Due to the final nature of the Constitutional Court's ruling, the second impact resulted in the shutting of the examination room for the article once more. The Constitutional Court is an institution of justice that is distinct from other institutions of justice.³⁹ Judicial institutions

³⁴ Moh Iqra, Syabani Korompot, and Al-fatih David, 'The Principle of Equality Before the Law in Indonesian Corruption Case : Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 135–46.

³⁵ Resti Dian and Suwat Jenvitchuwong, 'Implementation of Halal Product Assurance in the Pharmaceutical Sector in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 164–79 <<https://doi.org/https://doi.org/10.53955/jhcls.v1i3.19>>.

³⁶ Silas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 1–13 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>>.

³⁷ Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>>.

³⁸ Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>>.

³⁹ Gunawan Widjaja Idham, 'Legal Politics of Medical Cannabis in Indonesia', *Multicultural Education*, 7.6 (2021), 297–300 <<https://doi.org/10.5281/zenodo.4975526>>.



such as the Supreme Court can still pursue further legal action by submitting a judicial review in response to a case ruling. In accordance with the provisions of the 1945 Constitution, which were subsequently derived from the laws on the judiciary and the Constitutional Court, which indicated that the Court's authority to consider a case at the first and ultimate level was absolute. Because the decision of the Constitutional Court is definitive, it cannot be resubmitted as a case at any level, even the Supreme Court. Although the Supreme Court has the same authority to analyze statutes, the lower courts do not.⁴⁰ The Constitutional Court has notified the Supreme Court of a judicial review of the 1945 Constitution of the Republic of Indonesia, the Supreme Court cannot conduct a review related to the case notified by the Constitutional Court, and if the review under the law is in the examination stage, the Supreme Court must halt the examination of the case.⁴¹

Thirdly, the government is asked to "immediately" follow up on the status quo decision regarding the study and research of class I narcotics for the necessity of health services and/or therapy, as stated in section 3.13.2 of the legal considerations. As a result of the decision's consequences, the government undertakes studies or research on dual usage for health services as soon as possible. In the ruling of the Constitutional Court, the word "immediately" indicates the significance of study on the use of class I narcotics for health services. Indirectly, the ruling of the Constitutional Court obligated the government to do research on the use of class I narcotics for the benefit of health services, which will be taken into account when formulating policy.⁴²

Fourthly, in the Constitutional Court decision 106/PUU-XVIII/2020, the justices of the Constitutional Court are of the opinion that the tested legal norm is an open legal policy. The open legal policy is the view of a judge who, based on his considerations, concludes that the arrangement should be returned to the lawmakers, in this case the DPR. Therefore, with the ruling, the DPR is in charge of setting the legal policy direction. With the decision of the Constitutional Court, which is final and binding, and the Court's authority to adjudicate at the first and final levels, judicial review is no longer possible. However, there are other measures that can be implemented to encourage the use of opioids of the first schedule for medicinal purposes. The objective is to conduct a legislative review, as the Constitutional Court did not rule that Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics cannot be altered, and the matter has been returned to the legislators (open legal policy), especially the DPR.⁴³

⁴⁰ Aristo Marisi Adiputra Pangaribuan and Kelly Manthovani, 'Causes and Consequences of the War on Marijuana in Indonesia', *Indonesia Law Review*, 9.2 (2019) <<https://doi.org/10.15742/ilrev.v9n2.502>>.

⁴¹ Femmy Silaswaty Faried, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <<https://doi.org/10.53955/jhcls.v2i1.31>>.

⁴² Marisca Evalina Gondokesumo and Nabbilah Amir, 'Legality of Marijuana Use in the Need for Medical Treatment in Indonesia (Judging From Law Number 36 of 2009 Concerning Health and Law Number 35 of 2009 Concerning Narcotics)', *Journal Equity of Law and Governance*, 1.2 (2021), 119–26 <<https://doi.org/10.55637/elg.1.2.3938.119-126>>.

⁴³ Paundria Dwijo Hapsari, Awallia Septiyana Putri, and Henzie Kerstan, 'Legal Policy for Drug Users in Indonesia and the Netherlands', *Journal of Creativity Student*, 7.1 (2022), 35–66 <<https://doi.org/10.15294/jcs.v7i1.36206>>.



Conclusion

On the basis of the preceding description, it can be concluded that the legal review of alternative medical treatment of cannabis plants in Indonesia to date indicates that Indonesia remains one of the countries that oppose the legalization of marijuana or prohibit the circulation of marijuana for both recreational and medical purposes. This is in accordance with Law No. 8 of 1976 about the Ratification of the 1961 Single Convention on Narcotics through the International Drug and Narcotics Commission (CND) and the Protocol Amending It. In accordance with Law No. 22 of 1997, cannabis was classified as a category I drug. In the meanwhile, Law No. 35 of 2009 governs all legislation pertaining to narcotics, including cannabis plants. Similarly, in Islam, MUI via the (Institute for the Study of Food, Drugs, and Cosmetics of the Indonesian Ulema Council) argues that, in general, (Mazruat), plants or vegetable products that exist on earth are halal and may be consumed. Legal certainty is a legal instrument of a country that can secure a citizen's rights and responsibilities. According to Article 7 of Law 35/2009, drugs may only be utilized for the benefit of health services and/or the advancement of research and technology. However, according to Article 12 paragraph (1) of Law 35/2009, it is illegal to create and/or use class I narcotics in the production process, except in extremely small quantities for the advancement of science and technology. This means that the use of class I drugs is restricted to specified circumstances outlined in Law 35/2009 and is subject to Ministerial approval.

References

- Afiyanti, Yati, Dewi Gayatri, Besral Besral, Haryani Haryani, and Dyah Juliastuti, 'Unmet Supportive Care Needs Survey among Male Partners of Gynecological Cancer Survivors in Indonesia', *Asia-Pacific Journal of Oncology Nursing*, 8.6 (2021), 662–69 <<https://doi.org/10.4103/apjon.apjon-2113>>
- Arifiani, Sandra Dewi, Sri Andini Handayani, Monique Baumont, Cyril Bennouna, and Santi Kusumaningrum, 'Assessing Large-Scale Violence against Children Surveys in Selected Southeast Asian Countries: A Scoping Review', *Child Abuse and Neglect*, 93.December 2018 (2019), 149–61 <<https://doi.org/10.1016/j.chiabu.2019.05.005>>
- Barinda, Sandra, and Dumilah Ayuningtyas, 'Assessing the Food Control System in Indonesia: A Conceptual Framework', *Food Control*, 134 (2022), 108687 <<https://doi.org/10.1016/j.foodcont.2021.108687>>
- Dian, Resti, and Suwiat Jenvitchuwong, 'Implementation of Halal Product Assurance in the Pharmaceutical Sector in Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 164–79 <<https://doi.org/https://doi.org/10.53955/jhcls.v1i3.19>>
- Emovwodo, Silaas Oghenemaro, 'Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 1–13 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>>



- Erskine, Holly E., Sarah J. Blondell, Meaghan E. Enright, Jamileh Shadid, Yohannes Dibaba Wado, Frederick Murunga Wekesah, and others, 'Measuring the Prevalence of Mental Disorders in Adolescents in Kenya, Indonesia, and Vietnam: Study Protocol for the National Adolescent Mental Health Surveys', *Journal of Adolescent Health*, 2021, 1–8 <<https://doi.org/10.1016/j.jadohealth.2021.05.012>>
- Fathurokhman, Ferry, 'The Necessity of Restorative Justice on Juvenile Delinquency in Indonesia, Lessons Learned from the Raju and AAL Cases', *Procedia Environmental Sciences*, 17 (2013), 967–75 <<https://doi.org/10.1016/j.proenv.2013.02.115>>
- Firdaus, Sunny Ummul, 'The Urgency of Legal Regulations Existence in Case of COVID-19 Vaccination Refusal in Indonesia', *Journal of Forensic and Legal Medicine*, 91.October 2021 (2022), 102401 <<https://doi.org/10.1016/j.jflm.2022.102401>>
- La Fors, Dr Karolina, 'Legal Remedies For a Forgiving Society: Children's Rights, Data Protection Rights and the Value of Forgiveness in AI-Mediated Risk Profiling of Children by Dutch Authorities', *Computer Law and Security Review*, 38 (2020), 105430 <<https://doi.org/10.1016/j.clsr.2020.105430>>
- Fouché, Ansie, Daniël F. Fouché, and Linda C. Theron, 'Child Protection and Resilience in the Face of COVID-19 in South Africa: A Rapid Review of C-19 Legislation', *Child Abuse and Neglect*, 110.August (2020) <<https://doi.org/10.1016/j.chiabu.2020.104710>>
- Hapsari, Paundria Dwijo, Awallia Septiyana Putri, and Henzie Kerstan, 'Legal Policy for Drug Users in Indonesia and the Netherlands', *Journal of Creativity Student*, 7.1 (2022), 35–66 <<https://doi.org/10.15294/jcs.v7i1.36206>>
- Idham, Gunawan Widjaja, 'Legal Politics of Medical Cannabis in Indonesia', *Multicultural Education*, 7.6 (2021), 297–300 <<https://doi.org/10.5281/zenodo.4975526>>
- Iqra, Moh, Syabani Korompot, and Al-fatih David, 'The Principle of Equality Before the Law in Indonesian Corruption Case : Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 135–46
- Ishak, Nurfaika, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>>
- Jeevasuthan, Subramaniam, and Zulkarnain Ahmad Hatta, 'Behavioural Problems of Children Exposed to Domestic Violence in Rural Villages: A Micro Social Work Inquiry in Piranpattu Village at Chankanai Divisional Secretariat, Jaffna, Sri Lanka', *Procedia - Social and Behavioral Sciences*, 91 (2013), 201–7 <<https://doi.org/10.1016/j.sbspro.2013.08.418>>
- Joleby, Malin, Carolina Lunde, Sara Landström, and Linda S. Jonsson, 'Offender Strategies for Engaging Children in Online Sexual Activity', *Child Abuse and Neglect*, 120.July (2021) <<https://doi.org/10.1016/j.chiabu.2021.105214>>
- Kalra, Sathvi, and Devin K. Joshi, 'Gender and Parliamentary Representation in India: The Case of Violence against Women and Children', *Women's Studies International Forum*, 82.July (2020), 102402 <<https://doi.org/10.1016/j.wsif.2020.102402>>
- Maha, Masri Sembiring, Vanda A. Moniaga, Susan L. Hills, Anton Widjaya, Agus Sasmito,



Renny Hariati, and others, 'Outcome and Extent of Disability Following Japanese Encephalitis in Indonesian Children', *International Journal of Infectious Diseases*, 13.6 (2009), 389–93 <<https://doi.org/10.1016/j.ijid.2009.01.009>>

Maksum, Ali, 'Indonesian Post-Migrant Workers: A Challenging Problem for Human Security', *Social Sciences & Humanities Open*, 4.1 (2021), 100223 <<https://doi.org/10.1016/j.ssaho.2021.100223>>

Marisca Evalina Gondokesumo, and Nabbilah Amir, 'Legality of Marijuana Use in the Need for Medical Treatment in Indonesia (Judging From Law Number 36 of 2009 Concerning Health and Law Number 35 of 2009 Concerning Narcotics)', *Journal Equity of Law and Governance*, 1.2 (2021), 119–26 <<https://doi.org/10.55637/elg.1.2.3938.119-126>>

Mathews, Ben, 'A Taxonomy of Duties to Report Child Sexual Abuse: Legal Developments Offer New Ways to Facilitate Disclosure', *Child Abuse and Neglect*, 88.December 2018 (2019), 337–47 <<https://doi.org/10.1016/j.chiabu.2018.12.003>>

Mittal, Shalini, Tushar Singh, and Sunil K. Verma, 'Exploring the Trauma of Acid Attack Victims: A Qualitative Enquiry', *Women's Studies International Forum*, 88.July (2021), 102507 <<https://doi.org/10.1016/j.wsif.2021.102507>>

Nakamura, Julia, Ratana Chuenpagdee, and Mostafa El Halimi, 'Unpacking Legal and Policy Frameworks: A Step Ahead for Implementing the Small-Scale Fisheries Guidelines', *Marine Policy*, 129 (2021), 104568 <<https://doi.org/10.1016/j.marpol.2021.104568>>

Noer, Khaerul Umam, Siti Chadijah, and Endang Rudiati, 'There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia', *Heliyon*, 7.12 (2021), e08552 <<https://doi.org/10.1016/j.heliyon.2021.e08552>>

Nurbayani, Siti, Moh Dede, and Millary Agung Widiawaty, 'Utilizing Library Repository for Sexual Harassment Study in Indonesia: A Systematic Literature Review', *Heliyon*, 8.8 (2022), e10194 <<https://doi.org/10.1016/j.heliyon.2022.e10194>>

Pangaribuan, Aristo Marisi Adiputra, and Kelly Manthovani, 'Causes and Consequences of the War on Marijuana in Indonesia', *Indonesia Law Review*, 9.2 (2019) <<https://doi.org/10.15742/ilrev.v9n2.502>>

Pedroso, Márcia R.O., and Franciéle M.C. Leite, 'Physical Violence against Children in Espírito Santo, Brazil: Prevalence and Associated Factors', *Jornal de Pediatria*, 000.xxx (2022) <<https://doi.org/10.1016/j.jpmed.2022.07.009>>

Purnomo, Herry, Sonya D. Kusumadewi, Qori P. Ilham, Dyah Puspitaloka, Durrah Hayati, Made Sanjaya, and others, 'A Political-Economy Model to Reduce Fire and Improve Livelihoods in Indonesia's Lowlands', *Forest Policy and Economics*, 130 (2021), 102533 <<https://doi.org/10.1016/j.forpol.2021.102533>>

Rahiem, Maila D.H., 'COVID-19 and the Surge of Child Marriages: A Phenomenon in Nusa Tenggara Barat, Indonesia', *Child Abuse and Neglect*, 118.95 (2021), 105168 <<https://doi.org/10.1016/j.chiabu.2021.105168>>

Röell, Christiaan, Ellis Osabutey, Peter Rodgers, Felix Arndt, Zaheer Khan, and Shlomo Tarba, 'Managing Socio-Political Risk at the Subnational Level: Lessons from MNE Subsidiaries in Indonesia', *Journal of World Business*, 57.3 (2022)



<<https://doi.org/10.1016/j.jwb.2022.101312>>

- Safta, Cristina Georgiana, Emil Stan, Corina Iurea, and Mihaela Suditu, 'Counseling and Assistance for Women Victims of Domestic Violence in Romania - Case Study', *Procedia - Social and Behavioral Sciences*, 5 (2010), 2034–41
<<https://doi.org/10.1016/j.sbspro.2010.07.409>>
- Sen, Robin, Kate Morris, Gale Burford, Brid Featherstone, and Calum Webb, "When You're Sitting in the Room with Two People One of Whom... Has Bashed the Hell out of the Other": Possibilities and Challenges in the Use of FGCs and Restorative Approaches Following Domestic Violence', *Children and Youth Services Review*, 88.March (2018), 441–49 <<https://doi.org/10.1016/j.chilyouth.2018.03.027>>
- Siboy, Ahmad, Al-fatih Virga, Dwi Efendi, and Putri Hidayah, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30
<<https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>>
- Silaswaty Faried, Femmy, Hadi Mahmud, and Suparwi Suparwi, 'Mainstreaming Restorative Justice in Termination of Prosecution in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 66–77 <<https://doi.org/10.53955/jhcls.v2i1.31>>
- Simó-Soler, Elisa, and Eloy Peña-Asensio, 'From Impact Refugees to Deterritorialized States: Foresighting Extreme Legal-Policy Cases in Asteroid Impact Scenarios', *Acta Astronautica*, 192.December 2021 (2022), 402–8
<<https://doi.org/10.1016/j.actaastro.2021.12.015>>
- de Souza Santos, Debora, Eloisa Auler Bittencourt, Andréa Cristina de Moraes Malinverni, Juliany Barreto Kisberi, Sabrina de França Vilaça, and Edna Sadayo Miazato Iwamura, 'Domestic Violence against Women during the Covid-19 Pandemic: A Scoping Review', *Forensic Science International: Reports*, 5.November 2021 (2022)
<<https://doi.org/10.1016/j.fsir.2022.100276>>
- Toft, Julie, Arne Kristian Myhre, Yi Qian Sun, Tiril Willumsen, and Anne Rønneberg, 'Oral Health History in Children Referred to a Child Advocacy Center in Norway', *Child Abuse and Neglect*, 132.July (2022) <<https://doi.org/10.1016/j.chiabu.2022.105789>>
- Tsujimura-Ito, Takako, 'State of Damage to and Support for Victims of Motor Vehicle Accidents in Japan', *IATSS Research*, 43.2 (2019), 97–107
<<https://doi.org/10.1016/j.iatssr.2019.06.001>>
- Valencia Londoño, Paula Andrea, Martha Elisa Nateras González, Constanza Bruno Solera, and Phoenix Storm Paz, 'The Exacerbation of Violence against Women as a Form of Discrimination in the Period of the COVID-19 Pandemic', *Heliyon*, 7.3 (2021)
<<https://doi.org/10.1016/j.heliyon.2021.e06491>>
- Yakubu, Andala, and Soma Chaudhuri, 'Potential Opportunities and Challenging Realities: Organizations' Experiences While Accessing Resources and Advocating on Behalf of Survivors of Domestic Violence in Ghana', *Women's Studies International Forum*, 94.July (2022), 102620 <<https://doi.org/10.1016/j.wsif.2022.102620>>





Copyright: © 2025 by the authors. This is an open access article distributed under the terms and conditions of the Creative Commons Attribution License (CC BY 4.0)

