

LEGAL REVIEW OF MEDICAL MARIJUANA USE FOR PATIENTS TO ACHIEVE HEALTH

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Abstract. *The right to health is a constitutional right guaranteed by the 1945 Constitution and human rights instruments. However, the regulation of narcotics in Indonesia, through Law No. 35 of 2009, still classifies marijuana as a Schedule I narcotic, prohibited for medical purposes. This situation creates a gap between positive law and patients' needs for alternative therapies based on medical marijuana. This study uses a socio-legal approach with qualitative methods, combining primary data (interviews, focus group discussions, case studies) and secondary data (regulations, literature, and international research results). The results show that existing regulations are unable to provide adequate legal protection for patients, despite international medical evidence supporting the effectiveness of medical marijuana in treating epilepsy, cancer, autism, and sleep disorders. Analysis of the theories of Legal Protection, Balance, and Utilitarianism emphasizes the urgency of policies that balance the state's interest in preventing abuse with patients' rights to treatment. This study recommends a phased policy model starting from academic research, clinical trials, and limited distribution under government supervision, so that medical marijuana regulations in Indonesia are more adaptive, based on scientific evidence, and oriented towards protecting patient rights.*

Keywords: *Medical Cannabis, Treatment, Patients, Human Rights, Regulation*

I. Introduction

In modern society, health is a fundamental element that not only reflects an individual's quality of life but also serves as an indicator of national well-being. The right to health has been universally recognized as a human right, including in the 1945 Constitution. Fulfillment of this right includes not only access to adequate health services but also openness to innovation and scientific development in finding more effective treatment solutions.

Along with advances in medical science and pharmaceutical research, various alternative therapies have emerged, one of which is the use of cannabis for medical purposes. Active compounds in cannabis, such as cannabidiol (CBD) and tetrahydrocannabinol (THC), have been shown to have potential in treating various medical conditions, from epilepsy and chronic pain to certain neurological disorders. Several countries, such as Canada, Germany, and Thailand, have legalized medical

cannabis under strict supervision as a way of fulfilling patients' rights to alternative treatments when conventional methods fail to provide optimal results. (Drexel University, (2024)

Scientific research also demonstrates the effectiveness of medical cannabis. For example, a study by Zafar et al. (2020) demonstrated a significant reduction in seizure frequency in children with epilepsy after receiving medical cannabis-based therapy. The CBD and THC-based pharmaceutical preparations used in the study significantly improved the patients' quality of life. These findings align with numerous international studies supporting the use of medical cannabis for chronic diseases and specific conditions. (Zafar, 2020)

However, in Indonesia, the use of medical marijuana still faces legal challenges. Under Law No. 35 of 2009, marijuana is categorized as a Schedule I narcotic, strictly prohibited for use in healthcare. This policy is based on the government's precautionary principle to prevent the risk of drug abuse, but on the other hand, it creates a gap in the medical needs of some patients. The case of Fidelis Arie Sudewarto is a clear example of this dilemma, where Fidelis was convicted even though the marijuana treatment he provided was proven to improve his wife's condition, who suffered from syringomyelia. (Law No. 35 of 2009)

The Constitutional Court (MK) in Decision Number 106/PUU-XVIII/2020 rejected a judicial review petition against Law Number 35 of 2009 concerning Narcotics, which was filed with the aim of allowing the use of marijuana for health services. The plaintiff requested the legalization of marijuana use for his child with cerebral palsy, but the request was rejected. This decision was reaffirmed in Constitutional Court Decision Number 13/PUU-XXII/2024, where a similar request filed by the parents of a child with cerebral palsy was also rejected. In its consideration, the Constitutional Court stated that the request had no legal basis, so the use of marijuana for medical purposes cannot yet be accommodated in the Indonesian legal system.

However, in its ruling, the Constitutional Court urged the government to follow up on this issue by conducting further research into the potential benefits of medical cannabis. This demonstrates that, although the petition was legally rejected, there is recognition of the urgency of scientific research as a basis for future policy considerations. With comprehensive research, the government can evaluate whether existing regulations need to be updated to provide greater legal certainty for patients requiring medical cannabis-based therapy.

This situation raises important questions about how legal regulations in Indonesia govern the use of medical cannabis, and the extent to which patients' constitutional rights to health can be realized through this alternative therapy. Using a socio-legal approach, this study seeks to critically examine the relationship between law, policy, and social realities related to medical cannabis in Indonesia, while also offering relevant, evidence-based policy recommendations.

II. Research Methods

1. Research Paradigm

This research uses a constructivist paradigm. This paradigm was chosen because the research is socio-legal in nature, seeking to understand law not only as a normative text but also within its social context. Constructivism emphasizes that legal reality is

formed from interactions between various actors (patients, doctors, policymakers, and the community), thus understanding law as something dynamic and contextual. (Satjipto Rahardjo, 2009)

2. Research Approach

The approach used is a non-doctrinal approach (socio-legal research). This approach was chosen because:

- a. Can bridge the analysis between written law and social reality.
- b. Provide a broader understanding of the relationship between narcotics regulations, medical needs, and patient rights.
- c. In accordance with the complex issue of medical marijuana, which cannot be explained solely with a normative approach. (Satjipto Rahardjo, 2009)

3. Type of Research

This research is qualitative. A qualitative approach was chosen because it allows for in-depth understanding of patient experiences, the views of medical personnel, and the perspectives of policymakers regarding medical marijuana. Qualitative research is also compatible with socio-legal methods, which require descriptive and analytical data. (Satjipto Rahardjo, 2009)

4. Data Types and Sources

a. Data Primer

Results of in-depth interviews.
Focus group discussions (FGDs).
Open-ended questionnaires.

b. Secondary Data

Case studies (e.g., the case of Fidelis Arie Sudewarto).
Analysis of legal documents (Narcotics Law, Government Regulations, Ministerial Regulations).
Literature from books, journals, media articles, institutional reports, and publications related to medical cannabis.

5. Data Collection Techniques and Instruments

a. In-depth interviews

Objective: To explore informants' experiences, views, and perceptions regarding medical cannabis. Informants: medical cannabis patients, medical personnel, legal regulators (BNN, Ministry of Health), activists/civil society groups.

b. Case study

Focusing on the case of Fidelis Arie and similar cases, it provides a clear picture of the gap between the law and patient needs.

c. Document analysis

Law No. 35 of 2009 concerning Narcotics.
Constitutional Court rulings regarding medical marijuana.
Research and policy reports from official institutions.

6. Informant Determination Technique

This study used a purposive sampling technique, selecting informants based on specific criteria relevant to the research objectives. Informants were chosen because of their experience or expertise directly related to medical cannabis, including:

- a. Patients using medical marijuana.

- b. Medical personnel (doctors, pharmacists, health practitioners).
- c. Legal regulators (BNN, Ministry of Health).
- d. Activists/groups supporting medical marijuana (e.g., Lingkar Ganja Nusantara/LGN).

7. Data Validation Techniques

Data validation is performed to ensure the validity and reliability of the data. Techniques used include:

- a. Triangulation (sources, methods, and theories).
- b. Member check (requesting confirmation of interview results from the informant).
- c. Peer debriefing (discussion with other experts/researchers).
- d. Audit trail (recording the research process in detail so that it can be traced again).
- e. Prolonged engagement (researcher involvement in the field for quite a long time).
- f. Reflexivity (critical evaluation of potential researcher bias).

8. Data Analysis Techniques

Data analysis was conducted using a descriptive-analytical qualitative analysis method. Data from interviews, focus group discussions (FGDs), case studies, and legal documents were collected, then reduced, categorized, compared, and interpreted based on the legal theories used (Philipus M. Hadjon's Legal Protection Theory⁴, Satjipto Rahardjo's Equilibrium Theory⁷, and Jeremy Bentham's Utilitarianism Theory²). The analysis was conducted to identify gaps between legal regulations and patients' medical needs and to provide relevant policy recommendations. (Satjipto Rahardjo, 2009)

9. Framework of Thought

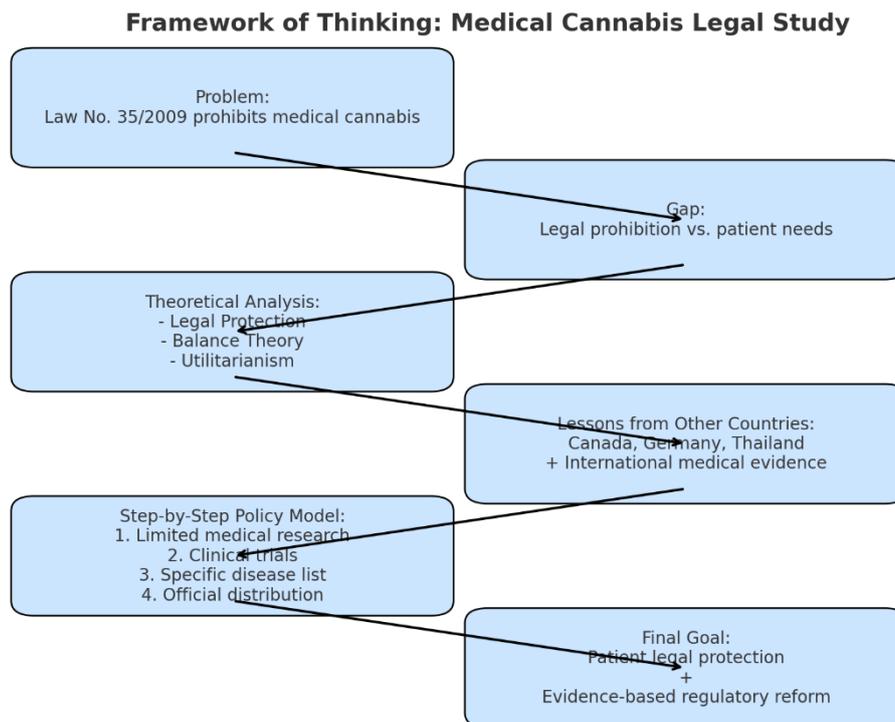


Figure 1. Framework of Thought: Legal Review of Medical Marijuana Use

Narrative Explanation

The framework of this research begins with the main problem, namely the absolute prohibition of medical marijuana use in Law No. 35 of 2009, which creates a gap with patients' needs for alternative treatments. This gap is analyzed through the approach of Legal Protection Theory (Hadjon, P. M. 1987), Equilibrium Theory (Satjipto Rahardjo, 2009), and Utilitarianism Theory (Jeremy Bentham), which emphasizes the need for legal policies that are more humane, just, and beneficial to society.

Furthermore, this study also examines regulations in various countries such as Canada, Germany, and Thailand, and refers to empirical evidence from international studies that support the effectiveness of medical cannabis for various health conditions.

Based on these findings, this study proposes a phased policy model, ranging from legalization of limited medical research, clinical trials, establishing a list of conditions that can benefit from medical cannabis therapy, to official distribution through hospitals or government pharmacies. This model aims to provide legal protection for patients while maintaining public order.

The ultimate goal of this framework is to create regulations that are more adaptive, based on scientific evidence, and oriented towards protecting patient rights, so that a balance is achieved between the interests of the state and the constitutional rights of the community to obtain health.

III. Results and Discussion

1. Regulatory Gap and Social Reality

This research reveals a significant gap between positive legal regulations and the public's medical needs. Under Law No. 35 of 2009 concerning Narcotics, marijuana is categorized as a Schedule I narcotic, meaning its use for medical purposes or research is absolutely prohibited. This regulation is based on the state's precautionary approach to preventing drug abuse.

However, in practice, this absolute prohibition raises serious issues. Many patients with chronic illnesses lack effective treatment alternatives when conventional therapies fail. The case of Fidelis Arie Sudewarto is a prime example: Fidelis faced legal action for using cannabis extract to help his wife, who suffered from syringomyelia, despite evidence of improvement in her health. This phenomenon demonstrates the inconsistency between positive law and patients' constitutional rights to healthcare.

2. Analysis with Legal Theory

The results of the analysis based on legal theory provide the following perspective:

a. Legal Protection Theory (Philipus M. Hadjon)

Emphasizing that the state is obliged to provide both preventive protection (regulations that allow for research and treatment) and repressive protection (justice mechanisms for patients caught in legal trouble due to medical marijuana use). Currently, Indonesia only implements the repressive aspect of criminalization, without any preventive protection.

b. Balance Theory (Satjipto Rahardjo)

Law should be dynamic and seek a balance between legal certainty, justice, and benefit. Absolute regulation of medical cannabis places too much emphasis on legal certainty, while sacrificing justice and benefit for patients.

c. Utilitarianism Theory (Jeremy Bentham)

Emphasizing that policies should provide the greatest benefit to society, opening limited areas for medical marijuana use could alleviate the suffering of thousands of patients, making it morally more utilitarian than total prohibition.

3. Medical Perspective and Empirical Evidence

A number of international studies have shown the great potential of medical cannabis in the health sector:

- a. Epilepsy: Zafar's (2020) research demonstrated a significant reduction in seizure frequency in children with epilepsy following medical cannabis-based therapy.
- b. Oncology: The Whole Health Oncology Institute (2023) suggests that medical marijuana may relieve cancer symptoms such as chronic pain, chemotherapy-induced nausea, and sleep disturbances.

- c. Quality of Life: A Drexel University study (2024) demonstrated an improvement in the quality of life of medical marijuana users, including aspects of mood, social functioning, and sleep quality.
- d. Autism: São Paulo University (2024) found that cannabidiol can help children with autism spectrum disorders reduce behavioral symptoms.
- e. Sleep Disorders: Research from the Keck School of Medicine of USC (2025) demonstrated improved sleep quality in patients with chronic illnesses who used cannabidiol.

4. Comparison with International Policies

Some countries have taken progressive steps:

- a. Canada: Legalized medical marijuana nationwide with a strict licensing system for dispensary-based producers and distributors.
- b. Germany: Allows the use of medical cannabis for patients with a doctor's prescription, with treatment costs covered by public health insurance.
- c. Thailand: Became the first Southeast Asian country to legalize medical marijuana in 2018, with a focus on research and government clinics.
- d. These practices demonstrate that legalizing medical marijuana does not automatically increase abuse, as long as it is implemented with a strict regulatory and oversight system.

5. Phased Policy Model for Indonesia

The research results recommend a gradual policy model that can be implemented in Indonesia, namely:

- a. Academic Research Phase: The government has opened limited legal access for universities and research institutions to conduct cannabis-based medical research.
- b. Clinical Trial Phase: Medical cannabis is tested on patients with specific diseases under official medical protocols.
- c. Stage of Compiling the List of Diseases: The government determines diseases that have been medically proven to be treatable with marijuana.
- d. Limited Distribution Phase: Access to medical cannabis is provided through state-owned pharmacies and hospitals with strict control and tracking systems.

With this policy model, the state can continue to carry out its role in preventing drug abuse while simultaneously fulfilling patients' rights to adequate treatment. Research shows that Indonesian law is unable to provide adequate legal protection for patients using medical cannabis. Analysis of legal theory, lessons learned from other countries, and international scientific evidence support the urgency of reforming medical cannabis regulations in Indonesia through a research-based, measurable, and phased policy model oriented toward protecting patient rights.

6. Social and Legal Implications

- a. Social: The public needs to be educated about the differences between medical marijuana and recreational marijuana, to avoid negative stigma against patients.

- b. Legal: New regulations or revisions to the Narcotics Law are needed to specifically regulate the use of medical marijuana.
- c. Medical: Healthcare workers must be trained in the use of medical cannabis, including dosage, indications, and clinical supervision.

This research confirms that the absolute prohibition of medical cannabis in Indonesia creates legal injustice for patients. Supported by international scientific evidence and best practices from other countries, Indonesia has a strong foundation for formulating a gradual, adaptive, and patient-rights-based medical cannabis policy.

IV. Conclusions and Suggestions

Conclusion

The right to health is a constitutional right that must be protected by the state, including the right to receive medical therapy based on scientific developments. However, Indonesia's narcotics regulations, which classify marijuana as a Schedule I narcotic, create a misalignment between the law and the needs of patients seeking alternative treatments. The Constitutional Court's ruling affirms the state's cautious approach while also opening up opportunities for research to inform future policymaking.

To balance the state's interest in preventing abuse with patients' rights to health, specific regulations are needed to allow for limited and controlled research and use of medicinal cannabis. A phased model, starting with academic research and clinical trials, and then limited distribution through healthcare facilities, could be a balanced, evidence-based solution that aligns with the principles of legal protection and public justice.

Suggestion

The government needs to develop specific regulations that allow for limited research and use of medical cannabis under strict supervision. This regulation must be accompanied by public education, training for medical personnel, and the adoption of best practices from other countries tailored to Indonesia's legal and social context. Thus, more adaptive, evidence-based, and patient-rights-oriented regulations can be a middle ground between the state's interest in maintaining order and fulfilling the public's constitutional right to optimal health.

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