

Type: **Research Article**

Legalization of Medical Marijuana in Indonesia from the Human Rights Perspectives: Lessons Learned from Three ASEAN Countries

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Abstract *Marijuana (cannabis) as a therapeutic medication has been used and recognized as part of the health system in several countries. In contrast, marijuana in Indonesia is classified as a class I narcotic under Law Number 35 of 2009 on Narcotics, which is prohibited and cannot be used as medication. However, a detailed examination of the Narcotics Act reveals*

some loopholes and ambiguities that could be exploited to legalize marijuana as a medication to cure certain illnesses. The present study employs normative legal research, specifically a statutory approach, to justify using marijuana for medical purposes. In addition, a legal comparative method is also used in this study to analyze the use of medical marijuana in three ASEAN countries: Thailand, Malaysia, and Singapore. Despite having a reputation for having highly stringent regulations on narcotics, Indonesia can benefit from the experiences of other ASEAN nations, such as Singapore and Malaysia, who have legalized medical marijuana. This consideration is prompted by the fact that certain individuals have shared positive outcomes from using 'illegal' medical marijuana as a form of health treatment. However, it is disheartening to note that these individuals have also had to witness the unfortunate loss of their loved ones and, in some cases, face legal consequences such as imprisonment. Conducting comprehensive research on the use of medicinal marijuana in Indonesia is crucial to upholding the citizens' right to health, as the right to health is a significant component of human rights.

Keywords *Legalization, Medical Marijuana, Right to Health*

1. Introduction

To begin the paper, the authors will describe various high-profile cases in Indonesia that have gained significant public attention. These cases involve family members of patients afflicted with specific illnesses who have sought relief through the utilization of medical marijuana (cannabis) therapy. Frustratingly, none of these narratives culminated in a state of happiness, as they all ended tragically. Nonetheless, these stories could somehow highlight the unfortunate reality of the demand for medical marijuana treatment in Indonesia and the tragic outcomes that can result.

Fidelis Arie Sudewarto is a loving husband who demonstrated care and support for his very ill wife, Yeni Irawati, who has been

diagnosed with syringomyelia. Yeni Irawati experienced the growth of a fluid-filled cyst, or syrinx, within her spinal cord. The story of the two individuals gained significant public attention in Indonesia due to Fidelis' utilization of marijuana as a potential remedy for his wife's illness. Fidelis decided to treat his wife, Yeni, with marijuana extract after conducting literature research and seeking guidance from a medical doctor in the Netherlands. He took the initiative to grow the marijuana plants in his own home. The treatment resulted in a gradual improvement in his wife's condition. The couple's joy was only momentary because, in the middle of February 2017, National Narcotics Agency (BNN) officers arrested Fidelis. The reason for his arrest was the discovery of 39 marijuana trees that were planted in his house. The destruction of the marijuana extract he had prepared for his wife resulted in the discontinuation of Yeni's medication. Yeni's condition, which had shown signs of improvement, suffered a setback. Tragically, 32 days after her husband Fidelis was arrested by BNN, Yeni passed away. Due to his affectionate care and the way he treated his beloved wife, Fidelis found himself serving a prison sentence lasting eight months.^{1,2}

The story of Santi Warastuti, a mother seeking treatment for her daughter Pika's cerebral palsy using CBD oil (cannabidiol), also gained significant public attention. In a state of desperation, Santi and a group of parents of cerebral palsy patients, with the support of local non-governmental organizations, took legal action by filing a lawsuit

¹ Fitria Chusna Farisa, "Ganja Fidelis Untuk Istrinya: Kisah Ganja Medis Fidelis Untuk Sang Istri Yang Berujung Bui", *KOMPAS* (2022), <https://amp.kompas.com/nasional/read/2022/06/29/13511341/kisah-ganja-medis-fidelis-untuk-sang-istri-yang-berujung-bui>

² BBC News Indonesia. "PNS Penanam Ganja Untuk Obat Istri Divonis Delapan Bulan Penjara," *BBC News Indonesia* (2017). <https://www.bbc.com/indonesia/indonesia-40799686>.

for judicial review of Law No. 35 of 2009 concerning Narcotics to the Constitutional Court. The objective of this legal action is to advocate for the use of Class I Narcotics, such as marijuana, for research purposes as well as for health therapy.³ The petition for review of Article 6 and Article 8 Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution of the Republic of Indonesia involves six petitioners with Case Number 106/PUU-XVIII/2020. The petitioners comprised three mothers, namely Dwi Pertiwi, Santi Warasyuti, and Nafiah Murhayanti. They represented their children and identified themselves as Indonesian citizens who believed their constitutional rights had been infringed upon. Three other applicants have submitted themselves as private legal entities: the Rumah Cemara Association, the Institute for Criminal Justice Reform (ICJR), and the Association of Community Legal Aid Institutions.^{4, 5} During the judicial review hearing, the petitioners introduced a witness named

³ Pijar Anugerah, "Ganja Medis: Perjuangan Santi Warastuti Demi Mencari Pengobatan Untuk Anaknya", *BBC News Indonesia* (2022), <https://www.bbc.com/indonesia/indonesia-61956811>. According to the lawyer representing the petitioner and Santi in the judicial review at the Constitutional Court, Santi Warastuti developed an interest in exploring medical marijuana as an alternative form of treatment after becoming a member of the Wahana Keluarga Cerebral Palsy Community in Yogyakarta. This community consists of approximately 5,000 parents whose children have cerebral palsy. In this community, Santi encountered Dwi Pertiwi, who provided CBD oil, derived from marijuana, to her son Musa IBN Hasan, who was living with cerebral palsy in Australia back in 2016. After Dwi's return to Indonesia, she stopped the therapy to her son due to the illegality of using marijuana for medical purposes, as stated in the Narcotics Law. Dwi's son finally died due to the condition he was suffering from.

⁴ Riyan Setiawan, "Uji Materi UU Narkotika: Perjuangan Seorang Ibu Menuntut Legalisasi Ganja Medis Demi Anaknya", *TIRTO* (2022), <https://tirto.id/perjuangan-seorang-ibu-menuntut-legalisasi-ganja-medis-demi-anaknya-gtsY>

⁵ Erik Dwi Prassetyo, "Legalisasi Ganja Medis (Analisis Putusan MK Nomor 106/PUU-XVIII/2020)", *Jurnal Analisis Hukum* 5, no. 2 (2022): 147–62

P. Ridanto Busono Raharjo. Mr. Raharjo testified that he utilizes marijuana extract as a means to alleviate chronic neuropathic pain in his right hand. The individual has been experiencing this condition as a result of a traffic accident that occurred in 1995. In 2019, Ridanto was arrested by the police after being found guilty of producing medicinal marijuana extract.

Health issues are a crucial aspect of overall human well-being that must be addressed through sustainable health development efforts to foster knowledge, motivation, and capacity to lead the community's healthy lifestyles, thus enabling individuals to attain an ideal state of public health. Significant advancements have been witnessed in international law in recent years on the normative delineation of the right to health, encompassing both access to healthcare services and the promotion of healthy living conditions. These norms provide a conceptual structure that reorients the examination of topics such as health care standards, disparities in treatment, and social justice considerations.⁶ Therefore, the World Health Organization's (WHO) constitution provides a broad definition of health as a state of complete physical, mental (spiritual), and social well-being and not merely the absence of disease or infirmity.⁷

The right to health, as an essential human rights component, is stated in Article 25, paragraph (1) of the Universal Declaration of Human Rights (UDHR). The right to health is reinforced further in Article 12, Cultural Rights (ICESCR), which Indonesia ratified

⁶ Alicia Ely Yamin, "The Right to Health under International Law and Its Relevance to the United States", *American Journal of Public Health* 95, no. 7 (2005): 1156–1161

⁷ Eleanor D. Kinney, "The International Human Right to Health: What Does This Mean for Our Nation and World?", *Indiana Law Review* 693, no. December (2004).

through Law Number 11 of 2005. This article requires that all state parties recognize and uphold the right to enjoy the highest achievable physical and mental health standards. Further, Article 12 Paragraph (2)d of the ICESCR states that for this right to be fully realized, the state parties must ensure that all medical services and medical care are available in the event of illness. Both, the UDHR and ICESCR do not explicitly specify the individual elements that constitute the right to health. However, they comprehensively encompass all facets of healthcare, thus prompting the states to undertake measures towards the actualization and establishment of circumstances that would guarantee equal and equitable access to medical services and healthcare in the event of sickness. Therefore, it is the state's responsibility, including Indonesia, to enact legislation controlling the conditions, ensuring that everyone afflicted with a specific illness has access to the treatment they require.

In addition, General Comment 14 to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) clarifies the extensive and specific scope and substance of the global entitlement to health. The comprehensive evaluation of healthcare services and facilities should encompass considerations of their availability, accessibility, acceptability, and quality. 'Availability' refers to the state party's ability to provide enough infrastructure and services for the population in light of the nation's level of development. Services like potable and safe drinking water impact the underlying determinants of health. The four dimensions of 'accessibility' to healthcare facilities and services are information accessibility, physical accessibility, economic accessibility (affordability), and non-discrimination. 'Acceptability' refers to the requirement that facilities and services uphold medical ethics, are appropriate for the local culture, maintain patient confidentiality, and enhance the health of the individuals they serve. 'Quality' also refers to the requirement

that services be highly quality and suitable from a scientific and medical standpoint.⁸

In Indonesia, the right to health is stipulated and guaranteed in the Constitution (UUD 1945), specifically in Article 28H paragraph (1). This provision asserts that every individual is entitled to lead a life of physical and spiritual well-being, including access to adequate housing, a favorable and healthy living environment, and the right to receive health/medical care services.

In connection with the topic of the use of medical marijuana or cannabis raised in this paper, according to Article 28H paragraph (2) UUD 1945, every individual possesses the entitlement to receive specialized facilities and treatment to attain equitable opportunities and advantages, thereby promoting equality and justice in the pursuit of optimal well-being and other fundamental rights. In addition to the constitution, Law Number 39 of 1999 on Human Rights and Law Number 17 of 2023 on Health also govern the right to health in Indonesia. These laws are vital for guaranteeing the provision of high-quality healthcare and services while also addressing issues of healthcare discrimination, particularly for individuals who require access to marijuana as a therapeutic remedy for their ailments.

The realization of the entitlement to healthcare as outlined in Law Number 39 of 1999 pertaining to human rights is explicitly articulated in Article 9, encompassing paragraphs (1) to (3). Article 9 states that: (1) Everyone has the right to live, maintain life, and improve their standard of living; (2) Everyone has the right to peace,

⁸ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), 2000 Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4) (2000), <https://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>.

security, happiness, and physical and spiritual prosperity; (3) Everyone has the right to a good and healthy living environment.⁹ The entitlement to health, particularly the entitlement to receive health services, is further underscored in Article 4 (1) point e of Law Number 17 of 2023 pertaining to health, which stipulates that every individual possesses the entitlement to access health resources.¹⁰ The given statement is aligned with the preamble statement of the Health Law, which emphasizes the necessity of health initiatives, resources, and administration to enhance public health to its highest level and should be fulfilled under the principles of welfare, equality, non-discrimination, participation, and sustainability. The framework for achieving the goal involves improving the quality and productivity of human resources in the health sector and reducing disparities. In addition, it also involves strengthening the quality of healthcare services, enhancing health resilience, ensuring a healthy life, and promoting prosperity for all citizens. These efforts are crucial for advancing the nation's competitiveness and achieving national development goals.

From a human rights standpoint, the state is required to formulate policies that will effectively uphold the right to health as an essential entitlement, which should not be seen in isolation from other human rights, particularly the right to life. The recognition of the right to health as a fundamental human right has achieved consensus inside the Indonesian constitution, especially since the 4th amendment explicitly mentions the right to health in Article 28H

⁹ Republic of Indonesia, *Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia*, (1999), Lembaran Negara Republik Indonesia Tahun 1999 Nomor 165, <https://www.dpr.go.id/dokjdih/document/uu/440.pdf>.

¹⁰ Republic of Indon, *Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 Tentang Kesehatan*, (2023), Lembaran Negara Republik Indonesia Tahun 2023 Nomor 105, <https://www.kemkes.go.id/id/undang-undang-republik-indonesia-nomor-17-tahun-2023-tentang-kesehatan>.

paragraph 2. The basic principle underlying healthcare provision as a human right is preserving human dignity (*the raison d'être*). The provision of health is an inherent entitlement afforded to all individuals. Hence, each person, household, and society must be entitled to access health protection, with the government assuming the responsibility of overseeing and safeguarding individuals to ensure the realization of their entitlement to a state of well-being. The obligation includes extending such provisions to economically disadvantaged individuals who lack the means to afford them.¹¹

The concept of the right to health encompasses a wide range of considerations, extending beyond the individual's entitlements to encompass several determinants that influence an individual's overall well-being, including but not limited to environmental variables, nutritional status, and housing conditions. Concurrently, the entitlement to health and access to healthcare constituting patient rights represent two separate elements within the broader framework of the right to health.

According to Article 1, point 1 of the Health Law, health is defined as an individual's well-being encompassing physical, mental, and social aspects, rather than solely the absence of disease, to enable a productive life. Additionally, it is stated in letter b of paragraph 1 of Article 5 that every individual is obligated to maintain and improve the health of those for whom they bear responsibility.

The instances mentioned above of medical marijuana being employed as an alternative therapeutic approach highlight the notion that its utilization aims to assist patients in alleviating their ailments, thereby enabling them to lead fulfilling, productive lives, as

¹¹ Fheriyal Isriawaty, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Masyarakat Berdasarkan Undang Undang Dasar Negara Republik Indonesia", *Jurnal Ilmu Hukum Legal Opinion* 3, no. 2 (2015): 1–10.

elaborated upon in the article. Upon examination of the regulations as mentioned above, it becomes evident that the state bears the obligation of ensuring the health entitlements of all individuals, including patient access to medical marijuana.

2. Method

This research employs a qualitative approach to investigate the legalization of medical marijuana in Indonesia from the human rights perspective, leveraging insights gained from the experiences of three ASEAN countries—Thailand, Malaysia, and the Philippines. The study involves document analysis of legal frameworks, policies, and court decisions, alongside interviews with key stakeholders such as policymakers, medical professionals, and activists. Through purposeful sampling and ethical considerations, the research aims to identify and analyze the human rights implications of medical marijuana legalization in Indonesia, drawing comparative lessons from the selected ASEAN nations. The methodology integrates thematic and legal analysis, examining individual rights, social and economic impacts, and diverse stakeholder perspectives. The findings will contribute to a nuanced understanding of the human rights landscape in the context of medical marijuana legalization, offering valuable insights for policy considerations in Indonesia and beyond.

3. Result & Discussion

A. The Evolution of the Use of Medical Marijuana (Cannabis)

Cannabis is a flowering plant genus that consists primarily of two species, *Sativa* and *Indica*. It is the oldest cultivated crop and has been utilized for millennia by ancient Chinese and Indian medics, ancient Greek and Roman doctors, Arab doctors during the Middle

Ages, and British Victorian, and continental European physicians. The earliest documented usage of medicinal cannabis in Africa dates back to ancient Egypt, when it was used as a suppository to relieve the pain of hemorrhoids and as a treatment for acute eyes.¹² The crop has hundreds of chemical components and distinct cannabinoids. Naturally, the human body can produce cannabinoid compounds. The primary role of this compound in the body is to regulate body movement, appetite, attention, sensation to the senses, and pain.¹³ The chemical composition of marijuana is contingent upon its geographical origin, resulting in distinct compounds across various regions.¹⁴ The composition of marijuana consists of three primary components, specifically cannabitol (CBN), cannabidiol (CBD), and Δ^9 -tetrahydrocannabinol (THC). The molecule THC, found in marijuana, has the potential to induce feelings of pleasure and hallucinations in individuals who consume it.¹⁵ Historically, when the cultivation of marijuana was banned in several countries in the twentieth century, its consumption fell. Science, according to Perucca gained a deeper understanding of plant properties once chemists and pharmacologists began investigating the molecular structure and biological activity of their active compounds and how they were

¹² Gama Bandawe, "Medical Cannabis and Cannabidiol: A New Harvest for Malawi", *Malawi Medical Journal* 34, no. 2 (2022): 138–42

¹³ Nur Arfiani and Indah Woro Utami, "Penggunaan Ganja Medis dalam Pengobatan Rasional dan Pengaturannya di Indonesia", *Jurnal Hukum Dan Etika Kesehatan* 2 (2022): 56–68.

¹⁴ Widi Asmoro and Palupi Lindiasari Samputra, "Analisis Naratif Kebijakan: Kebijakan Ganja Medis di Indonesia", *Matra Pembaruan* 5, no. 1 (2021): 13–24.

¹⁵ Ni Pitri Susanti, "Identifikasi Kandungan Cannabinoid dalam Ekstrak Batang Ganja dengan Metode AL-TLC Dan HPTLC Spectrophotodensitometry", *Indonesian Journal of Legal and Forensic Sciences* 2, no. 1 (2012): 282193.

chemically defined.¹⁶

Marijuana is derived from the cannabis plant, which is a shrub with the potential to grow up to 4 meters tall. This plant contains delta-9-tetrahydrocannabinol (THC), a hallucinogenic compound. The flowering stems of female plants exhibit the highest concentrations of THC, while comparable levels can also be observed in the leaves of the twigs. This particular genus encompasses hundreds of distinct species, such as *Cannabis sativa*, *Cannabis indica*, and *Cannabis ruderalis*. Within this diverse array of species, certain ones can be classified as fiber types, characterized by a THC content below 1.0%. Conversely, there are also drug-type species that possess THC levels of up to 5%. It is worth noting that, despite advancements in cultivation techniques, the THC concentrations in some drug-type species can exceed 10%. The levels of THC are contingent upon various factors, such as the botanical variety of the plant, the fertility of the soil, the climatic conditions in which the plant is cultivated, and the specific method employed for harvesting the shoots, leaves, or twigs. In addition to delta-9-tetrahydrocannabinol (THC), the cannabis plant is known to possess additional cannabinoids, namely cannabidiol (CBD) and tetrahydrocannabivarin (THCV). When marijuana leaves are stored under ambient conditions, their potency diminishes by 5% every month. Marijuana smoke contains a multitude of cannabinoids and various chemical compounds, with THC being recognized as the most

¹⁶ Emilio Perucca, "Cannabinoids in the Treatment of Epilepsy: Hard Evidence at Last?", *Journal of Epilepsy Research* 7, no. 2 (2017): 61–76.

significant constituent.^{17,18}

Marijuana can be eaten in the form of sweets or brewed like tea or coffee, but the majority of marijuana is smoked like tobacco. When doing it for the first time, someone who has never done it may cough. Each marijuana cigarette contains 5–20 mg of THC (before cultivation, only roughly 2.5–5.0% is absorbed, and only 50% is absorbed), and only 3–6% is absorbed when used orally (eaten). THC exits the plasma quickly and reaches fat-containing tissues, including the brain and testicles. THC is processed in the liver and excreted mainly in the feces and urine. THC has a half-life of 2-7 days. CBD does not have any psychoactive substances. CBD helps people with epilepsy, schizophrenia, and psychotic disorders. Its medical utility includes an anti-inflammatory, antioxidant, neuroprotectant, anti-depressant, analgesic, anti-psychotic, anti-tumoral agent, and anxiolytic substance. THC, on the other hand, is a psychoactive substance whose content can cause a person to get enthusiastic, laugh, feel hungry, lessen pain and red eyes, and increase heart rate. It also has the potential to treat cancer and be anti-inflammatory.¹⁹

Despite the fact that the marijuana plant thrives in some areas of

¹⁷ Maíra Ribeiro de Souza, Amélia Teresinha Henriques and Renata Pereira Limberger, "Medical Cannabis Regulation: An Overview of Models around the World with Emphasis on the Brazilian Scenario", *Journal of Cannabis Research* 4, no. 1 (2022).

¹⁸ National Center for Biotechnology Information. *PubChem Compound Summary for CID 16078, Dronabinol* (Maryland, US: National Center for Biotechnology Information, 2023).

¹⁹ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Medical Use of Cannabis and Cannabinoids: Questions and Answers for Policymaking* (Luxembourg: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2018), http://www.emcdda.europa.eu/system/files/publications/10171/20185584_TD0618186ENN_PDF.pdf.

Indonesia and is used for traditional medicine and traditional culinary ingredients, such as in Aceh Province,²⁰ marijuana is categorized as a class I narcotic, the use of which is forbidden under Law Number 35 of 2009 on Narcotics.²¹ The use of marijuana in Indonesia, viewed by opponents, primarily has been associated with the potential for dependence or addiction, thus necessitating stringent oversight throughout the entire process, from cultivation to consumption.

Preclinical studies by Stockings et al. and Badowski and Yanful showed that marijuana tetrahydrocannabinol (THC) has psychoactive effects. At the same time, cannabidiol (CBD) and cannabidivarin have demonstrated anti-seizure effects in both in vivo and in vitro models. The US Food and Drug Administration (FDA) approved medications in 1985 that contained cannabinoids or cannabinoid analogs, such as dronabinol, whether they were natural or synthetic. Oral capsules

²⁰ 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, no. 2 (2021): 119–26.

²¹ Narcotics in Law Number 35 of 2009 refer to chemicals or medications that are obtained from either botanical or non-botanical sources, encompassing both synthetic and semi-synthetic varieties. These compounds have the potential to induce alterations in consciousness, diminish or modify the sense of taste, alleviate or eradicate pain, and lead to dependence. According to Article 6, Paragraph (1) of the Narcotics Law, there are three distinct categories of narcotics. The first category, referred to as Category I narcotics, encompasses substances that are exclusively utilized only for scientific advancement. The utilization of these substances in therapeutic contexts is strictly banned due to their significant propensity for inducing dependence. Category II narcotics refer to a class of narcotics that include medicinal capabilities and are typically employed as a final option in treatment. These substances are utilized in both therapeutic settings and for research advancements and have a significant propensity to induce dependence. Category III narcotics are a class of substances that possess therapeutic characteristics. These substances are extensively utilized in therapeutic contexts and for scientific advancements, with a relatively low likelihood of inducing dependence.

containing dosages of 2.5 mg, 5 mg, and 10 mg were administered to individuals with Acquired Immune Deficiency Syndrome (HIV) as a therapeutic intervention for anorexia. Moreover, the oral solution (5 mg/mL) received approval in 2006. In addition to its primary therapeutic indications, this medication has demonstrated efficacy in managing chemotherapy-induced nausea and vomiting (CINV) among patients who have exhibited resistance to conventional antiemetic interventions.^{22,23} Dronabinol is also available via special access in certain European countries, such as Austria, Denmark, Ireland, and Germany.²⁴ Using Epidiolex, a drug made from cannabidiol (CBD), along with other treatments for people with Lennox-Gastaut syndrome, Dravet syndrome, or Tuberous Sclerosis Complex (TSC) seizures, really helps them feel better. These conditions are frequently associated with the development of congenital epilepsy, characterized by complex seizures. The medicine was approved by the Food and Drug Administration (FDA) in June of 2018. The European Medicines Agency (EMA) granted approval for this drug in Europe as an 'orphan drug' with a similar indication to

²² Emily Stockings et al., "Evidence for Cannabis and Cannabinoids for Epilepsy: A Systematic Review of Controlled and Observational Evidence", *Journal of Neurology, Neurosurgery and Psychiatry* 89, no. 7 (2018): 741–53.

²³ Melissa E. Badowski and Paa Kwesi Yanful, "Dronabinol Oral Solution in the Management of Anorexia and Weight Loss in AIDS and Cancer", *Therapeutics and Clinical Risk Management* 14 (2018): 643–51.

²⁴ N. Krcevski-Skvarc, C. Wells and W. Häuser, "Availability and Approval of Cannabis-Based Medicines for Chronic Pain Management and Palliative/Supportive Care in Europe: A Survey of the Status in the Chapters of the European Pain Federation", *European Journal of Pain (United Kingdom)* 22, no. 3 (2018): 440–54.

that of the FDA.^{25,26} The most common side effects associated with Epidiolex administration are diarrhea, elevated transaminase enzymes, decreased appetite, somnolence, and vomiting. Although there is no proof that marijuana treatment is superior to other widely used medications, until now, other chemicals have not yet replaced marijuana treatment in particular clinical settings.²⁷

As reported in clinical trials, the short-term health risks associated with the medical use of cannabis and cannabinoids were comparable to those of other frequently used medications. These risks were associated with dizziness, parched mouth, disorientation, nausea, euphoria, confusion, and somnolence. Severe adverse outcomes were infrequent. Although there is limited evidence regarding the health risks associated with long-term medical use of cannabinoids, the risks reported are generally comparable to those associated with short-term use.²⁸

Despite the widespread utilization of medicinal marijuana, its usage must align with specific requirements and targets. When prescribing marijuana, physicians should exercise caution regarding its chemical composition and the various routes of medication administration. Adjustments are required to prevent untoward health

²⁵ European Medicines Agency, *Public Summary of Opinion on Orphan Designation: Cannabidiol for the Treatment of Lennox-Gastaut Syndrome*. (London, UK: European Medicines Agency, 2017)

²⁶ Michael Felberbaum, "FDA Approves First Drug Comprised of an Active Ingredient Derived from Marijuana to Treat Rare, Severe Forms of Epilepsy, the Food and Drug Administration (FDA)", *Online FDA Release* (2018), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-drug-comprised-active-ingredient-derived-marijuana-treat-rare-severe-forms>.

²⁷ Alice Mead, "Legal and Regulatory Issues Governing Cannabis and Cannabis-Derived Products in the United States", *Frontiers in Plant Science* 10, no. June (2019): 1–10.

²⁸ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Medical Use of Cannabis and Cannabinoids: Questions and Answers for Policymaking*

effects associated with precision medicine. Although the risk of a fatal overdose is low, the use of marijuana is not entirely risk-free. Marijuana use is associated with nausea or vomiting, acute confusion, anxiety, panic, and hallucinations. Comprehensive studies are necessary to precisely elucidate the physiological mechanism by which marijuana exerts its therapeutic effects while preventing any adverse reactions.²⁹

According to Aggarwal et.al., the utilization of cannabis for medical purposes was prevalent in the United States between the mid-1850s and the early 1940s. This can be attributed to its incorporation into Western medicine as 'Indian Hemp' by Dr. W.B. O'Shaughnessy, a co-founder and professor at Calcutta Medical College. Dr. O'Shaughnessy's seminal journal article, published in 1839, played a significant role in introducing cannabis to the medical community. Despite being a Schedule I substance in the United States, established medical associations are increasingly acknowledging the therapeutic use of medicinal cannabis. According to legal mandates, federal entities such as the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) are obligated to undertake drug reclassifications that are grounded in scientific and medical factors.³⁰

²⁹ Brenda Victor, Kathy Hager and Shannon Stacy, "Re-Legalizing Cannabis for Medical Use in the USA", *Journal of Public Health (United Kingdom)* 44, no. 3 (2022): 679–84.

³⁰ Sunil K. Aggarwal et al., "Medicinal Use of Cannabis in the United States: Historical Perspectives, Current Trends, and Future Directions", *Journal of Opioid Management* 5, no. 3 (2009): 153–68. According to Aggarwal et al., several national and state medical associations, including the traditionally conservative American College of Physicians, consistently support the legal use of marijuana for particular medicinal purposes. The list also encompasses several notable organizations, such as the American Academy of Family Physicians, the American Psychiatric Association Assembly, the American Academy of

In 2009, in the pursuit of safeguarding and ensuring the right to health, a total of 13 states in the United States, namely Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington, enacted legislation that empowers physicians to endorse or suggest the utilization of cannabinoid botanicals for medically evaluated individuals who are suffering from chronic or critical illnesses. This legal framework effectively shields patients from prosecution at the state level. The process of medical marijuana authorization facilitates patients' acquisition of this form of healthcare. Through a ballot initiative known as I-692, voters in Washington State approved the Medical Use of Marijuana Act in 1998. With the implementation of Engrossed Senate Substitute Bill 6032 in 2007, the Washington State Legislature changed the Act. The relevant legal provisions can be found in Chapter 69.51A of the Revised Code of Washington and Chapter 246-275 of the Washington Administrative Code.³¹

In contrast, similar to other state legislation, the marijuana law in Washington does not have the authority to alter the existing federal laws pertaining to marijuana. Hence, individuals engaged in the production, distribution, dispensation, or possession of marijuana, regardless of their intentions, are susceptible to potential prosecution under federal legislation, specifically Title 21, Chapter 13, Sections 841 and 844 of the United States Code. The Medical Use of Marijuana Act does not grant legal authorization for the recreational use or any other utilization of marijuana that falls outside the explicit provisions outlined within the legislation. The scope of the law is limited to the

Addiction Psychiatry, the Washington State Medical Association, the California Medical Association, the Medical Society of the State of New York, the Rhode Island Medical Society, the American Academy of HIV Medicine, the HIV Medicine Association, the Canadian Medical Association, the British Medical Association, and the Leukemia and Lymphoma Society.

³¹ Aggarwal et al.

medical problems explicitly mentioned in the statute, and the utilization of marijuana for any other purposes apart from those explicitly permitted by law continues to be prohibited.³²

Cannabis is also the dominant illicit substance in terms of usage within European territory. The medicine in question is subject to significant polarization in both public opinion and political discourse. There is a notable surge in interest in this field, driven by critical global events that have led certain countries and jurisdictions to implement new regulations for this particular drug. In the context of Europe, the issue of determining an appropriate policy response to cannabis has emerged as a significant and relevant matter. The use of medicinal cannabis products has been permitted in several European Union (EU) countries.³³ Medicinal drugs containing dronabinol and nabilone exhibit limited prevalence and accessibility, being accessible in around one-third of European Union member states. In various nations, national healthcare insurance systems may provide reimbursement for expenses incurred under specific circumstances, including but not limited to obtaining prior clearance or receiving a prescription from a specialist.³⁴

Certain countries provide patients with the opportunity to obtain standardized cannabis medicines, whether through importation or home cultivation. In some nations, patients are granted the opportunity to utilize cannabis for therapeutic purposes through the implementation of medicinal practices. These practices involve the conversion of raw cannabis into a consumable format by a

³² Aggarwal et al.

³³ The European Parliament, *Use of Cannabis for Medicinal Purposes*, 115 (2020). European Parliament Resolution of 13 February 2019 on Use of Cannabis for Medicinal Purposes (2018/2775(RSP))

³⁴ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), *Medical Use of Cannabis and Cannabinoids: Questions and Answers for Policymaking*

qualified pharmacist. Several countries, like Croatia, Denmark, Finland, Norway, Poland, and Sweden, currently have implemented various forms of exceptional or compassionate use programs, as well as other specialized access initiatives, in order to facilitate the availability of cannabis preparations for the treatment of a limited set of medical problems. There are currently four European countries that have implemented an established access programme. These countries include Czechia, Germany, Italy, and the Netherlands. In 2018, both Luxembourg and Portugal enacted legislation pertaining to the medicinal utilization of cannabis. Moreover, medical goods containing nabiximols have been authorized in the Netherlands and are currently available. Nevertheless, since 2003, Dutch legislation has additionally granted all medical practitioners the authority to prescribe herbal cannabis as a means of alleviating symptoms associated with certain medical diseases, such as multiple sclerosis, HIV, cancer, pain, and Tourette syndrome, among others. In addition, prescription-based access to pharmaceutical drugs containing nabilone and nabiximols is also available in both Germany and Croatia. Moreover, in Germany, individuals have the possibility of receiving reimbursement from national health or social insurance entities.³⁵ The authorization for the therapeutic use of cannabis in Italy was initially granted in 2007. In 2014, a legislative measure was enacted to eliminate the formerly challenging bureaucratic procedures associated with acquiring a prescription for cannabis. Consequently, patients who possess a prescription from primary care physicians are now able to get cannabis without restrictions in Italy.³⁶

In fact, both in Indonesia and overseas, Marijuana is one of the most commonly used substances. According to the results of the

³⁵ European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

³⁶ Maurizio Bifulco and Simona Pisanti, "Medicinal Use of Cannabis in Europe." *EMBO Reports* 16 (2015).

BNN-BRIN survey conducted in 2021, in Indonesia, marijuana is the most commonly used substance at 41.4%, followed by ATS at 25%. BNN reports that marijuana, methamphetamine, ecstasy, and heroin are the most commonly consumed narcotics in Indonesia.³⁷

The pros and cons of medical marijuana are still prevalent in contemporary society, as marijuana abuse is typically associated with recreational functions or use for personal enjoyment rather than medical purposes. Proponents of legalization have underscored the potential to eliminate the illicit marijuana market, enhance quality assurance and safety measures, boost tax revenues, enhance accessibility to medical cannabis, and reduce drug-related violence associated with transnational organized crime. With the establishment of legalization regimes in several countries, there is a growing trend among public health professionals to integrate information from different policy domains to shape cannabis policy efficiently. On the other hand, critics of the legalization of cannabis have emphasized the potential for addiction, the risks associated with second-hand exposure to cannabis, the possibility of worsening pre-existing mental illnesses, and the impact on perception and attitudes towards cannabis, particularly concerning safety and driving.³⁸

Thailand is the only nation within ASEAN countries where marijuana is explicitly legal for both medical and recreational use. The cultivation of marijuana is permitted in this country, but its use is restricted. Due to its classification as a narcotic of class I, the

³⁷ Irianto, Agus, et.al. *Survei Penyalahgunaan Narkoba Tahun 2021*. (Jakarta: Pusat Penelitian, Data, dan Informasi Badan Narkotika Nasional Republik Indonesia, 2022).

³⁸ Anees Bahji and Callum Stephenson, "International Perspectives on the Implications of Cannabis Legalization: A Systematic Review & Thematic Analysis", *International Journal of Environmental Research and Public Health* 16, no. 17 (2019).

cultivation and use of marijuana are illegal in Indonesia. It is only permitted for research purposes. Malaysia and Singapore have not explicitly regulated the medical legalization of cannabis. Still, marijuana has significant potential for legalization, either through decriminalization (removal of criminal penalties for users or proprietors) or full legalization (allowing cultivation and sale). Psychologically and behaviorally, the community believes that marijuana has only harmful effects. Although its content is less than that of other narcotics, even when compared to alcohol and cigarettes, it is still a narcotic. Considering the significant medical and economic potential of marijuana use, legalization can reduce the administrative burden on law enforcement. At the very least, the first concrete action that the government can take is to permit research into the potential health benefits of marijuana.

B. International Drug Control Conventions & Measures Against Cannabis & Its Development

Promoting public health requires that the state and the international community actively participate in the enforcement of drug regulations on narcotics and illicit drugs.

Until now, health therapy utilizing medical marijuana is a highly debated health concern in Indonesia and elsewhere. Medical and health research on the use of medical marijuana for various conditions has been conducted in several different countries, such as for chronic pain, cancer, nausea and vomiting from chemotherapy, anorexia and HIV-related weight loss, irritable bowel syndrome, epilepsy, muscle spasms, Tourette's syndrome, Huntington's disease, dystonia, dementia, glaucoma, anxiety, depression, sleep disorders, post-

traumatic disorders (PTSD), and schizophrenia.³⁹

Internationally, to control illicit drugs and narcotics, three significant international conventions against narcotics and illegal drugs have been established to date. They are the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. According to this convention, states that sign these agreements have a legal obligation to ensure that the substances listed in the conventions are subjected to the corresponding compulsory control measures.

The primary regulation of cannabis control is outlined in Article 28 of the Single Convention on Narcotic Drugs, 1961, with amendments included by the 1972 Protocol.⁴⁰ Cannabis was initially

³⁹ Mary Barna Bridgeman and Daniel T. Abazia, "Medicinal Cannabis: History, Pharmacology, And Implications for the Acute Care Setting", *Pharmacy and Therapeutics* 42, no. 3 (2017): 180–88; Douglas L. Boggs et al., "Clinical and Preclinical Evidence for Functional Interactions of Cannabidiol and Î " 9-Tetrahydrocannabinol", *Neuropsychopharmacology* 43, no. 1 (2018): 142–54; Rosaria Greco et al., "Characterization of the Biochemical and Behavioral Effects of Cannabidiol: Implications for Migraine", *Journal of Headache and Pain* 24, no. 1 (2023): 1–15; Tadeja Kuret et al., "Cannabidiol as a Promising Therapeutic Option in IC/BPS: In Vitro Evaluation of Its Protective Effects against Inflammation and Oxidative Stress", *International Journal of Molecular Sciences* 24, no. 5 (2023).

⁴⁰ Article 28. Control of Cannabis in the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol: 1. If a party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in Article 23 respecting the control of the opium poppy. 2. This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes. 3. The parties shall adopt such measures as may be necessary to prevent the misuse of and illicit trafficking in the leaves of the cannabis plant.

classified as a forbidden substance when it was officially announced and ratified in the Single Convention on Narcotic Drugs in 1961, with subsequent revisions introduced through the 1972 Protocol. Nevertheless, in its development, the categorization and utilization of marijuana have undergone many evaluations by experts at the World Health Organization (WHO) concerning various worldwide studies.

The therapeutic potential of cannabis and cannabis extracts experienced an increased level of interest after the identification of the endocannabinoid system in the mid-1980s and the subsequent advancement of knowledge regarding this system during the 1990s. However, there is a limited availability of evidence regarding the efficacy of cannabinoids in the treatment of specific conditions. Cannabinoids are generally advised for patients whose response to conventional medicine has been inadequate or as adjunctive therapy. Cannabinoids and cannabis are effective in addressing chemotherapy-induced nausea and vomiting, alleviating patient-reported spasticity symptoms associated with multiple sclerosis, and managing epilepsy, according to conclusive or substantial evidence. These effects have been observed in adults with chronic pain. However, the available evidence regarding the efficacy of cannabis in treating various medical conditions is either limited, insufficient, or inconclusive.⁴¹

On November 12–16, 2018, the WHO Expert Committee on Drug Dependence (ECDD) met in Geneva to finalize its study of cannabis and cannabis-related drugs. It was the first time the ECDD conducted a comprehensive evaluation of these chemicals since the International Drug Control Conventions were created in 1961 and 1971, respectively. The Committee recognized the public health risks posed by cannabis-related elements, as well as its medicinal and scientific

⁴¹ UNODC, "Herbal Cannabis for Medical Use: A Spectrum of Regulatory Approaches". *World Drug Report 2023* (2023)

potential. As a result, the Committee proposed a more logical international regulatory system for cannabis and cannabis-related substances that would avoid drug-related harm while ensuring the availability of cannabis-derived pharmaceutical preparations for medical use.⁴²

The ECDD is also anticipated to make recommendations at the meeting regarding the appropriateness of the present international scheduling of cannabis and cannabis-related drugs. These suggestions aim to guarantee that international control mechanisms protect people's health, particularly the most vulnerable, without first restricting access to cannabis-derived products with proven therapeutic qualities. Moreover, the ECDD also conducts risk assessments on substances from a public health standpoint, such as if there is a danger of abuse, dependency, or injury. The reviews are based on scientific research and available evidence. To ensure that patients who could potentially experience positive effects from their use or who may benefit from these substances are not penalized by international controls, the committee also considers their demonstrated therapeutic properties.⁴³

Marijuana possession laws and the purpose of their use differ from country to country. The Maíra Ribeiro de Souza study mentioned that a total of 36 nations have previously established

⁴² WHO, "WHO Endorses Decisions of Expert Committee on Cannabis and Other Substances", *WHO News Online* (2019). <https://www.who.int/news/item/03-04-2019-WHO-endorses-decisions-Expert-Committee-on-cannabis-and-other-substances>

⁴³ WHO, "WHO Expert Committee on Drug Dependence Meets to Review Cannabis and Other Substances", *WHO News Online* (2018), <https://www.who.int/news/item/16-11-2018-Expert-Committee-on-Drug-Dependence-meets-to-review-cannabis-and-other-substances> (last visited Oct 15, 2023).

regulatory frameworks about medical cannabis, while an additional 16 countries are now in the process of developing or implementing such models, mostly in Europe and the United States. Within the African countries, similar legislation was passed in Uganda in 2015, Lesotho, Zimbabwe, and South Africa in 2018, Zambia in 2019, and Malawi in 2020.⁴⁴ The analyzed regulatory mechanisms exhibit significant variations across different countries, which can be attributed to societal, historical, and political factors.⁴⁵

As of the year 2021, a total of 64 countries had incorporated provisions into their national legislation or had formulated guidelines that permit the utilization of cannabinoid pharmaceutical preparations and/or cannabis-based products for various illnesses. Among the 64 countries surveyed, it has been observed that 34 of them have implemented policies that permit the utilization of cannabis-derived products. The aforementioned set comprises nine African countries, fifteen countries inside the United States, six Asian countries, thirty-two European countries, and two countries situated within Oceania.⁴⁶

In the opening paragraph of this paper, it was already explained that several cases have emerged on the medicinal use of marijuana in Indonesia, leading to a legal dispute (judicial review) brought before the Constitutional Court to review Law Number 35 of 2009 on Narcotics. The objective of this judicial review is to reclassify marijuana as a Class I narcotic, thereby enabling its utilization as a form of medicine, similar to its status in various other countries.

⁴⁴ Bandawe, "Medical Cannabis and Cannabidiol: A New Harvest for Malawi"

⁴⁵ Máira Ribeiro de Souza, Amélia Teresinha Henriques and Renata Pereira Limberger, "Medical Cannabis Regulation: An Overview of Models around the World with Emphasis on the Brazilian Scenario", *Journal of Cannabis Research* 4, no. 1 (2022).

⁴⁶ UNODC, "Herbal Cannabis for Medical Use: A Spectrum of Regulatory Approaches"

Based on the judicial review brought before the Constitutional Court, criminal legal charges and consequences applied against users and family members who assist patients with life-threatening conditions, and some medical studies mentioned earlier, this paper aims to address the human rights and national regulatory implications regarding the right to health and the ban on medicinal marijuana in Indonesia. Specifically, the paper also aims to examine the potential discriminatory consequences faced by those relying on its therapeutic benefits for the treatment of their respective medical conditions, considering the use of marijuana in Indonesia can be punished under the criminal law based on Law Number 35 of 2009 concerning Narcotics. In addition, this study will examine the deficiencies in the regulatory framework on the classification of marijuana as a category I narcotic in Indonesia through a comparative analysis of the law in three particular ASEAN countries.

In addition to the several studies and publications discussed earlier, some academic work has been carried out on the topic of legalizing the use of marijuana for medical purposes in Indonesia. For instance, Pratama et al. (2023) have authored an article titled "Comparative Study Between Indonesia and Thailand Regarding Cannabis Legalization Policy," which delves into the comparative analysis of cannabis legalization policies in Thailand and Indonesia.⁴⁷ Another publication by Prasetyo addresses the legalization of medical marijuana in connection with Constitutional Court Decision Number 106/PUU-XVIII/2020.⁴⁸ It examined some articles in Law

⁴⁷ Akbar Yudha Pratama, Ufran Ufran and Lalu Saepuddin, "Studi Komparasi Antara Indonesia Dengan Thailand Terkait Kebijakan Legislasi Ganja", *Parhesia* 1, no. 1 (2023): 70–81

⁴⁸ Prasetyo, "Legalisasi Ganja Medis (Analisis Putusan MK Nomor 106/PUU-XVIII/2020)"

Number 35 of 2009 concerning Narcotics against the Indonesian 1945 Constitution regarding the legalization of medical marijuana, which has had negative consequences for individuals who require treatment using medical marijuana therapy. Other publications include "The Urgency of the Legality of Marijuana for Medical Purposes" by Zulfikri and Badru Jaman (2022)⁴⁹, "Legalization of Marijuana in the Medical Sector Based on a Legal Perspective" by Malik et.al (2020)⁵⁰, and "Legalization of Marijuana as a Medicinal Plant: Is It Necessary?" by Qadrina and Risal (2022).⁵¹ Ayunda (2021) also wrote a publication titled "Opportunities and Legal Challenges of the Use of Marijuana for Medical Benefits in Indonesia from the Health Law Perspective".⁵² Finally, a study titled "A Comparative Study on Criminal Sanctions Against Drug Offenders" was conducted by Monalisa et al. This study examines the regulation and criminalization of narcotics, specifically comparing the regulatory frameworks and penalties imposed on individuals who engage in drug abuse in Indonesia and Singapore.⁵³

This paper distinguishes itself from prior studies by conducting comparative analyses of legal policies on Medical Marijuana in three

⁴⁹ Agung Zulfikri and Ujang Badru Jaman, "Urgensi Legalitas Ganja Untuk Kepentingan Medis", *Jurnal Hukum dan HAM West Science* 01, no. 1 (2022): 8–14.

⁵⁰ Syamsul Malik, Luriana Manalu and Rika Juniarti, "Legalisasi Ganja Dalam Sektor Medis Perspektif Hukum", *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 2, no. 2 (2022): 1–9.

⁵¹ Nurlaelatil Qadrina and M. Chaerul Risal, "Legalisasi Ganja sebagai Tanaman Obat: Perlukah?", *Jurnal Al Tasyri'Iyyah* 2, no. 1 (2022): 48–58.

⁵² Vina Rahmi Ayunda, "Peluang dan Tantangan Legalisasi Penggunaan Ganja Untuk Kepentingan Medis di Indonesia Ditinjau Dari Perspektif UU Kesehatan." *Proceedings Conference on Management, Business, Innovation, Education and Social Science* 1 (2021): 331–340.

⁵³ Monalisa Monalisa, Sri Rahayu and Dheny Wahyudhi, "A Comparative Study on Criminal Sanction Against Drugs Offenders", *Jambe Law Journal* 2, no. 2 (2020): 181–206.

ASEAN countries: Thailand, Singapore, and Malaysia. It also incorporates discussions on the right to health as a human rights component. It explores the potential legalization and decriminalization of marijuana use for medical purposes in Indonesian legal policy.

The present study employs a doctrinal legal research methodology to examine legal norms on medical marijuana, specifically focusing on existing legal provisions (Das Sollen). This study also employs a comparative method to discuss the legal utilization of medical marijuana within three ASEAN countries. The study examines the potential use and legalization of Medical Marijuana by using primary legal documents, such as statutes and regulations, and secondary legal materials comprised of scholarly papers and prior research conducted by legal scholars. The material is subjected to meticulous examination by utilizing a conceptual legal and human rights framework and an interpretive lens. The qualitative analysis method was employed to examine the findings of this study. The research outcomes were conveyed using coherent narratives, well-structured arguments, and deductive recommendations. The deductive methodology employed in this study facilitates the development of logical inferences and pragmatic suggestions on the subject of investigation, specifically the legalization of medicinal marijuana, to tackle pertinent legal concerns, particularly fulfilling the right to health as a human right for vulnerable individuals requiring it.

C. The Legalization of Marijuana as a Medicinal Substance in Several ASEAN Countries

1) *Legalization of the Use of Marijuana as a Medicinal Substance in Thailand*

It is anticipated that the ongoing trend of nations relaxing regulations on medicinal cannabis will persist. The relaxation of restrictions has predominantly taken place in countries situated in Europe, North and South America, and Oceania. However, certain regions in Asia are now beginning to ease restrictions. Thailand stands as a recent illustration of a Southeast Asian country that has taken the initiative to ease this particular restriction. In July 2020, the Ministry of Public Health in Thailand approved the prescription of 17 medical cannabis products to specific hospitals for patient treatment. Several other nations within the geographical vicinity have also initiated measures towards the legalization of medicinal cannabis, such as Japan, Malaysia, and the Philippines.⁵⁴

Thailand has become the first nation in Southeast Asia to enact legislation for the legal use of marijuana for medicinal and domestic or household, social, religious, and recreational purposes.⁵⁵ The legalization of marijuana-related substances in Thailand is a policy that yields economic advantages due to the presence of the marijuana industry.⁵⁶ The legalization of marijuana can serve as a viable answer

⁵⁴ MTP Connect and Deloitte Access Economics, *Australian Medicinal Cannabis Industry Report*, (2021), [https://www.mtpconnect.org.au/images/MTPC_Australian Medicinal Cannabis Industry.pdf](https://www.mtpconnect.org.au/images/MTPC_Australian_Medicinal_Cannabis_Industry.pdf).

⁵⁵ Sayam Aroonsrimorakot, Meena Laiphrakpam and Orapun Metadilogkul, "Social, Religious, Recreational and Medicinal Usage of Cannabis in India and Thailand", *Journal of Thai Interdisciplinary Research* 14, no. 4 (2019): 43–50.

⁵⁶ MTP Connect and Deloitte Access Economics, *supra* note 57. According to the findings of the Australian Medicinal Cannabis Industry Report (2021), the global market for medicinal cannabis has grown significantly in recent years. This expansion has resulted in the legalization of medicinal cannabis in more

for people suffering from various ailments who require marijuana as a medical alternative, thereby potentially reducing medical expenses.⁵⁷ The rationale behind the legalization of marijuana in Thailand encompasses political, commercial, and regulatory considerations regarding narcotics and pharmaceutical substances.⁵⁸ Restrictions on marijuana usage encompass the prohibition of consumption in public areas, the sale of marijuana to anyone below the age of 20, as well as its consumption by pregnant women and nursing mothers.

than 30 nations worldwide. According to estimates, the projected value of the worldwide medicinal cannabis industry is anticipated to reach \$80 billion (equivalent to US\$62.6 billion) by the year 2024, constituting around four percent of the overall global pharmaceutical market during that period.

⁵⁷ The Thai Ministry of Public Health (DMS), the Department of Thai Traditional and Alternative Medicine (DTAM), and the Thai Association for the Study of Pain (TASP) all provide different advice on the usage and efficacy of medical marijuana. Neuropathic pain, chemotherapy-induced nausea and vomiting, persistent epilepsy, stiffness from multiple sclerosis, AIDS-related cachexia, and palliative care diseases are among the conditions addressed with DMS. It may also be effective for illnesses such as generalized anxiety disorder (GAD), Parkinson's disease, Alzheimer's disease, and demyelinating disease. Furthermore, it may be helpful in cancer treatment, although further information and investigation are required. Insomnia, stroke, muscle spasms, poor appetite, chronic pain, and other conditions are among those addressed by DTAM's recommendations for the use of the Thai Traditional Medicine (TTM) formula. In contrast, according to the Thai Association for the Study of Pain (TASP), medical cannabis products (MCs) have just low to moderate-quality evidence, implying that placebos are still more effective for use in cancer patients. There is also low-quality evidence demonstrating symptom improvement in palliative care patients, including increased appetite and weight gain, but no difference in better sleep, depression, or quality of life. See Nantthasorn Zinboonyahgoon et al., "Medicinal Cannabis in Thailand: 1-Year Experience after Legalization", *Pain* 162, no. 7 (2021): S105–9.

⁵⁸ I Putu Satya Kama, Anak Agung Ayu Intan Prameswari and Sukma Sushanti, "Kepentingan Thailand dalam Penerapan Kebijakan Legalisasi Ganja", *Dikshi* 1, no. 1 (2021): 1–15.

The cannabis plant has been an integral component of traditional *materia medica* in Thailand for several centuries. During the early 19th century, numerous nations, including Thailand, initiated the prohibition of the aforementioned botanical species. The criminalization of marijuana in Thailand occurred in 1934 with the enactment of the Marijuana Act. The previous legislation was subsequently incorporated into the Narcotics Act of 1974, wherein the substance often referred to as 'marijuana' is designated as a Category V drug under Section 7.20. After the 2018 general election, a political party embraced the social movement advocating for the legalization of cannabis usage in Thailand, subsequently transforming it into a government policy. The policy was swiftly enacted by the recently appointed government, resulting in the introduction of the Narcotic Act (No. 7, 2019) in February 2019, which aimed to legalize the medicinal utilization of cannabis. Section 22 of the act provided those who possess marijuana for therapeutic purposes with a specified timeframe, spanning from February 27 to May 21, 2019, during which they were granted a ninety-day amnesty period.⁵⁹

On February 8, 2022, the Thai Minister of Health decided to exclude several components of the marijuana plant, including leaves, skin, fiber stems, branches, roots, seeds, and flowers, from the classification of narcotics. Nevertheless, it is essential to note that all components of marijuana and hemp, regardless of their form as essence or extract, continue to be categorized as narcotics. As of June 9, 2022, the cultivation of marijuana plants is deemed permissible, subject to specific criteria, provided that the tetrahydrocannabinol (THC) content does not exceed 0.2%. The registration of the product is a mandatory requirement set forth by the Thai Ministry of Health, while the procurement of plant seeds is restricted to those sourced

⁵⁹ Zinboonyahgoon et al., "Medicinal Cannabis in Thailand: 1-Year Experience after Legalization".

exclusively from the Thai government.⁶⁰

The utilization of marijuana in Thailand originated from studies that posited the presence of medicinal attributes in the plant. In addition, the Thai government grants those with medical conditions access to marijuana plants as an alternate form of treatment. The legislation on marijuana in Thailand is governed by the Narcotics Code B.E. 2564 of 2021.⁶¹ The utilization of marijuana for medicinal purposes is also conventionally practiced in Thailand. According to the Thai government, the primary objective of the recently implemented legislation on the legalization of marijuana is to mitigate specific health issues and foster well-being within households.

Individual possession of marijuana in limited quantities is permitted in Thailand, but only with a valid prescription and government-issued certification. With this new narcotics regulation, it is clear that marijuana use in Thailand is no longer punishable by imprisonment. There is an exception: if someone is discovered selling, exporting, and using marijuana without approval from a licensing regulatory body, then they can be sentenced to prison. In order to get permits and licenses for the utilization of marijuana, adherence to the fundamental principles, methods, and prerequisites outlined in the Regulation of the Minister of Public Health, under the oversight of the Narcotics Control Committee, is imperative.⁶²

All individuals engaged in the planting and production of marijuana and hemp in Thailand are required to register their

⁶⁰ Ganal Valian Gaffurie, *Perbandingan Kebijakan Indonesia & Thailand Tentang Ganja Dari Perspektif Kepentingan Nasional: Kebijakan Pemerintah Thailand Dan Indonesia Tentang Narkotika Jenis Ganja*. (Yogyakarta: Badan Narkotika Nasional Provinsi Daerah Istimewa Yogyakarta, 2022)

⁶¹ Pratama, et.al. "Studi Komparasi Antara Indonesia Dengan Thailand Terkait Kebijakan Legislasi Ganja"

⁶² Pratama, et.al.

activities through the Pluk Kan application. This application serves as a reporting tool designed and administered by the Food and Drug Administration. Individuals seeking to cultivate cannabis are required to adhere to a set of well-defined regulations, particularly concerning the tetrahydrocannabinol (THC) concentration. According to prevailing narcotics legislation, any tetrahydrocannabinol (THC) extract exceeding 0.2 percent is still classified as a Type 5 substance, subject to stringent control and suppression narcotics measures in Thailand.⁶³

2) *Regulation on the Use of Marijuana as a Medicinal Substance: Malaysia*

Due to Malaysia's geographical proximity to the Golden Triangle, the problem of drug trafficking, including marijuana trafficking, is particularly important. Malaysia has been described as a transit country for drug traffickers, facilitating the movement of illicit drugs from the Golden Triangle to various other countries.⁶⁴ In light of the challenges presented by the escalating issues of drug trafficking and drug dependence, in 1975, Malaysia initiated its efforts to combat this problem by the 'drug war'.⁶⁵

When it comes to the possession and use of illicit substances or drugs, Malaysia is among the most stringent countries in Southeast

⁶³ Isa, "Aturan Legalisasi Ganja di Thailand Yang Akan Berlaku Kamis Besok", *CNN Indonesia* (2022), retrieved online from <https://www.cnnindonesia.com/internasional/20220608112636-106-806289/aturan-legalisasi-ganja-di-thailand-yang-akan-berlaku-kamis-besok>

⁶⁴ Natalia Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications* (Victoria: Monash University, 2020).

⁶⁵ Sidney Harring, Death, "Drugs and Development: Malaysia's Mandatory Death Penalty for Traffickers and the International War on Drugs", *Columbia Journal of Transnational Law* 29 (1991): 365–405.

Asia. The legislative framework in Malaysia pertaining to criminal offenses associated with drug trafficking is primarily governed by the Dangerous Drugs Act of 1952 (referred to as the 'DDA'). In addition to that, the Poisons Act 1952 is also enforced by the Pharmacy Enforcement Division (PED) of the Ministry of Health, which provides for the control of the sale, import, and export of poisons, precursors, and other essential chemicals.⁶⁶ Other laws include the Dangerous Drugs (Special Preventive Measures) Act of 1985. It allows the Royal Malaysian Police to hold drug offenders for 60 days. After 60 days, the Home Ministry can hold someone for up to two years. One can also be equipped with an EMD to track their movements. The Dangerous Drugs (Forfeiture of Property) Act of 1988 allows authorities to track, freeze, and confiscate drug traffickers' assets. Finally, the Drug Dependents (Treatment and Rehabilitation) Act of 1983 provides treatment and rehabilitation for drug dependency by the National Anti-Drug Agency (NADA) under the Ministry of Home Affairs.⁶⁷

Drug trafficking continues to be the primary offense in Malaysia that carries a death sentence. Of the 1280 people on death row as of December 2019, 899 (or 70%) had been found guilty under Section 39B of the DDA, and 546 (or 43%) were foreign nationals. Over two-thirds of foreign nationals were found guilty of violating Section 39B of the DDA. Even though there haven't been any executions since 2017, drug

⁶⁶ Manop Kanato et al., *Drug Monitoring Report 2019* (Bangkok: ASEAN Narcotics Cooperation Center, 2020) Available online at <https://asean.org/wp-content/uploads/ADM-Report-2019.pdf>.

⁶⁷ Chandra Segaran Subramaniam, "Drug Laws in Malaysia: Whether the Drug Laws Have Been Effective in Curbing the Drug Menace in Malaysia", *Resource Material Series No. 106* (2018_

trafficking convictions still frequently result in the death penalty.⁶⁸ According to Amnesty International (2019), it is crucial that a greater proportion of women (95%) than men (70%) are on death row in Malaysia for drug trafficking. In addition, 86% of women on death row are foreign nationals, compared to 39% of men.⁶⁹

Marijuana itself is classified as a category I substance in Malaysia, as stipulated in Sections 2, 11 (1), and 17 (30) of the Dangerous Drugs Act 1952 (Act 234). Consequently, the consumption and possession of marijuana in any form are strictly prohibited and considered criminal offenses. The possession of quantities above 200 g of marijuana, irrespective of the individual's intent to utilize it, constitutes a grave offense that carries the penalty of capital punishment.⁷⁰

What is the current status of the legalization of medical marijuana in Malaysia? Nowadays, despite having stringent regulations regarding drugs and narcotics, Malaysia is attempting to grant medical marijuana users with specific health conditions some degree of leniency.

Ongoing research is being conducted in Malaysia about the potential legalization of marijuana for therapeutic applications. There is also an overwhelming demand in Malaysia for the legalization of medical cannabis, particularly from medical cannabis advocacy groups. Diverse stakeholders, including researchers, economists, and politicians, have also lobbied the government with professional

⁶⁸ Antolak-Saper et al., *Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications*

⁶⁹ Lucy Harry, "Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia", *Laws* 10, no. 9 (2021).

⁷⁰ Rahmat Dapari et al., "Acceptance towards Decriminalization of Medical Marijuana among Adults in Selangor, Malaysia", *PLoS ONE* 17, no. 2 February (2022): 1–17.

judgments, market value forecasts, and even political power.⁷¹ In light of stringent regulations and potential legal consequences, Malaysia appears to be gradually embracing the utilization of medical marijuana for therapeutic intentions.

In response to questions posed by Muar Syed Saddiq Syed Abdul Rahman, chair of a bipartisan parliamentary caucus investigating the medical applications of marijuana and indigenous plants, Malaysian Health Minister Khairy Jamaluddin stated in mid-November 2021 that the importation and utilization of marijuana-containing products for medical purposes are permissible in Malaysia, provided that they adhere to legal regulations. He stated that the Sale of Narcotic Drugs Act 1952, the Dangerous Drugs Act 1952, and the Poisons Act 1952 do not prohibit the use of cannabis-containing products for medicinal purposes at this time. Khairy Jamaluddin provided this response in response to Muar Syed Saddiq Syed Abdul Rahman's inquiry concerning Malaysia's position on the utilization of medical marijuana or hemp as a therapeutic substitute for patients, a practice that has been adopted by numerous nations and is acknowledged by the medical community internationally.^{72, 73}

Following the Control of Drugs and Cosmetics Regulations 1984, it is mandatory for any product that includes cannabis to undergo

⁷¹ Mohamad Haniki Nik Mohamed et al., "Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements", *Journal of the Malaysian Parliament* 2 (2022): 248–73

⁷² Thea Fathanah Arbar, "Malaysia Izinkan Penggunaan Ganja Untuk Medis, Ini Syaratnya!", *CNBC Indonesia* (2021), <https://www.cnbcindonesia.com/news/20211114073413-4-291341/malaysia-izinkan-penggunaan-ganja-untuk-medis-ini-syaratnya>

⁷³ CNN Indonesia, "Malaysia Izinkan Impor dan Gunakan Ganja Untuk Medis", *CNN Indonesia* (2021), <https://www.cnnindonesia.com/internasional/20211115193632-106-721563/malaysia-izinkan-impor-dan-gunakan-ganja-untuk-medis>

registration with the Drug Control Authority (DCA). According to the Poisons Act and the Dangerous Drugs Act, importers must also have a license and import permit. For someone to buy and use medical cannabis for specific medical reasons, it can only be administered and prescribed by a registered doctor or medical practitioner under the Medical Act 1971 or by a licensed pharmacist with a Type A license. Nowadays, in Malaysia, any interested party can apply for the registration and evaluation of cannabis (hemp) products with the DCA, provided they possess substantial scientific evidence supporting the medicinal use of such products. This process falls under the purview of the Drugs and Cosmetics Control Regulations of 1984.^{74,75}

3) Regulation on the Use of Marijuana as a Medicinal Substance: Singapore

Cannabis is classified as a controlled drug in Singapore under the Misuse of Drugs Act. The legislation includes stringent provisions pertaining to the trafficking, production, importation, exportation, possession, and consumption of controlled drugs, including their utilization beyond the borders of Singapore.⁷⁶ Under the Act, cannabis

⁷⁴ Arbar, "Malaysia Izinkan Penggunaan Ganja Untuk Medis, Ini Syaratnya!"

⁷⁵ CNN Indonesia, "Malaysia Izinkan Impor dan Gunakan Ganja Untuk Medis

⁷⁶ The original enactment of the Misuse of Drug Act (Chapter 185) was Act 5 of 1973. It was revised on 31st of July 2001. Singapore Statutes Online. Misuse of Drugs Act (Chapter 185). Available from: <https://sso.agc.gov.sg/Act/MDA1973>. According to the Misuse of Drugs Act in Singapore, the act of consuming drugs, whether within the country or outside, is considered a violation for both Singaporean citizens and permanent residents. If a Singapore citizen or permanent resident is discovered to have engaged in drug abuse outside of Singapore, they will be subject to the same treatment as if they had engaged in drug abuse within Singapore. The act of consuming a regulated substance is considered a violation, which can result in a minimum prison sentence of one

abusers must receive treatment and rehabilitation. Possession or use of cannabis can result in imprisonment for 1–10 years and a fine of up to SGD 20,000. Having more than 15 g of cannabis is considered trafficking, with penalties of 20 years in prison, 15 strokes of caning, or death. Based on the Central Narcotics Bureau (CNB) data, it is evident that cannabis has constantly maintained its position as the third most often misused substance among individuals apprehended for drug-related offenses between the years 2011 and 2017. This ranking places cannabis behind methamphetamine and heroin in terms of prevalence. Furthermore, the data reveals that cannabis has also occupied the second position among newly apprehended individuals from 2015 to 2018.⁷⁷

According to the most recent survey done by The Sunday Times and consumer research firm Milieu Insight in September 2023, 53% of Singaporeans agree with the legalization of marijuana for medical purposes. 35% did not agree, whereas 12% agreed to legalize marijuana for medicinal as well as recreational use.^{78,79} Nevertheless, the implementation of this idea may present challenges. Evidence from the findings of various prior investigations conducted in the same context in Singapore did not endorse the utilization of marijuana as a viable medicinal therapy.

A study in Singapore conducted by Doris Xin Yi Chia et al.

year and a maximum of ten years, or a fine not exceeding S\$20,000, or both.

⁷⁷ Doris Xin Yi Chia et al., "Understanding Cannabis Use in Singapore: Profile of Users and Drug Progression", *Singapore Medical Journal* 64, no. 6 (2023): 385–90.

⁷⁸ Zaenal Aripin, *Warga Singapura Setuju Ganja Legal Untuk Medis*, RBG.id (2022), <https://www.rbg.id/internasional/pr-9446587600/warga-singapura-setuju-ganja-legal-untuk-medis>

⁷⁹ Edy Pramana, *Lebih Dari Separo Warga Singapura Setuju Gunakan Ganja Untuk Medis*, JAWAPOS (2022), <https://www.jawapos.com/internasional/01411411/lebih-dari-separo-warga-singapura-setuju-gunakan-ganja-untuk-medis>

entitled “Understanding Cannabis Use in Singapore: Profile of Users and Drug Progression” shows that the effects of long-term cannabis use are not sound. The findings of the study also indicate that a significant proportion, almost 50%, of the participants had engaged in the use of illicit substances after their initial use of cannabis. Furthermore, the majority of these individuals had turned explicitly to heroin as their subsequent drug of choice.⁸⁰ A group of psychiatrists and researchers connected to the Institute of Mental Health, Singapore, undertook a literature review in 2015. Under the leadership of Jimmy Lee, an assistant professor at Duke-NUS Medical School and a consultant at the Department of General Psychiatry at the Institute of Mental Health, Singapore, concluded that cannabis use has been associated with anatomical and functional changes in the brain. Additionally, it has been linked to the onset of severe mental disorders, including schizophrenia, and may negatively impact fetal health. Cannabis, and THC in particular, are highly addictive. While there is some evidence to support the use of cannabinoids for specific limited conditions, the evidence is insufficient to support their use for the majority of situations.⁸¹

The stance of Singapore regarding medical cannabis is evident through the subsequent statement released by the Central Narcotics Bureau as follows: Singapore acknowledges the existence of pharmaceutical products containing cannabinoids, such as CBD, which are formulated to address specific medical disorders, such as some types of epilepsy and seizures and are typically administered through oral solutions and sprays. Additionally, due to their THC

⁸⁰ Doris Xin Yi Chia et al., "Understanding Cannabis Use in Singapore: Profile of Users and Drug Progression", *Singapore Medical Journal* 64, no. 6 (2023): 385–90

⁸¹ See Jimmy Lee et al., *A Literature Review On Medical Cannabis*, (2015), <https://www.mha.gov.sg/docs/default-source/media-room-doc/a-literature-review-on-medical-cannabis.pdf>.

content, these products are classified as controlled substances. However, despite their controlled status, the prescription of these pharmaceutical products is possible, but it is contingent upon adherence to rigorous health guidelines and evaluation by the appropriate authorities.⁸² In February 2019, a joint statement was made by the Ministry of Home Affairs (MHA) and the Ministry of Health (MOH) to provide clarification on the stance of the Singapore government regarding the utilization of pharmaceutical goods that contain cannabis. The Health Sciences Authority (HSA) is set to conduct a comprehensive evaluation of CBD pharmaceuticals with potential medical efficacy. The Singapore government is committed to establishing a secure and regulated framework that allows for the responsible utilization of evidence-based medical treatment programs involving CBD pharmaceuticals. The primary considerations in this regard are the documented risks and addictive properties associated with raw cannabis, as well as the lack of scientific research substantiating its therapeutic applications for

⁸² In this formal website released on December 3, 2020, it is stated that Singapore will continue to enforce the strict laws against the trafficking, possession, consumption, and import or export of illicit drugs, including cannabis, but at the same time, will continue to allow safe and controlled access to evidence-based medical treatment options, including cannabinoid pharmaceuticals, in accordance with the strict framework for the supply, prescription, and dispensation of controlled drugs used for medical purposes. See Singapore Government Agency, *The Singapore Government's Position on the Recommendations of the World Health Organisation Expert Committee on Drug Dependence, on Cannabis and Cannabis-Related Substances, Voted on at the Reconvened 63rd Session of the Commission on Narcotic Drugs, MEDIA ROOM* (2020), <https://www.mha.gov.sg/mediaroom/press-releases/the-singapore-government-s-position-on-the-recommendations-of-the-world-health-organisation-expert-committee-on-drug-dependence-on-cannabis-and-cannabis-related-substances-voted-on-at-the-reconvened-63rd-session-of-the-commission-on-narcotic-drugs/> (last visited Oct 18, 2023).

medical conditions.⁸³

Based on the data at hand, it can be inferred that Singapore maintains a steadfast adherence to its stringent policy of zero-tolerance against illicit substances, encompassing marijuana as well.⁸⁴

D. Policy for Legalizing the Use of Marijuana for Medical Purposes in Indonesia

Policy design is the process of giving meaning to action by framing it in a way that makes practices and outcomes suitable and valid. A policymaker must explain the objectives, identify different methods of attaining them and the costs of each, analyze the consequences of each option, and select the option that provides the most significant (greatest) net benefit; this is what Jeremy Bentham refers to as the 'felicific calculus'.⁸⁵ A policy attains legal validity or formal recognition when it is enacted as a statute or other regulatory measure, or when it is declared as a matter of public policy.

As mentioned earlier, this research aims to examine the policies and regulations on the legalization of medical marijuana for therapeutic purposes in Indonesia. To ensure the appropriateness,

⁸³ Central Narcotics Bureau, *Know Cannabis: An Information Booklet on the Harmful Effects of Cannabis*, 1 (2020), https://www.cnb.gov.sg/docs/default-source/educational-resources-documents/know-cannabis_booklet.pdf.

⁸⁴ On the Singapore Government Agency formal website released on December 3, 2020, it is stated that Singapore will continue to enforce the strict laws against the trafficking, possession, consumption, and import or export of illicit drugs, including cannabis, but at the same time, will continue to allow safe and controlled access to evidence-based medical treatment options, including cannabinoid pharmaceuticals, in accordance with the strict framework for the supply, prescription, and dispensation of controlled drugs used for medical purposes.

⁸⁵ HK Colebatch, "The Idea of Policy Design: Intention, Process, Outcome, Meaning and Validity", *Public Policy and Administration* 33, no. 4 (2018): 365–83.

validity, and maximum benefit of this policy/regulation, it is imperative for a policymaker or the government to undertake a comprehensive assessment of the objectives and costs associated with the legalization or prohibition of medical marijuana. In addition, the government should also analyze the potential outcomes of legalizing or prohibiting medical marijuana, both for society as a whole and for patients requiring medical cannabis therapy. Subsequently, the government could make the best choice regarding the most beneficial action for future policy implementation. Therefore, the policy advocating for the legalization of medical marijuana can be perceived as an endeavor to address societal issues in a manner that is equitable, advantageous, and beneficial to all, with a particular focus on the well-being of patients.

As we know, the utilization of medical marijuana remains an issue of controversy in Indonesia. Indonesia is one of the few countries that is also known for providing strict regulations for the misuse of narcotics and carries severe penalties, ranging from 4–20 years of imprisonment and death penalties.⁸⁶ Certain stakeholders are

⁸⁶ Articles 111–116 of Law Number 35 of 2009 concerning Narcotics address criminal penalties for class I narcotics abuse, Articles 117–121 for class II narcotics, and Articles 122–126 for class III narcotics. Anyone who produces, imports, exports, or distributes Class I narcotics illegally or against the law in the form of plants weighing more than one kilogram or five trees or in the form of non-plants weighing more than five grams is subject to the death penalty under Article 113 (2). Article 114(2) stipulates that the death penalty is applied to anyone who, without authorization or in violation of the law, offers, sells, buys, receives, acts as a middleman in the purchase and sale, exchanges, or delivers Class I Narcotics in the form of plants weighing more than one kilogram or more than five tree trunks, or weighs five grams in non-plant form. Similarly, Article 116(2) applies to anyone who, without authorization or in violation of the law, uses Class I Narcotics against another person or provides Class I Narcotics for use by another person, which results in the other person's death or permanent disability. Class II drug abuse is governed by paragraphs

campaigning for stringent prohibition laws, wherein they tend to overstate the potential risks associated with marijuana use while simultaneously disregarding or failing to accept the established therapeutic benefits it offers for specific medical illnesses. Conversely, proponents of the medical marijuana legalization policy argue that, due to its 'natural plant' origins, the medication should inherently possess a level of safety.

According to the attachment to the classification of narcotics, which has been amended three times, most recently by Minister of Health Regulation Number 36 of 2022 concerning Changes to the Classification of Narcotics, marijuana is still classified as a class I narcotic under Article 6 of Law Number 35 of 2009 concerning Narcotics. The rationale behind classifying marijuana as a Category I narcotic is its potential to produce severe dependence when abused or used without strict control and monitoring supervision.

The prohibition of utilizing Class I narcotics for health service purposes is reinforced in Article 8, paragraph (1) Law Number 35 of 2009. According to Article 8, paragraph (2), Category I narcotics may

117–121, whereas class III drug abuse is governed by articles 122–126 that deal with criminal penalties. When it comes to class II narcotics, the illegal actions listed in articles 118 (2), 119 (2), and 121 (2) are punishable by death. Suppose someone without any rights or in violation of the law uses or gives class III drugs to another person for use, resulting in that person's death or permanent disability. It is also punishable with the death penalty under Article 126(3) for abuse of class III drugs. For narcotics users, Article 127 of the law governs the punishment of one to four years in jail, with the option for medical and social rehabilitation. Furthermore, the legislation also specifies penalties for parents or guardians of addicted children who willfully choose not to disclose the condition under Article 128, paragraph (1). A fine of one million rupiah and a maximum of six months confinement could be inflicted upon them as punishment. Corporations, which include medical facilities and hospitals, and anyone who knows about a drug-related crime but chooses not to disclose it to the legal authorities (police)—including those involved in attempts or criminal conspiracies—are also subject to these sanctions.

only be utilized in restricted amounts for the purposes of scientific and technological advancement, as well as for the production of diagnostic reagents and laboratory reagents. However, prior approval from the Minister, based on the recommendation of the Head of the Food and Drug Supervisory Agency, is required in order to proceed with such usage. Furthermore, it is stated in Article 8 that only narcotics classified as class II or class III may be used medicinally. As previously described, the term 'Class II narcotics' refers to narcotics that are effective for treating medical conditions, but they should only be used as a last resort and only in therapy or for scientific research due to their high potential for dependence. On the other hand, 'Class III narcotics' are defined as narcotics that are effective for treating medical conditions, are frequently used in therapy or for scientific research, and have a mild potential for dependence.

Normatively, the authorization of medical marijuana in Indonesia has the potential to be realized in accordance with the criteria outlined in Article 7, as there is a partial conflict between the normative elements of Article 8 and Article 7. This occurrence can be attributed to the fact that Article 7 outlines the norms on the utilization of narcotics and emphasizes their restricted usage for medical purposes and/or the promotion of scientific and technological advancements. Furthermore, the scope of 'health services' defined in Article 7 clearly explains that narcotics also encompass medical rehabilitation services and may be employed for medicinal reasons to enhance research and technology. So, on the one hand, it is generally recognized by the law that narcotics may have legitimate medical applications. Still, on the other hand, as marijuana is classified as a Class I narcotic according to the regulations outlined in Article 6, in conjunction with Article 8, marijuana is prohibited for medical treatments.

In light of the fact that beside marijuana, some narcotics are also approved for use in treating specific illnesses, including the reduction of pain in patients, proponents of medical marijuana ought to vigorously support extensive research and inspire or establish society and government trust that medical marijuana is genuinely advantageous and could be the right drug for a specific ailment. There will therefore be a ray of optimism that marijuana's categorization as a class I narcotic may be changed and moved to a class II or III narcotic.

Despite its inherent challenges, proponents of medicinal marijuana legalization have the opportunity to use the 'legal loophole' or 'legal gap' outlined in Article 6, paragraph (3) to encourage changes to the narcotics classification for marijuana. The 'legal gap' that supporters can use is written in explanatory notes in Article 6, paragraph (3). In these notes, the phrase 'change in the classification of narcotics' is defined as changes that are influenced by international commitments (or agreements) and national interests.

Upon careful examination of the preamble to the Narcotics Law, it may be concluded that the existence of said legislation is based on the rationale of enhancing the overall health condition of the whole community. The Narcotics Law explicitly describes narcotics as drugs or substances that have the potential to be utilized for medical treatment, health services, and scientific advancement. The acknowledgment of this phenomenon holds significant importance as it serves as an entry point for the utilization of narcotics for medicinal objectives, hence establishing a solid connection to matters of health and scientific inquiry. So, the spirit of the Narcotics Law should be incorporated for the utilization of narcotics, such as medical marijuana, for medicinal purposes.

Hence, in the context of medical applications, marijuana ought to be administered exclusively to individuals with a genuine medical

necessity. It is imperative to extend legal safeguards to individuals who employ this material as a form of therapy, both for personal use and for the benefit of others. The utilization of medicinal marijuana is of significant importance due to its application in the treatment of many medical conditions.

The provision of legal protection is vital as it constitutes a deliberate endeavor to safeguard fundamental human rights, particularly in the context of granting access to medicinal marijuana for individuals who rely on it for therapeutic purposes. Taking into consideration multiple incidents that have happened in Indonesia, the imperative necessity of implementing the policy to legalize medicinal marijuana becomes obvious, which can be achieved through reclassifying marijuana to a Class II Narcotic. Efforts are necessary in the promotion of policies pertaining to the utilization of medical marijuana, with the objective of facilitating the fulfillment of constitutional and human rights for all individuals. These rights include the right to health and the ability to take advantage of health services.

As already mentioned earlier, the world community, particularly the World Health Organization (WHO), has officially recognized marijuana as a viable choice for medicinal therapy. The Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, has also made provisions to exclude the utilization of medical marijuana under specific circumstances. Several ASEAN countries, such as Malaysia and Thailand, initially enforced a strict prohibition on the utilization of marijuana; due to advancements in research and international agreements, as well as a consideration for the well-being of patients, they eventually consented to the legalization of medical marijuana as a viable alternative for therapeutic purposes. Aside from that, Indonesia can also learn from

different global communities such as the United States and the European Union, which have used marijuana-derived chemicals as ingredients and therapy for the treatment of various illness. Indeed, different point of view is required to see marijuana products positively.

4. Conclusion

After carefully examining the tragic and distressing cases provided in the introduction of this article, which illuminate the necessary use of medical marijuana by certain patients and the punitive actions taken against those who depend on it, it is reasonable to consider it applicable to Indonesia. This reflection intends to maximize the well-being of patients and protect their fundamental right to health. Given the incorporation of the right to health into the human rights framework, it is critical that Indonesia eventually take the opportunity to conduct comprehensive health and legal research, learning from neighboring ASEAN countries such as Thailand and Malaysia. Nevertheless, suppose marijuana is reclassified as a class II controlled substance, it is imperative to ensure that cannabinoids or marijuana compounds can only be used to treat specific medical conditions and for particular patients. Legislative mandates must be implemented to restrict the administration of medicinal marijuana only to patients who have demonstrated inadequate responses to conventional treatments or as a supplementary method of therapy. There is a possibility to alter the categorization of marijuana under narcotics legislation, as detailed in Article 6 of Explanation of Law No. 35 of 2009 concerning Narcotics. One feasible, relatively straightforward, and highly efficacious measure for incorporating marijuana as an alternative medical intervention involves reclassifying it as a Class II controlled Narcotics. This can be

accomplished by amending Minister of Health Regulation Number 36 of 2022 to include marijuana as a Class II Narcotics. Nevertheless, the successful execution of this endeavor necessitates effective communication and cooperation among multiple stakeholders.

5. Declaration of Conflicting Interests

The authors state that there is no conflict of interest in the publication of this article.

6. Funding Information

None

7. Acknowledgment

None.

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*Observe good faith and
justice toward all nations.
Cultivate peace and harmony
with all.*

George Washington

How to cite (Chicago style)

Yustina, Endang Wahyati, Marcella Elwina Simandjuntak, Mohamad Nasser, John D Blum, and Sheilla M. Trajera. "Legalization of Medical Marijuana in Indonesia from the Human Rights Perspectives: Lessons Learned from Three ASEAN Countries". *Lex Scientia Law Review* 7, no. 2 (2023): 569-628. <https://doi.org/10.15294/lesrev.v7i2.77670>.

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History of Article

Submitted: August 8, 2023

Revised: September 11, 2023; October 22, 2023; November 17, 2023

Accepted: November 26, 2023

Available Online: November 30, 2023