

## Juridical Analysis of the Regulations on the Use of Cannabis for Medical Purposes in Indonesia (A Comparative Study with Thailand)

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### Abstract

Narcotics are substances whose use is prohibited. They have both negative and positive effects on health. Indonesian law regulates narcotics in Law Number 35 of 2009 on Narcotics, which classifies them into two categories: plant-based and non-plant-based. Cannabis, a plant-based narcotic, is an example of a substance prohibited for use in the health sector in Indonesia. However, some countries permit the use of narcotics, such as Thailand, which allows the use of cannabis for public health benefits. This research is normative research, also known as doctrinal legal research, which involves examining existing legal rules using secondary data from library legal research. The study shows that there are differences in the rule of law between Indonesia and Thailand. The Indonesian Narcotics Act expressly prohibits the use of cannabis narcotics in the medical field, while in Thailand, the use of narcotics is allowed for medical purposes under government-determined conditions. In Indonesia, the use of cannabis narcotics is subject to clear criminal sanctions as specified in the governing law. However, in the Netherlands, the government has legalized the use of cannabis for medical purposes.

**Keywords:** Marijuana; medicine; narcotics

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## Introduction

The development of globalization makes every country have no state boundaries, because of the rapid transformation that causes the rapid movement of people and goods. Information technology as a technique that serves to collect, prepare, store, process, announce, analyze, and/or disseminate information has become a tool that can be integrated in various fields of human activity (Mantili & Dewi, 2020). However, one of the effects of the development of globalization is the occurrence of black markets and smuggling of goods entering from outside into a country that can pass easily by land, sea and air. This phenomenon can be said to be a threat to human security, both states, national and global. Currently, there is a controversial issue being discussed in various countries regarding drugs, namely about NAPZA (narcotics, psychotropic and addictive substances) (Gaffurie, 2022).

Drugs is a term that is currently a very hot topic of discussion in the community. In the community, drugs are considered a prohibited item that when consumed will cause negative effects and it is a crime if a member of the community is found to have used drugs. Despite the negative impacts, there are still only a few people who understand about drugs. Drugs here refers to narcotics, psychotropic substances and other active ingredients, so drugs are also known as narcotics.

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, that can cause changes in consciousness, loss of taste, and reduction to loss of pain, and

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can cause dependence. Based on this definition, narcotics have various types, both plant and non-plant. In Indonesia, there are several types of narcotics circulating illegally and owned by a person or group that does not have a permit, one of which is cannabis or better known as marijuana.

Marijuana or in Latin '*cannabis*' is one of the many types of narcotics that are often abused in Indonesia. In 2021, the Badan Narkotika Nasional (BNN) reported that there were around 3,690 (three thousand six hundred and ninety) suspects secured by the Police and the BNN for illegally possessing, controlling, and selling class I narcotics, namely marijuana in Indonesia. This phenomenon makes cannabis narcotics the most widely used substance in Indonesia, followed by several other types of narcotics such as amphetamines (amphetamine-type stimulants, ATS), shabu (methamphetamine) and ecstasy.

Drug abuse is a criminal offence. The procedure for handling criminal cases in Indonesia is regulated by the Criminal Code. The procedure consists of several stages, namely: (a) investigation; (b) examination; (c) prosecution; (d) trial; (e) execution of court decisions (Dewi, 2021). It is not enough for one to be punished if the person only fulfils the elements of a criminal offence. Even though the person has committed an act that fulfils the elements of a criminal offence and is against the law (formal material), and there is no excuse, this does not fulfil the requirement that the person committing the criminal offence must have committed a misconduct (Suriawan & Dewi, 2022).

To address the issue of rising narcotics cases and safeguard the community, the Indonesian government has implemented regulations pertaining to narcotics. By enacting the Law Number 35 of 2009 on Narcotics (hereinafter referred to as the Narcotics Law), the Indonesian government has taken actions aiming to combat the high number of narcotics cases by prohibiting certain acts and imposing criminal sanctions on offenders (Azizah & Dewi, 2023).

The Indonesian government has demonstrated its commitment to preventing and eradicating the circulation and abuse of narcotics and psychotropic substances through the establishment of the Narcotics Act. Cannabis is classified as a class I narcotic, meaning it can only be used for limited scientific and technological purposes, as outlined in Appendix I of the law. Article 8 paragraph (1) of the law prohibits the use of Class I Narcotics for health services. Therefore, the use of cannabis is seldom discussed. The cultural, traditional, and medical potential of the cannabis plant in Indonesia have received little attention. Cannabis, when consumed in accordance with established rules and procedures, has positive effects as a medical drug. However, it can also have negative effects that may damage public health (Malik et al., 2020).

There are many countries around the world that allow their people to use cannabis as a medical drug. One of these countries is Thailand, which is one of the Asian countries that recently authorized the use of cannabis as a medical drug. Previously, in 2013, Thailand adopted the War on Drugs policy, a policy to fight against drugs promoted by the United States. Although Thailand has been strict with drug traffickers and smuggling in its country, every year the number of drug abuse cases increases and the risk of death is high. It appears that the War on Drugs policy has had a negative impact on the welfare of the people, security, and development of the country. Thailand is also known as a Golden Triangle country, a narcotics marketing transit area that can trade these products to international markets, such as Europe, Asia, America, and Africa.

Further study is required to compare the policies of Indonesia and Thailand regarding the regulation of cannabis narcotics, particularly for medical use. It is also necessary to investigate how sanctions are applied to the policies of each country. There are differences in imposing criminal and administrative sanctions, as well as in the categories of people who can be sanctioned.

## Method

To explore the issues raised in this research, a normative legal research method was employed. Normative legal research involves examining laws and regulations that apply or are applied to a particular legal problem. This type of research is commonly referred to as doctrinal research, which focuses on legislative documents and library materials (Abdurrahman, 2003). For this study, we also employed several approaches to address the identified problems. These approaches are described below.

### The statute approaches

The statute approach is an approach that is generally used by the author when conducting a research on several legal regulations that are the focus and are the main idea contained in a legal research (Efendi & Ibrahim, 2016). This approach suggests that legal analysis can be improved by using approaches that have a reciprocal relationship to the topic and can provide insight into legal considerations. The research should be assisted by these approaches to overcome legal problems.

### Comparative approach

Comparative approach is a crucial approach, because when making comparisons in the field of law, it is not possible to conduct an experiment. This approach is used to be able to compare one legal institution from one legal system with a legal institution from another legal system. With this comparison, whether there are similarities and/or differences between the two legal institutions can be determined. The present research compares the legal systems regarding policies on the use of cannabis drugs between Indonesia and Thailand.

## Discussion

### Regulations on the Use of Cannabis Narcotics as Medical Drugs in Indonesia and Thailand

Narcotics are substances that, when introduced into the body, can have a profound impact on the brain and central nervous system, leading to a range of health, psychological, and social function disorders as a result of habit, addiction, and dependence. Narcotics are substances used as drugs that have the efficacy and benefits of relieving pain, especially during and after surgery. However, their misuse can have negative impacts. It is important to use narcotics only as prescribed by a doctor to avoid harm to oneself (Iskandar, 2019).

Etymologically, narcotics, comes from the word 'narcotics', which is similar to 'narcosis', meaning to anaesthetize. Narcotics can affect brain performance, causing changes in behavior, feelings, thoughts, perceptions, consciousness, and hallucinations. These effects are also used in anesthesia during medical procedures, such as surgery. The Large Indonesian Dictionary defines narcotics as drugs that can have a calming effect on nerves, relieve pain, cause drowsiness, or stimulate (Moelyono, 1988).

Narcotics can be classified into two groups: plant-based and non-plant-based. The most commonly recognized plant-based narcotic is cannabis, also known as marijuana. Cannabis resin is obtained from all plants of the cannabis genus, including seeds and fruits (Mardani, 2008). Marijuana comes from the leaves and flower shoots that are green when fresh and brownish when dried. It is shaped like a finger with jagged edges that when used will cause hallucinations to cause lung cancer. In India itself, marijuana is better known as Indian Hemp, because marijuana is a source of joy and can provoke or stimulate excessive laughter (Sitanggang, 1981).

Marijuana is typically smoked in cigarette form to experience its effects. This annual plant can grow up to 2 meters tall and has ray-leaved foliage with male and female flowers on separate plants. The flowers grow in small clusters at the end of twigs. Cannabis thrives in tropical mountainous regions at altitudes above 1,000 meters above sea level. It is cultivated in almost every tropical country, and some cold climate countries have even begun growing it in greenhouses.

In relation to the use of cannabis, it has been found to have medical benefits. The plant can be used as a medicine for certain patients who, based on the doctor's instructions, require cannabis treatment. Some countries in the world have provided freedom for the use of cannabis in society under terms and conditions that have been regulated in the regulations of each country.

In Indonesia, cannabis is classified as a Class I narcotic and is regulated by the Narcotics Act. According to Article 8, paragraph (1) of the regulation, the use of Class I narcotics for health benefits is prohibited. Therefore, the use of cannabis is only permitted for medical purposes as a form of medication. The use of cannabis narcotics is prohibited by law in Indonesia. Even if it is for medical reasons and has been prescribed by a doctor, it is still illegal and subject to criminal sanctions under the Narcotics Act.

The prohibition on cannabis use is due to the association of narcotics, both plant and non-plant

species, with crime. Narcotics are still considered to have a negative influence and can lead to criminal behavior. Crime is a relative concept. Mustafa argues that what is referred to as a crime is a social symptom that is not merely an act prohibited by law, but rather a biological or psychological disorder. These actions have the potential to harm and violate societal sentiments. Referring to Mustafa's formulation, the emphasis is on determining whether an act can be considered a crime or not, without making formal rules as a reference (Sudanto, 2017).

The laws governing the use of cannabis are still illegal in most countries. However, there are some countries that permit the use of this type of narcotic, especially for medical purposes. One example of a country that has legalized the use of cannabis narcotics is Thailand. Thailand is one of the first Asian countries to give permission to use cannabis narcotics for the general public.

To support Thailand's policies, the country has legalized the use of cannabis for medical purposes under The Thai Narcotics Act BE 2562 (2019). The government has made changes to the Act over time. The Thai Narcotics Act BE 2564 (2021) strictly regulates the use of cannabis for medical purposes through production and sales licenses. Possession of cannabis narcotics, either individually or in groups, with a certain amount used for medical needs, is still allowed by the Thai government. However, possession of these narcotics must meet the requirements set by the Thai government, which includes having a prescription and certification recognized by the government.

Under the new policy, individuals cannot be imprisoned in Thailand solely for using marijuana. However, there is an exception: Thais may face imprisonment if they are caught selling, exporting, or using cannabis without the approval of a licensed regulatory body (Jamaludin et al., 2023).

Section 26/2 of The Thai Narcotics Act BE 2564 (2021) regulates the licensing of cannabis cultivation in Thailand. Industrial cannabis cultivation and licensed cannabis cultivation for scientific research and investigation are legal. Additionally, growing cannabis for personal use is allowed with a recommendation from the licensing authority. Possession of certain types of cannabis by individuals is regulated by presenting a prescription and certification recognized by the government.

### **The Application of Sanctions for Policies on the Use of Narcotic Cannabis as Medical Means in Indonesia and Thailand**

Narcotics is one of the crimes that can be categorized as an extraordinary crime that occurs almost all over the world. However, in some countries there are regulations that regulate narcotics can be consumed as long as their use is in accordance with the provisions determined by the regulatory policies formed. One type of narcotics is class I plant narcotics, namely cannabis or cannabis. Some countries strictly prohibit the use of this type of narcotics even though it is a means used in the medical field, such as drugs and there are also several countries that have a policy of tolerance in the use of this type of narcotics.

In Indonesia, the policy on the abuse of cannabis drugs has been regulated in Article 111 to Article 116 of the Narcotics Law (Nugraha & Antonio, 2022). Some articles that are often used regarding the prohibition of narcotics use include Article 111 paragraph (1) of the Narcotics Law. The article stipulates that "anyone who unlawfully plants, maintains, possesses, stores, controls, or supplies Class I Narcotics in plant form shall face a minimum of four years and a maximum of 12 years of imprisonment, as well as a fine ranging from Rp. 800,000,000.00 (eight hundred million rupiah) to Rp. 8,000,000,000.00 (eight billion rupiah)." Article 114 paragraph (1) of the Narcotics Law stipulates that "anyone who unlawfully offers for sale, sells, purchases, receives, becomes an intermediary in the sale, purchase, exchange, or delivery of Narcotics Group I without right or against the law shall be punished with life imprisonment or imprisonment for a minimum of five years and a maximum of 20 years, and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah) (Dewi, 2019)."

Under the current policy of the Indonesian Narcotics Act, even if used for medical purposes, cannabis drugs cannot be dispensed. Thus, even if it is used as a medical means, the users will be subject to criminal sanctions which are generally in the form of imprisonment and fines.

Criminal sanctions for the use of cannabis as a medical tool may include bodily execution at a designated prison institution. For instance, in Decision Number 111/Pid.Sus/2017/Pn.Sag, the defendant named Fidelis Arie Sudewarto was convicted for narcotics-related charges that occurred on 19

February 2017. Fidelis grew cannabis plants in his private yard and processed them into cannabis extract for medical purposes. He used the extract to treat his wife, who had a rare disease. Before using the cannabis extract, the defendant's wife had tried various types of treatment, including traditional and medical, but none were successful. Fidelis requested dispensation from the local National Narcotics Agency (BNN) to use cannabis for his wife's treatment. However, he was arrested for possessing class I narcotics of plant origin (Pangkey & Rahaditya, 2019).

To counteract cannabis illicit trafficking and abuse in Indonesia, the police can cooperate with ministerial and non-ministerial government agencies, such as the Director General of Customs, Director General of Immigration, Department of Religion, Department of Tourism Arts and Culture, POM Agency, Prosecutor's Office, Judiciary, and BNN. The Narcotics Law states that investigators from the Indonesian National Police and BNN have the authority to investigate the abuse and illicit trafficking of narcotics and narcotics precursors. In practice, investigators from the Indonesian National Police and BNN investigators can cooperate and coordinate in conducting investigations into the abuse and illicit trafficking of narcotics and narcotic precursors.

In contrast, as the Thai government having made a policy to authorize the use of plant-based narcotics Class I, in this case cannabis, there are no legal sanctions that can ensnare users of these types of narcotics for medical purposes. This is because the Thai government provides access to the public to be able to use these drugs for medical purposes under certain conditions that have been set by the government.

This was also supported by the Thai Minister of Public Health. It is stated that there is a positive view regarding the use and utilization of cannabis as a medical remedy, especially to treat various diseases suffered by many people in the country. The country aims to regulate the legalization of cannabis narcotics for medical purposes to make treatment more affordable and accessible. The medicine produced is domestically sourced, making it accessible for all Thai citizens to use cannabis for medical purposes.

Referring to past research, cannabis has been found to have several health benefits, including the potential to alleviate certain mental health problems such as depression and symptoms of post-traumatic stress disorder. It is important to note that the use of cannabis for medicinal purposes is a controversial topic and further research is needed to fully understand its effects. Clinical Psychology Review has conducted research that supports this claim. Additionally, it is worth noting that smoking cannabis can have negative effects on lung health. A study published in the Journal of the American Medical Association suggests that cannabis use may increase lung capacity, which contradicts the common belief that it reduces lung function. The study examined a sample of 5,115 young adults, around 20 years old, and found that some tobacco smokers experienced a decline in lung function over time. However, cannabis users showed an increased lung capacity, likely due to the deep inhalation technique commonly used when smoking cannabis. The researchers concluded that this could be considered a form of exercise for the lungs, but caution that it should only be used in prescribed doses and with adherence to recommended guidelines (Malik et al. 2020).

## Conclusion

The use of cannabis or marijuana in both Indonesia and Thailand is governed by different regulatory policies. In Indonesia, Law Number 35 of 2009 concerning Narcotics strictly prohibits the use of cannabis narcotics, even for medical purposes. In contrast, Thailand has a policy that allows for the use of cannabis narcotics for medical purposes. According to Act No. 7 BE 2564 (2021) on Narcotics, the Thai government permits the use of cannabis or marijuana narcotics for medical purposes, subject to specific rules and conditions.

Sanctions for the use of cannabis in Indonesia are regulated in article 111 of the Narcotics Act for users, dealers, and sellers. The use of cannabis for medical purposes is also prohibited. In Thailand, the government policy exempts users from legal sanctions, both administratively and criminally, if cannabis is used for medical purposes.

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