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Exploring Human Rights Perspectives on Medical Cannabis Use in Indonesia: A Legal Analysis

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Abstract

Exploring Human Rights Perspectives on Medical Cannabis Use in Indonesia: A Legal Analysis. This research examines the perspective of human rights on the use of cannabis for medical purposes in Indonesia, focusing on normative legal analysis and related human rights views. It was found that while the medical use of cannabis can be justified by the right to health, there are still obstacles in its practice in Indonesia, especially regarding the provisions of Law No. 35/2009 which do not fully support the medical use of cannabis for healthcare services according to human rights perspectives.

Keywords: ***Cannabis, Medical, Human Rights***

Introduction

According to Nur Arfiani and Indah Woro Utami (2022), cannabis, with the Latin name Cannabis sativa and subspecies Cannabis sativa, is considered to be the most dangerous plant for humans. Its negative effects are comparable to the leaves of cocaine, morphine, heroin, and opium. However, this perspective changes when we look at the history of cannabis use. Barney Warf, a geography expert at the University of Kansas Lawrence, notes that the use of cannabis as medicine and as a spiritual tool has been known since pre-industrial times, especially among the Viking and ancient Germanic peoples, and then spread worldwide.

However, history took a drastic turn when policies began criminalizing cannabis. Internationally, regulations regarding cannabis often become topics of debate concerning legalization and criminalization. For example, the Single Convention on Narcotic Drugs of 1961 set limits on cannabis use (LGN, 2011) with the aim of stricter drug control.

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Governments in many countries took decisive steps to combat the dangers of drugs, including cannabis, by destroying cannabis plants and arresting users (LGN, 2011). Although there is no supranational body with absolute authority to set international rules, these perspectives still influence national policies and receive international attention.

The Expert Committee on Drug Dependence (ECDD) under the World Health Organization (WHO) believes that cannabis has curative potential for several diseases, including Alzheimer's, Parkinson's, depression, cancer, diabetes, cardiovascular diseases, and excessive anxiety due to cannabidiol (CBD) content. In 2019, WHO made recommendations through ECDD, and in 2020, the Commission on Narcotic Drugs (CND), the United Nations' governing body for drug preparations, responded to these regulations regarding drug use. Cannabis was removed from the 1961 Single Convention on Narcotic Drugs, making it highly likely and usable as a medicinal substance (Lokello et al., 2020).

At the same time, the use of cannabis for medical or recreational purposes has become widespread in several countries. For instance, Germany has allowed medical cannabis use since 2017, and countries like the UK, the Netherlands, some US states, and Canada have introduced cannabis as an alternative treatment, partly for business interests. According to Human Rights (HR), cannabis use for medical purposes is part of the right to health, as regulated in Article 25(1) of the Universal Declaration of Human Rights (UDHR) 1948, stating, "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Simply put, this can be interpreted as restricting or reducing someone's access to healthcare services, including cannabis treatment, which could be considered deviating from or even violating human rights. Especially when observing various phenomena in society, such as in Indonesia, there are numerous cases of cannabis use restrictions due to health reasons. Cases like that of Fideline, who independently cultivated and produced cannabis extract for her husband's treatment of a rare spinal cancer. Facing restrictions on access to cannabis treatment, Fidelis eventually sought alternative options because hospitals could not provide healthcare to his wife (Decision No. 111/Pid.Sus/2017/PN.SAG). Another case involved Mother Dwi Pertiwi, who had to witness her son, Musa Hassan Pedersen (Musa), experience health limitations, especially in cannabis treatment and stroke. Musa received cannabis treatment in Australia, which significantly

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improved his health during treatment. However, his treatment could not continue in Indonesia due to Law No. 35/2009, which still does not allow cannabis use for medical purposes. These cases serve as bad precedents and also illustrate the minimal access to medical cannabis services.

The use of cannabis for medical purposes and the violation of the right to health, which is considered a crucial part of their human rights by every individual, Fidelis and Musa are just two examples among many cases elsewhere that have not been addressed in the media regarding restrictions on access to health and the use of cannabis for medical needs. It should be noted that the position of cannabis can be an alternative treatment method for several serious diseases, not only from the perspective of Human Rights it is clear that access to healthcare services is possible for everyone, as long as its use is reasonable. Furthermore, the cases of Fidelis (2017) and Musa (2020) deserve attention due to the significant potential of cannabis in the medical field. This is the foundation of this research, which is an analysis of human rights perspectives on the use of medical cannabis in Indonesia.

Policy development and further research on the use of medical cannabis should take into account human rights as a strong foundation. While issues of regulation and law regarding the use of medical cannabis are still under debate, it is important to strike a balance between individuals' rights to effective healthcare and public safety. Through a human rights-focused approach, we can identify fair solutions that align with humanitarian principles, aiming to provide optimal access to care for all individuals without discrimination or unreasonable restrictions.

RESEARCH METHO

The research method is a way to obtain results from issues outlined in the article (Soekanto, 2019). Based on the nature and focus of the research, this type of study aims to understand the development and respond to social dynamics, including the use of cannabis for medical purposes. The approach used is a normative or legal approach, which essentially positions law as a norm or system of rules. The type of research employed is normative legal research, which utilizes legal source materials found in literature, such as products that serve as human rights regulations, considered primary legal materials, as well as secondary legal materials like law books, journals, research articles, and media reports that explain primary legal materials and third-level legal materials such as Legal Dictionaries and the Big Indonesian Language Dictionary (KBBI). Data collection techniques used include library searches and document searches, encompassing primary legal sources, secondary legal sources, and tertiary legal sources, where a

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number of laws, legal books, and legal dictionaries were found. The analysis method used is a descriptive qualitative method focused on analyzing legal provisions and human rights perspectives directly related to the use of cannabis for medical purposes.

DISCUSSION

Human Rights on the Use of Medical Cannabis in Indonesia

Human Rights (HR) serve as a foundational principle deeply ingrained in Indonesia's legal framework, echoing the ideals championed by John Locke, an eminent English philosopher. Locke's philosophy asserts that the primary function of establishing a state is to safeguard these inherent rights, encompassing a wide spectrum of human existence, ranging from economic and social to cultural, civil, political, and collective rights. Indonesia's adherence to HR is exemplified through its ratification of international agreements such as the Universal Declaration of Human Rights (UDHR) in 1948, followed by the ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. These international accords have been translated into domestic law, evident in statutes like Law Number 11 of 2005 concerning Economic and Social Rights and Law Number 12 of 2005 pertaining to Civil Rights.

The Indonesian government's commitment to HR is further substantiated by its legal mechanisms aimed at upholding and ensuring the realization of these fundamental rights. Laws such as Law Number 11 of 2005 and Law Number 12 of 2005 provide a legal framework that empowers the state to guarantee citizens' rights, including the right to healthcare. This right is explicitly recognized in Article 2 of the ICESCR, acknowledging health as an integral component of economic, social, and cultural rights. These legal provisions underscore Indonesia's dedication to promoting and protecting HR within its national legal landscape.

The integration of HR principles into Indonesia's legal system not only reflects the country's commitment to upholding universal human rights standards but also serves as a foundation for creating a just and equitable society. By recognizing and implementing HR, Indonesia endeavors to ensure that all individuals, regardless of background or status, have equal access to fundamental rights, including the right to healthcare.

Indonesia's ongoing dedication to human rights reflects its progressive approach towards creating a legal framework that prioritizes the welfare and dignity of its populace. However, challenges arise concerning the realization of the right to health and broader human rights

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principles, particularly in the context of medical cannabis use in the country. Notable cases like that of Fidelis (2017) and Musa (2020) shed light on these challenges. Fidelis resorted to using cannabis to alleviate his wife's cancer symptoms, yet his actions were met with legal consequences, showcasing the hurdles individuals face when seeking medical alternatives. Similarly, Musa's case, where he had to travel abroad for medical cannabis treatment due to its unavailability locally, underscores the gap between legal provisions and healthcare accessibility in Indonesia.

Despite Indonesia's constitutional recognition of the right to health, obstacles persist in accessing medical cannabis treatment due to the provisions outlined in Law Number 35 of 2009. This law categorizes cannabis as a dangerous substance, leading to its prohibition for medical purposes. The dichotomy between constitutional guarantees and legal restrictions highlights the need for legal reforms to ensure that individuals can exercise their right to health, including access to alternative medical treatments like cannabis, without fear of legal repercussions.

Addressing these challenges requires a comprehensive approach that balances public health concerns with human rights imperatives. Legal reforms that reevaluate the classification of cannabis and establish clear guidelines for its medical use could bridge the gap between legal constraints and healthcare needs. Such reforms would not only align with Indonesia's commitment to human rights but also enhance healthcare accessibility and promote individual well-being within a legal framework that upholds fundamental rights.

From a legal perspective, the situation regarding medical cannabis in Indonesia is complex. Article 8 paragraph (1) of Law No. 35/2009 unequivocally prohibits the utilization of cannabis for medical reasons, creating a direct contradiction with Article 28H of the 2008 Constitution. The latter explicitly ensures the right to healthcare for all individuals, highlighting a fundamental tension between legal provisions and constitutionally guaranteed human rights. This conflict illuminates the intricate balance required to harmonize laws and uphold fundamental rights, particularly concerning access to medical treatments like cannabis.

The clash between the legal prohibition on medical cannabis and the constitutional guarantee of the right to healthcare underscores the challenges in implementing human rights principles within the legal framework. While the government recognizes the imperative nature of the right to health and its obligation to ensure access to healthcare services, the existing legal barriers, such as those regarding medical cannabis, hinder the full realization of these rights. This legal paradox underscores the need for legal reform and policy adjustments to bridge the gap

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between legal restrictions and human rights imperatives.

In navigating this legal landscape, it becomes evident that legal reforms are necessary to reconcile conflicting legal provisions and uphold human rights principles. Efforts to amend laws like Law No. 35/2009 to align with constitutional guarantees of the right to healthcare could pave the way for improved access to medical cannabis treatment. Such reforms would not only enhance legal coherence but also ensure that individuals have the opportunity to exercise their right to healthcare in line with international human rights standards.

Human Rights Regarding the Use of Medical Marijuana in Indonesia

Human rights serve as foundational principles within Indonesia's legal framework. John Locke's philosophy underscores the core objective of establishing a state, which is the protection of these rights. This concept extends across a wide spectrum of human existence, encompassing economic, social, cultural, civil, political, and collective rights. The Indonesian government has demonstrated its dedication to human rights through various measures, including the ratification of key international agreements like the Universal Declaration of Human Rights (UDHR) in 1948. This commitment was further reinforced by the ratification of significant covenants such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1966. These global agreements have been translated into domestic laws such as Law Number 11 of 2005 on Economic and Social Rights and Law Number 12 of 2005 on Civil Rights, providing a legal framework for the protection and promotion of human rights within Indonesia.

Within the context of human rights in Indonesia, the right to healthcare stands out as a crucial component. The ICESCR, to which Indonesia is a party, recognizes health as an integral part of economic, social, and cultural rights. This recognition is further emphasized in Article 2 of the ICESCR, which stipulates that all individuals have the right to the highest attainable standard of physical and mental health. Consequently, the Indonesian government is mandated to take concrete steps to ensure access to healthcare services for all its citizens, irrespective of socio-economic status or background. The incorporation of health-related rights into Indonesia's legal framework reflects the country's commitment to upholding human dignity and well-being.

The integration of human rights principles into Indonesia's legal landscape has significant implications, particularly in the realm of healthcare. These legal frameworks not only establish the rights of individuals to healthcare services but also impose obligations on the government to enact

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policies and allocate resources to fulfill these rights. This includes ensuring access to essential medical treatments, facilities, and healthcare professionals, as well as addressing systemic barriers that may impede individuals from enjoying their right to health. By anchoring healthcare within the framework of human rights, Indonesia aims to create a more equitable and inclusive healthcare system that prioritizes the well-being of all its citizens.

However, in the context of using cannabis for medical purposes in Indonesia, several legal and human rights challenges arise. Cases like Fidelis (2017) and Musa (2020) serve as poignant examples. Fidelis resorted to using cannabis to alleviate his wife's cancer symptoms, yet his actions were met with criminalization. Similarly, Musa, who required medical cannabis treatment for a condition, had to seek treatment abroad due to the unavailability of such treatment in Indonesia. These cases highlight the conflict between the right to health and the legal restrictions on medical cannabis use imposed by Law Number 35 of 2009, which classifies cannabis as a dangerous drug and prohibits its medical usage.

From a legal perspective, the prohibition outlined in Article 8 paragraph (1) of Law No. 35/2009 presents a significant hurdle for individuals seeking medical cannabis treatment. This statutory provision explicitly restricts the use of cannabis for medical purposes, thereby creating a legal barrier that impedes access to this form of treatment. This legal restriction directly conflicts with the constitutional guarantee of the right to healthcare for all individuals, as enshrined in Article 28H of the 2008 Constitution of Indonesia. The clash between these legal provisions illuminates the complexities involved in reconciling statutory laws with fundamental human rights principles, particularly in the context of medical treatment accessibility.

The legal conflict between the prohibition on medical cannabis use and the constitutional right to healthcare underscores broader challenges within Indonesia's legal landscape. While the government acknowledges and upholds the fundamental right to health, the current legal framework poses obstacles that obstruct individuals from accessing medical cannabis treatment. This discrepancy highlights the pressing need for legal reforms aimed at bridging the gap between statutory laws and human rights standards. Such reforms would not only ensure compliance with constitutional guarantees but also promote greater inclusivity and accessibility to medical treatments, including cannabis-based therapies.\

Addressing the legal barriers to medical cannabis access requires a comprehensive approach that considers both legal and human rights perspectives. Legal reform efforts should focus on amending or revising existing statutes, such as Law No. 35/2009, to align with

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constitutional rights and international human rights standards. This may involve revisiting regulatory frameworks, introducing exceptions or allowances for medical cannabis under strict guidelines, and enhancing mechanisms for monitoring and oversight to ensure responsible usage. By harmonizing legal provisions with human rights principles, Indonesia can create a more equitable and inclusive healthcare system that prioritizes individuals' right to access safe and effective medical treatments, including cannabis-based therapies, where medically appropriate.

Medical Cannabis as a Right to Health

One of the efforts that can be made to realize the right to health is through government policies that prioritize healthcare services for the general public in line with human rights agendas and principles, accessible to everyone and under suitable conditions. In the same discussion, there is also the state's obligation to protect the right to health as a fundamental and non-revocable right, especially the right to life. Law No. 35/2009 in sections b and c states that narcotic substances can be viewed from two different perspectives, on one hand being beneficial in healthcare services or in the advancement of scientific research, and on the other hand posing a risk of dangerous addiction, which can be harmful if not properly handled and can be seriously abused, thus requiring strict and measured monitoring in specific situations.

Law No. 35/2009 regulates the use of narcotic substances for medical purposes, where cannabis plants are positioned as commodities or raw materials for the production of health-supporting medicines. However, unfortunately, Article 6(1) categorizes cannabis as a Schedule I narcotic, and Article 8(1) prohibits the use of Schedule I narcotics for medical purposes, indicating no intent to use cannabis knowingly or unknowingly. This is an action that can be punishable for medical purposes. Narcotics, including marijuana, are closely related to the right to health. ICESCR General Comment No. 14: The highest attainable standard of health states that the right to health is a fundamental right for the realization of other human rights, aligned with the principle of human rights itself, which is the principle of mutual interdependence, namely the realization of human rights. Human rights are closely related to other rights and cannot be separated (indivisibility), that human rights are a unity encompassing civil, political, economic, social, cultural rights, and collective rights.

Everyone has the right to enjoy the highest attainable standard of health. Indeed, it is true that drug circulation and abuse prevention policies are evidence of the government's understanding in protecting its citizens; however, the state must not turn a blind eye to the

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possibility of legalization and actual implementation of medical cannabis. The use of cannabis for health purposes is part of fulfilling the right to health within the framework of human rights broadly and for the public interest in improving access to healthcare in Indonesia in terms of human resources. The government should legalize medical cannabis in Indonesia.

One of the longstanding and evolving negative issues in Indonesian society is marijuana, which is most associated with addiction and death. While it may be proven through research processes, with the advancement of information technology, it is clear that marijuana and its derivatives have many benefits, especially in the medical field. The narrative of the Indonesian government's policy on marijuana is a symptom, but it only has more negative effects on its users. Some societal groups disagree with the government's narrative; they believe that marijuana has medicinal benefits and can be used to treat various diseases. In a democratic society, the government's role is to facilitate decision-making processes rather than be the primary policy maker.

In 2022, the Constitutional Court (MK) rejected the judicial review of Law Number 35 of 2009 on Narcotics related to the use of Schedule 1 narcotics including marijuana for healthcare. Considering that there is still minimal research on medical marijuana in Indonesia. Based on interviews conducted in June with Apt. Nova Syafni, M.Farm., Ph.D., a lecturer and pharmacologist at the Faculty of Pharmacy, Andalas University, several countries have legalized marijuana for medical purposes such as epilepsy, diabetes, cancer, Alzheimer's, but this cannot be generalized and applied in Indonesia without extensive evidence and research on the use of marijuana itself.

The impact felt to date is the lack of access to medical marijuana, thus the prohibition of marijuana plants for healthcare purposes has the potential to violate human rights, which is a violation of the right to health. There are mechanisms that can be taken for the use of marijuana so that it can be utilized in the medical field, namely by reconstructing the regulation of marijuana plants as Schedule II narcotics reviewed from the right to health, by placing marijuana plants as Schedule II narcotics so that marijuana plants can be accessed for healthcare purposes.

The use of marijuana must still adhere to strict procedures by obtaining marketing authorization from the Minister of Health and registered through the Food and Drug Monitoring Agency (BPOM), the use of marijuana should also only be provided by doctor's prescription. Based on the fulfillment of the right to health, it is necessary to make changes to the appendix of the Narcotics Law by moving marijuana plants from Schedule I narcotics to Schedule II narcotics. By placing marijuana plants as Schedule II narcotics, marijuana plants can be used for healthcare

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purposes, and the state has fulfilled the right to health for people who need marijuana plants for healthcare purposes.

CLOSING

The perspective of human rights can be applied to the use of medical marijuana as long as it is used to fulfill health-related rights, but its use in Indonesia is prohibited by Law No. 35/2009, particularly in Article 6 paragraph 1, where marijuana is classified as a Class I narcotic, the most dangerous and addictive, thus solidifying the ban on marijuana use in healthcare in Article 8 paragraph 1, this is clear. This is in contrast with the view of Human Rights that allows the use of medical marijuana in healthcare. Suggestions for further researchers and writers could stimulate discussions on factors influencing the ban on medical marijuana. It is also highly possible to study the social phenomena where marijuana use is still prevalent despite being banned. The Indonesian government is currently monitoring the developments in international marijuana regulations to review and amend Law No. 35/2009. Marijuana could also be classified as a Class III or II drug, which would not contradict the implementation of the right to health, thus allowing everyone to utilize medical marijuana as healthcare services.

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