

Legal Protection Of Children With Disabilities In Access To Medical Cannabis Treatment (Case Study Of Pika Sasikirana And Comparison With The Legalization Of Medical Marijuana In Thailand)

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Abstract

The objective of this study is to describe the regulation of marijuana in Indonesia and Thailand and examine the impact of marijuana legalization policies in Indonesia and Thailand. This research uses normative legal research, with statutory, and comparative approaches. The results of this study indicate that the regulation of marijuana in Indonesia and Thailand has been regulated through the Narcotics Code B.E. 2564 of 2021, while in Indonesia, marijuana is regulated in Law Number 35 of 2009 concerning Narcotics. Marijuana plants in Indonesia were until now considered haram and disadvantageous. The impact of legalizing medical marijuana in Thailand has advantages in various sectors, such as economic, social, and health. When compared to Indonesia, Indonesia has not yet legalized the use of marijuana for several reasons, including its negative impact, whereas when viewed in terms of what occurs in the community, marijuana can be used as a medicinal material.

I. Introduction

Along with the development of the theory of Human Rights, international countries began to proclaim this theory with a clear goal, namely to protect every human being from the arbitrariness of other human beings. In order to oversee, supervise and uphold the implementation of the theory of Human Rights, Indonesia has guaranteed the existence of Human Rights in the 1945 Constitution of the Republic of Indonesia Article 28 A - J. The legitimacy of Human Rights is increasingly strengthened along with the awareness of nations regarding the importance of Human Rights as a unit of human life that needs to be upheld. Harming Human Rights is the same as reducing the quality of human life. One of the aspects that affect the quality of human life is the assessment of the health aspect. In the 1945 Constitution of the Republic of Indonesia, Article 28H Paragraph (1) explains that:

"Everyone has the right to live a prosperous life in birth and mind, to live, and to get a good and healthy living environment and the right to receive health services."

Health is a parameter of a happy human life. A person who is in a sick state will not be able to recover on his own unless he gets good health services. This is one of the human rights that has been guaranteed by the state as explained in the 1945 Constitution of the Republic of Indonesia Article 34 Paragraph (3) which reads:

"The state is responsible for the provision of health care facilities and proper public service facilities."

With the provisions in Article 34 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it expressly gives orders and responsibilities to the government to be able to provide health service facilities to the community.

Cannabis or Marijuana which has the Latin name Cannabis Sativa is one of the plants that is included in the category of narcotics class 1 in accordance with the appendix of Law No. 35 of 2009 concerning Narcotics. The explanation of Article 6 Paragraph (1) and Article 8 Paragraph (1) states that:

"Class 1 narcotics are narcotics that can only be used for scientific development purposes and are not used in therapy, and have a very high potential to cause dependence."

Then in Article 8 Paragraph (1) it is stated that:

"Class 1 narcotics are prohibited from being used for the purpose of health services."

Law No. 35 of 2009 concerning Narcotics as the first reference in the problem of narcotics in Indonesia, is a legal product formed to protect the Indonesian people from the adverse effects of narcotics. Until now, marijuana is still a type of class 1 narcotic, which means that marijuana has a very high potential in causing dependence. Therefore, marijuana should not be used as a treatment / therapy and

can only be used for research purposes.

Internationally, marijuana is regulated in the Single Convention on Drugs 1961, which occupies schedules I and IV as dangerous narcotic plants and requires strict supervision. In 2019, on the recommendation of the Expert Committee on Drugs Dependence (ECDD)

of the World Health Organization (WHO) and in the Commission on Narcotics Drugs (CND) session in 2020, it was decided that the regulation of the use of marijuana was excluded from schedule IV of the Single Convention on Drugs 1961 and was still in schedule I of the Single Convention on Drugs 1961, which means that marijuana is a type of narcotic that can be used as a drug but with strict supervision because there is a great risk of abuse⁵. Musri Musman explained that various cannabis studies by experts around the world show that cannabis plants have various compounds that contain a lot of potential in supporting the health of the human body. There are 1269 compounds, including 144 cannabinoids such as THC, CBD, CBN, and so on that have a number of therapeutic effects, 150 flavonoid compounds that are beneficial in the form of various bioactives, and antioxidants. (Dania, 2021)

On June 26, 2022, a mother brought a poster reading "Please, My Child Needs Medical Marijuana" during the Car Free Day (CFD) event at the HI Roundabout, Central Jakarta. This mother is the mother of Pika, a child who suffers from cerebral palsy. Cerebral Palsy (CP) aka cerebral palsy is a neurological disorder or disorder that affects a person's movement, muscle formation, and body coordination⁹. Pika's mother's action voiced the legalization of marijuana by the government as a treatment in Indonesia, so that later it can be used by her child who is suffering from Cerebral Palsy. Several studies and also similar case examples abroad have used cannabis as a treatment and the results are that cannabis is good enough to relieve seizures suffered by Cerebral Palsy patients. (Amanda, 2021)

The use of narcotics as a medical ingredient is one way of developing science, because everyone has the right to benefit from this science which can be used to meet basic human needs, namely to be healthy. Based on the above background, the author is interested in conducting legal research which is expected to be used as a consideration for the government as a policy maker in order to accommodate all interests related to the use of cannabis plants. This legal research was written with the title "LEGAL PROTECTION OF CHILDREN WITH DISABILITIES IN ACCESS TO MEDICAL MARIJUANA TREATMENT (CASE STUDY OF PIKA SASIKIRANA AND COMPARISON WITH THE LEGALIZATION OF MEDICAL MARIJUANA IN THAILAND)"

2. Research Method

In this study, the author uses a normative legal research (doctrinal research). For this

study, a normative approach is used because in this study, it refers to laws and regulations, legal phenomena and norms that exist in society. The author uses normative research by observing various theories. The approaches used are the legislative approach and the conceptual approach. In the preparation of this research, the compiler will use a technique for collecting legal materials by studying literature, through laws and regulations, related literature, opinions from experts, and sources that are still related to the formulation of the problem being researched. As for the analysis of legal materials in this study, the compiler used the legal interpretation method as the legal material for analysis. This means that the compiler will make an effort to explain, explain, and affirm (narrow meaning or broad meaning) of existing legal understandings. Where it will be used to find answers to the formulation of the problems in this study.

3. Results and Discussion

Regulation of the Use of Cannabis as Medical Treatment in Indonesia

The responsibility of providing safe and quality health services to the public lies with the state, as outlined in Articles 54(1) and 54(2) of the Health Law. Therefore, the government is obligated to regulate the use of narcotics to prevent abuse. Additionally, the state must ensure the fulfillment of the right to access safe and high-quality health services, as guaranteed by Article 28H(1) of the 1945 Constitution of the Republic of Indonesia. Public perception associates narcotics with illicit, forbidden, and harmful substances. Those who use narcotics are often stigmatized as criminals or individuals with moral shortcomings. This societal labeling is significant, as individuals found in possession or transport of marijuana face severe legal consequences. Consequently, there is little leniency for those who are prosecuted under narcotics laws, as marijuana continues to be classified as an illegal substance in Indonesian law.

The 1971 Psychotropic Convention has been ratified by Law No. 8 of 1996 concerning the Ratification of the 1971 Psychotropic Convention. The two bills can be the basis for political law in dealing with the problem of narcotics and the making of the Narcotics Law in Indonesia. The law on narcotics itself has been replaced three times. The first is Law No. 9 of 1976 concerning Narcotics. Then it was replaced by Law No. 22 of 1997 concerning Narcotics. Finally, it was replaced by Law No. 35 of 2009 concerning Narcotics. The contents of the 1961 Single Convention on Narcotics, including the Protocol to Amendment, prove that Cannabis can be used for research and treatment, under certain conditions. (Idham, 2021)

If examined according to Law No. 35 of 2009 concerning Narcotics, based on the explanation of Article 4 paragraph (1) of the Narcotics Law, it is stated that the law was made "to ensure the availability of narcotics for the benefit of health services and/or the development of science and technology". This explains that the article provides space for the use of narcotics in health services and/or the development of

science and technology, while marijuana is included in Category I mentioned in Law No. 35 of 2009 concerning Narcotics. The prohibition on the use of class I narcotics for health services is contained in the explanation of Law No. 35 of 2009 concerning Narcotics in Article 8 paragraph (1), "Class I narcotics are prohibited from being used for the purpose of health services". Regarding Class II and Class III Narcotics, Article 37 of the Narcotics Law states that it will be further regulated by the Ministry of Health. The regulation will regulate the use of raw materials, both natural and synthetic, for use in the production of medicines".

Until now, the narcotics regulation still places marijuana as a dangerous plant that no one can use except for scientific development carried out under strict supervision. This is also reflected in the Constitutional Court's decision in its decision number 106/PUU- XVIII/2020 which was submitted by 3 (three) mothers who have children with Cerebral Palsy. The Constitutional Court's decision in the case stated that it rejected the applicants' application in its entirety. On the grounds that the facts brought by the applicant in the trial related to the legal use of medical marijuana and recognized by various countries in the world cannot necessarily be used as a measure that all types of narcotics can be used for health services that can be accepted by all countries, because there are differences in the characteristics of the type of narcotics, the structure and culture of the law, as well as the supporting facilities and infrastructure.

Regulation of the Use of Cannabis as Medical Treatment in Thailand

The number of cancer patients in Thailand is always increasing every year, this makes Anutin Charnvirakul who serves as the Minister of Public Health of Thailand have a positive view of the use of cannabis as a medical ingredient, especially to treat diseases that are suffered by many of his own people. Because by legalizing marijuana for medical purposes, he believes that people will be able to get treatment at a cheaper and affordable cost, because the drugs produced are domestic products. Dravet Syndrome and Epilepsy are among the diseases that are also suffered by many Thai residents. With this, if legalizing marijuana for medical purposes, it is hoped that the public will be able to get treatment at a cheaper and affordable cost, because the drugs produced are domestic products. (Public Relations, 2020)

Since the United States first declared that marijuana is very dangerous and has no medical function, Thailand has also stated the same thing although its implementation is still not as strict as in the United States. After including marijuana in class I narcotics, Thailand carries out its obligations strictly, namely by becoming one of the founders of the international anti-narcotics organization in ASEAN, namely the ASEAN Senior Officials on Drug Matters (ASOD) which was formed at the ASEAN Ministerial Meeting (AMM) after the ratification of the ASEAN Declaration of Principles to Combat the Abuse of Narcotics Drugs. With its obligations to eradicate the trafficking of narcotics of any kind, the Thai Government in 2003 adopted the War On Drugs policy from the United States by applying a zero tolerance attitude in its

implementation. (Bradford, 2016)

In an article by Sam Levin, it is stated that in several states of the United States that still do not allow the use of marijuana as a medical substance, there are about four hundred families who move to the states of Colorado, California and Oregon because these countries have long allowed medical marijuana which makes them move just to be able to get Cannabinoid (CBD) therapy. is one of the substances in the cannabis content to treat diseases suffered by their families, and the phenomenon is referred to as the "international medical marijuana migration". Learning from this phenomenon, it will not be impossible if many people in ASEAN member countries who have diseases that require cannabis treatment will go to Thailand just to do drug therapy from marijuana. Through this possibility, there will also be economic benefits that have the potential to be obtained by Thailand, considering that many people in ASEAN countries suffer from diseases that require the treatment of marijuana as a medical alternative, such as cancer, epilepsy, and HIV/AIDS. (Kama, 2019)

Legal Protection of Children with Disabilities in Access to Medical Cannabis Treatment (Pika Sasikirana Case Study and Comparison with the Legalization of Medical Marijuana in Thailand)

Mrs. Santi Wirastuti as Applicant II is the mother of Pika Sasikirana, a 12-year-old girl. Pika was diagnosed with epilepsy while sitting in kindergarten. Then a few months later, Pika was again diagnosed with Japanese Encephalitis, which is an infection in the brain spread by a virus. Pika often has long seizures, vomiting and fainting. Several treatments have been tried such as doctor's drugs, finger prick therapy and physiotherapy. Santi Wirastuti had learned that medical marijuana therapy could help epilepsy patients recover from their seizures. However, he did not dare to try because he was haunted by the fear of criminal threats for anyone who uses marijuana in Indonesia. As a result, Pika did not get medical marijuana treatment to improve the quality of life to the maximum possible level that her parents could strive for.

The Constitutional Court's decision in the case stated that it rejected the applicants' application in its entirety. On the grounds that the facts brought by the applicant in the trial related to the legal use of medical marijuana and recognized by various countries in the world cannot necessarily be used as a measure that all types of narcotics can be used for health services that can be accepted by all countries, because there are differences in the characteristics of the type of narcotics, the structure and culture of the law, as well as the supporting facilities and infrastructure.

However, according to the author, the legalization of Marijuana has become a topic of discussion in Indonesia, there are pros and cons among the public. Some Indonesians want cannabis to be legalized, while others consider cannabis dangerous for the Indonesian generation. The policy of narcotics as a medicinal ingredient existed Before Indonesia's independence, the Narcotics Law Number 35 of 2009 was already outlined as a way to enhance the health of the nation's citizens, aiming to contribute

to the public welfare. The law emphasizes the need to improve medical and health services, including the necessity of securing specific narcotics that are crucial for medicinal purposes, while also focusing on preventing and eliminating the risks associated with narcotic abuse and illegal trafficking. The authors contend that narcotics should not be misused in a way that leads to addiction. The preamble of the Narcotics Law calls for a policy formulation that acknowledges narcotics as substances that, under controlled conditions, can benefit medical and scientific advancements. However, it also recognizes the potential harm of narcotics if abused or used recklessly, highlighting the importance of strict regulation and oversight to mitigate the risk of dependency.

Based on the findings of the previously discussed research and the current regulations regarding medical marijuana, the author argues that there is a need for a reform in criminal law policy, particularly by revising Law Number 35 of 2009 concerning Narcotics. The scope of criminal law reform should not only address current policies but also anticipate future needs. This aligns with the broader objectives outlined in the Preamble of the 1945 Constitution, which aims to "protect the entire Indonesian nation and all Indonesian bloodshed and to advance the general welfare based on Pancasila." This guiding principle forms the foundation of Indonesian legal politics and should underpin all efforts to reform the law, including those related to criminal law and legal policy. Therefore, reforming the criminal law to allow cannabis plants and their derivatives to be classified as Class II narcotics for medical use is crucial.

In conclusion, the current regulations surrounding marijuana in Indonesia restrict its use to scientific research and technological development, excluding it from being classified as a substance for health purposes. This is inconsistent with the 1945 Constitution, which suggests that reforms in the narcotics law are necessary. Thailand, as the first country to legalize marijuana for medical purposes, has seen significant benefits, including economic gains and improved access to treatment for patients with conditions that could benefit from marijuana. Medical marijuana legalization in Thailand has contributed to the national interest by providing affordable treatment options for many patients, especially those with chronic illnesses. The author hopes that Indonesia will reconsider the legalization of marijuana for medical use, in order to ensure better health protection for children with disabilities.

in Indonesia so that no more children have difficulty accessing medical treatment and health facilities.

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