**Regulation of The Use of Marijuana for Medical Purposes: A Comparison of Civil Law and Common Law Legal Systems**

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**Abstract**

This study aims to determine the Regulation of the Use of Marijuana for Medical Purposes: Comparison of Civil Law and Common Law Legal Systems. This research uses normative juridical research methods using literature studies derived from Legislation, scientific journals, books related to medical cannabis discourse and analyzed qualitatively. Regulations related to Class I Narcotics in Indonesia are regulated in Law Number 35 of 2009 and Regulation of the Minister of Health of the Republic of Indonesia Number 30 of 2023. The use of cannabis as medicine is an urgent need. European countries are at the forefront of legalizing medical cannabis. Some European countries with a Civil Law legal system have different regulations in legalizing marijuana for medical purposes based on ownership restrictions. Meanwhile, countries with a Common Law legal system establish medical cannabis legalization policies based on the needs of patients, the quality of health provision, and the protection of patient rights. This study concludes that countries with a Common Law legal system have a pragmatic, case-based legal style that functions through logical reasoning while countries with a Civil Law legal system are more about practical implications.

**Keywords**: Medical Cannabis; Regulation; Legal System.

INTRODUCTION

Narcotics are substances or drugs that are very useful and necessary for the treatment of certain diseases. Conversely, if misused or used not in accordance with treatment standards, it can have very detrimental effects on the people who use it. Marijuana is included in the types of narcotics regulated in the Law. Marijuana or often called marijuana has the Latin name Cannabis sativa with the subspecies Cannabis sativa and Cannabis indica. Marijuana has hundreds of chemical compounds. There are about 104 (one hundred and four) different cannabinoids that have been identified in cannabis. Cannabinoids compounds themselves can be produced naturally by the body. The main function of this compound in the body is as a regulator of movement, appetite, concentration, sensation in the senses to regulate pain. Other identified compounds include terpenoids, flavonoids, nitrogenous compounds, and general plant molecules. (American Herbal Pharmacopeia, 2020)

In general, the uses of cannabis can be divided into two, namely consumption of cannabis (medical and recreational) and industrial cannabis. The fibers contained in cannabis are very useful in the industrial world because they can replace red bricks or bricks in making buildings, making ropes and making fabrics. The content of compounds in cannabis also has a medical function to relieve pain and nausea. On the other hand, this plant contains the compound Tetrahydrocannabinol or THC where this substance is the main psychoactive substance that can affect consciousness, give an excessive euphoric effect, and cause a sense of addiction to its users. This is then the main reason for the differences in the legalization of marijuana in various countries. (Anwar, 2020)

Cannabis can also be used for the treatment of opioid-type painkillers and other types of dangerous high-dose drugs. The term medical marijuana is applied by some countries whose doctors prescribe marijuana for anti-depressants, seizure-reducing drugs, anti-anxiety drugs and anti-nausea drugs. There is some pharmaceutical availability that has obtained approval from drug control agencies in several countries. Epidiolex is one of the drugs with cannabis content (canabidiol) that has been approved for distribution by the Food and Drug Administration or the United States Food and Drug Administration (FDA). This drug is used as an antiepileptic. The availability of drugs derived from cannabis is starting to be found in the market. Nabiximols is also one of the drugs that contain marijuana. This drug is used as a mouth spray. Its function is to reduce neuropathic pain and symptoms of multiple sclerosis. Nabiximols has received marketing approval from the United Kingdom and began circulation in Japan, China, and Africa in 2019. (Bridgeman & Abazia, 2017)

The birth of the Law on the prohibition of cannabis plants in Indonesia, namely Law Number 9 of 1976, subsequently passed an amendment to the Narcotics Law to Law Number 22 of 1997, and then passed another amendment to the Narcotics Law to Law Number 35 of 2009 concerning Narcotics and is still valid today. The implementation of Law Number 35 of 2009 concerning Narcotics in Indonesia itself is a ratification of the results of the Narcotics Single Convention, which guarantees the availability of narcotics for health and scientific purposes from the 1961, 1971 and 1988 United Nations (UN) Conventions. The classification of substances contained in the cannabis plant has motivated many countries to make adjustments to the development of their national laws. This is because the Single Convention on Narcotics is not a treaty that has the nature of impulsive implementation and becomes a legal
The codification of narcotics, but is also based on the views of each country in accordance with the development of the country’s law and legal system with its domestic needs for narcotics in the context of health and science. This is clearly seen with the classification adjustment and state compliance mechanism of the convention which shows the dynamism of member countries in adjusting the health and scientific needs of the country, such as the Netherlands, Portugal, Canada, Bolivia, and even now Malaysia and Thailand have decriminalized the use of class I substances in the use of cannabis for health. International classification arrangements are returned to member states to be regulated in their national laws while still informing UN organizations that control narcotics.

The differences in each country’s legalization of marijuana lead to different impacts and challenges, for example, the state provides alternatives to marijuana as an efficient and profitable treatment for its citizens. But on the other hand, the state must also adjust to the legal system in place and must even be prepared to face the possibility of new crimes. According to Lawrence M. Friedman, a legal system in actual operation is a complex organism where structure, substance and culture must interact. Structure is one of the basic and tangible elements of the legal system. Substance (regulations) is another element. Friedman goes on to say that the structure of a judicial system, when we talk about the number of judges, the jurisdiction of the courts, how higher courts are above lower courts, and the people associated with different types of courts. While substance is composed of rules and regulations regarding how the institutions should behave. The legal culture refers to fragments that exist in the general culture, such as customs, opinions, ways of acting and thinking that direct social forces towards or away from the law and in certain ways. (Syamsuddin, 2019)

A legal system in each country is faced with a difference. The reason for the differences in the legal system applied is due to the history of the colonizing country towards its former colonies. In general, there are two legal systems. First, the Common Law system (Anglo Saxon), basically the common law system has three characteristics, namely: 1) jurisprudence is seen as the main source of law (source of law, rechtsbron); 2) judges are bound to the so-called stare decisis, which means that judges are bound to apply decisions decided by previous courts in similar cases; and 3) there is an adversary system in the judicial process. (Marzuki, 2015) Second, the Civil Law legal system (Continental Europe), countries that adhere to the civil law legal system in deciding a case look more at written law or legislation. Judges are not bound by a case that has been decided as adopted in the common law system. Judges are given the freedom to decide a case without being bound by the decisions of previous judges. Judges are only bound by written rules, namely laws and regulations. (Marpi, 2020)

Indonesia is a country with a civil law legal system. The Indonesian state explicitly stipulates that marijuana is a forbidden and harmful plant. Based on attachment 1 point 8 of Law Number 35 of 2009 concerning Narcotics, marijuana is included in narcotics Group I (one). It is explained in Article 7 of the law that narcotics can only be used for the benefit of health services, the development of science and technology. Article 6 paragraph (1) letter a, in this provision explains what is meant by "Narcotics Group I" is Narcotics which can only be used for the purpose of scientific development and is not used in therapy, and has a very high potential to cause dependence, and in Article 8 paragraph (1) it is explained that class one narcotics are prohibited from being used for the benefit of health services. Possession of even small amounts of marijuana is punishable by imprisonment.
Conversely, there are also many other countries with civil law and common law legal systems that regulate the use of marijuana for medical purposes. Canada, which adheres to the common law system, is one of the countries that legalizes the use of marijuana for medical purposes, then countries with a civil law legal system such as Italy, consuming marijuana is not a criminal act. The Italian state allows the use of marijuana for medical purposes. However, it is illegal to sell, purchase, and cultivate marijuana en masse. Marijuana dealers in this country are also threatened with imprisonment. This phenomenon makes the author interested in raising this topic, where there are countries with civil law and common law legal systems that legalize the regulation of the use of cannabis for medical purposes that can be used by their people.

**RESEARCH METHODS**

This research uses normative juridical research methods. Normative legal research is a legal research both pure and applied in nature which is carried out by examining a norm such as in the fields of justice, legal certainty, order, benefit, and legal efficiency, legal authority, as well as legal norms and doctrines that underlie the enactment of these elements into procedural and substantive legal fields. (Fuady, 2018) This research was conducted by examining legal theories, legal concepts, legal principles and laws and regulations related to research on narcotics (medical marijuana). The research approach is a conceptual plan and procedure for research that includes steps, ranging from broad assumptions to provincial methods of data collection, analysis and interpretation. The approach used consists of a statute approach, conceptual approach, case approach, historical approach and comparative approach. (Irwansyah & Yunus, 2022)

In analyzing the study data related to research on medical cannabis and the legal system of civil law and common law, qualitative analysis is used. Qualitative analysis is intended so that researchers get clarity of the problems studied by referring to the provisions applicable in other countries by adjusting to literature studies as well as facts and data obtained. The form of research data analysis results in the form of descriptive sentences.

**RESULTS AND DISCUSSION**

Regulation of Cannabis Use According to Law Number 35 of 2009 and Regulation of the Minister of Health of the Republic of Indonesia Number 30 of 2023

WHO defines Cannabis as a general term used to denote several psychoactive preparations (the main psychoactive substance being tetrahydrocannabinol (THC)) from the Cannabis sativa plant. These substances have addictive properties that lead to high rates of abuse. In 2022, cannabis is still the most abused substance in the world, with an estimated 209 million people (four percent of the world’s population) using cannabis in 2020. (UNODC, 2022) Meanwhile, according to the “Indonesian Historical Dictionary”, "Marijuana" or "Cannabis Sativa" It comes from the Caspian Sea, but is reported to have originated in Java in the 10th century”. And can be found in various regions in Indonesia itself, including Aceh, Java, the East Indies and Ambon. (Julian, 2019) Marijuana or Cannabis is a plant that was once widely used as a traditional medicine and foodmixture. Marijuana has a psychoactive (mind-altering) chemical, delta-9-tetrahydrocannabinol (THC). Common effects that occur with marijuana useare pleasant euphoria, a sense of relaxation and increased appetite. The effects of using marijuana by burning and inhaling are faster when compared to the effects when consumed orally. However, contradictory effects occur when using...
marijuana excessively. Instead of getting pleasant effects, the effects of anxiety, fear and panic will dominate. The use of large doses of cannabis will cause acute psychosis, delusions and hallucinations that can persist for a long time in the individual. (Chandra et al., 2019)

Cannabis or marijuana, whose Latin name is Cannabis Sativa, is often called a magical healing plant. Beyond the psychoactive effects, cannabis contains other substances that can be utilized. A total of 483 different chemical constituents are recorded in Cannabis Sativa; 66 of them are referred to as cannabinoids, compounds that make marijuana usable as medicine. There are a whole host of other substances in cannabis that bring medical benefits. For example THC (Delta-9 tetrahydrocannabinol) which has analgesic or pain-relieving effects, anti-spasmodic properties or relieving spasms, anti-tremor, anti-inflammatory and others. Another substance called (E)-BCP (Beta-caryophyllene) can be used as a treatment for pain, arthritis (joint inflammation), cirrhosis (inflammation and poor function of the liver), nausea, and more. Cannabidiol (CBD) contains anti-inflammatory, anti-biotic, anti-depressant, anti-psychotic, anti-oxidant, and calming properties. Cannabinoid compounds are actually also produced by the body naturally to help regulate concentration, body movements, appetite, pain, and sensations in the senses. But in marijuana, some of these compounds are very strong and can cause a variety of serious health effects if abused. (Malik et al., n.d.)

The Indonesian state currently still considers that marijuana is a forbidden and harmful plant. Based on attachment 1 point 8 of Law Number 35 of 2009 concerning Narcotics, marijuana is included in narcotics Group I (one). It is explained in Article 7 of the law that narcotics can only be used for the benefit of health services, the development of science and technology. Article 6 paragraph (1) letter a, in this provision explains that what is meant by "Narcotics Group I" is Narcotics which can only be used for the purpose of scientific development and is not used in therapy, and has a very high potential to cause dependence, and in Article 8 paragraph (1) it is explained that class one narcotics are prohibited from being used for the benefit of health services.

A person is found guilty of violating the provisions of Article 111 and Article 116 of Law Number 35 of 2009 concerning Narcotics.

**Article 111:**
(1) Every person who without the right or unlawfully plants, maintains, possesses, stores, controls, or provides Class I Narcotics in the form of plants, shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp800,000,000.00 (eight hundred million rupiah) and a maximum of Rp8,000,000,000.00 (eight billion rupiah).

(2) In the event that the act of planting, maintaining, possessing, storing, controlling, or providing Class I Narcotics in the form of plants as referred to in paragraph (1) exceeds 1 (one) kilogram in weight or exceeds 5 (five) tree trunks, the perpetrator shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

**Article 116:**
(1) Every person who without the right or unlawfully uses Class I Narcotics against another person or provides Class I Narcotics for the use of another person, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of
(2) In the event that the use of narcotics against another person or the provision of Class I Narcotics for the use of another person as referred to in paragraph (1) results in the death or permanent disability of another person, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a maximum fine as referred to in paragraph (1) plus 1/3 (one third).

Class I narcotics are also regulated in Regulation of the Minister of Health of the Republic of Indonesia Number 30 of 2023 concerning Changes in Narcotics Classification, with consideration of the revocation and declared invalid by the Minister of Health Regulation Number 36 of 2022 concerning Changes in Narcotics Classification:

a. that narcotics are drugs or materials that are useful in the field of medicine or health services and the development of science, but can also cause dependence which is very detrimental if misused or used without strict and careful control and supervision;

b. that there are new psychoactive substances that have the potential for abuse and endanger public health that are not yet included in the narcotics class as regulated in Appendix I of Law Number 35 of 2009 concerning Narcotics and Regulation of the Minister of Health Number 36 of 2022 concerning Changes in Narcotics Classification.

Based on the Narcotics List in the attachment to the Regulation of the Minister of Health of the Republic of Indonesia Number 30 of 2023 concerning Changes in the Classification of Narcotics Group I point 8 reaffirms that cannabis plants, all plants of the genus cannabis genus and all parts of the plant including seeds, fruit, straw, processed cannabis plants or parts of cannabis plants including cannabis resin and hashish; and point 9 is Tetrahydrocannabinol, and all isomers and all stereochemical forms.

Minister of Health Regulation, hereinafter referred to as Permenkes, is a Legislation stipulated by the minister who organizes government affairs in the field of health to implement higher Legislation or formed based on authority. The Narcotics Law in Indonesia is a regulation that regulates the handling of narcotics and other addictive substances. Ministerial Regulations are laws and regulations as hierarchical legal norms where lower legal norms seek their validity in higher legal norms as proposed by Hans Kelsen or what Joseph Raz calls the chain of validity (Asthiddiqie & Safa’at, 2021).

According to the author, reflecting on the case of Reyndhart Rossy Siahaan and Fidelis, there are pros and cons in the midst of public life regarding the use of marijuana for medical purposes. If the purpose of law is to realize legal certainty (Indonesian State with Civil Law Legal System), then the actions committed by Reyndhart Rossy Siahaan and Fidelis are clearly a criminal act regulated in the legislation on narcotics, but the criminal act is not based on the element of intent/malicious intent to harm others but is based on emergency and force or necessity.

If a similar case occurs and the laws in Indonesia still prohibit the use of marijuana which can be used as a medical treatment, then this is the duty of the judge to take a policy in deciding the case, regulated in Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which stipulates: "judges and constitutional judges are obliged to explore, follow, and understand the values of law and a sense of justice that lives in society." The
government should reformulate the regulation on the classification of narcotics in accordance with science and developments, especially in the medical field for treatment using marijuana.

Comparison of Civil Law and Common Law Legal Systems in the Use of Marijuana for Medical Purposes

Broadly speaking, the legal system in the world consists of 2 systems, namely the Continental European Legal System (civil law) and the Anglo-Saxon Legal System (common law). The civil law system has a legal source that comes from the codification of written law (written code). John Henry Merryman in his writing states that there are 3 (three) sources of law in countries with civil law systems, namely laws (statutes), derivative regulations (regulations), and customs that are not contrary to law (custom), where judge decisions in civil law legal systems are often considered not a law. Meanwhile, the Anglo-Saxon legal system (common law) has historical roots in the United Kingdom which makes court decisions the basis of its law, where when there is a case decided by a judge, the decision is not only binding on the litigants but also generally applicable to similar cases. (Siregar, 2022)

Law as a system will be subject to the limitations of the characteristics of the system itself, such as the understanding of the legal system put forward by legal experts as follows: (Nuzul, 2016)

1. Austin in Roscoe Pound said that "every system of law has its specific and characteristic differences, there are principles, nations and distinctions common to various systems and forming analogies or likenesses by which such systems are allied.

2. Rene David, " Each law in fact constitutes a system: it has a vocabulary used to express concepts, its rules are arranged into categories, it has techniques for expressing rules and interpreting them, it is linked to a view of the social order itself which determines the way in which the law is applied and shapes the very function of law in that society. The conclusion of these two legal experts is that the system is formed from every law in every country. Meanwhile, according to Jan Cijssels and Mark Vab Hoecke in Sidharta, the legal system is an organized collection and legal rules, and legal rules, therefore it is difficult to ignore the rules of law and the legal system in which it has validity. (Huda, 2020) Every country including Indonesia has a legal system to regulate its government, such as a complex organism where the structure, substance and culture of law must interact with each other actually. The legal system regulates the life of a society so that conflicts do not occur, and the legal system also has a role in resolving these conflicts.

Legal culture is the overall attitude of citizens and the value system that exists in society that will determine how the law should apply in the society concerned. In this case we can observe that the attitude of the community in using marijuana as medicine is not a conflict, but an urgent need where this can be a determinant of the law that is enforced. Some countries legalize marijuana for medical purposes, including the Netherlands, Germany (with possession of 6 grams), Argentina, Cyprus (with possession of 15 grams), Ecuador, Mexico (with possession of 5 grams), Peru (with possession of 8 grams), Switzerland (with possession of 4 sticks), Spain (with possession of 2 sticks), Belgium (with possession of 3 grams), Czech Republic, Brazil, Chile, Uruguay, Paraguay (with possession of 10 grams), Colombia (with possession of 20 grams), Australia, and the United States states of Washington and Colorado. (Fauziyah, 2020) Each of these countries has different regulations in legalizing marijuana for medical purposes based on ownership restrictions. European countries are at the forefront of legalizing
medical marijuana. The legal system in European countries is the Continental European Legal System (Civil Law System) which prioritizes written law. Countries with this civil law legal system originated from the codification of law in the Roman empire during the reign of Emperor Justinianus, with the main principle that the law obtains binding force from regulations in the form of laws, where a judge is not free to create new laws with the aim of law is legal certainty.

Canada is a country that has legalized the medical use of marijuana since 2001. Other countries such as Australia since 2016 the Australian government only allows the use of marijuana for medical purposes. Meanwhile, possession and personal use are prohibited. The legal systems of both countries are pluralist, based on the English Common Law system (inherited from the colonies of the British Empire). This legal system is based on the decisions of judges/court decisions that are binding legal principles and rules, where a judge has broad authority to interpret legal regulations and create new legal principles. If the previous court decision does not find the legal principle sought, the judge based on the principles of justice, truth and common sense can decide the case using the method of legal interpretation. The policy of legalizing medical cannabis is based on scientific evidence of patient needs, quality of health care, protection of patient rights as well as in terms of meeting the needs of providers. (Bostwick, 2021)

Historically, cases can be an important source of law in the Common Law tradition, but are only seen as a secondary source of law in the Civil Law tradition. (Cruz, 2010) This confirms that countries with Common Law legal systems have a pragmatic, case-based legal style that functions through logical reasoning whereas countries with Civil Law legal systems have practical implications. Countries with liberal ideologies are predominantly legalizing the use of medical and recreational cannabis when compared to countries with socialist or conservative ideologies.

According to the author, reflecting on the case of Reyndhart Rossy Siahaan and Fidelis, there are pros and cons in the community regarding the use of marijuana for medical purposes. If the purpose of law is to realize legal certainty (Indonesian State with Civil Law Legal System), then the act committed by Fidelis is clearly an act of criminal offense regulated in the legislation on narcotics, but the criminal act is not based on the element of intent / malicious intent to harm others but is based on emergency and force or necessity.

If a similar case occurs and the laws in Indonesia still prohibit the use of marijuana which can be used as a medical treatment, then this is the duty of the judge to take a policy in deciding the case, regulated in Article 5 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which stipulates: "judges and constitutional judges are obliged to explore, follow, and understand the values of law and a sense of justice that live in society."

The government should reformulate the regulation on the classification of narcotics in accordance with science and developments, especially in the medical field for treatment using marijuana.

**CONCLUSION**

Regulations related to Class I Narcotics in Indonesia (with a Civil Law legal system) are regulated in Law Number 35 of 2009 and Regulation of the Minister of Health of the Republic of Indonesia Number 30 of 2023. The attitude of the community in using marijuana as medicine is not a conflict, but an urgent need where this can be a determinant of the law that is enforced. In this case, European countries are at the forefront of legalizing medical cannabis. Some European countries with a Civil Law
legal system have different regulations in legalizing marijuana for medical purposes based on ownership restrictions. Meanwhile, countries with a Common Law legal system establish medical cannabis legalization policies based on the needs of patients, the quality of health care, and the protection of patients' rights. Countries with a Common Law legal system have a pragmatic, case-based legal style that functions through logical reasoning while countries with a Civil Law legal system are more about practical implications.

BIBLIOGRAPHY


