



## Research Article

© 2024 Sumaryanto et al.

This is an open access article licensed under the Creative Commons Attribution-NonCommercial 4.0 International License (<https://creativecommons.org/licenses/by-nc/4.0/>)

Received: 5 April 2024 / Accepted: 18 June 2024 / Published: 05 September 2024

# Illegal Medical Plants in Law Philosophy Study

A Djoko Sumaryanto\*

Lolita Permanasari

Siti Ngaisah

Faculty of Law,  
Surabaya Bhayangkara University,  
Indonesia

\*Corresponding Author

DOI: <https://doi.org/10.36941/ajis-2024-0172>

## Abstract

Researchers are currently working to develop medications to treat several rare diseases. However, several medications for various rare diseases have been ruled illegal under statutory laws, referencing Court Decision Number 1022/Pid.Sus/2019/Pn.Jkt Utr, which restricts the cultivation of drugs in the form of cannabis to cure a patient of a rare disease. This research examines the use of illegal medicinal plants in the context of philosophy and the significance of legalizing these medications. The normative legal research methodology applies in this research. This research employs both a statutory and a case approach. Following the collection of legal materials, legal materials are processed to determine the suitability of the data with the issues examined. The analysis of legal material yields a conclusion based on inductive thinking. According to this research's findings, the judges in Court Decision Number 1022/Pid.Sus/2019/Pn. Jkt Utr prioritizes legal certainty while continuing to penalize anyone who makes use of cannabis as a medical medium. Originality: This article examines important and controversial topics of narcotics and drug law in Indonesia and provides some interesting perspectives and case studies. Philosophically, the imposition of punishments overlooks the nature of medicinal plants for disease healing. Cannabis or marijuana must be legalized as medication in order to fulfil the right to health of people suffering from rare diseases.

**Keywords:** Court Decision; Crime; Drug Abuse

## 1. Introduction

The advancement of science will have an impact on the discovery of numerous kinds of diseases (Zhang et al., 2020). As a result, various efforts needed in order to discover a cure swiftly (Patra et al., 2018). These efforts are undertaken solely to expedite the discovery of a cure for a disease. With the discovery of plants as medicines, the entire world will rejoice since it has discovered a cure for this rare disease. The discovery of plants as medicines to the entire world is emphasized in the document from a legal philosophy perspective. The advancement of science leading to the discovery of plants as medicines is seen as a cause for celebration globally, as it signifies the discovery of a cure for rare diseases. The significance of legalizing medications derived from plants and the importance of

expedited efforts in discovering cures for various diseases.

Since its establishment, the Republic of Indonesia has adopted a Civil Law System that sets the foundation for state administration on the premise of Legality (*Nullum delict Nulla Poena Sine Praevia Lege Peonalli*), called the principle of "no punishment without law." Plants that are considered to be medicinal have been regulated in several circumstances (Drake, Szeto, Paul, Teh, & Ma, 2017), causes these medicinal plants to be prohibited from consumption or labelled illegal (Rocha, Amaral, & Oliveira, 2016). Planting, processing, consuming, and distributing medicinal plants will thus be classified as an act against the law (*wederrechtelijkheid*) (Bonini et al., 2018). Anyone who cultivates these plants will be processed legally by the applicable law because it regulates them. According to the philosophical foundation of the narcotics and psychotropics law, Narcotics, on a positive note, are drugs or materials that have proven helpful in the field of medicine or health services, as well as the advancement of science and technology, on the contrary, it can also cause addiction, which is very risky when misused or used with no proper control and supervision (Saputro, 2021). It means that acts that must be avoided are attempts to abuse these drugs to protect the nation's youth and future.

Two factors prompted the formulation of this law: Narcotics, on a positive note, are drugs or materials that have proven helpful in the field of medicine or health services, as well as the advancement of science and technology; yet, on the contrary, it can also cause addiction, which is very risky when misused or used with no proper control and supervision (Renggong, 2016). This perspective advocates for the legalization of cannabis for medicinal purposes, emphasizing the importance of clear labelling and regulation to prevent drug abuse. Additionally, the potential benefits of cannabis plants as medicine and suggest that cultivating cannabis for medical purposes should not be considered a criminal act.

*Misuse* from the words *mis*, which means wrongly and *use*, which means to employ. Therefore, narcotics or drug abuse is defined as a process or method of misusing narcotics or drugs. Narcotics is synonymous with narcosis, which implies drugs. Some claim that the term narcotics derives from the Greek word *narke*, which means drugged so that one does not feel anything (Jabar & Nurhayati, 2021). Apart from that, some contend that the word narcotics originates from the phrase *narcissus*, which refers to a kind of plant with flowers that are capable of turning people unconscious. According to Article 1, paragraph 1 of Law Number 35 of 2009 Concerning Narcotics (hereafter referred to as the Drug Laws):

"Narcotics are substances or drugs produced from plants or non-plants, both synthetic and semi-synthetic, that can cause a decrease or change in consciousness, loss of taste, pain reduction or elimination, and addiction, and are classified under this Law."

As stated in Article 5 of the Drug Laws, the scope of Narcotics regulation is as follows: The Narcotics Regulations in this Law cover all forms of activities and/or actions related to Narcotics and Narcotics Precursors. Article III, paragraph (1) of the Drug Laws lists three elements, which are as follows:

1. The subject of the crime, i.e., everyone;
2. Types of criminal acts, particularly those committed without rights or against the law:
  - Planting, which refers to putting narcotic seeds in the perforated ground and then covering them with soil;
  - Maintaining, which means the perpetrators of criminal acts guard and care for the narcotic seeds that have been planted;
  - Possessing, which means the perpetrator of the crime has narcotics in the form of plants;
  - Storing, which means keeping Schedule I drugs;
  - Mastering, which refers to owning or maintaining Schedule I drugs; or
  - Providing Schedule I drugs in the form of plants refers to the preparing or acquiring of Schedule I drugs in the form of plants. The form of plants denotes that the perpetrator's Schedule I drugs are in the form of plants.
3. The criminal punishments are:

- Imprisonment for at least 4 (four) years and up to 12 (twelve) years; and
- Fines range from IDR 800,000,000 (eight hundred million rupiahs) to IDR 8,000,000,000 (eight billion rupiahs). According to the statement above, criminal punishments are cumulative, meaning imprisonment and fines are applied concurrently.

For example, Yeni Riawati teaches English at Mukok 3 Public Middle School. Yeni has two children, Yevensius Finito Rosewood (15 years) and Samuel Finito Sumardinata (3 years). Yeni's left leg hurt and could not be moved while she was pregnant with her second kid in 2013; thus, she was sent to the Regional Public Hospital. At the time, the doctor could not make a diagnosis and said it was due to her pregnancy, so Yeni was sent back to her home. Yeni gave birth to her second child generally after that. However, Yeni's condition reappeared in 2014 when the baby was five months old. Yeni was returned to the Regional Public Hospital of Sanggau, where she was diagnosed with Guainain Barred Syndrome and transferred to the Santo Antonius Hospital in Pontianak. Upon arrival at the hospital, Antonius Hospital laboratory results revealed no evidence of the disease. However, a radiological scan (MRI) suggests that Yeni might be suffering from Syringomyelia.

Her family then took Yeni to Bodok, Sanggau Regency, for alternative medicine therapy. Yeni was sent home once her big toe could wiggle again after two weeks. Yeni's condition began to reoccur in 2014. Yeni was transferred back to Sanggau Hospital and diagnosed with psychosomatic (psychiatric condition), after which she was referred to Singkawang Mental Hospital. Since the Singkawang Hospital did not provide inpatient services, Yeni was referred to the St. Vincentius Singkawang Hospital and was judged fit to go home because Yeni discovered no mental illnesses. Yeni returned to the Sanggau Hospital in 2016. This time, the diagnosis was a bladder tumour, and she was referred to Central Hospital Soedarso Pontianak. The Central Hospital Soedarso Pontianak stated that there was no bladder tumour based on the ultrasound results, and Yeni's condition is classified as Syringomyelia based on the MRI results.

Syringomyelia is a disorder in which a cyst filled with fluid (syrinx) grows within the spinal cord (Xu et al., 2021). When not treated immediately and adequately, the cyst will grow and cause damage to the spinal cord. Fidelis Arie Sudarwoto, or Arie, a civil servant in the Sanggau Regency Government, then sought medical therapy for his wife everywhere. Despite medical treatments, alternatives, and spiritual healers, nothing has been able to cure Yeni's disease. Then Arie looked up the internet for information on how to treat Syringomyelia. Finally, Arie discovered an effective treatment for his wife: cannabis extract (cannabis sativa). A real-life occurrence that Arie used as a reference was a syringomyelia patient in Canada who was able to survive on cannabis extract, which prompted Arie to try cannabis extract treatment on his wife eventually. Arie then began cultivating cannabis plants in his backyard. It turns out that treatment with cannabis extract is effective. After consuming the cannabis extract, Yeni found it easier to sleep, increased her appetite, and was able to go back to doing her regular daily routine. Officers from the National Narcotics Board of Sanggau Regency detained Fidelis Arie Sudarwoto (age 36) on Sunday morning, February 19, 2017, after discovering him planting 39 cannabis trees in his residence. Fidelis Arie's efforts to take care of Yeni Riawati had ended at that point. Yeni passed away exactly 32 days following the arrest of Fidelis Arie.

Cases of cannabis being used as medication include Fidelis Arie, who provided cannabis extract to his wife, who suffers from Silingomyelia. Fidelis Arie was sentenced to 8 months in prison and a fine of 1 billion rupiahs, with a subsidiary of 1 month in prison, by the Sanggau District Court Panel of Judges. In terms of the Drug Laws' punishment for Schedule I drugs of marijuana consumers, Article 127, paragraph 1 states: Schedule I drugs for oneself shall be punished with imprisonment for a maximum of 4 (four) years (Renggong, 2016). In addition to the Fidelis Arie case, the discussion of this research will also take a look at 727 district court decisions that have almost the identical sequence of events, namely the planting of cannabis for personal consumption. By imposing prison sentences and punishments, the judge's decision brings the case into compliance with the applicable regulations (Holmes & Griffin, 2020).

The argument presented in the document emphasizes the need for legislators to promptly formulate laws regulating cannabis plants as medication, along with implementing monitoring

mechanisms. Additionally, judges handling cases involving cannabis cultivation for medical purposes are advised to exercise caution and meticulousness when imposing sentences on defendants. Legislators and judges play crucial roles in either decreasing or increasing the number of crimes committed in society, highlighting the importance of structured legal regulation to protect medical cannabis research and usage. This argument underscores the potential impact of medical cannabis legalization policies on health science and the overall well-being of individuals.

According to the summary above, there is a situation in which attempts to find a solution for every rare disease are not precisely correlated to law enforcement efforts for the illicit practice of cultivating medicinal plants. Attempts to discover medications and their laws must be complemented so that medical research and development do not conflict with law enforcement. Colombia, Mexico, the United States, Canada, Germany, Italy, Thailand, South Africa, Australia, Argentina, Ecuador, Peru, Spain, Uruguay, and Cyprus are among the 15 (fifteen) countries that have legalized cannabis plants (Mahestu, Azhar, & Purba, 2020). Furthermore, the Netherlands is one of the countries that has legalized the use and selling of cannabis. These activities, however, are strictly limited to a certain amount for personal consumption. The legalization of cannabis in the Netherlands has resulted in restrictions that limit the rate of its use, and the minimum age to consume cannabis in the Netherlands is 18 years (Ammerman et al., 2015).

Furthermore, cannabis consumers are only permitted to purchase a maximum of 5 grams. Since the 1970s, the Dutch government has imposed a tolerance policy for cannabis use. The Netherlands legalized cannabis for a variety of circumstances, including:

- The use of drugs is permitted under strict regulations;
- The use of cannabis in the healthcare field is the primary focus of the reasons for its legalization;
- The criminalization of cannabis use hurts the government;
- There are rules governing the distinction between "hard and soft drugs."

According to Article 8 Paragraph 1, Schedule I drugs cannot be used as general medicine, and they cannot be used for healthcare services (Widodo, W, & Efendi, 2018). Cannabis can only be used for the advancement of science and technology (Blake & Nahtigal, 2019), as well as diagnostic and laboratory reagents, with the authorization of the Minister and the recommendation of the Head of the Indonesian Food and Drug Authority.

According to the preceding statement, cannabis has both valuable and harmful effects (Subritzky, 2018). However, in Indonesia, the use of cannabis continues to violate current rules and regulations, particularly in the medical field (Bridgeman & Abazia, 2017). In this context, looking into illegal medicinal plants in the medical industry from a legal perspective is worthwhile. A legal issue has been pointed out on how to apply the cannabis plant as medicine in Indonesia and to what extent is the urgency of legalizing cannabis as a medicinal plant for a complete discussion of the problem regarding the cannabis plant as medicine in applying law within Indonesia. Thus, this research aims to examine the use of illegal medicinal plants and the philosophy and urgency of legalizing cannabis as a medicinal plant.

According to the research team's search results, similar research on Medicinal Plants Declared Illegal has been conducted multiple times, most notably the "Use of Medical Cannabis in Rational Medicine and Its Regulation in Indonesia" conducted by Indah Woro and Nur Arfiani. It focuses on the usage of cannabis as medicine as well as the regulation of it in Indonesia. However, the author's research is novel and significant, considering that no research has been identified that mainly looks into medicinal plants declared illegal based on philosophical inquiry and examines the necessity of medically legalizing cannabis medicinal plants.

## 2. Research Methods

In analysing the issues above, the author employs the normative juridical law research methodology, which focuses on examining positive legal research such as regulations, laws, and court decisions. The statutory approach is employed in this legal research, which examines all laws and regulations related to the legal issues under consideration (Deakin, 2018). In order to use the statutory approach method, the researcher must first comprehend the hierarchy and the principles of legislation. In addition to the case approach, which is carried out by reviewing the Indonesian Criminal Code and the Drug Laws in cases relating to legal concerns encountered in cases of criminal abuse of Schedule I drugs in the form of plants. The primary legal material employed is statutory regulations and court decisions. The primary legal material in this research is Drug Law Number 35 of 2009 and the decision of the North Jakarta District Court Number 1022/Pid.Sus/2019/Pn. Jkt. Utr. Textbooks, legal journals, expert opinions, jurisprudence, and expert research results related to the crime of Schedule I drug abuse in the form of plants are a few instances of secondary legal materials.

Documentation is utilized in this study to find legal materials and read and write documents. The North Jakarta District Court decision directory Number: 1022/Pid.Sus/2019/Pn. Jkt. Utr is used in this case. This method is used to access legal materials about the judge's rationale for decisions on criminal cases involving the abuse of Schedule I drugs in the form of plants. The following method is library research, obtaining legal materials by reviewing books and literature. Legal materials on the abuse of Schedule I drugs in the form of plants are also obtained through library research.

In order to obtain legal materials through library research, the following procedures are used:

1. Editing, covers the act of examining and selecting legal materials for completeness and matters that need to be corrected from legal materials compiled in relation to the decision of the North Jakarta District Court Number 1022/Pid.Sus/2019/Pn.Jkt.Utr concerning the abuse of Schedule I drugs in plant form.
2. Organizing, which covers the act of compiling legal materials systematically, within the framework of a more planned explanation, concerning the criminal act of Schedule I drugs in plant form abuse in the decision of the North Jakarta District Court Number: 1022/Pid.Sus/2019/Pn.Jkt.Utr.
3. Analysing, which covers analysing various legal materials into interpretable information relating to the criminal law analysis regarding acts of Schedule I drug abuse in the decision of the North Jakarta District Court Number: 1022/Pid.Sus/2019/Pn.Jkt.Utr concerning the abuse of Schedule I drugs in plant forms. Furthermore, a conclusion is derived from the findings of the legal materials analysis based on the inductive method of thinking, namely a manner of thinking in deriving conclusions based on particular comprehension and then general conclusions.

The selection of normative legal was applied in the paper by examining positive legal research such as regulations, laws, and court decisions related to using illegal medicinal plants in the context of philosophy and the significance of legalizing these medications. This methodology employed a statutory and a case approach to analyse legal materials and derive conclusions based on inductive thinking. The legal analysis research examines various legal materials related to criminal law analysis concerning the abuse of Schedule I drugs in plant form. The analysis of legal materials led to conclusions based on inductive thinking, which is a method of deriving conclusions based on specific comprehension and then general conclusions.

## 3. Analysis and Discussion

### 3.1 Definition of Drug Crime

According to Akande & Gillard (2019) a criminal act is defined as an act that is prohibited by a provision of laws and is punishable by specified crimes for those who violate the prohibition.

Chuasanga & Argo Victoria (2019) also remarked that a criminal act is prohibited under criminal law regulations. A criminal act is an act or omission prohibited by law to protect society and can be punished based on the applicable legal procedure (Spena, 2014). A criminal act is defined in the Indonesian Criminal Code as "an act of doing something that is stated by laws and regulations as an act that is prohibited and punishable." It was also noted that for an act to be labelled a criminal act, it must be against the law. Unless there is justification, every criminal act is considered unlawful. Based on the preceding, it is possible to conclude that a criminal act is illegal for anybody who commits it.

### 3.2 Types of Punishment

Moeljatno (2008) It stated that the term punishment comes from the word *straf*, and the term punished, which comes from the word *gestraf*, is a conventional term, namely a sentence that replaces the word *straf* and is threatened with a criminal sentence to replace the word *gestraf*. If *straf* signifies punishment, then *strafecht* should be interpreted as a type of punishment law. Punishment law involves intentionally imposing unpleasant consequences on individuals who have committed acts that meet certain conditions. It encompasses the deliberate infliction of misery by the state on the perpetrator of an offence.

Punishment refers to significant subjects so that it may convey a broad and variable connotation. The term is frequently heard in the context of law and everyday contexts such as education, morals, religion, and others. As a result, criminal punishment is a more specific term, and it is required to limit the meaning or fundamental meaning that might indicate its distinguishing features.

Frijda (2017) defines punishment as "intentional suffering inflicted on people who commit acts that meet certain conditions." Meanwhile, Smeulers (2008) defines it as the state's deliberate infliction of misery on the perpetrator of the offense. Based on the definition provided above, it is possible to deduce that punishment includes the following elements:

- Punishment, in essence, is an imposition of other unpleasant consequences;
- Punishment is given intentionally by a person or legal entity with power;
- Punishment is imposed on someone who has committed a crime according to law;
- Punishment is a statement of reproach by the state for someone who has violated the law.

The types of punishment listed in Article 10 of the Indonesian Criminal Code consist of principal punishments and additional punishments:

#### 1. Principal Punishments

- Death penalty, one of the oldest types of punishment.
- Imprisonment, the restriction of a convict's freedom of movement, is accomplished by placing a person in a Correctional Institution, which forces them to obey all of the rules and regulations for those who have violated them.
- Detention, which is essentially lighter than imprisonment in terms of deciding a person's sentence.
- Fines, a type of punishment that is the oldest form of punishment, is even older than imprisonment.
- *Enshelterment*, a type of punishment for politicians who commit crimes as a result of due to the ideology to which they belong.

#### 2. Additional Punishments

- Revocation, a type of punishment that involves the removal of life rights as well as civil and constitutional rights.
- Deprivation of certain rights, a type of punishment in the form of confiscation of property earned through criminal acts and everything knowingly utilized in criminal acts.
- Announcement of the court's decision, whose aim is to raise public awareness of criminal acts such as embezzlement, fraud, and others.

### 3.3 Theories and Purposes of Punishment

Punishment theory consists of three theories, including absolute theory, relative theory and combination theory:

1. Absolute theory aims to appease individuals who hold grudges within the community and among those who are wronged or become victims.
2. Relative theory conveys that the imposition of punishment and its implementation must be oriented at least toward special prevention of future recurrence of crimes and general prevention of the possibility of the crimes committed and other crimes occurring again.
3. Combination theory combines the notions of relative and absolute theories

Meanwhile, Article 54 of the Indonesian Criminal Code has determined the purpose of punishments as follows:

- Preventing criminal acts by establishing laws for societal protection;
- Provide criminals with rehabilitation so that they might become productive and valuable citizens;
- Resolving concerns that were caused by criminal acts;
- Restore stability and develop a sense of harmony in society; and
- Release the guilt of the convict.

### 3.4 Definition of Schedule I Drugs in the Form of Plant

In Article 1, paragraph 1, drug law:

“Narcotics are substances or drugs produced from plants or non-plants, both synthetic and semi-synthetic, that can cause a decrease or change in consciousness, loss of taste, pain reduction or elimination, and addiction and are classified under this Law.”

Narcotics is synonymous with narcosis, which means to drug. Some claim that the term narcotics is derived from the Greek word *mark*, which means drugged so that one does not feel anything. Apart from that, some contend that the word narcotics originates from the word *narcissus*, which refers to a kind of plant with flowers that are capable of turning people unconscious. Term narcotics referred to in this context is not narcotics but drugs. In pharmacology, a drug means a type of substance that, when used by someone, will bring specific effects and influences on the consumer's body, such as:

1. Affects consciousness;
2. Provides encouragement that may affect behaviour;
3. These effects might take the form of:
  - Relaxing
  - Stimulant
  - Causes hallucinations (the consumer loses consciousness of time and place and cannot discriminate between imagination and reality).

Drugs, as referred to in Article 6 of the Drugs Law, could be classified into:

- Schedule I drugs;
- Schedule II drugs;
- Schedule III drugs.

Schedule I drugs refer to narcotics that can only be used for scientific development purposes, are not used in therapy, and have a very high potential to cause addiction. In the form of the plant, a seed is planted and cared for on purpose by the planter.

There are three elements listed in the definition above, which include:

- Its consumption;
- Its prohibition;
- Its possibility to cause addiction.

Consumption is using, benefiting from, or doing something with it. The use of Schedule I drugs is justified by scientific advancement. Given this scientific development, it is feasible to identify the various forms of drugs and the substances they contain. Heroin, Cocaine, Opium, Marijuana, Katinon, and MDMA/Ecstasy are a few instances of Schedule I drugs.

### 3.5 Definition of Abuse

Abuse, or misuse, is derived from the word mis, which means wrongly and use, which means to employ. Therefore, drug abuse/misuse can be defined as a process or method of misusing narcotics/drugs. Woodruff & Shillington (2016) explain what is meant by drug abuse is:

1. On a continuous/constant basis;
2. Occasionally;
3. Excessively;
4. Not under the doctor's recommendations (non-medical).

Juridically, the meaning of drug abuser is regulated in Article 1 point 15 Drugs Law: "Drug abuser is a person who consumes drugs with no rights or against the law." Meanwhile, a drug-related crime is a criminal act committed by a criminal subject who consumes substances or drugs produced from plants or non-plants, both synthetic and semi-synthetic, that can cause a decrease or change in consciousness, loss of taste, pain reduction or elimination, and addiction.

There are four elements listed in the definition of drug-related crime above, which include:

1. The criminal act presence;
2. The criminal presence;
3. The substance consumption presence; and
4. The consequences.

Article 111 of the Drug Law specifies the punishments for those who maintain, possess, store, control, or provide Schedule I drugs in the form of plants:

"(1) Any person who plants, maintains, owns, stores, controls, or provides Schedule I drugs in the form of plants with no rights or in violation of the law shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years, as well as a minimum fine of IDR 800,000,000 (eight hundred million rupiah) and a maximum fine of IDR 8,000,000,000 (eight billion rupiah).

(2) If the act of planting, maintaining, possessing, storing, controlling, or providing Schedule I drugs in the form of a plant specified in paragraph (1) weighs more than one kilogram or exceeds five plants, the offender 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 refers in paragraph (1) plus 1/3 (one third)."

Article 111, paragraph (1) of the Drug Law lists three elements, which are as follows:

1. The subject of the crime, i.e., everyone;
2. Types of criminal acts, particularly those committed without rights or against the law:
  - Planting, which refers to putting narcotic seeds in the perforated ground and then covering them with soil;
  - Maintaining, which means the perpetrators of criminal acts guard and care for the narcotic seeds that have been planted;
  - Possessing, which means the perpetrator of the crime has narcotics in the form of plants;
  - Storing, which means keeping Schedule I drugs;
  - Mastering, which refers to owning or maintaining Schedule I drugs; or
  - Providing Schedule I drugs in the form of plants refers to the preparation or acquisition of Schedule I drugs in the form of plants. The form of plants denotes that the perpetrator's Schedule I drugs are in the form of plants.
3. The criminal punishments are:



- Imprisonment for at least 4 (four) years and up to 12 (twelve) years; and
- Fines range from IDR 800,000,000 (eight hundred million rupiahs) to IDR 8,000,000,000 (eight billion rupiahs).

#### 4. Philosophical Analysis of The Judge's Decision

##### 4.1 Sequence of Events

Yeni Riawati teaches English at Mukok 3 Public Middle School. Yeni has two children, Yevensius Finito Rosewood (15 years) and Samuel Finito Sumardinata (3 years). Yeni's left leg hurt and could not be moved while she was pregnant with her second kid in 2013; thus, she was sent to the Regional Public Hospital. At the time, the doctor could not make a diagnosis and said it was due to her pregnancy, so Yeni was sent back to her home. Yeni gave birth to her second child generally after that. However, Yeni's condition reappeared in 2014 when the baby was five months old. Yeni was returned to the Regional Public Hospital of Sanggau, where she was diagnosed with Guillain Barred Syndrome and transferred to the Santo Antonius Hospital in Pontianak. Upon arrival at the hospital, Antonius Hospital laboratory results revealed no evidence of the disease. However, a radiological scan (MRI) suggests that Yeni might be suffering from Syringomyelia.

Her family then took Yeni to Bodok, Sanggau Regency, for alternative medicine therapy. Yeni was sent home once her big toe could wiggle again after two weeks. Yeni's condition began to reoccur in 2014. Yeni was transferred back to Sanggau Hospital and diagnosed with psychosomatic (psychiatric condition), after which she was referred to Singkawang Mental Hospital. Since the Singkawang Hospital did not provide inpatient services, Yeni was referred to the St. Vincentius Singkawang Hospital and was judged fit to go home because no mental illnesses were discovered. Yeni was returned to the Sanggau Hospital in 2016. This time, the diagnosis was a bladder tumour, and she was referred to Central Hospital Soedarso Pontianak. The Central Hospital Soedarso Pontianak stated that there was no bladder tumour based on the ultrasound results, and Yeni's condition was classified as Syringomyelia based on the MRI results.

Syringomyelia is a disorder in which a cyst filled with fluid (syrinx) grows within the spinal cord. When not treated immediately and adequately, the cyst will grow and cause damage to the spinal cord. Fidelis Arie Sudarwoto, or Arie, a civil servant in the Sanggau Regency Government, then sought medical therapy for his wife everywhere. Despite medical treatments, alternatives, and spiritual healers, nothing has been able to cure Yeni's disease. Then Arie looked up the internet for information on how to treat Syringomyelia. Finally, Arie discovered an effective treatment for his wife: cannabis extract (cannabis sativa). A real-life occurrence that Arie used as a reference was a syringomyelia patient in Canada who was able to survive on cannabis extract, which prompted Arie to try cannabis extract treatment on his wife eventually. Arie then began cultivating cannabis plants in his backyard. It turns out that treatment with cannabis extract is effective. After consuming the cannabis extract, Yeni found it easier to sleep, increased her appetite, and was able to go back to her regular daily routine.

Officers from the National Narcotics Board of Sanggau Regency detained Fidelis Arie Sudarwoto (age 36) on Sunday morning, February 19, 2017, after discovering him planting 39 cannabis trees in his residence. Fidelis Arie's efforts to care for Yeni Riawati had ended. Yeni passed away exactly 32 days following the arrest of Fidelis Arie. Sanggau District Court Judge's decision dated August 2, 2017, imposed a prison sentence of 8 (eight) months and a fine of 1 (one) billion rupiah, with a subsidiary prison sentence of 1 (one) month.

Meanwhile, the High Court granted release to convict Fidelis Arie after examining Fidelis' situation, which forced him to provide his wife with cannabis treatment that the state did not provide. Article 48 of the Indonesian Criminal Code states, "Whoever commits an act under the influence of coercive force shall not be punished." Article 25, paragraph 1 of the Universal Declaration of Human Rights declares that "everyone has the right to a standard of living appropriate for health

including nourishment, clothing, housing, health care and social services needed." Similarly, Article 28H paragraphs (1) and (2) provide that: (1) Everyone has the right to live in physical and spiritual prosperity, to have a house and a healthy and pleasant environment, and to have access to health care. (2) To achieve equality and justice, everyone has the right to facilities and special treatment for equal opportunities and benefits.

**Table 1:** Several Judges' verdicts concerning the act of cultivating cannabis plants

NO	NAME	STATE COURT DECISION	SEQUENCE OF EVENTS	VERDICT
1.	Alinur Tanjung	No. 175/Pid.B/2014/PN Ptp (Pasir Pangaraian District Court)	Cultivated 9 cannabis plants on a palm oil plantation for self-consumption as he did not have any money	<b>Imprisonment</b> for 4 (four) years, plus a <b>fine</b> of IDR 8 billion. If the fine cannot be paid, it shall be replaced with one month of imprisonment.
2.	Indra Usmardi (Indra)	No. 111/Pid.Sus/2015/PN Tjp (Tanjung Pati District Court) February 22, 2016	Cultivated cannabis seeds of 59 stems in polybags	<b>Imprisonment</b> for 16 (sixteen) years, plus a <b>fine</b> of IDR 1 billion. If the fine cannot be paid, it shall be replaced with six months of imprisonment.
3.	Rahmad Sukri STR a.k.a. Pak Kodir	No. 83/Pid.Sus/2021/PN Trt (Tarutung District Court) August 16, 2021	Cultivated 2 cannabis plants for self-consumption	<b>Imprisonment</b> for 4 (four) years, plus a <b>fine</b> of IDR 800 million. If the fine cannot be paid, it shall be replaced with one month of imprisonment.
4.	Amos Styven Sunbaru	No. 135/Pid.Sus/2018/PN SoeAMO December 10, 2018	Cultivating cannabis in flower pots at home for self-consumption	<b>Imprisonment</b> for 4 (four) years, plus a <b>fine</b> of IDR 800 million. If the fine cannot be paid, it shall be replaced with four months of imprisonment.
5.	Solehudin Bazri a.k.a. Goweng Bin (Alm) Winata	No. 9/Pid.Sus/2018/PN Idm (Indramayu District Court) February 15, 2018	Cultivated 6 cannabis seeds in his residence for self-consumption	<b>Imprisonment</b> for 4 (four) years, plus a <b>fine</b> of IDR 800 million. If the fine cannot be paid, it shall be replaced with one month of imprisonment.
6.	Jonner Pakpahan a.k.a. Pak Nita	No. 212/Pid.Sus/2020/PN Trt (Tarutung District Court) January 28 2021	Cultivated cannabis plants for self-consumption with no prior authorization	<b>Imprisonment</b> for 4 (four) years, plus a <b>fine</b> of IDR 800 million. If the fine cannot be paid, it shall be replaced with one month of imprisonment.
7.	Alexandro Knehans a.k.a. Claudi	No. 446/Pid.Sus/2015/PN Dpk (Depok District Court) October 21, 2015	Cultivated cannabis seeds in 4 (four) pots and stored one package of dried cannabis in the cupboard for self-consumption, with no prior authorization.	<b>Imprisonment</b> for 6 (six) months, plus <b>Mandated</b> the prisoner to receive treatment and rehabilitation at the Drug Addiction Hospital located at Lapangan Tembak St., number 75, Cibubur, Jakarta.
8.	Uliman Situmorang	No. 170/Pid.Sus/2020/PN Blg (Balige District Court) September 24, 2020	Cultivated cannabis plants for self-consumption with no prior authorization	<b>Imprisonment</b> for 6 (six) years, plus a <b>fine</b> of IDR 1 billion.

**Source:** Decision Directory.(Indonesia, 1967)

According to the preceding verdicts, judges still play the roles of law enforcers and have not yet attained the substantive role of justice enforcers by considering the suspect's conscience. The defendant's verdict did not comply with the law, particularly Article 111 paragraph (1) of Republic of Indonesia Law Number 35 of 2009 concerning drugs. Furthermore, the North Jakarta District Court Panel of Judges implemented decision Number 1022/Pid.Sus/2019/PN. Jkt. Utr regarding the crime of Schedule I drug abuse by imposing a prison sentence of 2 (years). This decision is issued per the minimum provisions of Drug Law Article 111, paragraph 1.

According to that article, the provisions for imprisonment are a minimum of 4 (four) years and a maximum of 12 (twelve) years. Suppose the judge acts by their function as the law's executor. In that case, the decision on the act of cultivating cannabis plants must be up to 4 years in prison, with sanctions commensurate with his actions as specified by law. However, suppose the judge believes that the sanctions contained in the statutory regulations are overly severe for cultivators of cannabis for self-consumption as medicine or for his spouse who suffers from a rare disease. In that case, it prefers community justice to legal certainty, even if the judge is uncertain. Ontologically, imposing severe punishments on cannabis cultivators is a form of sanction that overlooks the nature of medicinal plants to cure diseases. The government, which has the authority to establish laws (legislators), should enact policies that benefit the people regarding medicinal plants. According to

Fakim, It cannot be denied that pharmacognosy has had a chequered history but has evolved over the years to become one of the pillars of areas like pharmacy, medicine and natural product chemistry, amongst others (Gurib-Fakim, 2006).

Epistemologically, cannabis as a medication must be used by its goal, which is to be a medicine. To prevent the occurrence of drug abuse, the labelling of cannabis as a medicine must be unambiguous and firm through supervision and regulation by authorised entities. It must also be explicitly specified in the regulation that cultivating cannabis for medical purposes does not require it to be punished or accompanied by severe supervision. As a result, if law enforcement officials are detected producing cannabis for medical purposes, they will not immediately prosecute the act in question.

Cultivating cannabis for medical purposes does not need to be categorized as a criminal act from an axiological perspective because it is apparent that cannabis plants offer numerous benefits, particularly as medicine. In reality, its application should be expanded for humanitarian purposes. If cannabis plants are abused, both in their cultivation and in their management, community empowerment must be implemented. Indonesia opposes the Legalization and prohibits the circulation of marijuana or cannabis. One of Indonesia's considerations for rejecting marijuana is that cannabis that grows in Indonesia is different from cannabis that grows in other countries such as Europe and America; from the results of research, cannabis in Indonesia (including Aceh) has a high THC content (18%) and low CBD (1%) (Idham & Widjaja, 2021). The THC content is hazardous to health because it is psychoactive. Besides that, Legalization can provide broad access for people to consume marijuana.

Cannabis must be authorized as a medicine, particularly for persons suffering from epilepsy and Syringomyelia, as was the situation with Fedelis' wife. It is due to the presence of cannabidiol (CBD) in the cannabis plant, which can treat a variety of diseases. Cannabidiol (CBD) is effective as a treatment option for those who have failed to respond to conventional medications, as it reduces side effects induced by their use. Furthermore, medical cannabis should be legalized as a drug in order to fulfil the right to health of people suffering from epilepsy and Syringomyelia. The right to health at issue is the right to receive and utilize cannabis-containing epilepsy medications. Another medical benefit that has been widely recognized and validated by several other scientific studies is the Cannabidiol (CBD) content in the cannabis plant for the treatment of men, women, and children with epilepsy (Friedman & Devinsky, 2015). This arrangement is implemented by amending Article 8 paragraph (1) of Law Number 35 of 2009 concerning Drugs with the formulation "Schedule I drugs are prohibited from being used for the benefit of health services, with the exception of cannabis for the treatment of epilepsy," and Article 102 paragraph (1) of Law Number 36 of 2009 concerning health with the formulation "the use of pharmaceutical preparations in the form of cannabis classified as Schedule I drugs for the treatment of epilepsy.", as well as changing the definition of the cannabis plant in the Appendix of Minister of Health Regulation No. 9 of 2022 concerning Changes in Drug Scheduling and Classifications with the formula "all plants of the genus Cannabis, cannabis derivatives in the form of cannabidiol (CBD), and all parts of the plant including seeds, fruit, straw, processed cannabis plants or cannabis plant parts including resin and hash."

Cannabis for medicinal purposes has much potential in rational medicine. The lack of medical cannabis research in Indonesia is owing to the inadequacies of legal policies that protect it—medical cannabis research and usage structured legal regulation to protect everyone, from researchers to medical devices. Medical cannabis legalization policies shall have a significant impact on health science. However, in order to achieve *ius constituendum*, the use of medical cannabis in rational medicine needs to consider several factors in the aggregate so that it does not backfire and harm the state and society.

The challenges of legalizing medicinal cannabis in a conservative legal environment in Indonesia include resistance due to traditional views on drug use and concerns about potential societal impacts. The potential concern of medicinal cannabis abuse in Indonesia lies in the need for clear regulations and strict supervision to prevent misuse and ensure that cannabis is used solely for

medicinal purposes. The conservative legal environment in Indonesia may pose challenges in legalizing cannabis due to traditional views on drug use and concerns about potential societal impacts. Additionally, the lack of comprehensive legal frameworks and regulations governing the use of medicinal cannabis may hinder proper control and monitoring of its distribution and usage, potentially leading to abuse.

Regarding the author's study of medicinal plants regarded as illegal based on legal philosophy, illegal plants are undoubtedly essential, even though they are stated to be illegal plants according to laws and regulations. Ontologically, imposing severe punishments on cannabis cultivators for using cannabis as medicine is a type of punishment that overlooks the nature of medicinal plants to cure disease. The government, which has the authority to make laws (legislators), should enact policies that benefit the people regarding medicinal plants. Cannabis as a medication must be used by its function, which is to be a medicine, from the perspective of epistemology. To prevent the occurrence of drug abuse, the classification of cannabis as a medicine must be unambiguous and firm through supervision and regulation by authorized entities. Cultivating cannabis for medical purposes does not need to be categorized as a criminal act from an axiological perspective, considering it is apparent that cannabis plants offer numerous benefits, particularly as medicine. Instead, it shall be developed for humanitarian purposes and supported by all parties. Illegal medicinal plants, particularly for persons suffering from epilepsy and Syringomyelia, such as Fedelis' wife, should be immediately legalized because the cannabidiol (CBD) contained in cannabis is capable of treating the disease. Furthermore, medical cannabis must be legalized as a drug in order to fulfil the right to health of people suffering from epilepsy and Syringomyelia. Medical cannabis has tremendous potential for treatment, yet research on it in Indonesia is still limited due to inadequate legal rules protecting it.

## 5. Conclusion

In Indonesian law, judges prioritize legal certainty while nevertheless imposing sanctions on anyone who makes use of cannabis as a treatment medium. By philosophical law, the court's decision is an ontologically severe consequence for cannabis growers who pay little attention to the nature of medicinal plants to cure disease. Cannabis as a medicine must be used for its purpose as a drug, according to epistemology. Growing cannabis for medical purposes does not need to be classified as a criminal act from an axiological standpoint because it is apparent that cannabis plants give numerous benefits, particularly as medicine. The cannabis plant ought to be legalized as medication, especially for persons with epilepsy and Syringomyelia, similar to Fedelis's wife's experience, because the Cannabidiol (CBD) contained in cannabis may cure the disease.

Furthermore, medical cannabis needs to be legalized as a drug in order to fulfil the right to health of people suffering from epilepsy and Syringomyelia. However, due to insufficient regulations, studies regarding medical cannabis in Indonesia are currently limited. By the conclusions, legislators should immediately formulate laws regulating cannabis plants as medication, along with monitoring devices. Meanwhile, the researchers recommend that judges who hear cases involving cannabis cultivation for medical purposes be more cautious and meticulous in imposing a sentence on the defendant. However, legislators and judges play an essential role in decreasing or increasing the crimes committed in society.

## References

- Akande, D., & Gillard, E.-C. (2019). Conflict-induced Food Insecurity and the War Crime of Starvation of Civilians as a Method of Warfare. *Journal of International Criminal Justice*, 17(4), 753-779. <https://doi.org/10.1093/jicj/mqz050>
- Ammerman, S., Ryan, S., Adelman, W. P., Levy, S., Ammerman, S. D., Gonzalez, P. K., ... O'Brien, R. F. (2015). The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update. *Pediatrics*, 135(3), e769-e785. <https://doi.org/10.1542/peds.2014-4147>

- Blake, A., & Nahtigal, I. (2019). The evolving landscape of cannabis edibles. *Current Opinion in Food Science*, 28, 25–31. <https://doi.org/10.1016/j.cofs.2019.03.009>
- Bonini, S. A., Premoli, M., Tambaro, S., Kumar, A., Maccarinelli, G., Memo, M., & Mastinu, A. (2018). Cannabis sativa: A comprehensive ethnopharmacological review of a medicinal plant with a long history. *Journal of Ethnopharmacology*, 227, 300–315. <https://doi.org/10.1016/j.jep.2018.09.004>
- Bridgeman, M. B., & Abazia, D. T. (2017). Medicinal Cannabis: History, Pharmacology, And Implications for the Acute Care Setting. *P & T: A Peer-Reviewed Journal for Formulary Management*, 42(3), 180–188.
- Chuasanga, A., & Argo Victoria, O. (2019). Legal Principles Under Criminal Law in Indonesia Dan Thailand. *Jurnal Daulat Hukum*, 2(1), 131. <https://doi.org/10.30659/jdh.v2i1.4218>
- Deakin, S. (2018). The Use of Quantitative Methods in Labour Law Research. *Social & Legal Studies*, 27(4), 456–474. <https://doi.org/10.1177/0964663918760385>
- Drake, P. M. W., Szeto, T. H., Paul, M. J., Teh, A. Y.-H., & Ma, J. K.-C. (2017). Recombinant biologic products versus nutraceuticals from plants - a regulatory choice? *British Journal of Clinical Pharmacology*, 83(1), 82–87. <https://doi.org/10.1111/bcp.13041>
- Friedman, D., & Devinsky, O. (2015). Cannabinoids in the Treatment of Epilepsy. *New England Journal of Medicine*, 373(11), 1048–1058. <https://doi.org/10.1056/NEJMr1407304>
- Frijda, N. H. (2017). *The Laws of Emotion*. Psychology Press. <https://doi.org/10.4324/9781315086071>
- Gurib-Fakim, A. (2006). Medicinal plants: Traditions of yesterday and drugs of tomorrow. *Molecular Aspects of Medicine*, 27(1), 1–93. <https://doi.org/10.1016/j.mam.2005.07.008>
- Holmes, O. W., & Griffin, T. (2020). *The Common Law*. Routledge. <https://doi.org/10.4324/9780429338908>
- Idham, & Widjaja, G. (2021). Legal Politics of Medical Cannabis in Indonesia. *Multicultural Education*, 7(6), 297–300. <https://doi.org/10.5281/zenodo.4975526>
- Indonesia. Kitab Undang-Undang Hukum Perdata. , Pub. L. No. 1820, Angewandte Chemie International Edition, 6(11), 951–952. (1967). Indonesia.
- Jabar, R., & Nurhayati, S. (2021). The Effect of Drug Hazard Counselling in Improving Public Knowledge Level of Hazardous Drugs. *SPEKTRUM: Jurnal Pendidikan Luar Sekolah (PLS)*, 9(4), 455. <https://doi.org/10.24036/spektrumpls.v9i4.114106>
- Mahestu, G., Azhar, D. A., & Purba, V. (2020). Pandanga Remaja Terhadap “Legalisasi Ganja” di Indonesia. *JOURNAL OF SCIENTIFIC COMMUNICATION (JSC)*, 1(2). <https://doi.org/10.31506/jsc.vi1.7805>
- Moeljatno. (2008). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Patra, J. K., Das, G., Fraceto, L. F., Campos, E. V. R., Rodriguez-Torres, M. del P., Acosta-Torres, L. S., ... Shin, H.-S. (2018). Nano based drug delivery systems: recent developments and future prospects. *Journal of Nanobiotechnology*, 16(1), 71. <https://doi.org/10.1186/s12951-018-0392-8>
- Renggong, R. (2016). *Hukum Pidana Kasus* (1st ed.). Jakarta: Kencana.
- Rocha, T., Amaral, J. S., & Oliveira, M. B. P. P. (2016). Adulteration of Dietary Supplements by the Illegal Addition of Synthetic Drugs: A Review. *Comprehensive Reviews in Food Science and Food Safety*, 15(1), 43–62. <https://doi.org/10.1111/1541-4337.12173>
- Saputro, H. J. (2021). KEBIJAKAN PUBLIK TERHADAP PENGGUNA NARKOBA YANG DIHUKUM PASAL 127 AYAT (1) UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA. *Jurnal Ilmiah Publika*, 9(1), 25–41.
- Smeulers, A. (2008). Perpetrators of international crimes: towards a typology. *Supranational Criminology: Towards a Criminology of International Crimes*, 6, 233–264.
- Spena, A. (2014). Iniuria Migrandi: Criminalization of Immigrants and the Basic Principles of the Criminal Law. *Criminal Law and Philosophy*, 8(3), 635–657. <https://doi.org/10.1007/s11572-013-9229-6>
- Subritzky, T. (2018). Beyond deficit and harm reduction: Incorporating the spectrum of wellness as an interpretive framework for cannabis consumption. *International Journal of Drug Policy*, 60, 18–23. <https://doi.org/10.1016/j.drugpo.2018.07.013>
- Widodo, I. G., W, E. P., & Efendi, J. (2018). Law Liability of Construction Failure in Indonesia. *International Journal of Civil Engineering and Technology*, 9(11), 2363–2371.
- Woodruff, S. L., & Shillington, A. M. (2016). Sociodemographic and drug use severity differences between medical marijuana users and non-medical users visiting the emergency department. *The American Journal on Addictions*, 25(5), 385–391. <https://doi.org/10.1111/ajad.12401>
- Xu, N., Xu, T., Mirasol, R., Holmberg, L., Vincent, P. H., Li, X., ... Sundström, E. (2021). Transplantation of Human Neural Precursor Cells Reverses Syrinx Growth in a Rat Model of Post-Traumatic Syringomyelia. *Neurotherapeutics*, 18(2), 1257–1272. <https://doi.org/10.1007/s13311-020-00987-3>
- Zhang, L., Song, J., Kong, L., Yuan, T., Li, W., Zhang, W., ... Du, G. (2020). The strategies and techniques of drug discovery from natural products. *Pharmacology & Therapeutics*, 216, 107686. <https://doi.org/10.1016/j.pharmthera.2020.107686>