International Journal of Business, Law, and Education
E-ISSN : 2747-134X
Publisher: IJBLE Scientific Publications Community Inc.
Volume 5, Number 2, 2024
https://ijble.com/index.php/journal/index

Comparative Study of Legal Regulations on Cannabis in the Netherlands with Indonesia

Muh Irham Rais[1], Faizin Sulistyo[1], Patricia Audrey Ruslijanto[3]
Faculty of Law, Brawijaya University Malang, Indonesia[123]
Email: irhamraismuh@gmail.com

ABSTRACT
Cannabis as a plant that has the potential for medical use, has attracted the attention of various countries in regulating its laws. This study aims to conduct a comparison between the legal regulation of cannabis in the Netherlands and Indonesia, especially in the context of medical utilization. The global paradigm shift towards the use of cannabis for medical purposes is one of the driving factors to understand the differences and similarities in legal approaches between the two countries. Using a comparative analysis method, this study identifies significant differences in the approach to cannabis regulation between the two countries and analyzes the urgency of legal reform in Indonesia. Factors such as patient safety, the development of medical research, and the Netherlands' experience in implementing medical cannabis regulation are important points for consideration of legal reform in Indonesia. The results of this study are expected to contribute to the discussion of legal reform in Indonesia regarding the medical use of marijuana. The conclusions and recommendations generated from this study are expected to be a foothold for wise decision-making in formulating legal policies related to cannabis in order to increase its utilization in the medical field in Indonesia.

Keywords:
Medical Marijuana Use, Comparative Regulation of Marijuana, Marijuana Regulation in Indonesia

INTRODUCTION

Cannabis sativa in recent years has become an interesting topic of discourse in various perspectives, including from a medical and legal perspective, especially in the case of Fidelis where he used marijuana as a medicine for his wife who suffered from Syringomyelia, after one month BNN arrested Fidelis' wife died because the marijuana used as an alternative medicine could not be consumed by his wife, then Sutikno and Iqbal Munafi in Banyumas who were caught for growing marijuana in a small pot in their yard, he used the marijuana to treat his mother who was sick with diabetes (Pangkey and Rahaditya 2019, 773).

Cannabis is the most widely used illegal plant worldwide, whether for industrial, medical, and even recreational purposes. Historically, the plant was most likely first cultivated and originated in Central Asia or Southeast Asia and then spread throughout the world. According to DEA (Drug Enforcement Administration) intelligence reports, more than 300 terms have been used to refer to the products of this plant, whose Latin name is Cannabis Sativa, such as African Bush, Yellow Submarine, 420, and many more.

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 countries.

Launching through the official website of the North Sumatra BNN, that Cannabis Sativa is the Latin name of marijuana where the reference in this term is the top of the leaves, flowers and stems that come from plants that are processed by cutting, drying and chopping and are usually used in the form of cigarettes. Cannabis Sativa is one type of drug among three other types, namely Cannabis Indica and Cannabis Ruderalis. The three types of marijuana have different tetrahydrocannabinol (THC) content. Cannabis Sativa or cannabis is often used for medicinal and psychotropic plants, this plant is thought to have experienced its first evolution in Central Asia, namely Tibet. Cannabis Sativa has a high enough THC content that it is rarely used for medical purposes, even so Cannabis Sativa is still used in ayurvedic medicine or treatment methods originating from India. This method of treatment has benefits for fighting signs of depression, ADD, fatigue and psychological disorders.

Since then, views and research related to marijuana have increasingly gained a place of their own in Indonesia. Various views related to the use of marijuana in medical terms continue to penetrate the hallways of discussion in this country, especially in developed countries, research and development of medical marijuana is real. Research and journals on the benefits of marijuana or countries that legalize marijuana for medical reasons will be found easily on the Google search engine and even hundreds of them. In addition, support for marijuana research was also proclaimed by the Constitutional Court (MK). The Constitutional Court understands and has a high sense of empathy for people with certain "phenomenal" diseases which according to the petitioners can be cured if they do drug therapy. Therefore, the Court encourages the advancement of scientific research on class I narcotics.

Asa related to the future of cannabis research in Indonesia almost met a bright spot for the breakthrough of the ministry of agriculture which included cannabis as a list of medicinal plants fostered by the ministry of agriculture as stipulated in the Decree of the Minister of Agriculture of the Republic of Indonesia No. 104 of 2020 concerning commodities fostered by the Ministry of Agriculture, but a few days later the regulation was revised and the result was that cannabis, which in the aquo rules before being revised included medicinal plants fostered by the ministry of agriculture, was abolished because it was considered contrary to the legal norms above, and the hope of cannabis to be researched in Indonesia had to be dashed. Speaking of the way our laws treat marijuana, it seems that Indonesia needs to learn a lot from the Netherlands, whose criminal law system is the same as Indonesia. In addition to the similarity of the system, the Netherlands is also more advanced in the culture of law, so it is not wrong if we look back to the Netherlands. Legal culture itself defines the role of society towards its laws. Legal culture in society can be categorized into 3 types, namely parochial legal culture (obeying and submitting to community leaders), subject legal culture (starting to be aware of the law and may disagree with the leader but do not dare to take action and bring change), and participant legal culture (active society because it feels entitled and has an obligation to participate in the formation of laws for public purposes).

Legal history argues that there is no universal law as each nation has its own language, customs and laws. These laws are formed through a long process and do not come into being in an instant. This law then becomes Volkgeist (the soul of the

people) and evolves from primitive society to more advanced law in modern civilization.

In order to create perfect regulations that can fulfill the ideals of law, namely certainty, usefulness and justice, careful research and analysis of Cannabis Sativa is needed. If our country is inadequate or requires other references in conducting research, then legal comparison with laws in other countries can be one of the effective solutions to conduct research.

METHOD

This research applies normative juridical research methods, namely legal research based on library research, with a statutory approach, case approach, and legal comparison.

This research will use two kinds of theories both legal and non-legal in analyzing the issues raised. The following will describe these theories:

1. Political Theory of Law

Padmono Wahojo defines legal politics as a State Institution policy that is fundamental in determining the direction, form and content of the law to be formed and about what is used as a criterion for punishing something. Thus, legal politics according to Padmo Wahjono is related to the law that applies in the future (Ius Constituendum) (Syaukani and Thohari 2004, 30). According to T. Mohammad Radhie's point of view, Legal Politics is a statement of the wishes of the state authorities regarding the applicable law in their territory, and regarding the direction of legal development that will be built (Syaukani and Thohari 2004, 40). The statement “regarding the applicable law in its territory” contains the meaning of the current law (Ius Contitutum) and “regarding the direction of legal development that is built” contains the meaning of the law that applies in the future (Ius Constituendum).

Prof. Satjipto Rahardjo defines legal politics as the activity of choosing and the means to be used to achieve a social goal with certain laws in society whose scope includes answers to several fundamental questions, namely (Rahardjo 2014, 339):

a. What goals are to be achieved through the existing system;
b. What methods and which ones are considered the best to be used in achieving these goals;
c. When and through what means the law should be changed;
d. Can a standardized and established pattern be formulated to assist in deciding the process of selecting goals and ways to achieve these goals properly.

From various understandings or definitions, it has the essence which is the same as the definitions described above that in general legal politics is a legal policy related to laws that will be enacted or not enacted to achieve the ideals and goals of the state. In this case the law can be positioned as a tool (tools) to achieve the ideals and goals of the state.

2. Theory of Legal Benefit (Utilitarianism)

Gustav Radbruch in his perspective to realize a legal goal needs to establish the principle of priority over three values of legal objectives, namely: 1. Legal justice; 2. Legal expediency; and 3. Legal certainty. This priority principle needs to be established because in reality these legal objectives often clash with each other and do not produce satisfactory results in solving legal problems" (Erwin 2012, 122).

The theory of utilitarianism was first introduced by Jeremy Bentham, a philosopher, economist, jurist and legal reformer, who has the ability to compile the

principle of usefulness or utility (utility) into an ethical dogma, known as the utilitarianism school or utilitis school. Jeremy Bentham defined it as the property of things to tend to produce pleasure, good, or happiness, or to prevent damage, suffering, or evil, as well as unhappiness on the part of those whose interests are considered. According to Bentham, nature has placed humans under the rule of two sovereign masters, namely pain and pleasure.

This theory arose against the background of the problem faced by Bentham at that time was how to assess the good and bad of a social, political, economic, and legal policy morally. In other words, how to assess a public policy that has an effect on many people morally. Bentham found that the most objective basis is to see whether a particular policy or action brings benefits or useful results or, on the contrary, causes harm to the people involved. This was a manifestation of the reaction to the theory of natural law conception that was popular in the eighteenth and nineteenth centuries. Jeremy Bentham criticized the conception of natural law, arguing that natural law is neither vague nor fixed. Bentham presented a periodical movement from the abstract, idealistic, and a priori to the concrete, materialist, and fundamental.

According to Jeremy Bentham, the purpose of law is to provide as much benefit and happiness as possible to as many people as possible (Kansil 2018, 44). If it is related to what Bentham stated to the law, then the good and bad of the law must be measured by the good and bad consequences produced by the implementation of the law itself. A new legal provision can be judged good, if the consequences resulting from its application are good, maximum happiness, and reduced suffering. And vice versa, it is considered bad if its application produces unjust consequences, losses, and only increases suffering. The main principle of this theory is about the purpose and evaluation of law.

RESULTS AND DISCUSSION

1. The History of Marijuana Prohibition and Criminalization in Indonesia

Law is not recognized as an institution that is absolutely final, but is determined by its ability to serve humans. In the context of such thinking, law is always in the process of becoming. Law is an institution that continuously builds and changes itself towards a better level of perfection. The quality of perfection here can be verified in the factors of justice, welfare, concern for the people and others. This is the essence of "law as a process, law in the making" (Ayunda and Vina 2021, 335). Law is an institution that aims to lead humans to a life that is just, prosperous and makes humans happy (Rahardjo 2009, 102). Departing from his opinion, we must treat marijuana fairly in the eyes of the law for the progress of this nation in realizing cheap treatment for the whole people through the proper use of marijuana. The international world has given a bright light through research and the rule of law that advances marijuana as a medicinal plant, then it remains only how Indonesia is able to open up research space on marijuana for medical needs, of course it is done with a legal breakthrough that advances to regulate marijuana and its products.

Pramoedya Ananta Toer said that an educated person must be fair in mind. Departing from his words, the author, who is a law student, endeavors to treat marijuana fairly from the mind through scientific arguments. In Indonesia through Law No. 35 of 2009 concerning Narcotics, in article 8 paragraph 1 of the aquo regulation marijuana has been judged and completely prohibited from use in the world of health, even positive law in Indonesia provides a very difficult space to access for research

on marijuana. Various studies say marijuana contains substances that are very useful for the medical world and can be used as a cheap alternative medicine, surely the author is unable to mention one by one in detail but it should be a concern in the book the saga of the cannabis tree there are at least 18 types of diseases that can be cured through the use of marijuana and in research conducted by Robbert J. Delorenzo from Virginia Commonwealth Universty marijuana has proven effective in preventing seizures from epilepsy. Reporting from tirto.id in 2020 the UN narcotics commission (CND) announced that marijuana and its derivatives had been removed from list IV of the 1961 single convention on narcotics, which means the UN officially removed marijuana from the list of dangerous drugs (Putri 2020). Reflecting on the existing legal facts that the UN Convention aquo has been ratified into Law No. 8 of 1976 concerning the ratification of the 1961 single convention on narcotics, and included in the preamble of Law No. 35 of 2009 concerning narcotics. But unfortunately, Indonesia is less responsive to the changes in the convention and seems indifferent. The assumption that has been considering marijuana as a dangerous drug has been completely refuted through the revocation of the aquo convention and various existing literature. Departing from the arguments above, let's build a coherent line of thought as a comparison between the rules that prohibit marijuana and the rules that regulate the circulation of alcoholic beverages.

Non-narcotic addictive substances are basically allowed to be circulated in Indonesia, for example cigarettes and alcohol are classified as non-narcotic addictive substances and are allowed to be circulated in Indonesia. Various legal/political legal engineering finally guarantees its circulation without fear of being banned. If the law in Indonesia has a perspective

Because the revocation of marijuana from the narcotics group by the United Nations has the consequence that now marijuana is only something that contains non-narcotic addictive substances. So, marijuana is basically allowed to circulate in Indonesia. because the position of marijuana is now at the same level as cigarettes and alcohol as a non-narcotic addictive substance. Actually, now it is only the addictive nature of marijuana that is fortifying it to be legalized for medical purposes. The argument underlying the prohibition of the circulation of marijuana is its addictive nature and the assumption that marijuana is not useful at all, so there is an irregularity because in Indonesia there are regulations that guarantee the circulation of alcoholic beverages and cigarettes which in fact contain addictive and very dangerous substances, even the rules related to these two things are enshrined starting from the Law, Ministerial Regulations, to the level of regional regulations that smooth the circulation of both. In fact, without the need to open more references related to the use of alcohol (alcohol) and cigarettes, we have come to the conclusion that alcohol (alcohol) and cigarettes are things that contain addictive substances and are bad for health. Reporting from the tempo newspaper 1 in 20 deaths in the world is caused by alcohol consumption(Tempo 2018) even so alcohol is even made rules to ensure its circulation. If regulators consistently prohibit the circulation of something that contains addictive substances, alcohol and cigarettes should also be prohibited from circulation.

Comparison of laws related to marijuana in Indonesia with the Netherlands Basically, the criminal law system in Indonesia and the Netherlands is the same because Indonesia adopted the legal system from the Netherlands, including the criminal law system, but in this case Indonesia and the Netherlands have far differences in viewing marijuana in the eyes of the law. Indonesia through the

Narcotics Law has clearly prohibited any use of marijuana in medical terms or as a means of recreation. Although many countries have begun to open up to the use of marijuana, the stigma of marijuana in Indonesia still remains unchanged and even the government seems reluctant to update the rules related to marijuana. The rules related to marijuana in the Netherlands are fairly loose and are much different from those in Indonesia. In the Netherlands cannabis began to be decriminalized in 1976, at that time private possession of less than 5-grams of cannabis was not a problem (Hartman 2021). Even in 2003 the Dutch government legalized marijuana for medical purposes, the Dutch Minister of Health at that time said in public that marijuana had proven to be useful for the treatment of several diseases (CNN.com 2003).

2. Usage rules

In the Netherlands regarding the use of marijuana, there are very strict rules where marijuana users must be over 18 years old and cannot use marijuana in open places such as parks or bus stops, for places to use marijuana, apart from being able to be used at home, it can also be done in cofeeshops that have been registered as places to use marijuana.

3. Sales rules

Regarding the sale of marijuana in the Netherlands, it is also strictly regulated where only cofeeshops that have been registered for the process of buying and selling marijuana and in pharmacies, even then, the place where the marijuana is sold cannot have a stock of more than 250-grams of marijuana, if it exceeds that it will be dealt with strictly by giving fines and revoking distribution licenses. In addition, marijuana sellers are also not allowed to sell it to tourists or to residents under the age of 18.

4. Ownership rules

Possession of marijuana for individuals in the Netherlands is not allowed to exceed 5-grams and is not allowed to grow their own marijuana at home. If these rules are violated, the violator will be subject to strict sanctions in the form of fines and social sanctions to clean the plant for some time or repair social facilities. If you look further, the sanctions given are very interesting because the Dutch government does not apply criminal sanctions, this is because the Dutch government has begun to change its views regarding the form of sanctions and strongly avoids criminal sanctions which they consider very ineffective.

The rule of law regarding marijuana in the Netherlands and Indonesia is very much different even though the criminal law system is the same, this difference occurs because the perspective of the two countries is very different regarding marijuana. In Indonesia, marijuana users will definitely deal with the law, unlike the Netherlands, which considers marijuana use not a criminal act.

CONCLUSION

In the opinion of the author, regulators should open their horse glasses and stop labeling marijuana as something bad, because with the improvement of the laws regulating marijuana it is not impossible that it will bring such great benefits to the Indonesian people, especially seeing the benefits of marijuana which must be very helpful in the medical world, the justice of our perspective on marijuana must of course start from how we treat marijuana fairly before the law. Once again Indonesia must reform the laws that regulate marijuana because the current rules are outdated, irrelevant and using.

Then, the Netherlands allows the circulation of marijuana but with strict rules in its circulation and with very rigid restrictions, in contrast to Indonesia which completely prohibits the circulation of marijuana and the use of marijuana

Reference

Ayunda, Rahmi, and Vina Vina. 2021. "Peluang Dan Tantangan Legalısası Penggunaan Ganja Untuk Kepentıngan Medıs Dı Indonesıa Dıtınjau Darı Perspektıf UU Kesehatan." *CoMBInES - Conference on Management, Business, Innovation, Education and Social Sciences* 1 (1): 331–40. https://journal.uib.ac.id/index.php/combines/article/view/4457.

CNN.com. 2003. "Dutch Back Prescription Cannabis." 2003. https://edition.cnn.com/2003/WORLD/europe/09/01/dutch.cannabis.reut/.

Erwin, Muhamad. 2012. *Filsafat Hukum : Refleksi Kritis Terhadap Hukum*. Jakarta: Rajawali Pers.

Hartman, Ben. 2021. "The Legal Status of Weed in the Netherlands and Amsterdam: What Does the Law Actually Permit?" The Cannigma. September 26, 2021. https://cannigma.com/regulation/marijuana-laws-netherlands/.

Kansil, C. S. T. 2018. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai pustaka. //digilib.iainpalopo.ac.id%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D25056%26keywords%3D.

Pangkey, Karen Abigael, and R. Rahaditya. 2019. "Kebijakan Hukum Pidana Penggunaan Narkotika Golongan 1 (Satu) Jenis 'Ganja' Untuk Kesehatan." *Jurnal Hukum Adigama* 2 (2): 764–87. https://journal.untar.ac.id/index.php/adigama/article/download/6628/4458.

Putri, Restu Diantina. 2020. "PBB Cabut Ganja dari Narkoba Berbahaya, Izinkan untuk Obat Medis." tirto.id. December 3, 2020. https://tirto.id/pbb-cabut-ganja-dari-narkoba-berbahaya-izinkan-untuk-obat-medis-f7Ha.

Rahardjo, Satjipto. 2009. *Hukum progresif: sebuah sintesa hukum Indonesia*. Yogyakarta: Genta publishing.

———. 2014. *Ilmu Hukum*. Bandung: Citra Aditya Bakti.

Syaukani, Imam, and A. Ahsin Thohari. 2004. *Dasar-Dasar Politik Hukum*. Jakarta: Raja Grafindo Persada.

Tempo. 2018. "Alkohol Sumbang Kematian 1 Dari 20 Orang." Tempo. September 27, 2018. https://koran.tempo.co/read/kesehatan/435413/alkohol-sumbang-kematian-1-dari-20-orang.