



## LEGAL IMPLICATIONS OF DRUG USE IN TRADITIONAL MEDICINE BASED ON A HEALTH LAW PERSPECTIVE

Mariduk Lumban Tobing\*<sup>1</sup>, Muhammad Azhali Siregar\*<sup>2</sup> Henry Aspan\*<sup>3</sup>.

<sup>123</sup>Master of Laws, Panca Budi Development University

E-mail: [tobingokto@gmail.com](mailto:tobingokto@gmail.com) [azhalisiregar@dosen.pancabudi.ac.id](mailto:azhalisiregar@dosen.pancabudi.ac.id) [aspanhenry@yahoo.com](mailto:aspanhenry@yahoo.com)

Article Info	Abstract
<p><b>Article History</b> Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p><b>Keywords:</b> <i>arcotics, Traditional Medicine, Health Law.</i></p>	<p>The use of kratom and cannabis in traditional medicine has long been practiced, but it has now become the subject of debate due to the risk of misuse. Several countries, such as Thailand, have legalized cannabis for medical purposes, considering economic stability and public health. However, this legalization faces challenges, particularly concerning the increase in narcotics abuse. Therefore, it is essential to conduct a comprehensive evaluation of legalization policies, balancing the medical benefits and the risks of misuse, with strict regulation and effective oversight. In Indonesia, the legalization of cannabis remains a sensitive issue, strictly governed by Law No. 35 of 2009. Based on data on narcotics seizures, including cannabis and Methamphetamine, rational criminal policies are crucial to controlling drug circulation and ensuring that legalization, if implemented, supports both public health and economic welfare.</p>

### I. INTRODUCTION

The use of drugs in various forms of treatment, including traditional medicine, has become a controversial topic and has sparked various debates among health practitioners, law enforcement, and the public, one of which is the pros and cons of legalizing medical marijuana. The use of medical marijuana for treatment is considered necessary to be considered carefully by considering various aspects so as not to cause negative impacts that can harm the state and society.

The use of traditional medicine in Indonesia is part of the culture and is widely used by the community, although its effectiveness and safety have not been fully proven through research. Natural resources as traditional medicine ingredients need to be explored, researched, and developed for optimal utilization.

In some cultures, the use of narcotic plants is considered part of legitimate medicinal practices and has been used for centuries. An example is Kratom (*Mitragyna speciosa*) originating from West Kalimantan and exported as a traditional herb. Containing the alkaloids mitragynine, mitraphylline, and 7-hydroxymitragynine, kratom acts as a stimulant in small doses and a sedative in large doses. Currently, there is no legal regulation regarding kratom in Indonesia.

In Indonesia, various indigenous communities have long used plants such as

kratom leaves, datura (*Brugmansia sp.* or *Datura sp.*), cannabis leaves (marijuana) in traditional medicine to relieve pain or overcome sleep disorders. One example is the policy of the Ministry of Agriculture to determine kratom leaves as a medicinal plant commodity, but in 2018 the National Narcotics Agency (BNN) issued a recommendation letter requesting that kratom and its products be included in the category of Narcotics Class I with a five-year transition period. This means that starting in 2023, kratom leaves will be considered Narcotics Class I and their use by the public is prohibited. This policy is supported by BPOM Circular Letter Number HK.04.4.42.421.09.16.1740 of 2016, which prohibits the use of kratom in food supplements and traditional medicines due to the content of mitragynine alkaloids which have a stimulant effect in low doses and a sedative-narcotic effect in high doses.

Law No. 17 of 2023 on Health protects traditional medicine as part of the national health system, but further analysis is needed regarding the interaction with Law No. 35 of 2009 on Narcotics, which has the potential to conflict with traditional practices. In-depth research is needed to evaluate the consistency of the two laws regarding the use of drugs in traditional medicine. The goal is to find a balance between protecting tradition and law enforcement, with regulations that are more inclusive, based on scientific evidence, and adaptive to health advances.

## II. RESEARCH METHODS

This study examines the complexity of legal regulations related to the use of drugs in traditional medicine in Indonesia, focusing on the consistency between Law No. 17 of 2023 concerning Health and Law No. 35 of 2009 concerning Narcotics. The aim is to find a balance between the protection of traditional medicine and the enforcement of narcotics laws, and how these regulations affect traditional practices involving narcotic substances such as marijuana and kratom. Legislative and case approaches are used to analyze the regulations and their legal implementation, focusing on aspects of use, supervision, sanctions, and comparison with international standards.

This study uses document analysis, case studies, and literature reviews as data collection methods. Document analysis involves a review of laws and government policies, while case studies focus on traditional medicine practices in various regions in Indonesia involving drugs. The literature review provides a theoretical basis that supports the analysis of health laws related to drug use in traditional medicine. Data analysis was conducted using content and comparative analysis techniques to identify patterns, challenges, and alignment of legal regulations in the context of traditional medicine in Indonesia.

## III. RESULTS AND DISCUSSION

### A. Legal Policy on Regulating the Use of Drugs in Traditional Medicine

The use of drugs in traditional medicine often occurs outside of scientific rules and official health laws, especially because it has experienced pressure and prohibition. In this practice, recognition is usually derived from social and cultural traditions, rather than from modern health laws. Knowledge is passed down through apprenticeship or family reputation, and is often kept secret by healers to protect their healing methods. However, this approach often clashes with modern health laws, which require transparency and scientific evidence, especially in the use of dangerous substances such as drugs.

Indonesia has a strict legal framework in regulating the use of narcotics, especially those included in class I, such as marijuana in Law No. 35 of 2009 classifies all genus of marijuana and all its parts, including THC and CBD, as class I narcotics. In addition, although Law No. 35 of 2009 strictly prohibits the use of marijuana and

its derivatives in medicine, the development of regulations through Law No. 17 of 2023 concerning Health shows the government's efforts to create a more holistic and sustainable health system. This integration can create opportunities for more flexible regulations, especially when considering the provisions in Article 2 of Law No. 1 of 2023 which recognizes customary law.

Law Number 35 of 2009 replaced Law Number 22 of 1997 as part of an effort to reform the law related to narcotics in Indonesia. This law categorizes marijuana users as abusers, addicts, or victims of drug abuse. Marijuana, which is a class I narcotic, may only be used for the purposes of research and development of science and technology (IPTEK).

As part of these efforts, regulatory updates continue to be made, including the enactment of Law Number 35 of 2009, which replaces previous regulations to strengthen the handling of drug abuse, such as marijuana, more firmly. The Indonesian government has made great efforts to eradicate narcotics by continuously updating regulations. This step began with the issuance of Law Number 419 on December 22, 1949, known as the Hard Drug Ordinance. Furthermore, on April 2, 1985, the Minister of Health Regulation Number 213/Men/Per/IV/1985 was issued concerning certain hard drugs, which complemented several previous Minister of Health decrees.

As a continuation of efforts to update regulations, the classification of marijuana as a class I narcotic in Law No. 35 of 2009 reflects the government's firm stance on the prohibition of its use in medical therapy. Meanwhile, several other countries such as Thailand have taken different steps by legalizing marijuana for health purposes, showing a different approach to drug regulation. The Indonesian government's tough approach to marijuana is not only reflected in regulations, but also in strict law enforcement. In addition to the classification of marijuana as a class I narcotic prohibited for medical use, perpetrators of planting marijuana without a permit are faced with severe penalties, as regulated in Article 111 Paragraph 1 of Law No. 35 of 2009.

Law enforcement against perpetrators of marijuana cultivation, which is considered a narcotics crime, is carried out by law enforcement through various stages starting from investigation to judge's verdict. Based on Article 111 Paragraph 1 of Law No. 35 of 2009 concerning Narcotics, planting marijuana without a permit is subject to

a minimum prison sentence of 4 years and a maximum of 12 years, and a minimum fine of IDR 800 million to a maximum of IDR 8 billion. In accordance with Case Register Number 111 / Pid.Sus / 2017 / PN.Sag, the judge considered that his actions violated the law and did not support efforts to eradicate narcotics, so he was subject to criminal responsibility. A similar thing happened in the case of Case Register Number 175 / Pid.B / 2014 / PN.Prp, which was also found guilty according to the considerations of the panel of judges.

In addition to the criminal act of planting marijuana regulated in Article 111 Paragraph 1 of Law No. 35 of 2009 concerning Narcotics, regulations regarding practice permits in traditional medicine are also regulated in Article 35 of the Regulation of the Minister of Health Number 61 of 2016. Both emphasize the importance of strict supervision and regulation, both to prevent narcotics abuse and to protect patients from the dangers of using unsafe or illegal drugs.

Article 35 of the Regulation of the Minister of Health of the Republic of Indonesia Number 61 of 2016 concerning Traditional Empirical Health Services emphasizes the importance of practice permits and supervision in the implementation of traditional medicine, with the aim of protecting patients from the risk of using hazardous materials, including narcotics. The use of narcotics in traditional medicine is contrary to the principles of safety and empirical benefits regulated in this regulation. In addition, any violation of these provisions, including illegal use of narcotics, can be subject to strict legal sanctions, either in the form of revocation of practice permits or criminal sanctions in accordance with the Narcotics Law and the Health Law.

The regulation confirms that the law aims to provide legal certainty, namely a condition in which the law becomes certain because it has a concrete force that supports it. Thus, any medical action involving narcotics without a valid medical permit or supervision is considered unlawful, and the perpetrator must be subject to strict sanctions. Thus, Article 35 supports the principle of health law that prohibits the use of hazardous substances in traditional medicine in order to protect the rights and safety of patients. More detailed regulations on controlling the use of narcotics and psychotropics in medical practices, including traditional medicine, are also emphasized in Law Number 17 of 2023.

Article 139 and Article 320 of Law Number 17 of 2023, which regulates the use of narcotics and psychotropics in medicine, including traditional medicine, provide clear legal protection for human rights, especially the right to health and safety. By requiring the use of narcotics only based on medical prescriptions and under the supervision of health workers, this regulation ensures that hard drugs are not misused, so that the community is protected from the negative impacts of drug abuse. This legal protection aims to provide protection for the community's rights to enjoy the rights granted by law, including the right to receive safe and controlled treatment. These strict regulations also prevent others from harming the individual's human rights through the illegal or inappropriate use of narcotics.

With this provision, Law Number 17 of 2023 seeks to protect the public from the risk of drug abuse in traditional medicine and maintain the safety and quality of health services as a whole. More specific provisions on penalties for narcotics-related violations, including in traditional medicine, are regulated in the Criminal Code through Articles 609 and 610.

Article 609 and Article 610 of Law Number 1 of 2023 concerning the Criminal Code provide strict sanctions for anyone who without the right to possess, store, or provide Class I narcotics, including in the context of traditional medicine. Responsibility in criminal law is closely related to the existence of errors, both in the form of *dolus* (intentional) and *culpa* (negligence), therefore every form of error can be held criminally responsible because the act is an unlawful act (*strafbaar feit*). The construction of criminal law norms not only regulates prohibited acts, but also stipulates the conditions for imposing criminal penalties and threats of punishment, including drug abuse. In traditional medicine, the use of narcotics must comply with these rules which apply nationally.

In this case, the use of narcotics without official permission or without a valid medical prescription is considered unlawful, whether done intentionally or through negligence. The penalties imposed, ranging from 4 to 12 years in prison or life imprisonment if large quantities of narcotics are involved, reflect the serious impact of this offense on public safety. Thus, the fault of intention or negligence in this offense provides a strong basis for the imposition of severe criminal sanctions according to the level of the error committed.

Article 610 further regulates the production, distribution, and import of narcotics, which also has serious implications for the use of narcotics in traditional medicine. If traditional healers are involved in the production or distribution of narcotics without a permit, especially in quantities exceeding the legal limit (more than 5 grams for non-plant narcotics), they can be subject to severe penalties, ranging from 5 to 20 years in prison, even the death penalty or life imprisonment. This provision emphasizes that the use of narcotics in traditional medicine must be highly controlled and in accordance with strict legal regulations to protect the public from potential drug abuse and adverse health impacts.

However, the paradigm of health law in Indonesia emphasizes the Restorative Justice approach in resolving medical disputes, especially those related to errors or negligence in health services. This approach aims to restore the disturbed relationship between health service providers and patients, and reduce the emphasis on pure criminal penalties.

### **B. Health Law Perspectives on Balancing the Medical Benefits of Drugs with the Risks of Abuse in Traditional Medicine**

Articles in the 2023 Health Law emphasize that every member of society who wants to obtain health services, both individuals and society as a whole, to maintain and improve their health, must go through primary or secondary health care facilities. These services include promotive, preventive, curative, rehabilitative, and palliative aspects. Thus, this regulation allows Indonesia to follow in the footsteps of other countries that have begun to relax restrictions on the medical use of narcotics, while maintaining strict controls.

Meanwhile, Traditional Medicine is defined as a health service that uses methods and medicines based on experience and expertise that are passed down from generation to generation, which can be proven empirically and applied in accordance with the norms prevailing in society. As previously explained, in Indonesia, various indigenous communities have long used plants such as kratom leaves (*Mitragyna speciosa*), datura (*Brugmansia* sp. or *Datura* sp.), cannabis leaves (marijuana) in traditional medicine to relieve pain or overcome sleep disorders. However, kratom (*Mitragyna speciosa*) and datura (*Brugmansia* sp. or *Datura* sp.) are stated as prohibited substances and are restricted for use in medicines through the Regulation of the

Food and Drug Supervisory Agency Number 25 of 2023.

In the context of the use of plants such as kratom, datura, and cannabis, the harm principle put forward by John Stuart Mill explains that the state has the right to interfere with individual freedom only to prevent harm caused to others. In this case, state intervention based on this theory is assessed and considered legitimate because it aims to protect society from potential suffering caused by the use of plants containing dangerous substances such as narcotics and psychotropics, which can threaten public health if misused. Based on this description, the following description will limit the discussion to the health law aspect and the legalization aspect in some, especially limited to kratom and cannabis.

#### **Kratom**

The first documented use of kratom was in 1836, with its use in Malaysia as a substitute for opium. Traditionally, kratom is used to treat conditions such as malaria, cough, hypertension, and pain. In Thailand and Malaysia, kratom is used by workers to increase endurance, and kratom leaves are chewed for a stimulant effect. In Indonesia, kratom is used by several ethnic groups as a traditional medicine to treat various ailments, including pain, hypertension, and diabetes. Meanwhile, the use of kratom in the United States has only become popular in the last few decades, especially as an herbal remedy for pain and opioid addiction.

Kratom abuse is a controversial topic due to its potential side effects, including seizures, coma, and death. Some cases of kratom abuse involve combinations with other drugs, such as the case in Thailand with the "4x100" cocktail that caused poisoning. Although kratom has the potential to be a morphine substitute, the compound 7-hydroxymitragynine in it can increase opioid intake, while mitragynine actually decreases morphine intake, so mitragynine has the potential to be developed as a therapy for opioid addiction.

The United States has different federal and state laws regarding kratom. While federal law does not ban kratom, some states have different rules, such as California, which bans it in San Diego, and Florida, which bans it in Sarasota County. The DEA once proposed kratom as a Schedule I drug, but delayed it due to

protests. The FDA monitors kratom products, restricting imports, and issuing warnings about health risks. In Australia, kratom and mitragynine are banned except for research. Other countries such as Lithuania, the UK, Sweden, and South Korea also ban kratom, while some countries such as Denmark and Poland regulate it as a controlled substance with a prescription.

### **Marijuana**

Marijuana, or Cannabis, has long been used as a traditional medicine and food ingredient. The plant contains the main psychoactive chemical, THC (delta-9-tetrahydrocannabinol), which produces effects such as euphoria, relaxation, and increased appetite. The effects of marijuana are felt more quickly when inhaled than when consumed orally, but excessive use can cause anxiety, fear, and even acute psychosis. THC has been shown to be useful in medicine, and the FDA in the United States has approved THC-based drugs such as dronabinol and nabilone to treat nausea after chemotherapy and stimulate appetite in AIDS patients. In addition, CBD-based drugs such as Epidiolex are used for epilepsy, and the UK has also released nabiximols, a cannabis-based mouth spray for the treatment of neuropathic pain.

Indonesia has not legalized marijuana, while several countries such as Chile, Canada, Italy, the Netherlands, Turkey, Thailand, the United States, Sri Lanka, South Korea, and others have legalized it for medical purposes. This legalization policy has led to changes in legal regulations in these countries, which are adjusted to local conditions. The increase in the number of countries legalizing marijuana is influenced by WHO recommendations to reclassify marijuana and its derivatives, which were initially considered dangerous drugs, but can now be used for medical purposes.

Sam Levin's article states that around 400 families in the United States have moved to the states of Colorado, California, and Oregon, which have legalized medical marijuana. They moved to get Cannabinoid (CBD) therapy, a substance from marijuana that is used to treat their family's illnesses. This phenomenon is known as "international medical marijuana migration. The policy of legalizing medical marijuana in Thailand is a national strategic step to

maintain the country's economic stability by utilizing the potential economic benefits that can be generated from the domestic marijuana industry.

The importance of economic stability in legalizing marijuana in Thailand can be seen from the fact that Thailand's budget for dealing with drug abuse between 2002 and 2016 increased significantly from 3.5 billion baht to more than 10.6 billion baht (around USD 339 million). Total spending on combating drugs in the period 1999-2016 reached around 92 billion baht. If it continues to increase, this cost could absorb almost half of the total state budget, threatening economic stability. In addition, the government must also bear the cost of treating prisoners, where 70% of Thai prison inmates are drug-related offenders.

Based on the description, it is known that the use of kratom and cannabis (marijuana) has previously been a traditional medicine. However, what needs to be considered is the impact of abuse if the use of kratom or cannabis (marijuana) is legalized. Referring to the results of research by Jamaludin, et.al (2023) that the legalization of marijuana in Thailand is based on the interests of the country's economic stability.

Based on this, it is necessary to also review the stability of the legal criminal policy. As explained by Sudarto, criminal policy or criminal politics can be interpreted as an effort made rationally and organized by the community to overcome crime. Efforts to overcome this can be through a penal approach (penal policy) or non-penal. This criminal policy is in line with community protection and prevention of drug abuse that can endanger health.

Referring to the data from the Indonesia Drug Report Volume 6 in 2024, it shows that the most confiscated narcotics evidence was marijuana with 9,892,094.23 grams, Methamphetamine (Meth) with a total of 9,278,345.39 grams and 61,200 pills, in addition, synthetic marijuana or Gorilla Tobacco was also confiscated as much as 223,418.93 grams. MDMA (Ecstasy) occupies a significant amount with 2,063,156.5 pills and 351.21 grams. In addition to narcotics, there were also confiscations of hard drugs as much as 6,016,225 pills. From this data,

it can be seen that Methamphetamine and marijuana are the types of narcotics with the largest confiscations, indicating the high prevalence of trafficking in these types of drugs.

In the context of the use of kratom and cannabis as traditional medicine, the main concern regarding the legalization of both lies in the potential impact of abuse. Although these plants have been used medicinally in various countries, the risk of abuse and potential side effects, as is the case with kratom in Thailand and cannabis in some countries, raises debate about whether legalization will worsen conditions or provide benefits to public health. The case of Thailand shows that the policy of legalizing cannabis is largely driven by economic interests, especially to reduce the burden on the state in dealing with drug abuse. In this case, legalizing cannabis is considered a strategic step to balance the economy with public health needs.

In line with this policy, an evaluation of the criminal policy related to narcotics is needed, as expressed by Sudarto, that criminal policy must be rational and organized to overcome crime. Data from the Indonesia Drug Report Volume 6 in 2024 shows that marijuana and Methamphetamine are the types of narcotics most confiscated in Indonesia, with each reaching almost 10 million grams. This data illustrates the high level of drug trafficking and shows that the legalization of narcotics, such as marijuana, requires in-depth study so as not to worsen the existing criminal situation, but can also provide benefits to public health and the economy.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The use of kratom and cannabis in traditional medicine has been around for a long time, but is currently a subject of debate due to its potential for abuse. Some countries, such as Thailand, have legalized cannabis for medical purposes due to economic stability and public health considerations. However, cases of drug abuse in these countries, such as Thailand, show that legalization is not without risks, especially related to increased cases of substance abuse. Therefore, careful evaluation of kratom and cannabis legalization policies must consider the balance between medical benefits and risks of

abuse, with strict regulation and effective supervision.

In Indonesia, the legalization of narcotics such as marijuana is still a sensitive topic, with strict regulations through Law No. 35 of 2009. Data from the Indonesia Drug Report Volume 6 in 2024 shows that the seizure of marijuana and Methamphetamine reached a significant amount, reflecting the high level of drug trafficking in this country. In this context, a rational and organized criminal policy is very important to overcome drug trafficking, while ensuring that the legalization of narcotics, if carried out, does not worsen the crime problem, but instead has a positive impact on the health and economic welfare of the community.

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