



## UTILIZATION OF CANANA AS A MEDICINE IN LEGAL PERSPECTIVE IN INDONESIA

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### Abstract

The main problem in this research is that there is a conflict in Article 7 and Article 8. Where Article 8 Prohibition of the Use of Narcotics Group 1 for the Purpose of Health Services, while in Article 7 Narcotics can be used for the benefit of health services. Articles in the Narcotics Law currently conflict with other articles, causing many interpretations and legal uncertainty in the enforcement of the use of cannabis plants as medicine in society. The Use of Cannabis as a Drug Perspective of Indonesian Criminal Law and Islamic Law. It can be concluded in the Indonesian Criminal Law research on the Use of Cannabis as a Drug, currently many articles related to Narcotics are still in conflict with other articles, causing uncertainty in the law against the use of marijuana as a drug. The state must be able to codify the Law on Narcotics, so that these articles do not conflict with other articles, and so that there are no more losses experienced by the community and the state in the war on drugs. Whereas in Islamic Criminal Law it refers to the Qur'an and Hadith as well as the *ijtihad* of scholars. Cannabis plants can be used as long as it is intended for medicinal purposes, and provides punishment in the form of *ta'zir* against all forms of abuse. Whereas in *ijtihad* scholars through the *qiyas* method which equates cannabis plants with *khamr*, it does not meet the *qiyas* element, where in equating it with *khamr* which is clearly different in terms of content, substance, or the resulting effect. So that *qiyas* equating marijuana with *khamr* cannot determine the prohibition of cannabis plants as medicine. Whereas in the *maslahah al-mursalah* method, as long as the use of marijuana as a drug is regulated in its use so that it gets benefits, the use of marijuana as a halal drug is used, because it is already a rule of use as a drug against experts.

Keywords: Marijuana, Medicine, Islamic Law, Criminal Law.

### Introductions

Narcotics in Law Number 35 of 2009 concerning Narcotics are defined as substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, loss of taste,

reduce to eliminate pain, and can cause dependence, which is distinguished into groups as attached in the Act. The use of Narcotics Group 1 Types of marijuana are the most widely used in Indonesia, because cannabis plants grow in various regions in Indonesia. And again, many people have used and felt the benefits of marijuana plants, such as to relax by sucking to get calm and feel more relaxed in unwinding. Or teenagers from the lower middle class who can't have fun like teenagers from the upper middle class, so they can only hang out with their friends in a simple place and then buy a small packet of marijuana to be able to have fun with their friends. As well as several cases of using marijuana as a drug, such as the case of Fidelis who gave cannabis extract to his wife who was suffering from a rare disease of the spinal cord (Silingomyelia).

Sanctions for Narcotic Marijuana Users of Group 1 are contained in Law Number 35 of 2009, Article 127 paragraph 1 states; Narcotics Category 1 for oneself shall be sentenced to a maximum imprisonment of 4 (four) years.<sup>1</sup>Whereas in Article 111 paragraph 1 Planting, Maintaining, Possessing, Storing, Controlling or Providing Narcotics Category 1 in the form of plants is punishable by a minimum sentence of 4 years or a maximum of 12 years and a minimum fine of IDR 800,000,000.00 and a maximum of IDR 8,000. 000,000.00.

Article 111 paragraph 2 as referred to in paragraph 1 weighs more than 1 kilogram or exceeds 5 trees, shall be punished with life imprisonment or a minimum of 5 years and a maximum of 20 years and a fine plus 1/3 (one third). Article 112 paragraph 1 possessing, storing, controlling or providing Narcotics of class 1 non-plants shall be punished with imprisonment of 4 years and a maximum of 12 years and a fine of Rp. 500,000,000.00 and a maximum of Rp. 8,000,000,000.00.

Article 112 paragraph 2 possessing, storing, controlling, or providing, weighing more than 5 grams shall be punished with life imprisonment or a minimum of 5 years and a maximum of 20 years and a maximum fine of 1/3 (one third). Article 113 Paragraph 1 Producing, Importing, Exporting, or Distributing Narcotics Category 1 shall be punished with a minimum sentence of 5 years and a maximum of 15 years and a minimum fine of IDR 1,000,000,000.00 and a maximum of IDR 10,000,000,000.00.

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<sup>1</sup>Ruslan Renggong, Special Criminal Law, Jakarta: Kencana, 2017, p 130.

Article 113 Paragraph 2 Producing, Importing, Exporting, or Distributing Narcotics Category 1 in the form of plants weighing more than 1 kilogram or more than 5 tree trunks or in the form of non-plants with roots exceeding 5 grams shall be punished with capital punishment, life imprisonment or at least 5 years and a maximum of 20 years and a fine of 1/3 (one third).

Article 114 Paragraph 1 Offering for Sale, Selling, Buying, Receiving, Intermediary in Selling, Exchanging, or Delivering Narcotics Category 1 shall be punished with life imprisonment or a minimum sentence of 5 years or a maximum of 20 years and a fine of Rp. 1,000,000,000.00 and a maximum of IDR 10,000,000,000.00.

Article 114 Paragraph 2 Offering for Sale, Selling, Buying, as Intermediaries in Selling, Exchanging, Delivering, or Receiving Narcotics Category 1 in the form of plants weighing more than 1 kilogram or 5 trees or in the form of non-plants weighing 5 grams death, life imprisonment or imprisonment for a minimum of 6 years and a maximum of 20 years and a maximum fine of 1/3 (one third).

In the use of Narcotics Category 1 Types of Cannabis, where in use as a drug it should be given to people who are sick. Bearing in mind that in Article 7 Narcotics can only be used for the benefit of health services and/or the development of science and technology. The government should make a policy regarding the use of cannabis plants as medicine, because cannabis plants are herbal medicinal plants for various diseases, seeing that there have been many studies on the use of marijuana that can be used to cure various diseases. However, the use of Narcotics Category 1, Types of Marijuana cannot be used as medicine for the community, in accordance with the provisions in Article 8 Paragraph 1 Narcotics Category 1 is prohibited from being used for the benefit of health services.<sup>2</sup>The prohibition was made because they thought the cannabis plant had no medical benefits to cure disease, as well as the assumption that cannabis plants were considered dangerous.

The rules regarding Narcotics Crime Category 1 are contained in Law Number 35 of 2009, article 127 paragraph 1, article 127 paragraph 2, article 127 paragraph 3, article 128 paragraph 1, article 128 paragraph 2, article 128 paragraph 3, article 128 paragraph 4, article 129, article 130 paragraph 1, article 130 paragraph 2, article 131, article 132 paragraph 1, article 132 paragraph 2, article 132 paragraph 3, article 133 paragraph 1, article 133 paragraph 2, article 134 paragraph 1, article

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<sup>2</sup>Hadi Setia Tunggal, Compilation of Narcotics and Psychotropic Regulations, Harvarindo, 2012, p 34.

134 paragraph 2, article 135, article 136, article 137, article 138, article 139, article 140 paragraph 1, article 140 paragraph 2, article 141, article 142, article 143, article 144 paragraph 1, article 144 paragraph 2, article 145, Article 146 paragraph 1, article 146 paragraph 2, article 146 paragraph 3, article 147, article 148.

Whereas in Islamic Criminal Law, drugs (narcotics and drugs/dangerous materials) are not clearly explained, the Qur'an only mentions the term khamr. However, if a law has not found its status, it can be resolved through the Qiyas method. 8 Cannabis plants which are still being debated among scholars, because they have different views regarding the cannabis plant as a drug, both seen in its form and in its substance content. This is in accordance with the opinion of Al-Sayyid Sabiq, "indeed marijuana is haram". Had sanctions were given to people who abused it, as was given to Had Sanctions against alcohol drinkers.

Complex and urgent matters, Islam also regulates every aspect of life down to the smallest things that are always neglected. Therefore, Muslim scholars try to formulate a scientific discipline that makes it easier for us to know the various laws of a problem with more practical steps. In the form of a scientific discipline known as Qawaid Al-Fiqh or the rules of fiqh. One of the branches of its application is the Adh-Dharurat Tubihu AlMahzhurat rule which means "in an emergency, forbidden things are allowed". While some scholars such as As-Suyuthi include this rule as a branch of the "Adh-harar Yuzalu" rule which means that everything that is harmful must be removed. This rule is a branch of the rule of Al-musyaqqah Tajilibu at-taisir,<sup>3</sup> Like the Fiqh Rules in general, this rule is also based on several verses from the Qur'an. Among them "And verily Allah has explained to you what he has forbidden, except what you are forced to eat". And "Whoever is forced to eat it while he does not want it and does not exceed the limit, then he is not sinning. Verily, Allah is Forgiving, Most Merciful." Emergency in language means a need that is very urgent or very needed, while what is meant by emergency in this Rule is a person if he does not do this he will perish or almost perish. Most people in Indonesia today think that marijuana is a dangerous plant that can plunge people

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<sup>3</sup>Roni Nuryusmansyah, In an Emergency Condition What is Forbidden is Allowed, Muslim.or.id, 26 Dec,2013, p 1.

into a life full of sin, disease, and addiction. Marijuana is also known negatively by many people as a plant that is sought and hunted by its users, just for the sake of temporary pleasure. Even though at this time there have been many studies in other countries about the cannabis plant which turned out to provide information that was contrary to information that had existed long ago. And again there are many cases about the use of marijuana as a drug in Indonesian society which becomes a new problem when it turns out that the cannabis plant can cure various diseases. Even though at this time there have been many studies in other countries about the cannabis plant which turned out to provide information that was contrary to information that had existed long ago. And again there are many cases about the use of marijuana as a drug in Indonesian society which becomes a new problem when it turns out that the cannabis plant can cure various diseases. Even though at this time there have been many studies in other countries about the cannabis plant which turned out to provide information that was contrary to information that had existed long ago. And again there are many cases about the use of marijuana as a drug in Indonesian society which becomes a new problem when it turns out that the cannabis plant can cure various diseases.<sup>4</sup>In this study, how is the use of marijuana as a drug in the perspective of Islamic law and Indonesian criminal law?

### **Use of Cannabis As Medicine**

Cannabis (marijuana, marihuana, hashish) is a plant that has been known to humans about 8000 years ago, as a plant that can produce fibers to make yarn, rope, and textiles. The types of marijuana itself are divided into 3 types, namely Cannabis Sativa, Cannabis Indica, and Cannabis Ruderalis. The sativa type is the most widely used type of cannabis for recreational purposes, while the indica cannabis type contains more CBD than sativa which makes people feel more relaxed after consuming it. While cannabis ruderalis is one of the types commonly used to meet the needs of clothing and food, because the psychoactive substances are very low.

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<sup>4</sup>The Lgn Team, *The Hikayah of the Cannabis Tree, 12000 Years of Fertilizing Human Civilization*, Jakarta: Karya Gemilang, Cet 5, 2016, p 120.

Bhang is a decoction or mixture to be smoked with cigarettes derived from the shoots of the female cannabis plant that grows wild, while the so-called marijuana is the same type of plant, but which is cultivated so that the levels of active substances in it are higher. Charas “churus, churrus” is the result of pure sap extract derived from the shoots of the female cannabis plant.<sup>5</sup>Each plant contains ingredients such as Cannabis Indica which has the physical characteristics of a tree height of 90-180 cm, thicker, denser, thicker and shorter leaves, higher CBD content than THC. Cannabis Sativa physical characteristics, tree height 240-360 cm, less often, leaves slender, thin and long. Comes from Mexico, Colombia, Central America, Southeast Asia, the content of THC is higher than CBD. Cannabis Ruberalis physical characteristics, tree height 60 cm, the middle leaf is longer while the leaves on both sides are small. Coming from Mexico, Colombia, Central America, and Southeast Asia, the CBD content is higher than THC.<sup>6</sup>Cannabis began to be used in medicine in China in 2737 BC. Marco Polo wrote that marijuana was well known in those days as an ingredient for enjoyment and enjoyment. marijuana, marijuana, a herbaceous plant up to 4 meters high contains the physicoactive substance Delta-9 Tetra-hydro Cannabinol (THC). The highest levels of THC are found in the shoots of flowering female plants, but also in the leaves and twigs. There are more than 100 species, including Cannabis sativa, Cannabis indica, and Cannabis ruderalis. Cannabis waits in the tropics and soup-tropics. THC levels depend on the type, fertility, and moisture of the soil, the climate in which the plant grows, and when the plant's tops, leaves, or twigs are picked. In addition to THC, the cannabis plant also contains other cannabinoids, such as Cannabidiol and Tetra Hydro-Canabidiolic Acid. When stored at regular room temperature, the strength of cannabis leaves is reduced by 5% each month. In marijuana smoke there are more than 60 cannabinoids and in other chemicals, but the most important is THC.<sup>7</sup>Cannabis can be consumed as food in the form of sweets, brewed like tea or

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<sup>5</sup>Satya Joewana, *Mental and Behavioral Disorders Due to the Use of Psychoactive Substances*, Jakarta, EGC Medicine, 2003, p 8

<sup>6</sup>Kumparan News, *Getting to Know the Types of Cannabis Plants*, 31 March 2017, p 1.

<sup>7</sup>Satya Joewana, *Mental and Behavioral Disorders Due to the Use of Psychoactive Substances*, Jakarta, EGC Medicine, 2003, p 106.

coffee, but mostly smoked like smoking tobacco. For those who are inexperienced, he will cough. Each marijuana cigarette contains THC as much as 5-20 mg (before cultivation only about 2.5-5.0%, only 50% is absorbed. In oral use (eaten) only 3-6% is absorbed. THC quickly leaves plasma and enter fat-containing tissues, especially the brain and testes. THC is metabolized in the liver and extracted mainly through feces and urine. The half-life of THC is 2-7 days. CBD is not a psychoactive substance, the content that can be helped by CBD is Epilepsy, Schizophrenia, and Psychotic Disorders, while their medical values are Anti-Inflammatory, Antioxidant, Neuroprotectant, Anti-Depressant, Analgesic, Anti-Psychotic, Anti-tumor agents and anxiolytics. While THC is a psychoactive substance whose content can cause excitement, laughter, hunger, reduce pain, red eyes, and increase heart rate, has the potential to treat cancer and anti-inflammatory.<sup>8</sup>

Cannabis in the perspective of Islamic law Cannabis is a plant that is considered by some scholars to be the same as alcohol, judging from the substances contained in the plant. But in Pharmacology Cannabis and alcohol or khamr are something different, both in form and substances contained therein. When we compare the contents and contents, it is clear that the second verse has touched the contents of the benefits and harms. When this verse was revealed, the tradition of drinking alcohol was still going on, not only by the Kafirs, but also by the Companions of the Prophet. Regarding this, Al-Suyuthi explained that Ali bin Abi Talib told, Abdurahman bin Auf invited us to party and gave a banquet in the form of wine. At that time, many of us drank Kahamr.

In the Qur'an and Hadith the word Khamar has the meaning of objects that cause drunkenness, therefore in Khamar language includes all objects that can confuse the mind, both in the form of liquid and solid substances.<sup>9</sup>The word khamara is basically a liquor derived from wine and other potentially intoxicating

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<sup>8</sup>Kumparan News, Getting to Know the Types of Cannabis Plants, 31 March 2017, p 1.

<sup>9</sup>As-Sayyid Sabiq, Fiqh as-Sunnah, Medina: Dar Al-Fath, 1995M/1410H, p. 474



and commonly used for drunkenness.<sup>10</sup>By paying attention to the meaning of the word khamr and its essence, most scholars are of the opinion that any form (khamr, amphetamines, marijuana, ecstasy and the like) that can intoxicate, obscure the mind or make a person unable to control himself and his mind is haram.<sup>11</sup>The prohibition of drugs is not because they are in Qiyas with alcohol, but for two reasons: First, the text that forbids drugs, secondly it poses a danger to humans. The opinion of scholars regarding the meaning of khamr. Imam Al-Alusi in his Tafsir stated that the meaning of Khamr "is a substance that is intoxicating and is made from grape juice or all substances (drinks) that can cover and eliminate the mind".<sup>12</sup>Meanwhile, according to Abu Hanifa's opinion, what is meant by khamr is "the type of name for the type of drink made from grape juice after it is cooked until it boils and releases foam and then becomes clean again, it is the juice from the foam that is intoxicating", this opinion is also supported by the scholars of kuffah. . Al-Nakha'i, Al-Tsauri and Abi Laila, according to the Maliki, Shafi'i and Hambali scholars, what is meant by khamr is "all intoxicating substances or goods, either a little or a lot". In contrast to the opinions of the schools of thought, and starting from the description of the impact caused by Narcotics/Drugs which results in death. And for health it is very fatal, of course the legal sanctions must be more severe, although in the Qur'an there is no verse that expressly about sanctions or punishments for narcotics/drug users.

In the qiyas carried out by scholars, equating one problem with another, it turns out to be different, then the qiyas does not fulfill the Elements of doing qiyas, because the object being equated turns out to be different both in form, substance content, and the resulting effect. So that qiyas cannot be used as a benchmark for determining halal or maramatas on the use of marijuana as medicine, making qiyas against cannabis plants as khamr invalid because it does not meet the elements. As

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<sup>10</sup>Ministry of Religion of the Republic of Indonesia, Islamic View on Drug Abuse, Jakarta; Director General of Islamic Institutions, Ministry of Religion, RI, 2004, p.45.

<sup>11</sup>Al-Alusi, Ruth Al-Ma'ani, Al-Maktabah Al-Syamilah, Pustaka Ridwan; 2008, p. 123.

<sup>12</sup>Ibn Jarir Al-Thabari, Tafsir al-Thabari al-maktabah al-Syamilah, Ridwan Library; 2008, p.32.



a result of the government giving a bad stigma to marijuana plants and propagating too much, causing scholars to consider marijuana plants the same as khamr and more dangerous. Because propaganda that has been too long has caused a burh stigma attached to the ulama in making a prohibition decree on the cannabis plant, and equating its substance with khamr then qiyaskan it through the texts in the Qur'an and Hadith about khamr. Then make a decision by forbidding the cannabis plant which is considered the same in substance, nature, and effect as khamr. Even though now there are many studies on the cannabis plant, which inform the substances and content in the cannabis plant which are clearly different from khamr, both in its substances, contents or effects. If the scholars refer to the previous rule which states that marijuana is dangerous and can be deadly, the information is no longer relevant to the current situation which turns out to be in research on cannabis plants that can be useful in the fields of science and medicine. If the opinion from the health sector states that the cannabis plant can be used as medicine, the scholars allow it with the provisions of the experts on the limitations of its use. Scholars have to do Ijtihad again, so that they are really precise in determining the halal and haram of marijuana plants as medicine, which turns out to be different in content, substances, and the effects they cause with khamr. If we look at the Science of Usul Fiqh, there are several methods such as qiyas and maslahah al-mursalah. The qiyas method is defined as measuring something over something else and then equating it. And connecting or enforcing legal provisions, an issue that has already been stipulated in the text to a new issue because both have the same illat. If the text has explained the legal provisions of a problem and in it there is an illat of legal determination, then there is a new issue (event) whose illat is the same as what is explained by the text, then both apply the same legal provisions. In other words, the application of the same law between matters whose legal provisions are certain can be carried out if there is an equality or illat treatment between the two. But it turns out that scholars in doing qiyas are not right in equating cannabis plants with khamr, because the substance content and effects on the user are very different from the content in khamr. If the government is right in informing the public about cannabis

plants, create a stigma against scholars who used to equate cannabis plants with khamr because of its substances and have mudharad, to change their views. Scholars will consider marijuana as a natural medicine or food that has benefits for the body and has other benefits and will be haram if misused. While some scholars consider the cannabis plant not khamr, but as a plant that can be used as a medicine to cure disease. The scholars allow the use of cannabis plants, by looking at the texts in the Qur'an and Hadith about plants used as food or as natural medicines under certain conditions. Scholars who agree to allow marijuana plants as a medicine that can heal refer to the opinion of the Ash-Shafi'iyah Madzhab, Imam Nawawi said: "If it is necessary to consume part of it to reduce the pain when amputating the hand, then there are two opinions among the Shafi'iyah which are rightly permissible". Al-khatib Asy-syarbini who is also from the Shafi'iyah circle said: "It is permissible to use a type of narcotic in treatment when no other drug is found, even though it will cause an intoxicating effect because this condition is an emergency condition". The condition used in this permit is the state of Fiqh which reads, "an emergency allows something that is prohibited". Narcotics itself actually only refers to a type of plant that anesthetizes, in the form of opium and not marijuana or coca. In the Syafi'iyah circles it is explained that Narcotics can be used as medicine, although later it can cause harm. Conditions that are allowed in Fiqh are emergency situations that allow something that is prohibited. Regarding the taste, nutrition, cleanliness and safety factors of a food, there are other aspects that are no less important, namely the halal and haram status of food. Islam gives very high attention to halal, haram, or doubtful (doubtful) foods. Pay attention to food sources, cleanliness, processing methods, presentation, and how to dispose of food. Basically all food and drink that is on earth is lawful unless there is a proof that forbids it. Pay attention to food sources, cleanliness, processing methods, presentation, and how to dispose of food. Basically all food and drink that is on earth is lawful unless there is a proof that forbids it. Pay attention to food sources, cleanliness, processing methods, presentation, and how to dispose of food.

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### Conclusion

If we look at Law Number 35 of 2009 concerning Narcotics, it is coupled with the provisions of the ulama through the MUI which gives ta'zir punishments for abuse and does not prohibit the use of marijuana for medicinal purposes. Law Number 35 Year 2009 Article 7: Narcotics can be used for the benefit of health services, which means explaining that Narcotics can be used as health services as drugs including (marijuana). Scholars allow the use of marijuana as a drug when it is in certain circumstances to be able to cure a disease. Because in the principle of Islam "the prohibition of inserting an object or material that is detrimental to the health of the body, mind and soul in the human body. Bad and dangerous consequences and losses caused and the like by a person for other than treatment are prohibited. In the benefit of the cannabis plant which is regulated for treatment so as to cover any abuse, in the benefit of the cannabis plant it can be used as long as it is for medicinal purposes, and every abuse of the cannabis plant is given a penalty in the form of ta'zir.

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