



LEGALITY OF MARIJUANA USE IN THE NEED FOR MEDICAL TREATMENT IN INDONESIA (JUDGING FROM LAW NUMBER 36 OF 2009 CONCERNING HEALTH AND LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS)

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ABSTRACT - Marijuana according to positive law in Indonesia including narcotics group I which is considered the most dangerous because it has a very high addiction and the plant has long been viewed negatively by the wider community, but behind the negative stigma of the community it turns out that marijuana contains many benefits for health care needs. The issue for legalizing cannabis for medical purposes was initiated by the Nusantara Marijuana Circle organization. This research aims to examine whether the use of marijuana for medical purposes in Indonesia has received legalization. The research method used is empirical juridical. The legal materials use are primary legal materials and secondary legal materials. The results showed that because the law was born and developed continuously to build and change itself towards a better level of perfection. With so much potential contained in cannabis, especially its presence in the health sector it is appropriate for state officials to revise policies on narcotics. Legalization of cannabis can be used as an alternative solution for the Indonesian state to improve the welfare of the community because it can be used as an alternative to the country's industrial commodities, especially in the field of health services.

Keywords: Health, Legalization, Marijuana, Narcotics

I. INTRODUCTION

As mandated regarding the purpose of the nation and state of Indonesia in the constitution of the state of Indonesia in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia, it is stated that to protect the entire Indonesian nation and all of Indonesia's bloodshed. and to advance the general welfare, to educate the nation's life. To achieve these national goals, synergy between the government and citizens is needed to carry out sustainable development efforts in a comprehensive and directed manner and have a constructive mindset in order to create sustainable development in all aspects of life, including in this case development in the health sector.

Development in the health sector is part of national development, carried out to improve the health status of citizens through community empowerment activities supported by financial protection from the government for equitable distribution of health services throughout the regions in Indonesia. Therefore, as stated in Article 28H paragraph (1) of the

1945 Constitution of the Republic of Indonesia, it is stated that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to health services. In the implementation of health services carried out by the state because the state is responsible for it and emphasized in the provisions of Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated that the state is responsible for providing health service facilities and proper public service facilities.

The provision of health services in line with the increasing development of industrialization and modernization as well as rapid migration and urbanization can affect developments in the health sector to always carry out new innovations in line with the pace of globalization. New innovations in the health sector will influence thinking, especially regarding efforts to solve problems in the health sector. And the solution will also be influenced by politics, economy, socio-culture, defense and security as well as science and technology.

The development of technology development in the health sector will provide very fast information both to medical personnel and to the public who will receive health services and medical actions. With information related to knowledge in the field of public health in a country, it will be easy to receive information about anything, including knowledge in the health sector related to the use or utilization of marijuana or in Indonesia known as marijuana in the corridor of its use or use for medicinal purposes.

Marijuana is a cultivated plant that produces fiber, but is better known as a type of psychotropic because it contains Tetra Hydro Cannabinol (THC) substances located in the seeds which can make the wearer experience a prolonged feeling of pleasure without cause or euphoria. This marijuana plant is classified as an annual plant that can reach a height of approximately 2 meters and has finger leaves with the location or position of the female and male flowers being on different plants, meaning two houses. And this seasonal plant can only be cultivated or used in both temperate and hot climates. If in temperate climates, kasiat is obtained in the form of oil derived from seeds (Heyne 1987:271).

The history of the existence of marijuana in Roman civilization this plant is one of the most strategic plants with many benefits contained therein. The marijuana plant can be used as a pain reliever (analgesic) while on the battlefield, as well as as a material for rigging, cooking oil, lighting and others. With the various benefits that many marijuana plants give birth to the mention of the term as cannapaceus or canape which means everything made from cannabis (Tim LGN, 2018:5).

Research on the utilization or use of marijuana has been widely carried out and has been able to influence many people, including Indonesia. The State of Indonesia in the international world, is known as a producer of natural resources in the form of medical marijuana or cannabis (cannabis), the plant-producing area is more precisely in the Province of Nangroe Aceh Darussalam (NAD), the Aceh Region or well-known as the Veranda of Mecca city as we all know is a the best marijuana-producing area in the world, where marijuana is used as traditional medicine and the use of marijuana or marijuana plants other than for medicinal purposes, its use has grown to lead to the textile industry and the shipping industry which is used as material for making ship sails and ship ropes and even In the Aceh area, marijuana or marijuana leaves are used as food ingredients. This means that marijunana is gradually becoming a tradition in Aceh as an additional ingredient in spices in food recipes.

With the various uses of marijuana, the plant is often viewed negatively by the public. This is due to a lack of knowledge about the use of this plant which rarely reaches the general public. Behind the negative view of the marijuana plant, there are many positive elements that get less attention. However, along with the development of technology, there are parties who have realized the efficacy of the marijuana plant, some of whom are trying to disseminate information about the positive use of marijuana, until finally trying to bring the plant into the life of the wider community as a highly efficient plant commodity, especially in its utilization in the health sector.

Marijuana plant on its way to reap a lot of polemic. Marijuana or marijuana is illegal and its existence is strictly prohibited by the laws and regulations in force in Indonesia because

the plant is included in the category I narcotics list. This is explicitly stated in Law Number 35 of 2009 concerning Narcotics, hereinafter abbreviated as (UU 35/2009). 2009) in the first appendix number 8 (Eight) of the list of narcotics class I it is stated that the cannabis plant, all plants of the genus cannabis and all parts of the plant including seeds, fruit, straw, processed cannabis plants or parts of the cannabis plant including cannabis resin and hashish .

This means that with the entry of marijuana or marijuana into narcotics group I, the existence of these plants is strictly prohibited by the Indonesian government. On the one hand, the existence of marijuana or marijuana is very closely related to local wisdom in some areas of Indonesia, especially the Aceh area as described above along with other uses that provide benefits, especially in the health sector, an idea was born to legalize marijuana or marijuana plants, one of the initiators of the legalization of marijuana in Indonesia was formed. in a non-governmental organization (NGO) named Lingkar Ganja Nusantara (LGN). LGN has the task of providing education and disseminating information about the efficacy of the marijuana plant or especially marijuana (medical cannabis), related to its relationship and benefits to the sustainability of human life. Based on the description of the background above, researchers are interested in knowing and researching whether the use of marijuana for medical purposes in Indonesia has received legalization.

II. RESEARCH METHOD

The type of research method used is empirical juridical, research on legal identification. The juridical approach is that the law is seen as a norm or *das sollen*, because the substance of the law consists of norms, rules, legal principles, doctrines, and laws and regulations (Fajar & Yulianto, 2015). In writing this research will use legal materials, both primary legal materials and secondary legal materials. Empirical approach is law as a social, cultural and *das sein* reality because in this study using primary data obtained from the field (Sunggono, 2007).

III. RESULT AND DISCUSSION

Legalization of Marijuana Use in Medicine

As stated in the consideration for considering Law Number 36 of 2009 concerning Health, hereinafter abbreviated as (Law 36/2009) health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Constitution of the Republic of Indonesia. 1945. Therefore, to realize this effort, it is carried out through activities to maintain and improve the highest degree of public health and its implementation is based on sustainable, non-discriminatory and participatory principles, in the context of forming good Indonesian human resources, and to increase the nation's resilience and competitiveness for sustainable national development. Sustainable development is a series of comprehensive, directed and integrated development, including development in the health sector (Hendrik 2011:176).

The emergence of the health law institution in Law 36/2009 will create new hopes for the future of Indonesian citizens who will be accommodated in the form of a health service forum for the sake of the sustainability of the community's life. Explicitly the definition of health is a healthy condition, physically, mentally, spiritually, and socially that allows everyone to live a socially and economically productive life as referred to in Article 1 of the *a quo* law.

Then in line with the definition of health in Law 36/2009, one form of activity to improve and maintain health in Indonesia, the government established a health system to support health programs in the form of a National Health System or Sistem Kesehatan Nasional (SKN) with the issuance of Presidential Regulation Number 72 of 2012 concerning the National Health System, hereinafter abbreviated (Perpres No. 72/2012).

SKN as referred to in Article 1 number 2 of Presidential Regulation No. 72/2012 it is stated that the National Health System is a health management that is carried out by all components of the Indonesian nation in an integrated and mutually supportive manner in order to ensure the achievement of the highest degree of public health. This means that the implementation of health development is carried out by combining various health action efforts into one goal, because these actions will create or guarantee the existence of health

development goals in the context of realizing welfare for the community, as mandated in the Indonesian constitution.

The implementation of health development through SKN is one form of indicator or component which is divided into various systems that have their own functions, so as to ensure the achievement of the objectives of the system, it is strongly influenced by the performance of each indicator in various existing systems, meaning that between the existing indicators are interrelated with each other, the indicators of the SKN system in the form of pharmaceutical preparations, medical devices, management, information, health regulations and community empowerment. This is as referred to in Article 3 of Presidential Regulation No. 72/2012.

Furthermore, when viewed from one of the SKN indicators in the form of pharmaceutical preparations, based on the provisions of Article 1 point 4 of Law no. 36/2009 states that pharmaceutical preparations are drugs, medicinal ingredients, traditional medicines, and cosmetics. Along with developments in the era of globalization, the use of marijuana or marijuana plants whose utilization is based on medical purposes, because these plants are ingredients or ingredients in the form of plant materials, which are used for generations that can be used for medical treatment and can be applied according to the designation in the community. .

This is because marijuana can be categorized as traditional or herbal medicines that are friendly and safe, if the designation of the plant is used positively and will eventually be able to overcome several diseases. Some of the diseases suffered by a person can be overcome with marijuana, among others, such as asthma, hepatitis, nerves, epilepsy, slowing alzheimer which attacks the brain, cancer drugs and so on. The most important thing about the medical use of marijuana or marijuana can help treat or overcome rare diseases that are difficult to cure.

Although there have been various benefits contained in marijuana or marijuana, especially in the health sector, its use in Indonesia is still strictly prohibited, this is because marijuana or marijuana is included in the category I narcotics category as explained in the provisions of Law 35/2009. . So with the many potentials contained in marijuana or marijuana, especially in its existence in the health sector, it is proper that the state administration apparatus is expected to revise it again in order to legalize the existence of marijuana or marijuana as stated in the a quo law.

The discourse to legalize marijuana or marijuana has long been launched since 2010 by the NGO, namely LGN. The NGO is the first association in Indonesia which aims to support the legalization of marijuana to be realized in Indonesia with various considerations. This is because LGN believes that marijuana is not a type of narcotic that contains harmful ingredients for the community if used positively, because on the one hand marijuana has many ingredients that can greatly help the community in various fields, especially for health services or in the industrial sector.

Seeing the belief in the benefits of marijuana, LGN believes that the realization of marijuana legalization in Indonesia should be fought for and realized. However, to make this happen the legalization of marijuana in Indonesia has led to a debate between some people who are pro with the legalization of marijuana and some people who are against the legalization of marijuana, this is because marijuana has always been viewed negatively by people, meaning that the existence of marijuana is often involved in acts against law and something dangerous. This means that the views related to the existence of marijuana use itself can be classified into 2 (two) between the pro and contra:

1. The counter party will provide arguments or views regarding the use of marijuana or marijuana that the type of person who uses it is due to the desire to get negative effects or euphoria from the use of marijuana or marijuana that deviates improperly by using it uncontrollably. Negative effects or euphoria are the main elements that are highly desired by a person who uses marijuana or marijuana, this is because a person who is using marijuana when using marijuana thinks only for their interests without knowing or having education related to their awareness of why someone is smoking. The implication is that someone who has this type of trait can damage

the reputation of using marijuana for medical purposes, because the only thing they want is hallucinations and momentary pleasure.

2. The pro party will provide arguments or views regarding the use of marijuana or marijuana that the person who will use it knows that the use of marijuana or marijuana is used according to its designation. The person is included in the category that marijuana is a plant that contains very good properties, if used properly, especially for someone who needs marijuana or marijuana in the corridor of health or medical services. According to the author, LGN itself should be positioned as a pro, because every member of LGN knows the urgency of using marijuana and its benefits for medical services. So for them, for someone who suffers from the disease as described above that can be cured or treated with marijuana understands this.

The seriousness of LGN in realizing the legalization of marijuana use can be proven by the publication of a book in 2010 entitled "Hikayat Tree Ganja". The book became the basis for LGN's thinking in realizing the legalization of marijuana use and trying to educate the public about the relevance of marijuana use in medical services. A process of legalizing the status of marijuana in positive law in Indonesia to be used according to medical services is not easy.

The idea of legalizing marijuana is not an idea that is very easy to realize because the required process must go through stages, especially related to the construction of people's educational patterns of thinking about the use of marijuana. On the one hand, the community is given a forum to develop traditional health services that must be accountable with supervision carried out by the government. can be accounted for its benefits and safety. Where to regulate and supervise traditional health services is carried out by the government based on security, interests, and community protection.

So that through educational actions and mutual interaction between individuals with one another will create a form of realization in order to realize the regulation of the existence of marijuana use in medical services. Because through a legal approach to the community in an educative way, it will have a very broad impact in order to provide legality for the use of marijuana, especially in medical treatment services, which then these thoughts will be poured into the form of binding regulations in the form of positive law.

Gaps in the Implementation of Law Number 35 of 2009 concerning Narcotics against Marijuana Use in the Health Sector

Progressive law means that the law does not accept the law as an absolute and final institution, but the essence of the law is largely determined by the factor of its ability to serve humans. In the context of this thought, making the law always positioned in a process to keep changing and dynamic. This means that the law is born and develops continuously to build and change itself towards a better level of perfection. The perfection of the benchmark of the law can be seen from its quality which can be verified into factors of justice, welfare, usefulness, usefulness, conditions that exist in society and so on.

The essence of law is as a process to give birth to law in its manufacture (law as a process, law in the making). The law does not exist to stand alone, but the existence of the law to serve humans. The meaning of the word progressive itself from progressive law means progress. The implication is that it is hoped that the urgency of the law should be able to keep up with the times, be able to respond to the changing times with all the basics in it, and be able to serve the community by relying on the morality aspect of the human resources of law enforcement itself (Rahardjo, 2006:228)

Law in the continuity of human life is an integral part of living together. This means that law exists in society, so where there is society there is always law (*ubi societas ibi ius*). The urgency of the law is to provide protection to humans against one another's human interests so that they do not conflict with common interests. Therefore, we need rules that regulate human life so that the interests of one do not conflict with the interests of other fellow citizens. One of the rules that humans need is the rule of law that regulates relations between humans to achieve peace through harmony between order and peace (Mertokusumo, 2018).

Seeing the social conditions of society in everyday life, it is necessary to guarantee the fulfillment of basic needs for every citizen where in a position like this it is expected that state administrators, namely the government, will continue to be in the midst of society to always think dynamically in order to realize a welfare state, with one of the factors guaranteeing health services. Recently, there have been many innovations in the implementation of health services, one of which is the use of marijuana or marijuana in medical treatment, but marijuana in Indonesia is categorized as a class I narcotic as referred to in Law 35/2009.

The definition of narcotics is explicitly stated in Article 1 number 1 of Law 35/2009 which states that narcotics are 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 or eliminate pain. , and can cause dependence, which is divided into groups as attached to this Law.

According to the author, understanding the definition of narcotics in the a quo Law, it is true that marijuana comes from the marijuana plant whose presence has reaped a negative stigma by the wider community as a type of narcotics, but what is caused in that sense can be different if the use of marijuana is used positively according to needs and needs especially in the use of medical treatment. If examined further, the main goal of the government to issue Law 35/2009 is of course to provide a protection factor for all Indonesian people from the dangers of abuse, as well as illegal narcotics trafficking, and what the government should want is to ensure the availability of drugs for people who need them from its utilization. Because today's narcotics, especially marijuana or marijuana, are widely used in the medical world for health services.

The presence of legislation on narcotics in Law 35/2009 according to the author, there is a gap related to the presence of marijuana or marijuana in the a quo law as classified in narcotics group I. Although Article 7 of Law 36/2009 states that narcotics can only be used for service purposes health and/or development of science and technology. However, the existence of marijuana or marijuana which is a type of narcotic in group I, its use is prohibited for the benefit of health and can only be used for the benefit of developing technology and science. In limited quantities, class I narcotics can be used for the purpose of developing science and technology and for diagnostic reagents and laboratory reagents after obtaining approval from the Minister on the recommendation of the Head of Badan Pengawas Obat dan Makanan (BPOM) [Food and Drug Supervisory Agency].

The above description implies that behind the potential benefits of using marijuana or marijuana in medical treatment as described previously, but in the laws and regulations in force in Indonesia, which are classified as class I narcotics, their use is prohibited for the benefit of health services. With the enormous benefits of marijuana or marijuana in medical treatment, the LGN organization then created a campaign that was given the name "presumption of innocence of the cannabis plant". This can be interpreted as an effort to provide re-education about the position of marijuana or marijuana which based on Law 35/2009 is a prohibited plant and has no benefits like other types of narcotics class I. The essence of the existence of this principle is to try to give an understanding that as a plant, marijuana or marijuana actually provides great benefits for the benefit of human life as well as other plants.

The view of the negative stigma related to the use of marijuana or marijuana, is to provide input to the government in the use of marijuana for health services. This is by LGN for its seriousness in establishing a research institution, namely the "Sativa Nusantara Foundation". The establishment of the institution received a positive response from the government by obtaining legality in the form of approval of a research proposal entitled "Optimization of Diabetes Drugs (Lead) Using Cannabis Root, Flower, and Seed Extracts". related to the use of marijuana or marijuana plants by the Ministry of Health through the Health Research and Development Agency. The research is based on the permit letter by the Ministry of Health No: LB.02.01/III.3/885/2015, dated January 30, 2015 Subject: Permit for cannabis research. And signed by Prof. Dr. Tjandra Yoga Aditama. One of these research will refer to

Law 35/2009. So it is hoped that this research will reap bright points to realize the legality of marijuana.

Thus, according to the author, the existence of marijuana or marijuana should be regulated, especially for the benefit of health services in its use as traditional medical drugs and have a significant positive impact on the impression of negative stigma related to the presence of marijuana or marijuana among the wider community. And its existence in Law 35/2009 as a class I narcotic does not create a gap, after knowing the use of marijuana or marijuana in medical treatment on the one hand, the law is born and develops continuously building and changing itself towards a better level of perfection. Because the legalization of marijuana or marijuana can be used as an alternative solution for the Indonesian state to improve the welfare of its people with useful processing, not necessarily destroying it.

The prospect of legality of marijuana or marijuana can be taken into consideration by the Indonesian government because these plants in the Aceh area have very good quality when compared to other countries where this can be used as an alternative to domestic industrial commodities. Even if legality has been granted by the government, the very important urgency is, the public is required to be aware of it, obey and be responsible that the emphasis on the legality of marijuana is only for the benefit of its use in medical treatment purposes in Indonesia.

IV. CONCLUSION

Based on the descriptions above, it can be concluded that the idea of legalizing marijuana is not an easy idea to realize because the required process must go through stages, especially related to the construction of people's educational patterns of thinking about the use of marijuana. So that through educational actions and mutual interaction between individuals with one another will create a form of realization in order to realize the regulation of the existence of marijuana use in health services. Because through a legal approach to the community in an educative way, it will have a very broad impact in order to provide legality for the use of marijuana, especially in medical treatment, which then these thoughts will be poured into the form of binding regulations in the form of positive law.

Because the law is born and develops continuously building and changing itself towards a better level of perfection. With the many potentials contained in marijuana or marijuana, especially its existence in the health sector, it should be expected for the state administrative apparatus to revise Law 35/2009 which is categorized as a class I narcotic. Legalization of marijuana or marijuana can be used as an alternative solution for the Indonesian state to prosper the community because can be used as an alternative to domestic industrial commodities. The urgency of this legality is addressed to the public whose awareness is required to participate, obey and be responsible, that the most important meaning to emphasize from this legality is only based on the interests of using marijuana for medical treatment purposes in the State of Indonesia.

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