

ANALYSIS OF THE CONSTITUTIONAL COURT'S RULING AGAINST THE LEGALIZATION OF MEDICAL CANNABIS AND ITS PRACTICE IN MAQASHID



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Abstract

Medicine is one of the most important things in human life. Many substances can be used as medicine, including marijuana. In this case, according to the decision of the constitutional court, permission was not granted for the medical use of marijuana for various reasons. Even though developed countries like America have allowed the use of marijuana as a medicine. Health services in our country can be said to be quite up-to-date in terms of human resources, however when it comes to granting permits to use marijuana as a source it is not permitted either by general law or by religious law. The many opinions and statements from legal observers and religious leaders make this matter still a matter of debate. Some say that the use of marijuana as a medicine is not a problem if it is still under the supervision of health experts and some say it is not yet the time to allow it because marijuana is a class 1 narcotic, which means it has a very high level of dependence on its users. The Constitutional Court also rejected the use of marijuana as a source of health services because human resources in Indonesia have not been able to accept marijuana as a health service tool, considering and considering the widespread use of narcotics freely, and to date, this has not been addressed by the Government.

Keywords: Medical Marijuana, Legalization, Constitutional Court

INTRODUCTION

Medicine is a multidisciplinary field of study throughout history that seeks to explore and understand medical practice. The history of medicine is the study and documentation of the evolution of medical care, practice, and knowledge over time. Medical historians often draw from other humanities fields of study including economics, health sciences, sociology, and politics to better understand the institutions, practices, people, professions, and social systems that have shaped medicine. When the period predates or lacks written sources on medicine, information is instead drawn from archaeological sources. This field traces the evolution of human societies' approaches to health, disease, and injury from prehistory to modern times, the events that shaped these approaches, and their impact on populations.

Because human populations were once spread across the globe, forming isolated communities and cultures that interacted sporadically, various archaeological periods have been developed to explain the technological context, sociocultural developments, and uptake of different writing systems across early human societies. Prehistoric medicine then was highly contextual to the location and people in question, creating a non-uniform period of study to reflect varying levels of societal development.

Military medicine advanced methods of treating trauma and surgery. Public health measures were developed primarily in the 19th century because rapid urban growth required systematic sanitation measures. Advanced research centers opened in the early 20th century, often attached to large hospitals. The mid-20th century was marked by new biological treatments, such as antibiotics. These advances, along with developments in chemistry, genetics, and radiography led to modern medicine. Medicine was highly professionalized in the 20th century, and new careers opened up for women as nurses (from the 1870s) and as doctors (especially after 1970).

As time progresses, medical treatment also becomes more advanced. It has reached the point where humans have developed various ways so that cures for all diseases can be formulated and found. One of them is utilizing the function of marijuana which is said to be able to cure all diseases, including diseases that are said to have no cure. The constitutional court's decision firmly rejected the use of marijuana as a medical medium because the marijuana plant has addictive properties that can cause strong dependence and can damage the mind and diminish consciousness. From a religious perspective, especially in the Islamic

religion, it is true that public use of marijuana is strictly prohibited because it is included in the category of plants that can damage common sense as well. However, with the development of science, scholars and religious leaders are again exploring knowledge about the law of using marijuana by studying the science of *Ushul Fiqh*. In Islamic knowledge, health is one of the great blessings that Allah SWT has given to humans. Because health is the main capital in life, especially for humans. to protect its people's survival as explained in the objectives of Islamic law, which include preserving religion, preserving souls, preserving reason, preserving property, and preserving offspring. In Islamic wisdom, health is one of the great blessings of Allah SWT given to mankind (Yakubu & Isbahi, 2022). Because health is the main capital in life, especially for humans. To protect its people in the continuity of life which has been explained in the objectives of Islamic law which include preserving religion, preserving the soul, preserving the mind, preserving property, and preserving offspring.

There are more and more medical problems as time goes by. resulting in Muslims being faced with a very dilemma and urgent problem. When Islamic teachings are faced with medical realities that are racing along with technological advances. So, it is not uncommon for them to use something that is forbidden by Islam. According to Islamic teachings, anything that can damage the mind and bring harm to humans is forbidden by religion and requires that it be destroyed or burned to the ground (Toha & Rozikin, 2020). The aim is to understand what marijuana is and find out how the constitutional court ruled on marijuana for medical purposes, as well as the Maqashid Sharia view on marijuana for medical purposes.

RESEARCH METHOD

This research uses a qualitative approach to find the purpose of this research. Qualitative research methods are one of the research methods that are currently increasingly developing and are widely implemented in conducting research. Data collection in this research used descriptive data in the form of written language, namely books and scientific journals. This was done because this research needs to be understood in depth, especially if it has never been done before. This research aims to explore various opinions circulating regarding the legalization of the use of medical marijuana in Indonesia. This qualitative

method uses Library Research, namely by using literature (library) which is divided into 2 parts, namely primary and secondary. Primary literature includes the results of decisions of the Constitutional Court, and secondary, namely in the form of books, scientific journals, and also articles.

RESULTS AND DISCUSSION

Marijuana

Marijuana or what is known in scientific language as *cannabis sativa* is a plant that is classified as a class I narcotic, which is the most dangerous group because its addictive power is very high so it can cause dependence. In Islam, treatment using marijuana as a medium is also permitted provided that it must be supervised by the authorities, whereas in Indonesia the use of marijuana is prohibited based on Law Number 35 of 2009 concerning Narcotics.

The large amount of research that has been carried out on the benefits of marijuana as a medicinal medium has given rise to a lot of debate and sparked various new thoughts discussing the importance and validity of its use as a new medical source and the existing sanctions and criminal penalties in Indonesia (Qadrina & Risal, 2022). Marijuana, which has always been considered a negative thing in society in general, turns out to be able to provide promising medical services is no longer seen as a bad thing and can be a very useful alternative treatment provided that its use is supervised by authorized parties.

Authorized and knowledgeable, both experts on the cannabis plant itself and medical personnel. As recently happened to Yeni, a child who suffers from syringomyelia, a disease that attacks the spinal cord, characterized by the presence of fluid in it which tends to grow and develop in the sufferer's organs. However, due to the decision issued by the Constitutional Court stating that the use of level I narcotics can be dangerous and addictive in nature, their use is prohibited (Malik, Manalu, Juniarti, 2020)

Results of the Legalization of Marijuana for Medical Needs

All types of plants of the cannabis genus, including leaves, seeds, and processed products, are included in the type of marijuana. As a class I narcotic, marijuana is prohibited and cannot be used as a source of medical services. However, class II and III narcotics, if used in certain quantities, are permitted to be used in controlled doses if there are medical indications that require their use, but provided that they must comply with the prescription

recommended by medical personnel and must also comply with statutory provisions. Until now, class I narcotics, namely marijuana and all types of plants with the same shape and properties, are only used as a research medium and for scientific and technological progress and are only carried out by pharmacists and at certain scientific institutions.

Indonesia is one of the countries that has not legalized marijuana according to its legal provisions. However, on the other hand, several countries have legalized marijuana as a medical necessity for their countries, such as the United States, Canada and Italy. The impact of allowing marijuana in several of these countries has resulted in changes to laws that must be adapted to the circumstances and conditions of that country. One of the reasons for the increase in countries starting to legalize marijuana as a source of medical services is because of recommendations from the WHO (World Health Organization) which said to review the classification of the legality of marijuana and similar plants, which initially thought that marijuana was categorized as the most dangerous plant and medicine. It turns out that it can be used as a medical source after a deeper review (Utami & Arfiani, 2022).

It can be said that the polemic on the legalization of marijuana is a very complex and very sensitive matter because there are still many parties who believe that the benefits obtained are not commensurate with the level and impact of damage received by those who use it. In Islam, it is clear that the use of marijuana is unacceptable even though it is not mentioned in the Qur'an, but in the science of *ushul fiqh*, marijuana is legally determined to be the same as wine which can cause loss of consciousness and is intoxicating, in which case marijuana can cause high dependence on its users so that it is prohibited by law to be used and determined by the science of *Ushul Fiqh*.

Maqashid Sharia

The substance of *Al-Maqashid Asy-Syar'iyah* is benefit. Benefits in God's Taklif can be realized in two forms. The first is in the essential form, namely direct benefits in the sense of causality. Second, in the form of *majazi*, namely the form which is the cause that brings prosperity. Benefits according to *Asy-Syatibi* can be seen from two points of view as follows.

First, *Maqashid Asy-Syar'i* (God's Purpose). *Al-Maqashid Asy-Syar'iyah* contains four aspects, namely: a) The initial goal of the Sharia is the benefit of humans in this world and the hereafter; b) Sharia as something that must be understood; c) Sharia as the Taklif law that must be carried out; d) The Shari'a aims to bring humans under the auspices of the law.

Second, *Maqashid Al-Mukallaf* (Aim of *Mukallaf*). Benefits as the substance of *Al-Maqashid Syar'iyah* can be realized if the five main elements can be realized and maintained. The five main elements are: a) Religion (*Ad-Din*); b) Soul (*An-Nafs*); c) Descendants (*An-Nasab*); d) Intellect (*Al-Aql*); e) Treasure (*Al-Maal*).

To realize and maintain these five elements, Ash-Syatibi divides them into three levels of *maqashid* or *syar'iyah* goals, namely: a) *Maqashid Ad-Dharuriyah*, is intended to maintain the five main elements of human life above; *Maqashid Al-Hajiyyat*, is intended to eliminate difficulties or become a guide to the five main elements for the better; b) *Maqashid At-Tahsiniyat*, is intended so that humans can do their best to perfect the maintenance of the five basic elements; c) *Maqashid Asy-Syar'iyah* in simple terms, consists of two words, namely *Maqashid* and *Syar'iyah*. *Maqashid* is the plural form of *Maqshud* which means intention or purpose. Sharia linguistically means the path to a water source whose direction is meant to be the basic source of life.

The aim of sharia is for human benefit. Asy-Syatibi wrote: In fact, the Sharia aims to realize the human benefit in this world and the afterlife. Understanding *Al-Maqashid Asy-Syar'iyah* takes up a fairly large portion of Ash-Syatibi's work, namely *Al-Muwaffaqat* (Jumantoro & Amin, 2009).

Marijuana from an Islamic Perspective

From an Islamic perspective, there is no evidence for discussing marijuana in the Al-Qur'an or Hadith, however, many branches of science discuss marijuana, especially the view of Islamic law towards marijuana itself. Wahbah Az-Zuhaili stated that one of the things that can lead to damage to the mind is *Al-Hasyusy* which is commonly used in the East and is used as the name for the marijuana plant because it can cause numbness or intoxication. Imam Hajar Al-Asqalani also said in his book *Fathul Bari* that marijuana is haram (BNN Banda Aceh, 2020). Based on the hadith of the Prophet Muhammad Peace be Upon Him in the history of Abi Daud and Ibnu Umar which says that marijuana is the same as *khamr* which is intoxicating and everything that intoxicates is haram (Gunawan, 2022).

One strong piece of evidence that marijuana is haram is the explanation of *qiyas*. *Qiyas* in language is measuring an equality or compromise between two things. Meanwhile, in terms of terms, *qiyas* is attaching an event for which there is no legal provision an event whose decision is mentioned in a decision in a decision whose text is mentioned (Meliala,

2013). To carry out *qiyas* on marijuana, the law of which is not found in the Qur'an and Hadith, *ushul* experts return to the origin and *far'u* of marijuana, the legal origin of which is *haram*, and after it is *illat*, the result is that marijuana is also intoxicating and can cause the user is unconscious, then the final result of the *qiyas* is that marijuana is prohibited because it is intoxicating, which is the same as *khamr*.

Origin of *Far'u* Origin of the Law of *Illat* Value of *Qiyas Khamar* Marijuana is prohibited Intoxicating *Khamar* Marijuana is prohibited because it is intoxicating.

Table 1
Origin of Far'u Illat Law

Origin	Far'u	Origin of Law	Illat	Qiyas Value
Wine	Marijuana	It's forbidden Wine	Intoxicating	Marijuana is prohibited because it is intoxicating

The table above is an example of *qiyas* carried out to determine the law on marijuana. The first is Origin or *Al-Aslu*, namely wine itself. Next, there is *Far'uya*, which is marijuana in the form of an item that has the same properties as wine. In the context of *qiyas*, *far'u* is defined as a case that wants to be compared to the original because no text or proposition clearly states the law. Then there is the legal origin, namely the provisions that already exist in the Al-Qur'an and Hadith to determine the existence of the text at the origin, namely the prohibition of wine. Allah Subhanahu Wa Ta'ala says in Surah Al-Maidah verse 90 which means "O you who believe, indeed drinking alcohol, gambling, (sacrificing to) idols, and drawing lots of fortunes with arrows are the actions of Satan. So, stay away from those (deeds) so that you will be lucky". Next, there is *Illat*, which is a clear characteristic that is used as the basis for guidance and legal differences. In this case, marijuana is equated with wine, whereas wine itself already has legal provisions, namely intoxication, which ultimately has the *qiyas* value that marijuana is something that is *haram* to use because it is intoxicating and causes dependence.

Petitioner's Application for Legalization of Medical Marijuana and Constitutional Court Decision

In their application, the applicants request that the Constitutional Court: a) In the Narcotics Law it has been explained that narcotics can be a medium for health services, but

it is stipulated in Article 6 Paragraph 1 letter A, and article 8 Paragraph 1 that health services using narcotics are prohibited; b) The prohibition on the use of class 1 narcotics means that Indonesian people cannot enjoy health services resulting from developments in technology and science as regulated by the constitution; c) The benefits of class 1 narcotics are very large in health services even though they are considered to have a very high level of dependence, the state should regulate this, not set restrictions and prohibitions on their use; d) It is hoped that this application can be regulated by the state so that research and its use can provide positive results for all Indonesian people, just like other countries that provide legal access to class 1 narcotics.

And also the main aim of the petitioners in their petition is to encourage guarantees and quality of health services that can be utilized as fully as possible by all Indonesian people (Constitutional Court, 2020)

In its decision, the Constitutional Court decided to reject the petitioners' petition on the grounds: a) According to the Constitutional Court, class 1 narcotics can indeed provide health services for all Indonesian people, but the side effects of class I narcotics can cause very high losses and dependency and have fatal consequences if misused and used without control and supervision; b) Legal facts stating that the use of narcotics is legal and legally recognized for health services for the state. However, due to differences in the characteristics of types of narcotics, structure and legal culture as well as supporting facilities and infrastructure, the constitutional court has not been able to approve the implementation of the same policy as other countries; c) The legal facts obtained in the trial state that there is no evidence that comprehensive and in-depth scientific studies and research have been carried out in Indonesia. In the absence of evidence regarding such comprehensive studies and research, it is difficult for the Court to consider and justify the wishes of the Petitioners on rational grounds, both medically, philosophically, sociologically, and juridically (Constitutional Court, 2020).

CONCLUSION

Until now, regarding whether or not marijuana is permitted as a source of medical services for the Indonesian people, there is still no clarity. If we look at the decision of the constitutional court, we can conclude that this matter still cannot be given legal permission.

And likewise, if you look at the thinking of religious leaders, not all of them allow it. However, this can be possible under certain conditions, as explained by Maqashid Sharia, in one condition marijuana is needed as a medical aid, if it is not given to those who need it, it can kill someone's life. Conditions like this can trigger public attention to the medical use of marijuana. Also as citizens, we should be able to treat this as a serious problem because it is possible that if marijuana is legalized as a source of medical services it will save many lives in the future.

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