

Volume: 3  
Number: 3  
Page: 638 - 643

**Article History:**

Received: 2022-07-10  
Revised: 2022-08-10  
Accepted: 2022-11-11

**THE LEGALIZATION OF MEDICAL CANNABIS: A COMPARATIVE  
APPROACH OF THE THAI NARCOTICS ACT B.E.2522 (1979)**

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**Abstract:**

Based on Appendix I, point 8 of Law no. 35 of 2009 concerning Narcotics, Cannabis is classified as Schedule I narcotics. Referring to Article 7 of Law 3 of 2009, narcotics other than Schedule I can be used to benefit health services and the development of science and technology. Meanwhile, narcotics from Schedule I can only be used to develop science and technology. Thus, Cannabis can only be used for the development of science and technology with the permission of the Minister of Health and the recommendation of the Head of the National Agency of Drug and Food Control (BPOM). This study compares favorable laws regarding narcotics, especially Cannabis, which is regulated in the law of Indonesia and Thailand. This study also explores the regulation of Cannabis as an alternative in the future in Indonesia. In normative law research, statutory and comparative approaches compare the Narcotics Laws in Indonesia and Thailand. Cannabis is not included in the Narcotics class that can be used for health since it is classified as Schedule I. On the official website of the Royal Gazette, it was announced that Thailand had legalized the use of Cannabis as a medical alternative. It will be legalized 120 days after the announcement is made.

**Keywords:** Legalization, Medical Cannabis, Comparison.

Cite this as: INDRIANI, E.R., MADJID, A. (2022) "The Legalization of Medical Cannabis: A Comparative Approach of The Thai Narcotics Act B.E.2522 (1979)" International Journal of Environmental, Sustainability, and Social Sciences, 3 (3), 638 - 643.



**INTRODUCTION**

Cannabis is classified as an illegal plant in Indonesia. Indonesia issued a law prohibiting the production, distribution, and consumption of Cannabis. Based on Appendix I point 8 of Law no. 35 of 2009 concerning Narcotics, Cannabis is classified as Schedule I narcotics. Referring to Article 7 of Law 35 of 2009, narcotics can only be used to benefit health services and the development of science and technology. The Elucidation of "health services" includes medical rehabilitation. The term "development of science and technology" is the use of narcotics for treatment and rehabilitation, including education, training, research, and development carried out by government agencies whose duties and functions supervise, investigate, and eradicate drug trafficking. Education and training include training drug-sniffing dogs of the Indonesian National Police, Customs and Excise, the National Narcotics Agency, and other agencies.

The debate over legalizing Cannabis has erupted in Indonesia, with pros and cons. Some Indonesians want Cannabis legalized, while others believe it is harmful to the Indonesian generation. As of the writing of this paper, the government is still considering legalizing Cannabis, as demonstrated by several National Legislation Programs discussing the legalization of medical Cannabis. Based on Law number 35 of 2009 concerning Narcotics, which the Minister of Health further regulated in Regulation Number 7 of 2018 concerning Changes in the Classification of Narcotics, Cannabis is classified as Schedule I narcotics. It means that Cannabis can be used for the benefit of science and technology with permission from the Minister of Health and a recommendation from the Head of the National Agency of Drug and Food Control (BPOM). (BPOM). However, for those who use Cannabis without consent (planting, maintaining,

possessing, storing, controlling, or providing in the form of plants), then they can be sentenced to a minimum of 4 years in prison and a maximum of 12 years with a minimum fine of IDR 800 million and a maximum of IDR 8 billion. Penalties will increase if the plant produced weighs more than one kilogram.

Globally, there are three categories of cannabis legalization for recreation due to its 'high' sensation, medical purposes, and cultivation. Possession of small amounts of Cannabis is not subject to punishment by jail or fine in Germany or Argentina. In other countries such as Australia, Belgium, New Zealand, Spain, and Sri Lanka, Cannabis is only legal for medical consumption. In the United States, Cannabis is legal in some states. Cannabis is classified as Schedule I Narcotics, which means that Cannabis cannot be used as a drug or therapy in treating patients. Cannabis is effective in the treatment of several diseases, including:

1. Glaucoma
2. Alzheimer's Disease
3. Fibromyalgia.

In many countries, the debate over legalizing Cannabis use persists. Several countries have decided to legalize Cannabis. The National Assembly of Thailand has approved the use of Cannabis for medical purposes. A lawmaker called it a 'New Year's gift' to the Thai people. However, the use of Cannabis for "recreation" remains prohibited. Cannabis was once used as a traditional medicine in Thailand, but it was outlawed in the 1930s.

Countries in Southeast Asia issued regulations prohibiting the use, possession, and distribution of drugs. Thailand was the first country in the region to allow the use of Cannabis as a drug. The parliament, which was set up by the Thai military regime, supported amending the 1979 Narcotics Law on Tuesday, December 2018. According to Reuters, Thailand's parliament added time for deliberation before the New Year holidays, resulting in the legalization of Cannabis for medical purposes.

The author selects two problem formulations that will be discussed in this paper based on the explanation of the background provided above. First, how is the regulation of narcotics, especially Cannabis, specifically medical Cannabis, in Indonesia and Thailand? Second, how is the legal construction of medical Cannabis in Indonesia in the future?

## METHOD

This normative legal research used primary legal materials of Law number 35 of 2009 concerning Narcotics. There were also secondary legal materials in library research and written legal sources. The author used The Thai Narcotics Act B.E.2522 (1979) in this study. The statutory approach and the comparative approach were employed in this study. The statute approach was carried out by reviewing all laws and regulations related to the legal issues being addressed. Practically, this legal approach will allow researchers to investigate the consistency and suitability of a law with other laws or the constitution. The comparative method was used by comparing a country's laws with one or more countries on the same subject. Court decisions for the same case in different countries can also be compared.

## RESULT AND DISCUSSION

**Positive Laws on Cannabis in Indonesia.** Article 28 H (1) of the 1945 Constitution reads, "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care". Indonesians have a right to a safe place to live and an environment free of narcotics.

Narcotics can be addictive, harm the body, and ruin a person's life. Human life must be clean and free of things that are harmful to one's health. Law number 35 of 2009 concerning Narcotics regulates and supervises, and takes action on the circulation and abuse of Narcotics. Narcotics not only make people addicted, but they can also cause people to die entirely unexpectedly. Humans require a clean environment as well as a healthy body to live. Drug abuse is a crime against humanity.

Law concerning narcotics in Indonesia, Law number 35 of 2009 concerning Narcotics, prohibits narcotics and threatens punishment for narcotics abusers, who can be individuals or legal entities (corporations). The Law on Narcotics in Indonesia also uses the terms drug abuser, drug addict, and drug victim for people who use Cannabis. Addicts are addicted to narcotics, while abusers are people who use narcotics but are not dependent on them. Meanwhile, Victims are people who use narcotics under the influence of others and are unaware that they are doing so. The law on narcotics does not define the correct use of narcotics for personal purposes. The analogy is that if there is a term abuser, there must be the opposite of "justifier". Cannabis, as a class I narcotic, which is justified in the Narcotics Law, may only be used for research and development of science and technology (Article 8 Paragraph (2) of Law Number 35 of 2009 concerning Narcotics).

Indonesia, a country that produces cannabis plants that are quite extensive and of high quality, has eradicated it. It is proven by the enactment of Law Number 35 of 2009. Article 6 states that cannabis plants are classified as Schedule I narcotics, or the abuse of the use of it may result in severe punishment. The beginning of the stipulation of the law prohibiting Cannabis in Indonesia was Law No. 9 of 1976. It was then ratified into the amendment of the Narcotics Law Number 22 of 1997. Then, it was re-ratified to the amendment of the Narcotics Law Number 35 of 2009, which is and is still valid until now. The application of Law Number 35 of 2009 in Indonesia is ratifying the results of the Single Conventions of the United Nations (UN) in 1961, 1971, and 1988.

The current use of narcotics is regulated in Law Number 35 of 2009 concerning Narcotics, classifying narcotics into a. Schedule I narcotics (narcotics that can only be used for scientific research and not in therapy and have a high potential for addiction), b. Schedule II Narcotics (narcotics with medicinal properties used as a last resort, can be used as therapy and to develop knowledge, and have a high potential for addiction) c. Schedule III Narcotics (narcotics with medicinal properties and are widely used in therapy and to develop science and have a mild potential to cause addiction) (See the explanation of Article 6 Paragraph (1)). Regarding the Amendment to the Classification of Narcotics, it is stated that: Cannabis plants, all plants of the Cannabis genus and all parts of the plant, including seeds, fruit, straw, processed products of the cannabis plant, or parts of the cannabis plant including cannabis resin and hash. Cannabis is included in Schedule I Narcotics, which means Cannabis cannot be used as a drug or therapy for patient treatment.

Article 7 of Regulation Number 35 of 2009 concerning Narcotics, narcotics can only be used for the benefit of health services and the development of science and technology. However, Cannabis is not included as Narcotics that can be used for health since Cannabis is classified as Schedule I narcotics and is prohibited from being used for health services. However, for those who use Cannabis without consent (planting, maintaining, possessing, storing, controlling, or providing in the form of plants), then they can be sentenced to a minimum of 4 years in prison and a maximum of 12 years and a minimum fine of IDR 800 million and a maximum of IDR 8 billion. Penalties will increase if the plant produced weighs more than one kg.

The government has also specifically regulated cannabis farming through Government Regulation Number 1 of 1980 concerning Provisions for Papaver, Coca, and Cannabis Planting.

Various regulations for the abolition of narcotics crimes have been enacted to tackle the widespread distribution and abuse of narcotics. Among the regulations are:

1. Drugs Ordinance (Verdoovende Middelen Ordonantie) Stbl. 1927 No. 278 Jo. No. 536, which regulates the circulation, trade and use of drugs;
2. Law Number 9 of 1976 concerning Narcotics;
3. Law Number 35 of 2009 concerning Narcotics.

In addition, the following laws and regulations implement and clarify the provisions of the Narcotics Law:

1. Government Regulation Number 40 of 2013 concerning the Implementation of Law Number 35 of 2009 concerning Narcotics;
2. Government Regulation Number 25 of 2011 concerning the Implementation of Compulsory Reporting of Drug Addicts;
3. Regulation of the Minister of Health Number 46 of 2012 concerning Technical Guidelines for the Implementation of Medical Rehabilitation for Addicts, Abusers, and Victims of Narcotics Abuse who are in the Process or Have Been Decided by the Court;
4. Regulation of the Minister of Health Number 2415/MENKES/PER/XII/2011 concerning Medical Rehabilitation of Addicts, Abusers, and Victims of Narcotics Abusers;
5. Supreme Court Circular Number 04 of 2010 and the Supreme Court Circular Number 03 of 2011.

**Positive Laws on Cannabis in Thailand.** Thailand was the first country in Southeast Asia to legalize Cannabis as an alternative medical treatment. It was ratified by the parliament set up by the Thai military regime. During the discussion, the Thai Parliament supported the amendment of the 1979 Narcotics Law. The Thai government officially legalized Cannabis for medical purposes on January 1, 2019. The Thai government strictly regulates Cannabis for medical purposes through production and sales licenses. Possession of individual Cannabis in a certain amount is regulated by having a prescription and certification recognized by the government. The Thailand government confirms that the law also applies to Kratom, which has a stimulant effect.

Thailand is the first country in Southeast Asia to legalize Cannabis for medical and research use. Residents are allowed to consume and grow Cannabis at home under this new rule, but they must still notify their respective local governments. This new rule is effective 120 days after the draft law on Cannabis use is officially published on the official website of the Royal Gazette soon. However, the Minister of Public Health, Anutin Charnvirakul warned that Cannabis could not be used for commercial purposes without a permit. The Ministry of Public Health submitted a draft law to parliament on details of cannabis use, including its production and commercial use. The draft bill includes a fine of 200,000 baht for residents who grow Cannabis without notifying local authorities, a sentence of 3 years in prison and a fine of up to 300,000 baht for citizens caught selling Cannabis without permission. Thailand's most recent initiative aims to promote Cannabis as a commercially viable crop. Agriculture employs one-third of Thailand's workforce, according to the World Bank.

While there has been rapid progress in the possibility of legalizing the medical use of Cannabis, full legalization for recreational Cannabis use is unlikely to materialize any time soon. This country, for several centuries, has used Cannabis for traditional medicine. However, a stigma is still associated with using this plant for fun. Leading government officials are reluctant to advocate the recreational use of Cannabis despite the plant's lucrative economic potential. Other officials flatly rejected the prospect of legalization.

Cannabis production and possession create legal confusion and a gray area. Therefore, the Minister of Public Health is also submitting a separate draft to parliament regarding the

legalization of Cannabis, including production, commercial, and recreational or personal use. Paisal Dankhum, Thailand's Food and Drug Regulator Chief, previously said home-grown Cannabis should be used for medical purposes such as traditional medicine. Fines for violators of the government's draft, residents who grow Cannabis without notifying the government, can be fined up to THB 20,000, or IDR 8.7 million. Meanwhile, those who sell without a permit will be fined THB 300,000 or around IDR 130 million, three years in prison, or both.

**Alternative Laws in Indonesia regarding Medical Cannabis in the Future.** Legalizing Cannabis has become a topic of discussion in Indonesia, and there are both pros and cons. Some Indonesians want Cannabis legalized, while others believe it is harmful to the Indonesian generation. Narcotics as a drug ingredient policy existed prior to Indonesia's independence in Law Number 35 of 2009 concerning Narcotics (from now on referred to as the Narcotics Law). It is stated that to improve the health of Indonesian human resources in the context of realizing people's welfare. Efforts must be made to increase in the field of treatment and health services, including seeking the availability of certain types of Narcotics that are urgently needed, like drugs, as well as preventing and eradicating the dangers of abuse and illicit trafficking of Narcotics and Narcotics Precursors. The author also disagrees that Narcotics are being abused in a way that leads to addiction. As stated in the preamble to the Narcotics Law, there is a need for a formulation policy that regulates that Narcotics, on the one hand, are drugs or materials that are useful in the field of treatment or health services and scientific development, but on the other hand, can cause addiction, which is very detrimental if misused or used without strict and careful control and supervision.

Reviewing the research findings mentioned earlier and the application of medical Cannabis regulation, the authors conclude that it is necessary to formulate a criminal law policy to revise Law Number 35 of 2009 concerning Narcotics. The Criminal Law Policy does not only talk about current criminal law policies but also about the future. It was also released as the objectives and foundation, as stated in the preamble to the 1945 Constitution. The objectives outlined in the preamble to the 1945 Constitution are briefly "shall protect the whole Indonesian nation and the entire native land of Indonesia and advance the public welfare based on Pancasila". The general policy line serves as both the foundation and the goal of Indonesian legal politics. It is also the foundation and goal of any legal reform effort in Indonesia, including criminal law and legal policy reforms.

The need for criminal law reform is crucial. Criminal law must include legal rules that bind actions that meet specific criteria for a crime.

Hence, I believe that the Appendix to Law Number 35 of 2009 must be revised by moving the Cannabis, all plants of the cannabis genus, and all parts of the plant, including seeds, fruit, straw, processed cannabis plants, or the cannabis plant including cannabis resin and hash, into Schedule II narcotics allowing it to be used for medical purpose.

## CONCLUSION

Article 7 of Regulation 35 of 2009 concerning Narcotics states that narcotics can only be used for health services and the development of science and technology. However, Cannabis is not included in the Narcotics schedule that can be used for health purposes since it is classified as Schedule I narcotics and is prohibited from being used for health services. Thailand is the first country in Southeast Asia to legalize the use of medical Cannabis as a medical alternative. Under this new rule, residents can consume and grow Cannabis at home by notifying their local governments. The bill would include a fine of 200,000 baht for residents who grow Cannabis without notifying local authorities, a sentence of 3 years in prison, and a fine of up to 300,000 baht for citizens caught selling Cannabis without permission.

Cannabis cannot be used for recreational purposes. It cannot be used freely without any restrictions. It is necessary to make new regulations of a criminal law policy to move Cannabis from Schedule I to Schedule II or Schedule III for medical purposes. Cannabis cannot be used as an alternative medical treatment if it is classified as Schedule I narcotics. Therefore, a revision of Law Number 35 of 2009 stating that Cannabis should not be used as a medical material can be revised so it can be used as an alternative medical treatment.

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