Criminal Policy Reform of Cannabis use for Medical Purposes in Indonesia Based on the Consideration of the Single Convention on Narcotics 1961

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ABSTRACT
All international agreements ratified by the Government of Indonesia and ratified by laws of ratification or ratification must be transformed into transformation laws so that they can be applied in court because judges are not bound by international agreements made by the Executive agency but by legal regulations made by the agency. Legislature in accordance with the theory of separation of powers based on function, it is time for the Government of Indonesia to review its narcotics policy on the basis of the benefits and health rights of its citizens. Based on the results of the UN voting, it can be used as medical legitimacy that must be followed by member countries including Indonesia which always refers to the provisions of the 1961 Single Narcotics Convention. With the ratification of the 1961 Single Convention on Narcotics, including the Amendment Protocol that permits the research and use of medical marijuana, and a list of drug categories that may be amended by Regulation of the Minister of Health. From this point of view, it can be said that the actual politics of medical marijuana law is not that difficult. Provisions that allow changes to class I drugs in the list of the Narcotics Law are good legal political evidence that can support research and use of medical marijuana.

Keywords: *Criminal Policy; Reform; Cannabis, Narcotics*

1. INTRODUCTION

The 1961 Single Convention on Narcotic Drugs (Single Convention on Narcotic Drugs) is the result of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which took place in New York from January 24 to March 25, 1961, and was opened for signature on March 30, 1961, the convention's goal is to:

a. Creating an international convention that is widely approved by governments throughout the globe and that has the potential to replace the international control restrictions on drugs that are now dispersed among eight (eight) different international treaties;
b. Improving techniques of narcotics control and restricting their use exclusively for the benefit of treatment and/or research reasons;
c. Ensuring the presence of international cooperation in monitoring in order for these goals and objectives to be accomplished.

It has been determined that amendments to the Convention in question should be made after it has been in force for the aforementioned period of eleven (eleven) years. The United Nations Conference to examine Amendments to the Single Convention on Narcotic Drugs was held from the 6th to the 24th of March in 1972. This conference produced the Protocol Amending the Single Convention on Narcotics 1961 as a consequence of its deliberations (Protocol Amending the Single Convention on Narcotic Drugs). drugs, on which signatures might be affixed beginning on March 25th, 1972.

The Republic of Indonesia has signed the above-mentioned Convention on July 28, 1961 by submitting a reservation to Article 48 paragraph (2) regarding the obligation to settle disputes at the International Court of Justice and submitting a declaration against Article 40 paragraph (1) regarding countries which can be parties to the Convention, and to Article 42 which regulates territorial applications. Similarly, the Republic of Indonesia has signed the Protocol Amending the Single Convention on Narcotics 1961 on March 25, 1972 [1].

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In view of developments in Indonesia's domestic politics, the declarations on Article 40 paragraph (1) and Article 42 above need to be withdrawn. Our nation is now working to develop a society that is both fair and affluent. To accomplish this goal, each and every resident of Indonesia has to contribute their time, energy, and ideas. This objective will be accomplished in a short amount of time if the populace is free from the detrimental effects of narcotics, stimulant drugs, tranquillizers, and alcoholic drinks and is in excellent bodily and mental condition. Therefore, especially the use of narcotics needs to be closely monitored and preventive measures need to be taken against narcotics abuse and in addition, narcotics addicts in our country need to be given care and treatment to then be rehabilitated into society [2].

Treatment and treatment efforts for narcotics addicts can be carried out by the Government or private entities that have obtained permission from the Minister of Health. With Indonesia's participation in the 1961 Single Convention on Narcotics and the Protocol that Amends It, and with Indonesia's ratification of the Convention as a law, international cooperation in the field of preventing and eradicating narcotics-related crimes can be carried out in a manner that is more secure and steady. In addition, the provisions of the Single Convention and the Protocol that amends them do not, in general, go against the interests of Indonesia. As a result, these provisions can be accepted and used as the basis for drafting national legislation in the narcotics sector, which is something that should be done.

The United Nations Commission on Narcotics (CND) decided to issue marijuana from Group IV of the 1961 Single Convention on Narcotics to Group I. The decision was based on UN voting results, with 27 agree and 25 rejected [3]. These results do not mean removing marijuana from the list of illegal drugs. Based on the official CND statement, earlier in January 2019, the World Health Organization (WHO) made a series of recommendations to change the scope of control of marijuana and marijuana-related substances. In its official statement, CND agreed to the WHO recommendation to remove cannabis and cannabis resin from group IV and keep it in group I.

The Commission was decided by 27 votes in favor and 25 against this recommendation. Accordingly, cannabis and cannabis resin will be removed from Group IV (written Schedule IV) and placed in Group I. As such, cannabis use remains subject to all levels of control of the 1961 Single Convention. Yesterday's CND session was to decide on WHO recommendations related to cannabis. One of the things approved by the CND is the release of cannabis and cannabis resin from schedule IV or group IV to group I.

In general, the problem of drugs and illegal drugs in Indonesia can basically be divided into three interrelated parts, namely the types of drugs that are widely circulated, traffic in circulation and trafficking and abuse of illegal drugs. The production of illegal drugs and illegal drugs goes through a cultivation process where plants are the main raw materials for the manufacture of dangerous drugs such as coca plants as raw materials for cocaine, opium poppies as raw materials for heroin and cannabis which are processed into hashish or marijuana and processing raw materials until it is ready to be traded and consumed [4].

Indonesia as a country that has ratified the Single Convention on Narcotics 1961, of course, must conduct a review of its narcotics legal policy, this is what underlies this research.

2. METHOD

This research is normative juridical research with a conceptual approach and statutory regulations. The statutory approach is carried out by examining all laws and regulations related to legal issues [5]. This statutory approach is intended to examine and analyze the statutory regulations relating to related legal issues in particular. Conceptual approach moving from the views and doctrines of the doctrines that developed in the science of law [5]. Studying the views and doctrines of these doctrines with a systematic interpretation of written legal materials.

3. RESULT AND DISCUSSION

3.1. Medical Marijuana Regulation

Possession, production, and distribution of this material, regardless of the purpose, remain illegal at the federal level, although states that allow the use of medicinal cannabis have set regulations and individual limits on the sale of cannabis for medical reasons. Deputy Attorney General James M. Cole stated in a 2013 communication to all US attorneys that, despite the adoption of state laws allowing the cultivation and sale of marijuana, it has a regulatory framework that contradicts the typical coordinated efforts of federal authorities to cooperate. Prosecuting persons who cultivate and supply marijuana to terminally sick people for medical reasons has not been listed as a federal priority in local governments [6].

In spite of this, there are additional regulatory ramifications that must be considered in accordance with federal marijuana rules. Due to the fact that cannabis is classified as a Schedule I substance, doctors are unable to "prescribe" medical cannabis therapy legally. However, in accordance with state legislation, they may approve or refer patients for treatment. The expenditures of medicinal marijuana cannot be covered by either publicly funded medical assistance programmes or privately owned health insurance policies. Because marijuana is classified as a Schedule I substance under federal law and

DEA regulations, gaining access to the substance for the purposes of research can be challenging. Non-practitioner researchers have an easier time registering with the DEA to conduct research on substances classified under Schedules II–V than they do with Schedule I substances [7]. With addition to the challenges involved in acquiring chemicals for research purposes, there are also additional constraints in the field of cannabis study. For instance, the Centre for Medicinal Marijuana Research at the University of California-San Diego had access to funding, marijuana with varying concentrations of THC, and approval for a number of clinical research trials; however, they were unable to recruit a sufficient number of patients to carry out five large trials, which resulted in the trials being terminated [8]. Patients were unable to participate in the clinical studies because of unforeseen circumstances, such as a prohibition on driving imposed during the trials. Because there is a lack of clinical research to either support or disprove therapeutic claims and indications for the use of cannabis for medicinal purposes, state legislative authorities and clinicians are frequently forced to rely on anecdotal evidence, which has not been subjected to intense peer review and scrutiny. This is because of the limited availability of clinical research to support or disprove therapeutic claims and indications for the use of cannabis for medicinal purposes. as well as randomized clinical tests that are carried out properly, to prove that medical cannabis is both safe and effective as a treatment. Furthermore, a single entity pharmaceutical drug, such as dronabinol, that has been isolated, evaluated, and given approval for use by the FDA cannot be patented nor can it be mass produced by the corporate entity [9]. This is despite the fact that the drug has been granted approval for use by the FDA. In spite of these constraints, a number of businesses, notably GW Pharmaceuticals, are engaged in the industrial production of the cannabis plant in order to extract either complex combinations or individual cannabinoids for use in clinical studies [9]. Regulation, standardization, purity, and the potential of cannabis as a botanical medicinal product are further complicated by the intricate pharmacology associated with the numerous substances and interactions between chemicals that are found in the cannabis plant. Environmental factors that are present during cultivation also add to this complexity.

Even while medical cannabis treatment has been widely regarded by the general public as having advantages when taken under the supervision of a physician, the ramifications of patients continuing to use this medication when they migrate to other acute care settings are complicated and varied. Because marijuana is classified as a Schedule I substance, hospitals and other treatment settings that receive federal funding—whether through Medicare reimbursement or other federal grants or programs—are required to pause and consider the possibility that they will lose these funds if the federal government steps in and takes action if patients are permitted to use this therapy in the comfort of their own homes. campus. In addition, licensed practitioners who are registered to certify patients for state medicinal marijuana programmes may have comparable concerns regarding the possibility of jeopardizing their federal DEA registration as well as their ability to prescribe other controlled substances, as well as the possibility of jeopardizing Medicare reimbursement. However, worries continue to exist notwithstanding Eric Holder's recommendation in 2009 that enforcement of federal marijuana prohibitions should not be a priority in states that have adopted medical marijuana programmes and follow the rules and regulations of such programmes. Concerns continue to exist despite the fact that Attorney General Eric Holder of the United States urged that enforcement of federal marijuana laws not be a priority in states that have adopted medical marijuana programmes and follow the rules and regulations of such programmes. Concerns continue to exist despite the fact that Attorney General Eric Holder of the United States urged that enforcement of federal marijuana laws not be a priority in states that have adopted medical marijuana programmes and follow the rules and regulations of such programmes.

3.2. Transnational theory in international law as a form of state sovereignty

There are two traditional theories that are often used in justifying the normativity of international law in the national territory. In short, the scheme of thought of the theory of monism-dualism the theory of monism comes from the natural law school [10]. Broadly speaking, the flow of monism with the principle of international law is a direct consequence of the basic norms of all law [11] so that it binds each individual collectively [12]. Because this thinking sees international law and national law as a single 'body' of knowledge called law [15], then monism uses the technique of incorporation where the state can apply international law in its national territory without changing its legal basis [13]. The incorporation technique implies the creation of a type of treaty, namely a self-executing treaty that can be applied directly in the national legal system [14]. The dualism theory gives supremacy to national law based on state sovereignty so that international law cannot force a state to comply with international law [13]. In contrast to the theory of monism, which sees international law as an integral part of national law, the dualism theory places international law separately from national law [14]. International law is not ipso facto part of municipal law [15]. Because there is a clear separation between the two types of law, the dualism theory uses a transformation technique where the application of international law must be followed by a legislative process to change international law into part of national law [16]. This transformation technique produces a type of law that is non-self-executing treaty

where this type will not have the power of execution without additional regulations or national implementing regulations [17]. The two classical theories in fact have crucial weaknesses in providing normativity in the use of international law in the national territory [17]. First, the theory is expose which only looks at state practices. Second, the theory lacks normative content that cannot be used as an argument in national courts. Third, the theory is not able to face the overlapping practice of the theory itself in a country.

3.3. Analysis

In the opening of the Single Convention on Narcotic Drugs in 1961, all commissions on narcotic drugs under the United Nations stated that narcotics drugs are very useful in the world of health [18]. Synchronization between International Law and Indonesian National Law in Combating Narcotics Trafficking is very necessary, the 1961 Single Convention on Narcotics was ratified through Law Number 8 of 1976, concerning Ratification of the Single Convention on Narcotics and Protocol Amending Hereto (State Gazette of 1976, Number 36. Supplementary Gazette State Number 3085). Then in 1976, Law no. 9 of 1976 concerning Narcotics which prohibits the manufacture, storage, distribution and use of narcotics without restriction and supervision because it is very contrary to the Narcotics Law. Because narcotics crime is a crime that is very detrimental to individuals, society and is a big danger to the joints of human life and the life of the state in the political, security, economic, social, cultural, and the national security of the Indonesian nation, in the 1972 Protocol on Amendment to the Single Convention on Narcotics, Law Number 7 of 1997, concerning the ratification of the United Nations Convention Against Illicit in Narcotic and Psychotropic Substances (State Gazette of 1997, Number 17, Supplement to the State Gazette Number 3673) This condition has changed along with the increasing and growing Narcotics crime in Indonesia. In this section of the criminal provisions, there have been some quite principal and basic changes from Law No. 22 of 1997. 35 of 2009 concerning Narcotics, due to Law no. 22/1997 cannot prevent narcotics crime which is increasing both quantitatively and qualitatively and the forms of organized crime. However, substantially, the new Narcotics Law has not undergone significant changes compared to the previous Law.

If the arrangement in the single narcotics convention concerning the release of cannabis from group I, is regulated without a definitive review, it will contradict and exceed the rule of law offered by international drug control [19]. It would also undermine international treaty law, which is subject to a good faith interpretation of the treaty provisions by all Parties bearing in mind the "object and purpose" [20]. The treaties, and the doctrine of pacta sunt servanda encapsulates the necessity to carry out agreed-upon international obligations in good faith.

The world has reached a turning point in the development of international drug policies, of course it is very possible for Indonesia to also consider the principle of expediency as a form of fulfilling the health rights of its citizens, in this case we present and assess that there are four general paths that the Indonesian government can take to legalize marijuana for medical needs. while still respecting international law and upholding the sovereignty of the rule of law by: 1) treaty reform; 2) agreement reservation; 3) withdrawal or cancellation of the agreement, and 4) reformulating the narcotics policy by reducing marijuana in the list of narcotics attachments of class I to class III to be researched and utilized, with state supervision.

The main general obligation of the Single Convention is found in Article 4(c), which stipulates that Parties should "take all possible legislative and administrative measures" necessary… subject to this provision, to limit exclusively to medical and scientific purposes of production, manufacture, export, import, distribution, trade, use, and possess narcotics" [21].

Indonesia as a country is not absolutely bound by international agreements; in fact, it is not bound by international agreements made by the executive, but by legal regulations made by the legislature [22]. International law is only one source of law that can be used as a tool to interpret a national legal regulation. By understanding the constitutional conception and separation of powers prevailing in Indonesia, Indonesia is a dualistic country in which all ratified international treaties cannot be applied directly in national courts or non-self-executing. Thus, these agreements require a process of transformation from the form of an international agreement into a form of legal regulation that is legally recognized in Indonesia.

The amendment to the single narcotics convention in 1961 had a major impact on the position of cannabis in international narcotics policy. So that it is no longer a barrier to the development of science and its use in the medical world. For this reason, they called for the Indonesian government to also start opening up to the potential for domestic use of medical marijuana.

4. CONCLUSION

That all international agreements ratified by the Government of Indonesia and ratified by laws of ratification or ratification must be transformed into transformation laws so that they can be applied in court because judges are not bound by international agreements made by the Executive agency but by legal regulations made by Legislative institutions in accordance with the theory of separation of powers based on function, it is time for the Government of Indonesia to review its

narcotics policy on the basis of benefits, and the health rights of its citizens. Based on the results of the UN voting, it can be used as medical legitimacy that must be followed by member countries including Indonesia which always refers to the provisions of the 1961 Single Narcotics Convention. With the ratification of the 1961 Single Convention on Narcotics, including the Amendment Protocol that permits the research and use of medical marijuana, and a list of drug categories that may be amended by Regulation of the Minister of Health. From this point of view, it can be said that the actual politics of medical marijuana law is not that difficult. Provisions that allow changes to class I drugs in the list of the Narcotics Law are good legal political evidence that can support research and use of medical marijuana.

REFERENCES

[1] Andi Hamzah, RM. Surachman, Narcotics and Psychotropic Crimes, Jakarta: Sinar Graphic, 1994, p. 13

[2] Agus Salim, Efforts of the United Nation Office on Drugs Crime (Unodc) in Suppressing Opium Production in the Golden Triangle Region (Case Study in Myanmar 2011-2014), eJournal of International Relations, Volume 5, Number 3, 2017: 761-744, p. 761

[3] https://national.kontan.co.id/news/pbb-hapus-ganja-dari-List-narkotika-most-dikontrol-ketat-bnn-masih-narkoba

[4] Rizki Sari Fadillah, Unodc (United Nations Office On Drugs And Crime) Efforts in Overcoming Drug Problems in Indonesia, Volume 2 No. October 2, 2015, p. 3

[5] Peter Mahmud Marzuki, Legal Research, Kencana Prenada Media Group, Jakarta, 2005, H.171.

[6] Cole Jm. Guidance Regarding Marijuana Enforcement. Aug 29, 2013. [Accessed August 8, 2021]. Available At:Www.Justice.Gov/Iso/Opa/Resources/305201382913275685746 7.Pdf. [Ref List]

[7] Dea Diversion Control Division. Dea Form 225—New Application For Registration. [Accessed August 10, 2020]. Available At:Www.Deadiversion.Usdoj.Gov/Drugreg/Reg_Apps/225/225_Instruct.Htm. [Ref List]

[8] Center for Medicinal Cannabis Research. University of California; San Diego: [Accessed December 4, 2021]. Available at:http://cmcr.ucsd.edu. [Google Scholar] [Ref List]

[9] Cannabinoid Research Institute. G Pharmaceuticals. [Accessed December 4, 2021]. Available At:Www.Gwpharm.Com/Products-Pipeline/Research-Trials/Cannabinoid-Research-Institute. [Ref List]

[10] Basak Cali, The Authority Of International Law: Obedience, Respect, And Rebuttal (Oxford University Press 2015) p, 137.

[11] Martin Dixon, Textbook On International Law (Blackstone Press Limited 1993) p, 69.

[12] Sugeng Istanto, International Law (Atma Jaya University Yogyakarta 2010) 7.

[13] Martin Dixon, Loc. Cit. 12 Damos Dumoli Agusman, Treaties Under Indonesian Law: A Comparative Study (Remaja Rosdakarya 2014) p, 85.

[14] Anthony D'amato, 'The Coerciveness Of International Law' Faculty Working Papers, 2010, p. 91

[15] Werner Levi, Contemporary International Law: A Concise Introduction, Westview Press 1991, p.23.

[16] Ninon Melatyugra, 'International Legal Normativeness in the Practice of Judicial Review by the Constitutional Court' (Thesis, Satya Wacana Christian University 2016).

[17] Simon Butt, 'The Position Of International Law Within The Indonesian Legal System' (2014) 28 Emory International Law Review 1, 7-9.

[18] AR. Sudjono and Bony Daniel, AR. Sudjono and Bony Daniel, 2011, Comments and Amendments to Law Number 35 Year 2009 concerning Narcotics, Cet. I, Sinar Graphic, Jakarta, 2011, p. 41.

[19] Le Dain G, Commission on Inquiry into Non-Medical Use of Drugs (Ottawa: Government of Canada, 1972); Senate Special Committee on Illegal Drugs, Senate Special Committee on Illegal Drugs Report: Cannabis (2002) p 467.

[20] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, 8 ILM 679, at s 31(1) (entered into force 27 January 1980) [Vienna Convention] at p 31(1)

[21] Single Convention, supra note 4 at p 4(c)

[22] Suparti Hadhyono, Practice of Implementing International Treaties in Judge's Decisions, http://www.scribd.com.