

The Urgency of Fatwa as a Legal *Ijtihad* on Medical Cannabis Legalization in Indonesia

Rizka*¹, M. Junaidi², Ridwan³, & Siti Hasanah⁴

Universitas Muhammadiyah Surakarta Indonesia^{1,2}, Universitas Muhammadiyah Bima Indonesia³, Universitas Muhammadiyah Mataram Indonesia⁴
Email: riz123@ums.ac.id*¹, m.junaidi@ums.ac.id², ridwann@umbima.ac.id³, sitihasanah@ummat.ac.id

Abstract

This article offers a discussion on the law on medical cannabis utilization in the health sector from the perspective of the fatwas (official statement from an Islamic religious leader) of the Indonesian Islamic Scholar Assembly (MUI) and the Tarjih Council of Muhammadiyah (Muhammadiyah Organizational Ijtihad Institution). This paper aims to provide insight into the legalization of medical cannabis in Indonesia and review the policies of other countries that have legalized cannabis for medical purposes. There needs to be a firm statement of MUI and Islamic organizations such as Muhammadiyah on this issue. This paper employed the normative research method. It used the statute approach to profoundly analyze the available legal materials. The data were sourced from secondary legal materials. The data were collected by reading, studying, and understanding the materials related to the legal issue. The data were analyzed using the qualitative technique. Research results showed the findings that the fatwas of MUI and Tarjih Council of Muhammadiyah permit the usage of medical cannabis for treatment under emergency reasons and with strict supervision from doctors. It is crucial to have a fatwa in determining the legalization of medical cannabis, considering that Indonesia has the largest Muslim population in the world, and up to now, there has not been a firm legal policy that regulates the use of medical cannabis. The existence of a fatwa in determining the law benefits human beings both in the world and in the Hereafter. Apart from that, it brings tranquility in resolving the issue of the Muslim community. This paper brings novelty as it provides information on how other Muslim countries view the legalization of cannabis as well as the perspectives of MUI and the Tarjih Council of Muhammadiyah on this issue.

Keywords: Regulation, Legalization, Islamic law, Medical Cannabis, Legal Void, Fatwa.

Abstrak

Artikel ini membahas tentang hukum penggunaan ganja medis di bidang kesehatan dari sudut pandang fatwa Majelis Ulama Indonesia (MUI) dan Majelis Tarjih Muhammadiyah. Tulisan ini bertujuan untuk memberikan wawasan tentang legalisasi ganja medis di Indonesia dan meninjau kebijakan negara lain yang telah melegalkan ganja untuk tujuan medis. Perlu adanya pernyataan tegas dari MUI dan ormas Islam seperti Muhammadiyah tentang masalah ini. Tulisan ini menggunakan metode penelitian normatif. Pendekatan perundang-

undangan digunakan untuk menganalisis secara mendalam bahan hukum yang tersedia. Data bersumber dari bahan hukum sekunder. Data dikumpulkan dengan cara membaca, mempelajari, dan memahami bahan-bahan yang terkait dengan masalah hukum tersebut. Analisis data menggunakan teknik kualitatif. Hasil penelitian menunjukkan bahwa fatwa MUI dan Majelis Tarjih Muhammadiyah membolehkan penggunaan ganja medis untuk pengobatan dalam keadaan darurat dan dengan pengawasan ketat dari dokter. Fatwa dalam menentukan legalisasi ganja medis menjadi hal yang penting, mengingat Indonesia merupakan negara dengan jumlah penduduk muslim terbesar di dunia dan hingga saat ini belum ada kebijakan hukum yang tegas dalam mengatur penggunaan ganja medis. Adanya fatwa dalam menentukan hukum tersebut memberikan kemanfaatan bagi manusia baik di dunia maupun di akhirat. Selain itu, fatwa juga memberikan ketentraman dalam menyelesaikan permasalahan umat Islam. Tulisan ini menjadi hal yang baru karena memberikan informasi tentang pandangan negara-negara muslim lainnya terhadap legalisasi ganja serta pandangan MUI dan Majelis Tarjih Muhammadiyah terhadap permasalahan ini.

Kata kunci: Peraturan, Legalisasi, Hukum Islam, Ganja Medis, Kekosongan Hukum, Fatwa.

INTRODUCTION

There has been a global shift in the perspective on cannabis in the last few years. The World Health Organization (WHO) has recommended the United Nations (UN) to ratify cannabis as a medical need. The Commission on Narcotic Drugs has priorly carried out voting, and the results showed that 27 out of 53 countries have agreed to eliminate cannabis and cannabis sap from Category IV and move them into Category I during the Single Convention of 1961. Based on scientific research, cannabis has potential health risks as well as therapeutic benefits. The Expert Committee on Drug Dependence recommended the recategorization of some drugs, including cannabis, as psychoactive substances (Qadrina & Risal, 2022).

Cannabis is a type of Category I drug that may cause mental and behavioral changes in consumers. The Republic of Indonesia's Law No. 2 of 1997 states that Category I drugs may only be used for scientific knowledge development goals. They cannot be used in therapy. Apart from that, they have a severely high potential to cause addiction. Several studies showed that the use of cannabis in Indonesia still has not obtained a permit from the government, even though it is used for medical needs rather than recreational ones. Cannabis users in Indonesia are still imposed with sanctions in the form of imprisonment and fines if the elements in the Law on Drugs (Law No. 35 of 2009) are found to be fulfilled (Arfiani & Utami, 2022).

This research is urgent because it analyzes the phenomenon of the Constitutional Court rejecting the proposal for the legalization of cannabis for medical interests. This led society to demand the government review other countries; policies that have legalized cannabis for medical interests. It is a fact that many researchers have acknowledged the benefits of cannabis. For instance, it is an effective drug for treating cerebral palsy. Even in several cases, the effects generated from cannabis are far more significant compared to conventional medications and therapy. Islamic institutions or organizations must undergo ijtihad (independent interpretation of problems not covered in the Qur'an or Hadith) so that they can genuinely obtain an accurate decision on determining the halal or haram status of the cannabis plant for medicine, which has different contents, substances, and effects compared to khamr (alcohol beverages) that is prohibited in Islam.

In Indonesia, cannabis is not only developed in Aceh Province. But it also grows in Ambon Province. In his book, Rumphius carried out research in Ambon. He found that there was Ambonese herbal medicine, that was used to treat diseases (Rumpf & Beekman, 1981). The Ambonese herbal medicine consists of some plants, including *Lodoicea maldivica Pers* (sea coconut), whose fruit is used as an anti-inflammatory and anti-piretic medicine. Then, it was also made from the coconut's peel, which contains a cholera antibiotic to treat diarrhea. It also contained the roots of *Drynaria sparsisora (Desv.) T. Moore* (locally called *Paku Layang*) that have benefits in increasing the appetite. This plant can be boiled; then, its water can be used to lower high blood pressure as it has diuretic side effects. The seeds of *Parinarium gaberrimum Hassk* (locally called *atung*) are used as a medicine to treat dysentery as they contain anti-diarrheal, anti-infective, and anti-inflammatory substances (Buenz, Johnson, Beekman, Motley, & Bauer, 2004).

Previous research can be grouped into two, namely those who agree with the use of cannabis for medical interests and those who disagree with this idea. All of these studies were based on scientists' expertise in various sectors. They became a footstep for future research. The highlight is that in Indonesia, the use of cannabis is still prohibited by the government, even if it is used for medical reasons rather than recreational ones. Qadrina and Risal (2022) found that the policy on medical cannabis legalization will provide a crucial contribution to scientific knowledge in the health sector. Even so, medical cannabis requires a regulation as a legal protection. Apart from that, in carrying out rational treatment, various aspects must be considered before allowing medical cannabis legalization in Indonesia.

This is in line with the research of Gunawan (2022), who found that the Indonesian Law on Drugs needs to be revised. It needs to categorize the cannabis plant into a Category II drug so that it can be used for medical treatment. Even, Fauziyah (2022) stated that the government needs to reformulate the regulation on the cannabis plant that is categorized into Category I drugs under medical considerations. Then, Rusmarina and Dewi (2021) stated that the limited number of studies on medical cannabis in Indonesia was due to a lack of adequate legal protection policies.

The demand for medical cannabis legalization occurred as cannabis is a medicine to treat severe illnesses, such as HIV/AIDS, Alzheimer's, epilepsy, Parkinson's, and hepatitis C (Yuan, Kanellopoulos, & Kotbi, 2019). This is contradictory to the research of Koagouw (2020) who stated that the impact of cannabis increase with cigarettes and may lead to consumers' deviant behavior, which will destroy the young generation (Nalle, 2015). Even according to the Indonesian National Narcotics Agency (*Badan Narkotika Nasional*), cannabis is a dangerous plant that requires maximum protection from the state's legal system. The novelty of this research is that it analyzes the importance of a fatwa (official statement from an Islamic religious leader) that becomes a policy whether or not there is a need to legalize medical cannabis in Indonesia. This is so that the government can issue legal regulations or laws for the benefit of human beings in the world and hereafter. Apart from that, it is also to bring tranquility to resolving human issues.

This article discusses the law on medical cannabis utilization in the health sector from the perspective of the fatwas (official statement from an Islamic religious leader) of the Islamic Scholar Assembly (*Majelis Ulama Indonesia/MUI*) and *Tarjih* Council of Muhammadiyah (Muhammadiyah Organizational *Ijtihad* Institution). This paper may impact the scholarship after its completion and publication as it may provide lawmakers with consideration for the benefits and potential harms of medical cannabis legalization.

Therefore, this article will discuss the legalization of medical cannabis in non-Muslim and Muslim countries of the world, as well as the urgency and role of fatwa in resolving the Muslim community's issues in Indonesia. It also discusses the legal negotiation on the use of medical cannabis in the health sector primarily based on the perspectives of MUI and the *Tarjih* Council of Muhammadiyah. This article highlights the legal policies in Indonesia that still reject the legalization of medical cannabis up to now.

RESEARCH METHOD

This research employed the normative legal research method that was used to study several legal regulations that applied to cannabis for medical reasons. The normative legal research analyzes laws that were deemed norms or regulations that functioned in society, which became a reference to every person's behavior (Sunstein, 1996). The normative legal research was also called literary legal research or theoretical/dogmatic legal research, as it analyzed literary materials or secondary data (Posner, 2002).

In this research, the authors used the statute approach to analyze the available legal materials (Baker, Bédard, & Prat dit Hauret, 2014). This approach observed and analyzed all legal regulations related to the discussed legal issues. This method was available for initial research articles and was descriptively documented. Secondary legal materials consisted of all legal publications, including textbooks, legal dictionaries, legal journals, and commentaries on juridical decisions (Dimiyati & Wardiono, 2004). This research employed the normative legal research method, which was used to study several legal regulations that apply to cannabis for medical needs. The normative legal research studies laws deemed as norms or regulations that function in society and become a reference to every person's behavior (Ali, 2021). Normative legal research is also called literary legal research, theoretical/dogmatic legal research, or normative legal research, which studies literary materials or secondary data (Irwansyah, 2020). The data were collected by reading, learning, and understanding the materials related to the legalization of medical cannabis, policies in other countries, and fatwas from MUI and the *Tarjih* Council of Muhammadiyah. The data in this article were presented in a narrative-descriptive manner. The data analysis technique used was the qualitative data analysis of Huberman and Miles (2014), namely data condensation, data presentation, and conclusion drawing.

RESEARCH FINDINGS AND DISCUSSION

Questioning the Benefits of Medical Cannabis: A Review of Medical Cannabis Legalisation in Non-Muslim and Muslim Countries of the World

Reviews obtained from foreign countries also produce different results according to the type of policy specification, level of use, and the background of applicable norms before the legalization policy is made. For instance, there was research on the relationship between the legalization of cannabis and the prevalence of cannabis misuse in teenagers and adults (Yustina, Simandjuntak,

Nasser, Blum, & Trajera, 2023). Several previous studies have shown the relationship between cannabis misuse and the increase in cannabis misuse in teenagers (Stolzenberg, D'Alessio, & Dariano, 2016) and adults (Smart & Pacula, 2019). But other research did not find such a link (Hasin et al., 2015; Laqueur et al., 2020; Marinello & Powell, 2023).

Even so, some Muslim countries in the current era have reformed their regulations. Even, some have legalized the use of cannabis. As a general description prior to discussing regulations in Muslim countries, the regulation of cannabis in Islamic law is urgent to be discussed. A survey concluded that the majority of Muslim academicians agree that cannabis is not a haram (prohibited) thing to be used for medical purposes. However, they agree that it is clearly haram for recreational uses.

Studies prove that cannabis with its high Cannabinoid (CBD) content and very low THC content (or even none at all) is not a substance that influences one's consciousness. Moreover, it is not dangerous to be used for medical reasons. Therefore, the usage of medical cannabis should not be prohibited in the Islamic religion (Robinson, 2020).

Some Muslim countries legalize the use of medical cannabis. Pakistan and Lebanon are examples of two countries that permit medical treatment using products containing cannabis. Pakistan is a Muslim country that recently legalized cannabis in 2020. Pakistan's decision to legalize the use of medical and industrial cannabis emerged right after the UN Drug Commission decided to emit cannabis from the list of the most dangerous drugs in the world (Ishtiaq, 2021). Pakistan does not only encourage the obtainment of income through cannabis product exports; it also believes that cannabis cultivation in this country will help prevent climate change (Bari, 2020).

Iran is also one of the Muslim countries which legalize cannabis as most of its *marja* (Iranian legal experts) believe that cannabis is not fully prohibited although it is not permitted either. Most *marja* agree that medical cannabis is not a prohibited thing so long as it does not damage the body or influence the mind. The cultivation and export of cannabis for valid reasons is also deemed as a non-prohibited thing. This means that the cannabis that is exported overseas cannot be manipulated or used for prohibited things (Corboz, n.d.)

A similar thing was also seen in the research on the relationship between the legalization of cannabis and the number of accidents in the United States (US). Research that was conducted in several US states found that this policy was linked to an increase in mortality by an average of 10 % due to vehicle accidents

(Cook, Leung, & Smith, 2020). However, other research found a relationship between the legalization of medical cannabis and the decrease in fatal road accidents (Anderson, Hansen, & Rees, 2013), with a road accident mortality decrease of 8% to 11% (Sevigny, 2018). Most data on the impacts of cannabis legalization on public health originate from the US. In the US, cannabis has been legalized for medical and/or recreational interests in 34 jurisdictions and counting.

More and more countries have considered following the steps of the US in legalizing cannabis. An understanding of the impacts of cannabis legalization on Americans' public health will provide a crucial guideline for other countries that consider making similar policy changes (Chiu, Leung, Hall, Stjepanović, & Degenhardt, 2021). Meanwhile, several researchers have tried publishing some benefits of medical cannabis, including treating nausea and vomiting caused by chemotherapy, treating complex motoric disorders in children, and treating epilepsy seizures (Whitcomb et al., 2019). In other research, it was found that the use of medical cannabis in low dosages is proven to be safe for neuropathic treatment. It is free from short-term effects. Even so, there is a need for further research to see the long-term effects of medical cannabis usage (Lee, Grovey, Furnish, & Wallace, 2018).

Organizations that support this discourse include *Lingkar Ganja Nusantara/Cannabis Circle of the Archipelago*, *Yayasan Sativa Nusantara/Sativa Foundation of the Archipelago*, *Rumah Cemara/Pine House*, Institute for Criminal Justice Reform (ICJR), etc. They regard that in several countries, the use of cannabis for medical purposes has been legalized. Then, based on data collected from these countries, such as the US, Canada, Netherlands, Israel, and Australia, it was found that there were only small negative impacts or issues that occurred from the usage of cannabis for medical treatment. Apart from that, it was found that many patients required a prescription for cannabis drugs (Farisa, 2022). Cannabis has benefits, especially as a medical plant for treating some chronic diseases. Research conducted in foreign countries showed the benefits of cannabis for medical purposes. Studies conducted in the US from 2010 to 2011 on patients with chronic illnesses showed that cannabis was safe and effective for patients as it can decrease pain, insomnia, and treat anxiety (Webb & Webb, 2014).

Apart from that, cannabis-based drugs have been proven effective in treating other diseases, such as multiple sclerosis, chronic neuropathic pain, nausea and vomiting caused by chemotherapy, as well as epilepsy (Arkell,

Downey, Hayley, & Roth, 2023; Vickery & Finch, 2020). It functions as an antiemetic and is an appetite stimulant for patients with cancer and AIDS. It treats spinal injury, Tourette syndrome, up to glaucoma (Amar, 2006). Another narration spread by these non-government organizations that is no less crucial is the strong relationship between the cannabis plant and the Indonesian culture. The footprint of cannabis plant usage was written in 1741 by a German-Dutch botany expert, G. E. Rumphius, who stated that the cannabis plant has been used for medical and recreational benefits by society in Maluku island (Bukit & Rahmi Ayunda, 2022).

In his book entitled *Herbarium Amboinese* (Ambonese Herbs), it was written that the people of Maluku island use the cannabis plant to treat fatigue, gonorrhoea, diarrhoea, hernia, and asthma. According to the *Tajul Muluk* book, as quoted by Lumbanrau, in Aceh, cannabis has been known since the 16th century. Lumbanrau (2020) quoted that cannabis was used as medicine to treat diabetes. It was also used as a food ingredient in daily recipes, such as Aceh noodles and goat curry. It was also used as a mixture of coffee beverages and herbal medicine (Pohan, 2022).

There were also proofs of its use in Java and Bali Islands, as what was written several centuries ago from the relief of the cannabis plant that was found in the second tier of the Kendalisodo Temple in Penanggungan Mountain, Mojokerto, East Java Province. It showed the function of the cannabis plant in Javanese society's spiritual activities in the past (Tifada & Febrian, 2021). In Bali, cannabis was written in the *Usada Lontar* (holy text) that contained knowledge on medicine, types of diseases, and plants that are used as medicine ("Cannabis in Lontar Usada, Balinese Traditional Medicine," 2020).

Apart from benefits in the medical sector, cannabis also has potential benefits in the industrial and economic sectors. Cannabis has some uses in the industrial sector, i.e., for lighting, ropes, ship anchors, paint or varnish, construction materials, t-shirt materials, cosmetics, and skin treatment (Zulfikri & Jaman, 2022). The cannabis plant also produces fibers that have great potential as a sustainable source of textile fiber (Vandepitte et al., 2020). Cannabis fibers have also become one of the raw materials of hempcrete. It is an alternative to concrete that is seven times stronger, twice lighter, more elastic, and more resistant to cracks compared to common concrete (Putra, 2014). Studies conducted in Canada found that the cannabis industry can compete with other energy-generating plants in the global market. It is a raw material for bioenergy. Thus, it can be more economical. The explanation above makes the cannabis plant a more

profitable industry potential which may impact the increase in the state's source of income if it is managed well.

The Legalization of Medical Cannabis in the World

Indonesia is one of the countries that has not legalized cannabis. On the other hand, some countries that have legalized cannabis for medical purposes include Chile, Canada, Italy, Netherlands, Turkey, Thailand, the United States, Sri Lanka, South Korea, and several other countries. These legislation policies led to changes in the legal stipulations with adaptations according to the condition of each of these countries. In these countries, cannabis, which was initially categorized in the group of the most dangerous drugs, was then reclassified as a drug that can be used for medical purposes (Arfiani & Utami, 2022). In Indonesia, the Law on Drugs was issued to eradicate the illegal distribution and misuse of drugs (“Asal Muasal UU Narkotika Di Indonesia Dan Segudang Masalah Di Balikinya,” 2020).

In these last few years, the pros and cons of the policy on medical cannabis legalization have happened in Indonesia. There is an ongoing societal movement that encourages a review of the law on cannabis usage for medical purposes. On the other hand, the Indonesian government is still consistent in categorizing cannabis as a type of Category I drug whose usage is prohibited for medical purposes.

A year after the issuing of the research on Category I drugs, no movement was yet seen in the research on cannabis. Thus, there needs to be more specific technical guidelines that can help researchers carry out studies on cannabis. No solution to this issue will be found unless there is comprehensive research on the use of cannabis. Research should not only focus on the benefits and potentials of cannabis. However, it must also study the risk of negative effects that may occur to societal life in case this policy is in the end enacted. In seeing the policy on the legalization of medical cannabis, there needs to be an overview of various aspects, such as the public health, social, economic, cultural, and security aspects. This is because either directly or indirectly, the policies taken by the government will impact the lives of many people (Fauziah & Runturambi, 2023).

The use of cannabis as medicine has become more normalized. Considering the various conditions that can be treated with medical cannabis as well as the varied products and forms of dosages available, clinical evidence that combines the results reported by patients may help determine its safety and effectiveness. In this case study, patients who use medical cannabis reported an

increased life quality related to health, that mostly endures with time. Unfortunate events seldom occur in severe situations, but they commonly happen. This shows that there is a need for extra care in prescribing medical cannabis (Arkell et al., 2023). Available technical reports provide a review of what is currently known about the relationship between the use of cannabis and health as well as its relationship with the development of the brain. There are studies on the legal status of cannabis and its use in teenagers to further understand how changes in the legal status can affect the level of cannabis usage in teenagers in the future (Committee on Substance Abuse, 2015).

Results of surveys showed that there is currently a rather high level of acceptance of the decriminalization of medical cannabis. However, its acceptance is spreading especially among those who were exposed to this substance and those who regard medical cannabis as having low risks. Therefore, there needs to be a further exploration of this phenomenon, especially in increasing the number of samples and expanding the research location to other countries (Dapari et al., 2022).

The issue of the decriminalization of marijuana for medical interests has obtained global public attention due to the decision of various governments in developed and developing countries that have decriminalized marijuana for medical needs. Such an action is an impact of changes in the perception towards the use of cannabis for medical needs that are currently deemed safe, acceptable, and must be decriminalized. In line with the advancement of modernization and the wide access to information, changes in the perception towards medical cannabis seem to be unavoidable. It may have reached groups of Malaysian society, although no basic data that may determine that claim are currently available (Dapari et al., 2022). The perspective on cannabis has started to shift in various countries. At first, they may perceive cannabis negatively. But from time to time, they became more open to its medical benefits. Developed countries have started to legalize cannabis for medical use. Therefore, it is time for the Indonesian government to reevaluate this prohibition.

Table 1. Countries that Legalize Cannabis as Medicine

Argentina	Jamaica	Peru	Czech Republic
Australia	Germany	Poland	India
Netherlands	Canada	Thailand	United Kingdom
Chile	Croatia	Romania	Portugal
Columbia	Lesotho	San Marino	South Korea

Cyprus	Luxemburg	Switzerland	Sri Lanka
Denmark	Macedonia	Turkey	
Finland	Malta	Uruguay	
Israel	Mexico	Greece	

Medical Cannabis in Indonesian Regulations

In Indonesia, drugs are regulated in Law No. 35 of 2009 on Drugs, which contains prohibitions and threats of penalization for the people who misuse drugs, both individuals and corporations. In Indonesia, the Law on Drugs utilizes the terms *narcotics addict*, *narcotics abuse*, and *victims of narcotics abuse*. The term *narcotics addicts* refers to people who use narcotics and are addicted to them. But if it does not cause addiction, it is called *narcotics abuse*. Then, *victims of narcotics abuse* refer to people who misuse narcotics due to the influence of other people without the knowledge that they are consuming drugs. The use of cannabis which is categorized as a Category 1 drug is regulated in Law No. 35 of 2009. It is stated that cannabis may only be used for the research of scientific knowledge as well as the development of knowledge and technologies. It is prohibited for therapeutic use.

If we review the legal or juridical aspect, the existence of drugs is true and valid. The law on drugs only prohibits the use of drugs as they are often misused for interests other than medical and scientific knowledge. Many people misuse drugs for business reasons that are rapidly developing and are highly promising. This leads to the psychological, mental, and physical damage of all layers of Indonesian society, from children, teenagers, and adults up to the elderly. Drugs are currently spreading at a quick rate. It does not only happen in large cities. However, it has also reached districts and even small villages.

Regulation of the Minister of Health No. 30 of 2023 on Changes in Drug Categorization was determined under the following considerations:

That narcotics are drugs or materials that are beneficial in the medical or health service sector and the development of scientific knowledge. But it may also lead to addiction that brings severe harm if misused or used without strict and careful control and monitoring.

That there are new psychoactive substances that may potentially be misused or may endanger public health that were not yet categorized into drug groups as regulated in Appendix I of Law No. 35 of 2009 on Drugs and Regulation of the Minister of Health No. 30 of 2023 on Changes of Drug Categorization.

Based on the considerations written in letters a and b, as well as to implement the stipulations of Article 6 clause (3) of Law No. 35 of 2009 on Drugs, the Regulation of the Minister of Health on Changes in Drug Categorization needs to be enacted.

The Indonesian Constitutional Court's Decision on Medical Cannabis Legalization

Even though many legal facts have been obtained on the fact that many people suffer from certain diseases that may be treated with drugs of certain categories, it is not parallel with the severe impacts that may occur if it is carried out without adequate preparation of the people's legal structure and culture, including the fact that the required facilities and infrastructure are still unavailable.

In its consideration, the Constitutional Court does not deny that some countries have succeeded in using Category I drugs for health services. However, it is not enough to be used as a legal basis for the usage of Category I drugs in Indonesia for medical purposes. These legal facts cannot arbitrarily be used as a parameter that all types of drugs may be used for health services and that they can be accepted and applied in all countries. This is because there are different types of drugs. Also, each country has different structures and societal cultures.

The Constitutional Court judges stated that the plea of applicants cannot be accepted due to a lack of valid scientific analyses. Therefore, these pleas are deemed irrational. The applicants' demand for permission to use Category I drugs for health services or therapies still lacks adequate evidence that there has been comprehensive and profound scientific research and analyses on the case. Due to such conditions, it is difficult to consider the demands of the applicants. It is difficult for the assembly to accept this case's reason of rationality (Mahkamah Konstitusi, 2024).

The phenomenon of treating illnesses using Category I drugs is not enough to be used as evidence. The Constitutional Court can understand and have a high sense of empathy for the sufferers of diseases that can phenomenally be healed using therapies that utilize Category I drugs. However, the assembly regards that it is not yet a valid result from scientific analyses and research.

The Constitutional Court then stated that the legal certainty on the use of Category I drugs is the authority of lawmakers. The problem is that the Constitutional Court regards it as a sensitive, substantial discussion as it contains penalization. In some of its decisions, the Constitutional Court has stayed

consistent that these things become the authority of lawmakers of open legal policy. Even though this decision rejects the legalization of medical cannabis, the applicants and parents of children who suffer from certain diseases hope that further research is immediately carried out by the government. They regard that research on cannabis for medical interests may provide a better alternative treatment for patients who require it.

The Urgency of a Fatwa From MUI in Resolving Issues of the Muslim Community

A fatwa is the answer to a reality that happens from an issue where its legal basis is questioned. The word fatwa originated from the Arabic word *al-ifta'*. The attitude of making a decision is the simple meaning of fatwa. The making of a fatwa is not as easy as one might imagine. From the question asked to the decision made, great care is required as they must make a decision based on principles and laws with a clear basis (Gayo, 2011).

According to al-Jurjani, the word *fatwa* originated from the words *al-fatwa* or *al-futya*, which means a resolution from an occurring issue (*musykil*) in the legal sector. Therefore, a *fatwa* is defined as an explanation (*al-ibanah*) (Amin, 2008). The terminological definition for the word *fatwa*, as stated by Zamakhsyari, is the explanation of Sharia laws on the existence of a person's or a group of people's questions. According to as-Syatibi, the word *fatwa* originated from the word *al-iftaa* which means giving an explanation of a Sharia law that does not have a positive law stipulation that binds it to be followed by Muslims.

Etymologically, fatwa means suggestions for answers to various questions to obtain legal certainty on *muamalah* (the activity that regulates the way of life as a fellow human being). Based on the terminological perspective of *ushul fiqh* (a study of various principles and discussions on Sharia arguments), it can be defined as a thought or an opinion that is delivered by a person or a group of *fiqh* (a study of Sharia laws) experts or mujtahid (a person capable of carrying out ijtihad) to realize various answers or questions asked by those who asked for a fatwa for an issue with non-binding characteristics (Dahlan, 1996). A fatwa is a response to a legal issue that does not bind the embracers of the Islamic religion (Kau, 2010).

Concerning the position of a fatwa in the life of Islamic religion embracers, a fatwa is not legally binding. This means that a fatwa is not a positive law that can bind everyone. However, this fatwa is religiously binding.

Thus, there is a small chance for Muslims to deny or oppose it if it is based on clear and correct arguments (Amarudin, 2009). There are often differences between one fatwa result and another. This does not become a big issue if there is respect for the different opinions of different knowledgeable Islamic scholars.

The MUI then formulated its functions into four formulations, namely:

1. Giving guidance to the Indonesian Muslim community in achieving a religious and societal life that is blessed by Allah subhanahu wa ta'ala;
2. Giving advice and fatwa on religious and societal issues to the government and society, increasing activities for the achievement of Islamic brotherhood and tolerance between religious peoples in strengthening the unity and oneness of the nation;
3. Becoming a bridge between Islamic scholars and the government. It is the translator of a reciprocal relationship between the Muslim community and the government to achieve successful national development; and
4. Increasing the relationship and cooperation between organizations, Islamic institutions, and Muslim scholars in giving guidance to society, especially the Muslim community, by reciprocally organizing consultations and information. Fatwa is also identical to *ijtihad*. In its definition, *ijtihad* means power exertion and intellectual efforts Muslims based on al Qur'an and al-Hadist. The results of *ijtihad* are called *al-ra'yu* (an opinion) (Ansori & Ulumuddin, 2020).

From the four functions above, it is true that MUI's fatwa does not legally bind people even though they are Muslims. However, sociologically and theologially, those who have stated the *syahadah* (the declaration of becoming a Muslim) are bound to its fatwa, whether they like it or not.

Therefore, it is highly urgent for MUI's fatwa to become an alternative choice of answer for the Muslim community. It is not impossible for MUI's fatwa to become a reference for the positive law in urgent cases, such as in the case of the usage of cannabis for medical treatment. This is because for a Muslim, undergoing medical treatment is an effort that must be carried out to be healed from a disease. In this effort, the Sharia gives the flexibility to use a prohibited thing if that thing has been scientifically proven to heal and save one's life. This is because saving human lives is a goal of the sharia in the form of *Maslahat Daruriyat*.

Some main points in MUI's fatwa regarding this case are as follows:

1. The use of medical cannabis must be based on medical needs. It is only allowed for medical reasons under a doctor's prescription. The use of a prohibited object such as cannabis for medical reasons is permitted to save one's life according to a fiqh principle, "In emergency cases, it is permissible to use prohibited things."
2. The use of medical cannabis cannot cause addiction or misuse. Cannabis, which is a prohibited item, is permitted to save human life. However, its usage must be according to the indicated dosage so as to not cause an addiction effect. "Anything that is permissible due to emergency conditions is only carried out in small dosages for the emergency."
3. The use of medical cannabis must not damage the health. Its use cannot bring harm to the physical, mental, or social health of the person who uses it. The use of medical cannabis as a medicine must be scientifically proven. It must be proven that it has the potential to heal illnesses. This is because, in Islam, the use of a prohibited thing in emergency cases must be proven to bring a solution rather than bring harm. This is according to the fiqh principle, "Do not harm and do not be harmed."
4. The use of medical cannabis must be according to controlled quality and dosage. The medical cannabis used must fulfill the quality standard and have a controlled dosage.

Negotiating the Law of Using Medical Cannabis in the World of Health from the Perspective of Fatwa of MUI and *Tarjih* Council of Muhammadiyah

The Indonesian Islamic Scholar Assembly (*Majelis Ulama Indonesia*/MUI) issued a fatwa on the use of medical cannabis. In its fatwa, MUI stated that the use of medical cannabis is permitted in certain conditions, as long as some requirements are met. Some main points of that fatwa are:

1. The use of medical cannabis must be based on medical needs: The use of medical cannabis is only allowed for medical reasons under a doctor's prescription.
2. The use of medical cannabis cannot cause addiction or misuse: The use of medical cannabis must be monitored to prevent addiction and misuse.
3. The use of medical cannabis must not damage the health: The use of medical cannabis cannot endanger the physical, mental, or social health of the person that uses it.

4. The use of medical cannabis must be according to a controlled quality and dosage: The medical cannabis used must fulfill the quality standard and controlled dosage.

Then, the *Tarjih* and *Tajdid* Council of Muhammadiyah Central Leadership (Muhammadiyah Organizational *Ijtihad* Institution) issued a fatwa on the use of medical cannabis. In this fatwa, Muhammadiyah (Indonesia's second-largest Islamic organization) provided a more open perspective on the use of medical cannabis compared to MUI's fatwa. Several points of that fatwa are:

1. The use of medical cannabis is permissible: Muhammadiyah stated that the use of medical cannabis is allowed in Islam if it is used for health purposes under the recommendation of a competent doctor.
2. The criteria of medical cannabis usage: The use of medical cannabis must fulfill several criteria. For instance, it must be used as a last resort medicine after other treatments have failed and no other alternative exists that is effective enough. Apart from that, it must not cause harmful side effects.
3. Monitoring and regulation: Muhammadiyah emphasized the importance of tight monitoring and regulation on the production, distribution, and use of medical cannabis to prevent misuse and to protect public health.

From the fatwas of the *Tarjih* Council of Muhammadiyah, it can be concluded that cannabis for medical usage is permitted in Islam under the condition that it is used for health and that there is no other alternative treatment. Apart from that, in allowing the use of medical cannabis, there must be strict monitoring to prevent its misuse. The government should consider these fatwas as these institutions regard that the use of cannabis for medical treatment and emergency conditions may bring benefit to society. This is because some diseases can be treated using medical cannabis through strict monitoring from competent doctors.

CONCLUSION

The legalization of medical cannabis in the world has been carried out in almost forty countries, including some Muslim countries such as Pakistan, Iran, and Malaysia. Up to now, Indonesia still places cannabis usage as a crime. In determining legal policies in Indonesia, there must be a fatwa determining medical cannabis legalization considering its large Muslim population. This is because up to now, no firm legal policies that regulate the use of medical cannabis have been issued. The fatwa of MUI and the *Tarjih* Council of

Muhammadiyah which allow the usage of medical cannabis for treatment under emergency reasons and strict monitoring from doctors should be used as a reference. The existence of fatwas in determining laws aims to give benefit (*maslahah*) to human beings both in the world and in the Hereafter. It is also to create tranquility in resolving the Muslim community's issues.

Acknowledgement

The authors would like to thank the RisetMU Research Grant that has provided funds for this research and LRI UMS that has facilitated and supported this research.

REFERENCES

- Ali, Z. (2021). *Ali, Z., Metode Penelitian Hukum (Legal Research Method)*. Jakarta: Sinar Grafika.
- Amar, M. Ben. (2006). Cannabinoids in medicine: A review of their therapeutic potential. *Journal of Ethnopharmacology*, 105(1–2). <https://doi.org/10.1016/j.jep.2006.02.001>
- Amarudin, Z. (2009). *Ushul Fiqih*. Yogyakarta: Teras.
- Amin, M. (2008). *Fatwa Dalam Sistem Hukum Islam*. Jakarta: Elsas.
- Anderson, D. M., Hansen, B., & Rees, D. I. (2013). Medical marijuana laws, traffic fatalities, and alcohol consumption. *Journal of Law and Economics*, 56(2), 333–369. <https://doi.org/10.1086/668812>
- Ansori, A. I., & Ulumuddin, M. (2020). Kedudukan Fatwa MUI Dan Lembaga Fatwa Di Indonesia. *Jurnal Mahkamah*, 5(1). <https://doi.org/10.25217/jm.v5i1.755>
- Arfiani, N., & Utami, C. I. W. (2022). Penggunaan Ganja Medis Dalam Pengobatan Rasional Dan Pengaturannya di Indonesia. *Jurnal Hukum Dan Etika Kesehatan*, 2(1), 56–68. <https://doi.org/10.30649/jhek.v2i1.45>
- Arkell, T. R., Downey, L. A., Hayley, A. C., & Roth, S. (2023). Assessment of Medical Cannabis and Health-Related Quality of Life. *JAMA Network Open*, 6(5). <https://doi.org/10.1001/jamanetworkopen.2023.12522>
- Asal Muasal UU Narkotika Di Indonesia Dan Segudang Masalah Di Baliknyanya. (2020). Retrieved from VOI website: <https://voi.id/tulisan-seri/2941/asalmuasal-uu-narkotika-di-indonesia-dansegudang-masalah-di-baliknyanya>
- Baker, C. R., Bédard, J., & Prat dit Hauret, C. (2014). The regulation of statutory auditing: an institutional theory approach. *Managerial Auditing Journal*, 29(5), 371–394.
- Bari, M. (2020). How Pakistan is Trying to Boost Industrial Hemp Production. Retrieved November 14, 2024, from DW website: <https://www.dw.com/en/pakistan-industrial-hemp-cannabis-production/a-56106271>
- Buenz, E. J., Johnson, H. E., Beekman, E. M., Motley, T. J., & Bauer, B. A. (2004). Bioprospecting Rumphius's Ambonese Herbal. *Journal of Etho Pharmacology*, 1.

- Bukit, A. N., & Rahmi Ayunda. (2022). Urgensi Pengesahan RUU Perlindungan Data Pribadi Terhadap Perlindungan Kebocoran Data Penerimaan SMS Dana Cepat. *Reformasi Hukum*, 26(1), 1–20. <https://doi.org/10.46257/jrh.v26i1.376>
- Cannabis in Lontar Usada, Balinese Traditional Medicine. (2020). Retrieved from Baca Ganja website: <https://bacaganja.com/ganja-dalam-lontar-usada-pengobatan-tradisional-bali/#more-1344>
- Chiu, V., Leung, J., Hall, W., Stjepanović, D., & Degenhardt, L. (2021). Louisa Degenhardt, Public health impacts to date of the legalisation of medical and recreational cannabis use in the USA. *Neuropharmacology*, 193. <https://doi.org/10.1016/j.neuropharm.2021.108610>
- Committee on Substance Abuse, C. on A. C. on S. A. C. on A. (2015). The impact of marijuana policies on youth: clinical, research, and legal update. *Pediatrics*, 135(3), 584–587. <https://doi.org/10.1542/peds.2014-4146>
- Cook, A. C., Leung, G., & Smith, R. A. (2020). Marijuana Decriminalization, Medical Marijuana Laws, and Fatal Traffic Crashes in US Cities, 2010–2017. *American Journal of Public Health*, 110(3). <https://doi.org/10.2105/AJPH.2019.305484>
- Corboz, E. (n.d.). The Najafi Marja'iyya in the Age of Iran's Vali-ye Faqih (Guardian Jurist): Can it Resist? Retrieved November 14, 2024, from Pomeps website: [https://pomeps.org/the-najafi-marjaiyya-in-the-age-of-irans-vali-ye-faqih-guardian-jurist-can-it-resist#:~:text=A marja' or%2C after the,\(Muslim community\) at large](https://pomeps.org/the-najafi-marjaiyya-in-the-age-of-irans-vali-ye-faqih-guardian-jurist-can-it-resist#:~:text=A%20marja'%20after%20the,(Muslim%20community)%20at%20large)
- Dahlan, A. A. (1996). *Ensiklopedi Hukum Islam Vol. 2*. Jakarta: Ichtiar Baru Van Hoeve.
- Dapari, R., Mahfot, M. H., Nazan, M., Hassan, M. R., Dom, C., & Rahim., S. A. (2022). Acceptance towards decriminalization of medical marijuana among adults in Selangor, Malaysia. *PLoS One*, 10(17). <https://doi.org/10.1371/journal.pone.0262819>
- Dimiyati, K., & Wardiono, K. (2004). *Metode Penelitian Hukum (Legal Research Method)*. Surakarta: Universitas Muhammadiyah Surakarta.
- Farisa, F. C. (2022, June 28). Pros and Cons of Cannabis Legalization for Medical Purposes in Indonesia. *Kompas*. Retrieved from <https://nasional.kompas.com/read/2022/06/28/16375051/pro-kontra-upaya-legalisasi-ganja-untuk-kepentingan-medis-di-indonesia>
- Fauziah, E., & Runturambi, A. (2023). Pros and Cons of Medical Cannabis

- Legalization in Indonesia. *Technium Social Sciences Journal*, 45, 343–352. <https://doi.org/10.47577/tssj.v45i1.9178>
- Fauziyah, W. (2022). Perlunya Regulasi Terhadap Peraturan Penggunaan Ganja di Indonesia Ditinjau dari Kepentingan Medis. *Jurnal Panorama Hukum*, 7(2), 168–178. <https://doi.org/10.21067/jph.v7i2.7702>
- Gayo, A. A. (2011). Kedudukan Fatwa MUI Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah. In *Penelitian Hukum Badan Pembinaan Hukum Nasional Kementerian Hukum Dan HAM RI* (p. 13).
- Gunawan, D. P. (2022). Legislasi dan Masalah: Studi Pemanfaatan Ganja untuk Pengobatan Medis. *Ijtihad*, 38(1), 37–52.
- Hasin, D. S., Wall, M., Keyes, K. M., Cerdá, M., Schulenberg, J., O'Malley, P. M., ... Fen, T. (2015). Medical marijuana laws and adolescent marijuana use in the USA from 1991 to 2014: results from annual, repeated cross-sectional surveys. *The Lancet Psychiatry*, 2(7), 601–608. [https://doi.org/10.1016/S2215-0366\(15\)00217-5](https://doi.org/10.1016/S2215-0366(15)00217-5)
- Huberman, A. M., & Miles, M. B. (2014). *Qualitative Data Analysis A Methods Sourcebook*. In *SAGE Publication* (3rd ed.). London: SAGE Publications.
- Irwansyah. (2020). *Penelitian Hukum Pilihan Metode dan Praktik Penulisan Artikel (Legal Research, the Choice of Methods and the Practice in Writing Articles)*. Yogyakarta: Mitra Buana Media.
- Ishtiaq, M. (2021). Pakistan to Introduce Cannabis Cultivation Policy by December. Retrieved from Arab News website: <https://www.arabnews.pk/node/1947981/pakistan>
- Kau, S. A. P. (2010). Posisi Fatwa Dalam Diskursus Pemikiran Hukum Islam. *Sofyan A. P. Kau*, 10(1), 178.
- Koagouw, M. O. (2020). Semua yang Usul Legalisasi Ganja Patut Dicurigai. Retrieved December 9, 2020, from RRI website: <https://rri.co.id/nasional/peristiwa/890900/semua-yangusul-legalisasiganja-patut-dicurigai>
- Laqueur, H., Rivera-Aguirre, A., Shev, A., Castillo-Carniglia, A., Rudolph, K. E., Ramirez, J., ... Cerdá, M. (2020). The impact of cannabis legalization in Uruguay on adolescent cannabis use. *International Journal of Drug Policy*, 80, 102748. <https://doi.org/10.1016/j.drugpo.2020.102748>
- Lee, G., Grove, B., Furnish, T., & Wallace, M. C. (2018). Medical Cannabis for Neuropathic Pain. *Current Pain and Headache Reports*, 22(1).

- Lumbanrau, R. E. (2020). History and culture of cannabis in the archipelago: Rituals, medicine and food spices - BBC News Indonesia. Retrieved from BBC Indonesia website: <https://www.bbc.com/indonesia/indonesia-51441909>
- Mahkamah Konstitusi. *Putusan No. 13/PUU-XXII/2024.*, (2024). Indonesia.
- Marinello, S., & Powell, L. M. (2023). The impact of recreational cannabis markets on motor vehicle accident, suicide, and opioid overdose fatalities. *Social Science & Medicine*, 320, 115680. <https://doi.org/10.1016/j.socscimed.2023.115680>
- Nalle, V. I. W. (2015). The Relevance of Socio-Legal Studies in Legal Science. *Mimbar Hukum*, 27(1), 179. <https://doi.org/10.22146/jmh.15905>
- Pohan, M. (2022). *The Use Of Cannabis As A Food Additioning In Banda Aceh Community Culture (Comparative Study Of Islamic Law And Positive Law)*. Syarif Hidayatullah State Islamic University.
- Posner, E. A. (2002). Law and Social Norms. In *Law and Social Norms*. Harvard university press. <https://doi.org/10.4159/9780674042308>
- Putra, M. T. P. (2014). Policy On The Employment Of Hemp (Industrial Marijuana) For Industrial Interests In Indonesia. *Jurnal Hukum*, 8.
- Qadrina, N., & Risal, M. C. (2022). Legalisasi Ganja Sebagai Tanaman obat; Perluakah? *Jurnal At Tasyri'iyah UIN Alauddiin*, 2(1). <https://doi.org/10.24252/jat.vi.30201>
- Robinson, D. (2020). Bridging the Accessibility Gap of Cannabinoid Medicine and Arabic Culture. *Rambam Maimonides Medical Journal*, 11(1), 3.
- Rumpf, G. E., & Beekman, E. M. (1981). *The Poison Tree Selected Writings of Rumphius on the Natural History of the Indies*. Massachusetts: University of Massachusetts Press.
- Rusmarina, N., & Dewi, M. N. khofifah. (2021). Transisi Penggolongan Ganja Dalam Perjanjian Pengendalian Narkoba PBB: Langkah Legalisasi. *Khazanah Hukum*, 3(2), 59–69. <https://doi.org/10.15575/kh.v3i2.11801>
- Sevigny, E. L. (2018). The effects of medical marijuana laws on cannabis-involved driving. *Accident Analysis and Prevention*, 118, 57–65. <https://doi.org/10.1016/j.aap.2018.05.023>
- Smart, R., & Pacula, R. L. (2019). Early evidence of the impact of cannabis legalization on cannabis use, cannabis use disorder, and the use of other substances: Findings from state policy evaluations. *American Journal of Drug and Alcohol Abuse*, 45(6), 644–663.

<https://doi.org/10.1080/00952990.2019.1669626>

- Stolzenberg, L., D'Alessio, S. J., & Dariano, D. (2016). The effect of medical cannabis laws on juvenile cannabis use. *International Journal on Drug Policy*, 27, 82–88. <https://doi.org/10.1016/j.drugpo.2015.05.018>
- Sunstein, C. R. (1996). On the expressive function of law. *University of Pennsylvania Law Review*, 144(5), 2021. <https://doi.org/10.2307/3312647>
- Tifada, D. A., & Febrian, R. (2021). The History of 420 Traditions in Indonesia and the Archipelago's Cannabis Culture from Aceh, Ambon, to Java. Retrieved from VOI website: <https://voi.id/memori/45823/sejarah-tradisi-420-di-indonesia-dan-budaya-ganja-nusantara-dari-aceh-ambon-hingga-jawa>
- Vandepitte, K., Vasile, S., Vermeire, S., Vanderhoeven, M., Borght, W. Van der, Latré, J., ... Troch, V. (2020). Hemp (*Cannabis sativa* L.) for high-value textile applications: The effective long fiber yield and quality of different hemp varieties, processed using industrial flax equipment. *Industrial Crops and Products*, 158. <https://doi.org/10.1016/j.indcrop.2020.112969>
- Vickery, A. W., & Finch, P. M. (2020). Cannabis: are there any benefits? *Internal Medicine Journal*, 50(11), 1326–1332. <https://doi.org/10.1111/imj.15052>.
- Webb, C. W., & Webb, S. M. (2014). Therapeutic benefits of cannabis: a patient survey. *Hawai'i Journal of Medicine & Public Health*, 73(4), 109–111.
- Whitcomb, B., Lutman, C., Pearl, M., Medlin, E., Prendergast, E., Robison, K., & Burke, W. C. (2019). Use of cannabinoids in cancer patients: A Society of Gynecologic Oncology (SGO) clinical practice statement. *Gynecologic Oncology*, 157(2), 307–311. <https://doi.org/10.1016/j.ygyno.2019.12.013>
- Yuan, M., Kanellopoulos, T., & Kotbi, N. (2019). Cannabis use and psychiatric illness in the context of medical marijuana legalization: A clinical perspective. *General Hospital Psychiatry*, 61(July), 82–83. <https://doi.org/10.1016/j.genhosppsych.2019.08.003>
- Yustina, E. W., Simandjuntak, M. E., Nasser, M., Blum, J. D., & Trajera, S. M. (2023). Legalization of Medical Marijuana in Indonesia from the Human Rights Perspectives: Lessons Learned from Three ASEAN Countries. *Lex Scientia Law Review*, 7(2), 569–628. <https://doi.org/10.15294/lesrev.v7i2.77670>
- Zulfikri, A., & Jaman, U. B. (2022). Urgency Legality of cannabis for medical purposes. *West Science Law and Human Rights*, 1(1), 8–14.