

The Dilemma of Judicial Pardon in the Use of Medical Cannabis: A Criminal Law Perspective in Indonesia

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Abstract

Rechterlijk pardon is not explicitly mentioned in the nomenclature of the National Criminal Code, however, substantively / implicitly the arrangement is in Article 71 of Law Number 1 of 2023 concerning the Criminal Code, so that it is sufficient to provide legal certainty for judges in its application. This arrangement, it is possible to apply in the case of medical marijuana. As a response to public discourse and the dynamics of law and the development of science as well as the solution of creating a balance between fair law enforcement and recognition of urgent medical needs. Without leaving the integrity of the applicable law, carried out with the precautionary principle, and having true accountability. In addition, applying rechterlijk pardon in medical marijuana cases is an important step supported by the principles of humanity and human rights. By giving judges discretion to consider the individual circumstances of the accused, the judiciary can contribute to substantive justice. The criminal law implications of medical cannabis use in Indonesia create complex challenges but also offer opportunities for reforms that can improve access and protection for patients. By addressing legal uncertainty and inherent stigma, Indonesia can develop more humane policies and be responsive to public health needs. Constructive dialog between policymakers, legal experts, and the public is essential to balance law enforcement and the need for effective medical care.

Keywords: *Rechterlijk Pardon, Medical Cannabis, Criminal Law*

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1. Background of the Problem

The use of cannabis for medical purposes is a growing topic, especially since in many countries cannabis has been legalized for the treatment of diseases such as epilepsy, cancer, and other chronic conditions. However, in Indonesia, the use of medical cannabis is prohibited under Law No. 35 of 2009 on Narcotics, which prevents it from being provided to patients who need cannabis-based therapy. On the other hand, the medical benefits of cannabis are increasingly recognized by the global medical community, and this fact lends preference to making regulatory changes within the criminal justice system in Indonesia. This research is important to understand how criminal law and the Narcotics Law need to be reconsidered to meet medical needs without infringing on existing boundaries.

The concept of judicial pardon, or referred to as forgiveness by the judge, is an approach that gives judges the authority to make more humane decisions in the enforcement of criminal law, especially in the context of cases involving medical needs, such as the use of medical marijuana. In Indonesia, although medical marijuana is prohibited, the application of judicial pardon can be a wiser solution in enforcing the law when there is an urgent need that cannot be met by the currently applicable laws. Judicial pardon, which is adopted from the Dutch legal system, allows judges to grant forgiveness to defendants who meet certain conditions, even though they are technically found guilty.¹ This concept aims to avoid the imposition of sentences that may not align with the sense of justice and humanity.² In the context of Indonesian criminal law, the application of *rechterlijk* pardon is expected to be part of a broader legal reform that emphasizes the principles of restorative justice and flexibility in law enforcement.³

The application of judicial pardon can be seen as a step to address the rigidity of the existing legal system, which often fails to consider the social context or the

¹Jatmiko, 2022, *Rechterlijk pardon* (Pemaafan Hakim) Dalam Tindak Pidana Perpajakan, *Hermeneutika: Jurnal Ilmu Hukum*, 6 (1). <https://doi.org/10.33603/hermeneutika.v6i1.6774>.

²Sukma, 2023, Urgensi Penerapan *Rechterlijk Pardon* Sebagai Pembaharuan Hukum Pidana Dalam Perspektif Keadilan Restoratif, *Gorontalo Law Review*, 6 (1). <https://doi.org/10.32662/golrev.v6i1.2678>.

³Hasibuan, 2021, Kebijakan Formulasi *Rechterlijk Pardon* Dalam Pembaharuan Hukum Pidana, *Jurnal Hukum Progresif*, 9 (2), 111-122. <https://doi.org/10.14710/jhp.9.2.111-122>.

rights and conditions of the defendants.⁴ One interesting example, in the case of medical marijuana usage, is that judges can actually consider the medical reasons why someone takes that action, thus the decisions made are not only based on strict law, but also explored from the values of humanity, utility, and justice.

As an illustration, the Sanggau District Court's decision sentenced Fidelis to 8 months in prison and a fine of 1 billion Rupiah with a subsidiary of 1 month in prison. ICJR regrets that the judge in Fidelis's case did not comprehensively consider and take into account the facts revealed during the trial. In ICJR's view, Fidelis should be categorized under emergency circumstances as regulated in Article 48 of the Criminal Code, and therefore, he should be acquitted of all legal charges. Fidelis's condition, where he had no choice but to help his wife with cannabis treatment not provided by the State, should have been a key consideration for the judge.⁵ Fidelis knows that his actions are against the law. But Fidelis also knows that cannabis extract is making his wife's condition gradually improve. However, the law is still the law with all its rigidity, and Fidelis was detained. Since being detained, his wife's health condition has declined again, and even after 32 days of Fidelis being detained, his wife passed away.⁶

That the judge has been given the space not to impose a punishment if it is considered that, based on the existing facts, it does not provide certainty or is not appropriate. This provision is in line with the principles contained in the Criminal Code (KUHP) Law No. 1 of 2023, Article 71 Paragraph (1) states that if someone commits a criminal act that is only punishable by imprisonment for less than 5 (five) years, and the judge believes that it is not necessary to impose a prison sentence after considering the objectives of punishment and the sentencing guidelines as referred to in Articles 51 to 54, that person may be sentenced to a fine only.

The application of the concept of judicial pardon also reflects the philosophical values of Pancasila in law enforcement, where the values of justice

⁴Setyawan, 2023, Permaafan Hakim Dalam Pembaruan Hukum Pidana Indonesia, *Juridikum*, 1 (1). <https://doi.org/10.59435/juridikum.v1i1.97>.

⁵ICJR, 2017, [ICJR: Fidelis Korban Kampanye Buta Anti Narkotika](#), diakses pada tanggal 30 Desember 2024.

⁶CNN, 2017, <https://www.cnnindonesia.com/nasional/20170731142646-12-231457/kisah-fidelis-antara-cinta-ganja-dan-ancaman-penjara>, diakses pada tanggal 30 Desember 2024.

and humanity serve as the main foundation in every legal decision.⁷ Thus, judicial pardon not only serves as a legal tool but also as a mechanism to achieve broader substantive justice in society. In this context, it is important to continue developing and refining the application of judicial pardon to maximize benefits for all parties involved in the criminal justice system.

The main challenge of using medical marijuana is the inconsistency between empirical facts related to the medical need but unable to be realized due to legal regulations prohibiting it. From a criminal law perspective, Indonesia faces a dilemma of justice and legal certainty, concerning whether medical marijuana users should be punished under narcotics laws or be granted leniency through judicial pardon. This also raises significant questions about justice and individual rights. On one hand, there is a need to enforce strict narcotics laws, while on the other hand, there is an urgency to ensure access to medications for patients who need them. This issue is further complicated by the social stigma surrounding marijuana and the widespread risk of abuse.

This study aims to explore the application of judicial pardon in cases of medical cannabis use in Indonesia and to examine the potential for criminal law reform related to this issue. Through a normative legal analysis, this research is expected to provide a roadmap for how the law can evolve to balance drug enforcement and the individual's right to receive adequate treatment. The findings of this study are anticipated to make a significant contribution to the criminal law literature in Indonesia, as well as provide recommendations regarding the use of judicial pardon in a medical context.

The application of judicial pardon in the context of medical marijuana use in Indonesia raises a complex legal dilemma. Judicial pardon, which allows judges not to impose penalties under certain conditions, may be used to protect patients who require cannabis-based treatments. However, the narcotics law in Indonesia, Law No. 35 of 2009, classifies marijuana as a Schedule I narcotic, making its medical use completely prohibited without considering the therapeutic needs of patients.

⁷Prastyanti, 2023, *Perlindungan Hukum Bagi Pengguna Layanan Fintech Lending Syariah Di Indonesia*, Jurnal Ilmiah Ekonomi Islam, 9 (3), <https://doi.org/10.29040/jiei.v9i3.10437>.

This regulation creates significant barriers in the application of judicial pardon for medical marijuana users.

The concept of judicial pardon was introduced in Indonesia through Law Number 1 of 2023 concerning the Criminal Code (KUHP). This law aims to modernize the criminal system by providing flexibility to judges to consider mitigating factors in sentencing.⁸ It should be taken into consideration that this more flexible legal approach is in line with global trends, where judicial discretion is utilized to tailor sentences to the unique circumstances of each case, especially in drug-related offenses.⁹ In comparison, countries like the Netherlands have adopted and implemented a more lenient approach to cannabis, where the justice system has successfully integrated the concept of medical cannabis to consider the intentions and circumstances of the users.¹⁰

The potential to carry out cannabis policy reform in Indonesia is increasingly reinforced by scientific evidence showing the benefits of cannabis for medical needs. Research conducted has proven how effective medical cannabis is in managing various health conditions, thereby encouraging a paradigm shift to reconsider existing regulations. The integration of scientific evidence into the legislative process plays an important role in developing a regulatory framework that recognizes the therapeutic potential of cannabis while also seeking to protect patients' rights.¹¹ This reform serves as a pathway for the implementation of judicial pardon, allowing judges to exercise discretion in cases involving medical cannabis users, thus reducing heavy penalties as stipulated in the law.

The success of the application of judicial pardon in medical cannabis cases depends on a comprehensive understanding of the implications of legal and social

⁸Estiningtyas, A, 2024, Comparison of The Legal Regulation of the Rechterlijk Pardon In Indonesia And The Netherlands, *Jurnal Suara Hukum*, 6 (1), 162–186. <https://doi.org/10.26740/jsh.v6n1.p162-186>.

⁹Riboulet-Zemouli, K., & Krawitz, M, 2022, WHO's First Scientific Review of Medicinal Cannabis: From Global Struggle To Patient Implications, *Drugs Habits and Social Policy*, 23(1), 5–21. <https://doi.org/10.1108/dhs-11-2021-0060>.

¹⁰Estingtyas, *Op. Cit.*

¹¹Thahir, P, 2024, Legal Review Of Medical Crime: Patient Protection And Professional Responsibility In Medical Practice, *Audito Comparative Law Journal (ACLJ)*, 5 (2), 130–142. <https://doi.org/10.22219/aclj.v5i2.33832>.

phenomena. The Indonesian legal system must be able to navigate the balance between public health interests and drug enforcement law. This requires a collaborative approach involving legal experts, healthcare professionals, and policymakers to create a framework that supports the use of medical cannabis while ensuring compliance with existing legal standards.¹²

The dilemma between the use of medical cannabis as a necessity in health and the strict regulations in Law Number 35 of 2009 concerning Narcotics remains an unresolved debate. While judicial pardon has been introduced through the new Criminal Code, the application for medical cannabis cases still lacks a clear legal basis. Previous research has explored various aspects related to medical cannabis and the law in Indonesia. Sonjaya discusses the legal challenges of medical cannabis in the context of Law Number 35 of 2009, focusing on regulatory obstacles.¹³ Komalasari highlights the potential for legislative changes regarding medical marijuana in Indonesia, but focuses more on the historical aspects than its implementation.¹⁴ Saputro conceptually examines the judicial pardon in the draft of the Criminal Code, but has not discussed its application in medical cannabis cases. Lestari's research proposes a reform of medical cannabis legalization policy but does not relate it to jurisprudence or judicial discretion. These studies indicate that, although the benefits of medical cannabis have been widely recognized, the legal mechanisms to protect medical cannabis users, such as the use of judicial pardon, are still rarely studied specifically.¹⁵

2. Problem Formulation

The issue that arises in this research is how the application of judicial pardon can be integrated into cases of medical marijuana use in Indonesia. The justification for this research is supported by the urgency of finding a fair solution for patients in critical situations who need medical marijuana, while not violating existing laws.

¹²Triyatna, A, 2024, Juridical Analysis Of The Regulations On The Use Of Cannabis For Medical Purposes In Indonesia (A Comparative Study With Thailand), *Jurnal Hukum Prasada*, 11(1), 31–36. <https://doi.org/10.22225/jhp.11.1.2024.31-36>.

¹³Sonjaya, *Op.cit.*

¹⁴Komalasari, *Op.cit.*

¹⁵Lestari, *Op.cit.*

3. Research Method

This research uses the normative juridical research method, examining applicable legal rules, legal doctrines, and legal principles relevant to the discussed issue, namely *rechterlijk pardon* in the context of cannabis use for health. The normative approach allows the researcher to analyze law as a normative system consisting of written rules, including laws, government regulations, and court decisions. It focuses on understanding criminal law regulations related to narcotics and how the application of *rechterlijk pardon* can be integrated into cases of medical cannabis use in Indonesia. The approaches used to analyze this legal material are the statute approach and the case approach, where each existing rule and legal decision will be analyzed and compared to the application of the principle of *rechterlijk pardon*.

4. Theoretical Foundation

a. Teori Penanggulangan Kejahatan (The Theory of Crime Control)

Barda Nawawi Arief argues that policies or efforts to combat crime are essentially an integral part of efforts to protect society (social defence) and to achieve social welfare. Furthermore, G. P. Hoefnagels, in Barda Nawawi Arief, states that efforts to combat crime can be undertaken through: 1) The application of criminal law, 2) Prevention without punishment. 3) Influencing societal views on crime and punishment through mass media.¹⁶

Furthermore, Barda Nawawi Arief also stated that, broadly speaking, efforts to tackle crime are divided into two pathways: the penal route (criminal law) and the non-penal route (outside of criminal law). Efforts to combat crime through the penal route emphasize a repressive nature (suppression or eradication) after the crime has occurred, while the non-penal route emphasizes a preventive nature (prevention or deterrence and control) before the crime occurs.¹⁷

The general understanding of crime prevention fundamentally involves several system arrangements that must be made to ensure effective functioning,

¹⁶Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Jakarta: Kencana Prenada Media Group, hlm. 45.

¹⁷Barda Nawawi, *Ibid*, 46.

such as an integrated approach or method, the relationship between the government and the community, both of which are subjects of all security activities, as well as a safe situation as the object of community security. Meanwhile, specific prevention is basically not much different from the general concept of crime prevention, as the only difference lies in the methods or strategies used, one of which is crime prevention with a situational approach (situational crime prevention), which is one of the various prevention theories that employs strategies to explain a form of prevention strategy applied in a specific environment or activity. According to Muladi, the main division of crime prevention strategies is categorized into three groups: 1) Primary prevention is a strategy carried out through public policy, specifically to influence the causes and root of crime with the target of the general public, 2) Secondary prevention is a strategy aimed at potential offenders, 3) Tertiary prevention is a strategy aimed at those who have already committed a crime.¹⁸

b. Teori Hukum Progresif (Progressive Law Theory)

One of the causes of stagnation in the legal world is the continued entrapment in the single paradigm of positivism, which is no longer functional as an analysis and control that aligns with the living table of human characteristics that are truly within a dynamic context and multi-interests, both in processes and legal events.¹⁹ Thus, the law is understood only in a very narrow sense, meaning it is only interpreted as statutes, while values outside the law are not regarded as law. In the history of the Republic of Indonesia, there have been alternating political changes (according to the period of the political system) between democratic political configurations and authoritarian political configurations. Along with these changes in political configurations, the character of legal products also changes. When the political configuration appears democratically, the legal products it produces are

¹⁸Muladi, 2002, *Demokratisasi Hak Asasi Manusia dan Reformasi Hukum*, The Habib Center: Bandung, hlm. 156.

¹⁹Sabian Usman, 2009, *Dasar-Dasar Sosiologi Hukum*, Yogyakarta: Pustaka Belajar, hlm. 1.

responsive in character; conversely, when the political configuration appears authoritarian, the laws produced are orthodox in character.²⁰

Progressive law is a concept of legal development proposed by Satjipto Rahardjo, which views that law is made for humans, not humans for law. In the reality of social life, the law faces a crucial problem that obscures its meaning. The law is used as a tool to protect certain interests and is made a means to legalize actions that undermine the values of justice in society. Law is only made a tool and not a goal, so law becomes a frightening specter for society; law is no longer for the happiness of society but instead causes suffering.

Progressive law solves that deadlock. It demands the courage of law enforcement to interpret articles to civilize the nation. If this process is correct, the ideal that is built in law enforcement in Indonesia is aligned with the nation's efforts to achieve common goals. This ideality will distance us from the practices of uncontrolled legal disparities as we see today. Therefore, in the future, there will be no more legal discrimination in Indonesia. If equality before the law cannot be realized, that partiality is absolute. Humans create laws not only for certainty but also for happiness and welfare.

According to Satjipto Rahardjo, progressive law enforcement is about applying the law not just as black-and-white words of regulations (according to the letter), but according to the spirit and deeper meaning (to the very meaning) of the laws or regulations. Law enforcement is not only about intellectual intelligence, but also about spiritual intelligence. In other words, law enforcement should be carried out with full determination, empathy, dedication, commitment to the suffering of the nation, accompanied by the courage to seek alternative paths than those that are commonly taken.²¹

Legal activities in a broad sense encompass activities to implement and apply the law as well as to take legal action against any violations or deviations from the law committed by legal subjects, either through judicial procedures or

²⁰Mahfud MD, 2009, *Politik Hukum di Indonesia*, Jakarta: Rajawali Pers, hlm. 373.

²¹Satjipto Rahardjo, 2009, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, Yogyakarta: Genta Publishing, hlm. 13.

through arbitration procedures in the resolution of other disputes. In a narrow sense, law enforcement includes activities to enforce against any violations of laws and regulations, particularly through the criminal justice process involving law enforcement officials.²² Law enforcement is part of the implementation of the state policy of a nation. Therefore, the political system and political climate greatly influence the law enforcement process itself. A good political system accompanied by a conducive political climate will facilitate law enforcement, whereas a chaotic political system and climate will significantly hinder it. To achieve effective law enforcement, a proper political order and practices are also necessary. In particular, the law must be able to respond to the dynamics of societal thought so that the law does not stagnate. In terms of law enforcement in Indonesia specifically, if understood rigidly and superficially, then no judge is wrong in every decision or ruling of a case, even if the decision is wrong, incorrect, inappropriate, contradicts justice, or even contradicts their own conscience. This gives rise to arbitrary and oppressive law enforcement agents in the jungle.²³

One of the most important aspects of law enforcement is how to introduce the law to the community and promote their legal awareness. Law enforcers should not only view the community as objects in law enforcement but should involve them as subjects in law enforcement. Many still believe that the law is a dogmatic set of regulations without caring about the upheavals occurring in society. There are many who exploit the law to enrich themselves without considering the sense of justice that all layers of society crave for. Therefore, this is where the need for responsive law enforcement comes into play.²⁴

5. Research Results

5.1 The Dilemma of Applying Judicial Pardons

Judicial pardon, or forgiveness by a judge, is a legal concept that gives judges discretion in imposing sentences. This allows for the possibility of reducing

²²HM Ali Masyur, 2010, *Pranata Hukum dan Penegakannya di Indonesia*, Semarang: Unnisula Press, hlm. 57-66.

²³ HM Ali Masyur, *Ibid*.

²⁴ Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat", *Jurnal Pembaharuan Hukum*, Vol. 1, No. 3 (September – Desember 2014): 267-269.

sentences or even granting release to defendants based on certain conditions, such as the defendant's personal circumstances or humanitarian considerations. Although this concept is not explicitly regulated in Indonesian criminal law, empirical evidence shows that judges in Indonesia often use this discretion to impose lighter sentences in situations where strict application of the law could result in injustice.²⁵ Criminal law is essentially just a “tool” that is a tool to achieve the purpose of punishment. Thus, before using the tool, it is necessary to understand the tool. Understanding of this tool is very important to help understand whether with the tool the predetermined goals can be achieved.²⁶

In Indonesia, the regulation of drug offenses governed by Law Number 35 of 2009 explicitly prohibits the use of cannabis for any purpose, including medical. Cannabis is categorized as a Class I narcotic, which is considered very dangerous. However, the application of judicial pardon offers a mechanism that allows judges to consider the individual circumstances of defendants, especially those suffering from serious illnesses and in need of cannabis for therapeutic purposes. In such situations, judges may decide to take a more humane approach, thus aligning legal outcomes with societal values and the realities of the defendants' conditions.²⁷ An approach that reflects the important role of the judiciary in balancing the rigidity of the law with the principles of justice and equality is very relevant in the context of the legal system in Indonesia. In this regard, restorative justice emerges as a promising alternative to address dissatisfaction with the criminal justice system, which is considered less humane.²⁸

A number of cases in Indonesia show the potential application of judicial pardon in drug-related offenses. These cases often spark debates about the

²⁵ Estiningtyas, A, 2024, *Comparison of the legal regulation of the rechterlijk pardon in Indonesia and the Netherlands*, *Jurnal Suara Hukum*, 6(1), 162–186. <https://doi.org/10.26740/jsh.v6n1.p162-186>.

²⁶ Anindya Prima Digantari, 2021, *Abortion Perspective of Rape Victims Criminal Law Study*, *Focus Journal Law Review*, Vol. 1. No.1, hlm. 16. <https://doi.org/10.62795/fjl.v1i1.6>.

²⁷ Saputro, A, 2016, *Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP*. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 28(1), 61. <https://doi.org/10.22146/jmh.15867>

²⁸ Ahzar, R. M, 2022, *Keadilan Restorative Justice Sebagai Upaya Mewujudkan Peradilan Yang Humanis*, *Amnesti: Jurnal Hukum*, 4(2), 109-119. <https://doi.org/10.37729/amnesti.v4i2.2192>.

appropriateness of existing laws, which are frequently deemed too harsh and insufficiently responsive to medical needs. In the context of the judiciary, the use of discretion by judges to impose lighter sentences reflects a more humanitarian approach compared to strict law enforcement. This indicates that judges are attempting to consider the individual circumstances of defendants and the broader social context in their decision-making.²⁹ There will certainly be a debate about the risks of bias in the application of judicial discretion, which can threaten the principle of the rule of law, while others argue that judicial discretion is an important element in achieving justice.

In this context, criminal law reform that is more responsive to social dynamics and medical needs becomes important. The existing legal framework needs to consider scientific evidence regarding the benefits of medical marijuana and accommodate flexibility in the application of the law. In this way, judicial pardon can play a strategic role in protecting patient rights without compromising legal certainty. The application of judicial pardon in medical marijuana cases is supported based on humanitarian principles and human rights. Therefore, it is important to reformulate the legal framework to align with the medical needs of society, allowing judges to grant clemency in cases where the use of marijuana is a solution for improving the health conditions of users.

Concerns about the application of judicial pardon in the context of medical marijuana use in Indonesia reflect a complex dilemma between law enforcement and the need to recognize the potential medical benefits of marijuana. Its implementation leads to legal uncertainty; the theory of legal certainty emphasizes the importance of clear and predictable rules that allow individuals to plan their actions without fear of arbitrary action from authorities. Without legal certainty, people do not know what to do, leading to uncertainty that ultimately results in chaos caused by legal indecision. Thus, legal certainty refers to the enforcement of laws that are clear, stable, and consistent, where their implementation cannot be

²⁹Sugiharto, G., Mira Julita Sari, Kurnia Dewi Anggraeny, & Fauzan Muhammadi, 2024, Analysis of legal discovery methods by judges in *rechterlijk pardon*'s perspective to solve criminal cases, *Jurnal Jurisprudence*, 1-22. <https://doi.org/10.23917/jurisprudence.v14i1.4397>.

influenced by subjective circumstances (R. Tony Prayogo, 2011). Law No. 1 of 2023 concerning the Criminal Code (KUHP) Article 71 Paragraph (1) can serve as a basis for judges to apply judicial pardon as a foundation for providing legal certainty. However, in the application of judicial pardon, especially regarding the use of medical cannabis, it must be carried out with the principles of caution, measurability, and accountability based on the real facts disclosed in the trial.

Some studies suggest that cannabis has therapeutic potential for the treatment of various diseases, such as Alzheimer's and Parkinson's, and others that can provide significant benefits for patients. The opinion on the use of medical cannabis often focuses solely on the patients' right to receive effective and humane treatment. This is in contrast to the strict enforcement of drug laws, including cannabis, aimed at preventing abuse and protecting society from the potential negative impacts of drug use. Many parties are concerned that providing greater access to medical cannabis could serve as a gateway for abuse and would certainly undermine existing anti-drug policies.³⁰ These concerns are reinforced by data showing that the legalization of medical marijuana in several states in the US has been followed by an increase in overall marijuana use, which may contribute to public health issues.³¹ Therefore, many are calling for a careful and measured approach in addressing this issue, taking into account the long-term impact on society and the integrity of the legal system.

Law No. 35 of 2009 on Narcotics classifies marijuana as a Class I narcotic and explicitly prohibits its use, including for medical purposes. This policy reflects the conservative views that dominate drug regulation in Indonesia, where marijuana is more often associated with abuse and criminal acts. However, recently, discussions about the medicinal potential of marijuana have begun to emerge and become a debate, especially after several international studies have shown its benefits for addressing various chronic health conditions, such as pain from cancer, seizures in

³⁰Freitag, C., 2024, Available But Inaccessible: Patient Experiences During The First 2 Years Of A Primary Care-Based Medical Cannabis Program At An Academic Medical Center. *Harm Reduction Journal*. <https://doi.org/10.1186/s12954-023-00919-2>.

³¹Hasin, D. S., Sarvet, A. L., Cerdá, M., et al., 2017, US Adult Illicit Cannabis Use, Cannabis Use Disorder, And Medical Marijuana Laws, *JAMA Psychiatry*, 74(6), 579–588. <https://doi.org/10.1001/jamapsychiatry.2017.0724>.

epilepsy, or spasticity in multiple sclerosis.³² The rigidity of existing policies creates a dilemmas situation for patients who need this alternative treatment. They are faced with a difficult choice between continuing to suffer or risking the use of cannabis illegally. This situation creates legal uncertainties that impact patients' rights to access adequate medical care. On the other hand, there has been policy reform in other countries, such as Thailand, which has legalized medical cannabis, becoming an important reference for advocates of change in Indonesia. This issue has also gained greater attention from the public following the Fidelis case. Although there is still resistance from some circles, this momentum provides an opportunity to open a more inclusive policy dialogue, based on scientific evidence, and to consider public health interests more broadly.

The use of medical cannabis in Indonesia faces significant challenges from a criminal law perspective. Patients using cannabis for medical purposes are threatened with severe penalties as they are considered to have committed a criminal offense. This situation not only creates a fear among patients but also negatively impacts access to healthcare services, which should be a fundamental right as citizens.³³ Fear of violating this law causes patients to be hesitant to speak openly to doctors about their needs or ultimately seek alternative treatments that are less risky. This can certainly worsen their suffering, both physically and psychologically.

Besides patients, medical personnel such as doctors or pharmacists are also faced with ethical dilemmas. On one hand, they have a professional and moral responsibility to provide the best care to patients. However, on the other hand, the legal ambiguity surrounding the use of medical marijuana makes them hesitant to offer recommendations or even just to discuss the possibility of treatment with

³²Levinsohn, E. A., & Hill, K. P., 2020, Clinical Uses Of Cannabis And Cannabinoids In The United States, *Journal of the Neurological Sciences*, 415, 116717. <https://doi.org/10.1016/j.jns.2020.116717>.

³³Satterlund, T. D., Lee, K. J., & Moore, R. S., 2015, Stigma Among California's Medical Marijuana Patients, *Journal of Psychoactive Drugs*, 47(1), 10–17. <https://doi.org/10.1080/02791072.2014.991858>.

marijuana.³⁴ Many medical personnel ultimately choose to avoid this topic, even though they are aware of its potential benefits. As a result, the process of research and development of cannabis-based therapies has also been hindered. In other countries, similar challenges have been addressed through legal policies that provide protection to patients and medical personnel, as long as cannabis use is conducted in accordance with strict medical protocols. Legal reform that accommodates the medical aspects of cannabis can be an important step to ensure that both patients and healthcare providers are no longer victims of a legal system that is less adaptive to the developments in science.

Amid the complex legal challenges, reforms in medical cannabis policy offer opportunities to create a more just, humane, and certain legal framework. Many countries have adopted approaches that allow for the use of medical cannabis under strict supervision. Canada and Germany have designed regulations that not only ensure safe access for patients but also protect healthcare providers from legal risks. Moreover, medical cannabis was officially legalized in Thailand on February 18, 2019, making Thailand the first country to do so in Southeast Asia. This model can certainly serve as an inspiration for Indonesia to compare medical cannabis policies as it seeks to establish law while adhering to the principles of national law.

This reform has the potential to reduce the negative stigma associated with medical cannabis. This approach can be carried out through public education campaigns that highlight the benefits of cannabis as a medical treatment based on proven scientific evidence. Furthermore, the concept and implementation of restorative justice as a benchmark in the Indonesian legal system is also relevant as a guideline in this case. This approach emphasizes recovery and rehabilitation rather than punishment for individuals involved in cases of cannabis use for medical purposes. Thus, the law can be more responsive to the needs of patients without compromising the integrity of the justice system.

³⁴Levinsohn, E. A., & Hill, K. P., 2020, Clinical Uses Of Cannabis And Cannabinoids In The United States, *Journal of the Neurological Sciences*, 415, 116717. <https://doi.org/10.1016/j.jns.2020.116717>.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) in Indonesia brings about a number of significant changes to the criminal justice system, including regulations regarding pardon or *rechterlijk pardon*. Although not explicitly stated, the *rechterlijk pardon* in Article 71 paragraph (1) has provided an opportunity for Judges to not impose imprisonment after considering the purposes of punishment and if sentencing guidelines are met, the individual may only be sentenced to a fine. This article has sufficiently provided legal certainty for the application of *rechterlijk pardon*.

6. Conclusion

Judicial pardon is not explicitly mentioned in the nomenclature of the National Criminal Code, however, its substantive/implicit regulation is found in Article 71 of Law Number 1 of 2023 concerning the Criminal Code, thus providing sufficient legal certainty for judges in its application. This regulation can be applied in medical marijuana cases. As a response to public discourse, legal dynamics, and scientific developments, this is a solution to create a balance between the enforcement of law that is just and recognition of urgent medical needs. Without abandoning the integrity of the applicable law, it is done with a principle of caution and has true accountability. In addition, the application of judicial pardon in medical marijuana cases is an important step supported by the principles of humanity and human rights. By granting discretion to judges to consider the individual circumstances of defendants, the judiciary can contribute to substantive justice.

7. Recommendations

The criminal legal implications of using medical marijuana in Indonesia create complex challenges, but also offer opportunities for reform that can improve access and protection for patients. By addressing legal uncertainties and inherent stigma, Indonesia can develop more humane and responsive policies to public health needs. Constructive dialogue between policymakers, legal experts, and the community is crucial to achieve the right balance between law enforcement and the need for effective medical care.

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