

**ABUSE OF DRUGS FOR MEDICINE (STUDY OF DECISION NUMBER
111/PID.SUS/2017/PNSAG)****Husni Akhmad Husein**

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Even after several decades, we still confront many issues today. Narcotics are one of the topics that have generated controversy up to this point. These days, it is inextricably linked to the global elite's influence over national regulations. The original purpose of narcotics regulations, which had nothing to do with health or medicine, was to control the spice trade. Eventually, many nations adopted the created regulations as the basis for their drug prohibition laws. This subsequently turned into a contentious issue because some drugs have therapeutic uses, and Indonesia is known to be among the nations with the strongest anti-drug policies. Even though now something that has benefits in Islam certainly has the opportunity to be used, because it is the basis of Islam which gives Grace to the whole world. The creation of narcotics is not without reason, it does have drawbacks if used on the wrong person and not only on drugs but on all things. This study will provide a brief overview of narcotics in the medical world. concise, and clear. In this study, the author will also use a normative legal research method which will analyze the existing problems through legal and library materials. And specifically to the case in the decision Number 111 / Pid.Sus / 2017 / PN.Sag which contributed to taking someone's life.

Keywords: *Islam, Maqoshid Syariah, Medical, Narcotics*

INTRODUCTION

We understand that God made the earth and the heavens and provided everything within them as a means of holding humans accountable for meeting their own needs.¹ Many of these things eventually turn into prohibited or halal, advantageous or hazardous, good or

¹ Rizal, Agus, 2016, *Pemisahan Langit dan Bumi Menurut Al-Qur'an Berdasarkan Penafsiran Surah Al-Anbiya' Ayat 30*. Diss. UIN Ar-Raniry Banda Aceh.

evil, wisdom or lessons—all of which have to be in line with Allah’s will and intention. Many things eventually turned gray or indistinct because of human avarice.²

One of the things that is still controversial among mankind is the benefits of narcotics or other additives in the world of medicine.³ This problem has never been resolved since decades ago, since the 1900s, when initially these psychotropic substances were banned from being used freely in the world, but they could still be used for medical purposes.⁴

In historical records, this regulation emerged after World War 2, namely when there was a group of people who then prohibited the circulation of goods or plants or something related to psychotropics such as Opium plants, marijuana plants, and several plants containing other addictive substances. It needs to be underlined in bold, related to this prohibition is aimed at stopping or monopolizing spices or medicinal ingredients containing psychotropic substances so that they do not spread widely, and means this is not related to health.⁵

Indonesia adopted the legislation from the outset and utilized it as the foundation for the anti-drug law, which was first implemented during President Soeharto’s New Orde era. The Indonesian government at the time was sharply criticized for just copying foreign legislation at that time and for not having the guts to carry out independent research or investigations.⁶ As a result, in 1976 the law on narcotics was passed, which placed restrictions on the use of several substances, including in medicine.⁷

The law on narcotics then changed, namely in 1977 with the issuance of Law Number 5 of 1977 concerning Narcotics, then changed again in 2009 with the issuance of Law Number 35 of 2009 concerning Narcotics, the difference between the two is regarding the

² Nasution, Muhammad Syukri Albani, and Rahmat Hidayat Nasution, 2020, *Filsafat hukum & maqashid syariah*. Prenada Media.

³ Todung Mulya Lubis, 2009, *Kontroversi hukuman mati: perbedaan pendapat hakim konstitusi*. Penerbit Buku Kompas.

⁴ Prasetya yoga, 2022, Diskursus Legalisasi Ganja Dalam Tayangan Rosi “Ganja: Mitos Dan Fakta”, *Jurnal Ilmiah Multimedia dan Komunikasi* 7.1

⁵ Hanri Aldiano, 2018, Persepsi mahasiswa terhadap gagasan legalisasi ganja di Indonesia, *Jurnal Hukum Samudra Keadilan* 13(2), 234-249.

⁶ Abiyyu, Mohammad Darry, 2016, Strategi Gerakan Lingkar Ganja Nusantara Dalam Memperjuangkan Legalisasi Ganja di Indonesia, *Jurnal Politik Muda*, 5(3): 300-310.

⁷ T. Haris Kumar, 2017, *Human Evolution and Cannabis: The Ultimate Gift*. Lulu. Com.

firmness or punishment given to someone who uses narcotics freely and several plants or types of narcotics are included in the newest group, for example, marijuana narcotics which are then included in narcotics group one.⁸

For your information, in Law Number 35 of 2009 which is currently used as the basis for enforcement in Indonesia, class one narcotics are a type of narcotics which are prohibited from being used for anything, including in the medical world.⁹ This then turns into a contentious issue because marijuana is one of the plants that contains compounds that are widely used and beneficial in the medical field, such as helping patients who are experiencing relapses in their epilepsy. Additionally, there are other instances of narcotics being employed in the medical field; this is only one of them.¹⁰

Within Islam, a fiqh-related issue is seen as a matter of personal opinion differences. This also applies to the use of drugs in medicine; some advocates for this have differing views, and both are equally valid, but others forbid it.¹¹

The view that permits is the view that drugs should not be used when misused or in the wrong hands, as these situations lead to negative consequences for humanity. However, when drugs are used responsibly, they may be very useful. On the other hand, the view that claims it is not permitted holds that drugs are the same as Khamr, or what is more commonly known as alcoholic drinks. This occurs as a result of the fact that the effects produced by alcohol and drugs are identical. Although there is no explicit reference of drugs being forbidden in the Quran or hadith, scholars believe that this is Qiyas.¹²

As explained earlier, not everything in this world has benefits in goodness, but some are created by Allah as a test or trial for mankind, especially Muslims. Very broad insight and ever-developing knowledge make us as humans and Muslims smarter in utilizing it.

⁸ Nusantara, Lingkar Ganja, 2014, Sekarang aku, besok kamu! Advocate ourself.

⁹ Law Number 35 of 2009 concerning Narcotics

¹⁰ Syamsul Malik, Luriana Manalu, & Rika Juniarti, 2022. *Legalisasi Ganja Dalam Sektor Medis Perspektif Hukum*. Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia, 2(2), page 1-9

¹¹ Nurlaelatil Qodrina, and M. Chaerul Risal, 2022, *Legalisasi Ganja Sebagai Tanaman Obat: Perluakah?*, JURNAL AL TASYRIYYAH : 48-58.

¹² Afi Imaduddin, and Faridatul Ulya, 2022, *Ganja Medis di Indonesia (Dilematik Penggunaan Tinjauan Analisis Perspektif Konstitusi Hukum di Indonesia dan Hukum Islam)*. "The Indonesian Journal of Islamic Law and Civil Law 3.2: 164-185.

RESEARCH METHOD

The method in this research used normative legal research or doctrinal law with a juridical approach and a conceptual approach.¹³ This research in a legal approach examined and analyzed the concept of wiretapping in positive law and most importantly in Islamic law which enters the criminal realm. This type of research was descriptive research with and also explains the phenomenon of events that occur at this time. This research used secondary data derived from literature studies in the form of data from books, journals, literature, and opinions of legal experts and several other sources that can support the success of this research.

DISCUSSION

Legal Analysis of Narcotics in Positive Law

Regulations on Narcotics in Indonesia can be said to be regulations that have been around for quite a long time and are quite old considering that Narcotics are a threat if they fall into the wrong hands. Initially, regulations on Narcotics were triggered by a single conference in the Hague, Netherlands regarding the distribution of materials containing additives after World War 2.

The Law Number 35 of 2009 concerning Narcotics, which later served as the foundation for narcotics usage in Indonesia, is cited in the current legislation. The BNN, or the National Narcotics Agency, is the organization or agency in charge of overseeing the use of narcotics in Indonesia. It is considered the primary landmark in the country's narcotics history. Public attention has been drawn to numerous instances involving the BNN's management of narcotics in Indonesia.

The case of Fedelis, which is in Number 111 / Pid.Sus / 2017 / PN.Sag, is among the most well-known and is still being discussed by academics and proponents of marijuana legalization. In this case, Fedelis was named a suspect because he used class one narcotics, specifically marijuana, to treat his ailing wife.¹⁴

¹³ Khudzaifah Dimiyati, and Kelik Wardiono. "Metodologi Penelitian Hukum." *Fakultas Hukum UMS, Surakarta*, 2004.

¹⁴ Dermawan, Sigit, Ismail Ismail, and Salim Fauzi Lubis, 2019, Analisis Yuridis Terhadap Penegakan Hukum Tindak Pidana Narkotika (Studi Putusan Nomor: 111/Pid. Sus/2017/Pn. Sag)." *JURNAL PIONIR* 5.4.

This incident occurred in 2013, when the defendant's wife whose full name is Fedelis Ari Suderwarto was sick until she finally fell paralyzed, he did not take his wife to the hospital because of his poor economic situation. Until he got information about the efficacy of marijuana that could help his wife's treatment.

Then in 2016 he met someone who could help with his wife's illness through alternative marijuana treatment. A few days later Fedelis received a package containing marijuana and some seeds, and from there Fedelis made his own medicine and planted some marijuana seeds that he got from it. And finally on February 19, 2017, Fedelis' healing efforts for his wife had to stop because he was arrested on charges of keeping marijuana. In Fedelis' house, 9 marijuana plants were found, then 30 marijuana plants were also found in other places. And finally, he was sentenced and threatened with Article 116 paragraph 1 of Law Number 35 of 2009 concerning narcotics.¹⁵

The offender was subsequently given a jail term and a fine by the judge. According to the judge's ruling, the defendant had been found legally guilty of using class 1 drugs against individuals in an unlawful manner. The defendant was sentenced to 8 months in prison and \$1 billion, with the option to serve an additional month in prison if the fine was not paid. But before the three months were over, Fedelis, who was incarcerated, had to hear the tragic news that his wife had passed away after two months of living and receiving medical attention in a hospital.¹⁶

The Fedelis case then became a trending topic for some time later, this was due to the interference of legislation and state officials in the loss of a sick person's life in the name of legal justice. If it is based on the law, how important is a person's life compared to imprisonment or dropped objects. Various efforts have sometimes been made by several groups or groups to legalize marijuana, such as the Lingkar Ganja Nusantara community.

Some substances or goods are prohibited by law but have very large medical benefits in them, for example, marijuana. Marijuana itself was included in Narcotics Class 1 after the change in the Narcotics Law from 1997 to 2009. This then made marijuana increasingly narrow for use in the medical world and research, even though marijuana is one of the

¹⁵ No 111/Pid.Sus/2017/PN.Sag

¹⁶ Yohan, Gaviota Adrian, I. Nyoman Gede Sugiarta, and Diah Gayatri Sudibya. "Tindak Pidana terhadap Pelaku Penanaman Pohon Ganja Secara Ilegal Berdasarkan Putusan Pengadilan Negeri Sanggau Nomor 111/Pid. Sus/2017/Pn. Sag." *Jurnal Interpretasi Hukum* 3.2 (2022): 309-314.

Narcotics that can provide treatment for several diseases that conventional medicine currently cannot treat, such as epilepsy to HIV.

It should be mentioned that efforts are being made to ensure that drugs with numerous health benefits, like marijuana, are not illegal in the medical field. Everything has been going smoothly with the green table or literacy. It should be mentioned, although, that the BNN, which is in charge of managing drugs in Indonesia, will not consent to any kind of drug being made legal there. This leads to the removal of a large amount of knowledge about the use of drugs in medicine from research publications or theses, which are no longer accessible.

In the medical field, drugs are used to treat cancer patients' pain during surgery, anesthesia, and therapy. Class 2 narcotics, which include amphetamines, morphine, fentanyl, pethidine, and cocaine, are typically used in the medical industry. The Minister of Health Regulation number 2 of 2017, lists and categorizes the many types of drugs, including the list and categories of drugs utilized. Class 1 narcotics are prohibited, as indicated in Article 8 of law number 35 of 2009 addressing narcotics, and are not allowed in the health sector.¹⁷

The contentious issue concerns the addition of marijuana, which has been shown to have numerous positive effects on health both medically and scientifically. Several nations, like the United States, Canada, Italy, Argentina, Germany, and most recently, our neighbor Thailand, have allowed their citizens to use marijuana with particular freedoms.¹⁸ Some of the questionable things are why marijuana is not legalized in Indonesia, even though there are many uses of marijuana and several studies state that Aceh marijuana is the best marijuana ever.

This was once discussed in a trial of the judicial review of the law on article 8 and article 6 of law number 35 of 2009 concerning narcotics, which was submitted by a mother who felt disadvantaged by the regulation because her child did not have access to marijuana treatment like abroad. On that occasion, the government then gave a reason, namely to Commission 3 of the Indonesian House of Representatives, conveying that Indonesia was not ready for the burden that would arise if it legalized the use of marijuana or other narcotics, even in the

¹⁷ Sheila Margaret, 2023, *Penegakan Hukum Terhadap Penyalahgunaan Narkotika Jenis Ganja yang Digunakan untuk Kepentingan Medis*. Diss. Universitas Kristen Indonesia.

¹⁸ Anhar Aswan *ANALISIS PERBANDINGAN SISTEM HUKUM TERHADAP LEGALISASI GANJA DI BEBERAPA NEGARA*. Diss. Universitas Hasanuddin.

health sector. Because the release of marijuana in several countries in Europe and parts of America, is still within certain limits and is not truly free without control.¹⁹

What was conveyed by members of Commission 3 of the Indonesian House of Representatives is the truth. The Indonesian people are not yet ready for the burden that must be accepted if marijuana can then become legal even though its use is limited, the BNN as the main spearhead in handling Narcotics in the trial said that the use of Narcotics from year to year has increased, even if it is classified as one, it still experiences a significant increase even though we know that Class 1 Narcotics should not be used in any case. This then makes the BNN have a strong determination not to stretch any type of Narcotics including marijuana even though it has many benefits.

Analysis of Narcotics in Maqashid Syariah

One of the drugs that is not allowed to be used freely worldwide is narcotics, as its improper or excessive usage can be harmful to people. Numerous laws governing the use of narcotics themselves have been put into place in different parts of the world. Some of these laws permit the personal or unrestricted use of narcotics for a variety of purposes and under specific circumstances, such as the use of America's, which is circled but has restrictions. This is a way to stop people from using narcotics freely, which could cause more harm.

In Islam itself, ethics is a substance that is equated or likened to liquor or in Islam it is called khamr. Scholars say that narcotics are the same as liquor because they have similarities in the effects caused, namely eliminating reason. However, some other scholars allow the use of narcotics because there are benefits in them such as use for treatment or in reducing pain. There is nothing wrong with both because each has a different basis or from which all are correct if used in certain conditions.²⁰

Allah states in surah al Ma'idah verse 90 of the Qur'an that alcohol consumption is completely forbidden and that offenders will face retribution. This explains why alcohol consumption is forbidden by Allah and his Messenger, is a disgusting conduct, and is an act

¹⁹ Decision Number 106/PUU-XVII/2020

²⁰ Afi Imaduddin, and Faridatul Ulya, 2022, Dilematik Penggunaan Ganja Medis di Indonesia (Tinjauan Analisis Perspektif Konstitusi Hukum di Indonesia dan Hukum Islam)." *The Indonesian Journal of Islamic Law and Civil Law* 3.2: 164-185.

of Satan. As a result, humans are compelled or ordered to give up alcohol.²¹ Then in a hadith passed by Imam Muslim which is a hadith from Abdullah bin Umar that the Messenger of Allah once said every thing that is done is khamr and khamr is haram. And if the use of drugs is equated with the use of alcoholic beverages, then in this case it is an absolute haram.²²

So from the two arguments above, it can be concluded that the perpetrators of narcotics use are the same as the perpetrators of alcohol use in Islam. So the punishment given to narcotics users in Islam is the same as the use of alcohol in Islam. Preventing an act to avoid bad or negative things that arise from the case that threaten religion, soul, mind, property and descendants, then based on the rules of usul fiqh, its use must be prevented.

Consistent with the goals of the maqoshid sharia, which denotes a particular purpose and intent for a system of laws created by Allah to serve as a guidance for Muslims. The maqoshid sharia is composed of five fundamental ideas such as maintaining property, descendants, reason, and soul.²³

1. Maintain Religion

Maintaining religion is one of the foundations of the concept of maqosyid sharia. For Muslims, religion is the most important thing in a Muslim's life, nothing is more expensive and more important than religion. So, if narcotics are then likened to khamr, then their use is forbidden for Muslims because, in the Qur'an and hadith, it is very clear that alcoholic drinks are forbidden and vile.

2. Nourish the Soul

One of the things that is a necessity for all mankind is protection regarding their lives, so in Islam protection of the soul is one of the main things. Abuse of narcotics in everyday life with very free circulation, can pose a threat to a person's life. As we know, if someone uses narcotics freely then it can take a life, and if someone sells or distributes narcotics then the risk received is also not worse than losing a life because this kind of dark business is a business that is very prone to murder.

²¹ Q.S. Al-Maidah Verse 90

²² Muslim, Terjemah Shahih. "Shahih muslim." *STUDI KITAB HADIS: Dari Muwaththa' Imam Malik Hingga Mustadrak Al Hakim* 54 (2020).

²³ Jauhar, Ahmad Al-Mursi Husain. *Maqashid syariah*. Amzah.

3. Maintain Reason

Since reason is what separates humans from other animals, reason is the most valuable quality in a human being. Therefore, upholding reason is crucial to Islam since it is from this place that a Muslim is formed and receives authority and stability from reason. In a hadith transmitted by Umm Salamah, the Messenger of Allah sallallahu alaihi wasallam once declared that he prohibited the use of anything that affects reason, including drugs when used improperly.

4. Maintain off spring

The people of the Prophet Muhammad are the most numerous people because the Prophet Muhammad likes someone who has many descendants. So, in maintaining these descendants, Islam pays great attention to what goes into a person. Medically, excessive use of narcotics can cause damage to sperm cells which will result in unsuccessful fertilization of the egg. And in pregnant women, narcotics will have a bad effect on the fetus so that growth in the mother's womb is not perfect. Several articles and medical journals say that narcotics do not have an effect on sexual function, but in reality, narcotics can damage sexual function and cause death. Allah has warned in the surah At-Tahrim verse six which explains to society, especially Muslims, to keep their families, especially their own families from evil.

5. Maintain property

Islam is a religion that gives its adherents consideration for everything in this world. Seeking the world is indeed bad, but in Allah's world, we will pursue the hereafter. Islam instructs us to avoid making mistakes and to not waste the Rizki that Allah has given us. This includes utilizing the Rizki for activities that are prohibited by Shari'a law, including purchasing illegal items. Narcotics frequently have surplus food provided by Allah, even though Allah has forewarned against this in surah al-Isra verse 27 of the Qur'an. Thus, if someone consumes wine while under the influence of drugs, they will be punished in accordance with the Prophet Muhammad's hadiths from Ali bin Abi Tolib regarding Walid bin Uqbah. Whereas Umar bin Khattab punished drug users with 80 times the standard sentence of 40 lashes, this is a sunnah that Umar finds acceptable.

A little about the conclusion of the explanation above, then in the purpose of Maqoshid Syariah which protects all religions, souls, minds, descendants, and property of a Muslim, then in implementing regulations regarding narcotics must consider the welfare of society and the needs of a particular society. Like in Indonesia where the majority of people have not

been able to accept the burden of using narcotics, then the use of narcotics must be monitored more and very strictly by the government. In line with this, the case that happened to Fedelis should be a lesson for all of us including law enforcers. Fedelis should be able to get leniency on the sentence given because he used marijuana for treatment not to harm others. In the future, law enforcers must be more careful and contribute to providing legal certainty to the community, considering that the narcotics law in Indonesia has almost fulfilled the maqashid Syariah.

CLOSING

Narcotics have been a controversial topic since post-World War II, both in their use as a medical field. Regulations on Narcotics in Indonesia are also regulations that have received many suggestions and criticisms, where in their preparation they appear to have plagiarized regulations made by foreign parties. This seems to make it seem that regulations on Narcotics in Indonesia are not based on independently researched science.

This effect eventually led to several legislative revisions and the inclusion of various narcotics in the Class 1 narcotics, which are illegal for any purpose, even though some have very broad applications, like marijuana plants.

Narcotics are useful in medicine for a variety of reasons, including as reducing pain during surgery or cancer patients' therapy. Several countries in Europe and the Americas have very strict laws allowing people to possess drugs up to a certain amount. What makes Thailand special is that it is one of the countries that has legalized marijuana drug use, and it is still an ASEAN nation. Because the nation recognizes some of the medical benefits of marijuana that the general population may directly utilize—such as its proven ability to relieve epilepsy symptoms in a matter of minutes—it permits the public to consume marijuana.

In Islam itself, the difference in determining the law on Narcotics lies in the scholars who judge Narcotics as liquor and some who do not judge it as liquor. Scholars who judge it as liquor rely on Narcotics being the same as liquor and can eliminate reason, while those who do not judge it as liquor say that liquor has no use whatsoever while Narcotics can have benefits if in the right hands. So, in this case, the use of Narcotics in Islam depends on who uses it. Because the purpose of Islamic law and Islamic law is to protect the entire soul, body, property, descendants, and mind of every Muslim.

So, in the case experienced by Fedelis in the decision number 111 / P id.SUS / 2017 / PN SAG Which gave a decision that was found guilty of possession of class one narcotics in the form of marijuana for his wife's treatment, is something that is right according to positive law in Indonesia but can be said to be wrong when faced with Islamic law. Because in this case, the wife who was treated by the hospital shortly afterward breathed her last.

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DECISIONS AND LAWS

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