
**POTENTIAL FOR LEGALIZATION OF MARIJUANA ACCORDING TO ISLAMIC LAW IN THE STUDY OF
THE RULES OF FATHU DZARIAH WA SADDU DZARIAH**

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ABSTRACT

Determining the illegalization of marijuana in Indonesia always reaps many pros and cons in society. Law Number 35 of 2009 concerning Narcotics is the main basis for prohibiting marijuana plants for medical purposes, even though some treatments require the Tetrahydrocannabinol or THC-9 content of marijuana plants. Various attempts to release marijuana from Category I narcotics have occurred many times, both through literature from the marijuana research community, and even PUU before the Constitutional Court. The Ministry of Health has repeatedly issued regulations regarding the classification of Narcotics, but Marijuana is still in Class I Narcotics. In Islamic law, Marijuana is legal in jurisprudence in qiyas by several fiqh scholars with Khamr because it has similarities in the consequences of its use, namely loss of mind, even though The origin and substances contained are different. But there are several scholars who do not agree with this qiyas, this is based on Khamr which has no benefits at all while Ganja still has benefits in it, moreover, no Nash clearly mentions the prohibition of Marijuana in Islam. This research was conducted using the Normative Juridical research method, so this research will focus on the legislative approach, conceptual approach, approach to Islamic law and analysis of the rules of Usul Fiqh. The final aim is to state whether marijuana is worthy of being legalized in Indonesia in the study of the fiqh proposals of Fathu Dzariah and Saddu Dzariah's rules.

Keywords : Marijuana, Law Number 35 of 2009, Fathu Dzariah, Saddu Dzariah

INTRODUCTION

Allah Subhanahu Wa Ta'ala created the heavens and the earth during the six days of creation.¹He created everything and arranged it in such a way that there will be many benefits and wisdom in it. Because what is God's will *Subhanahu Wa Ta'alanot* necessarily achievable by human reason. Understanding what Allah Subhanahu Wa Ta'ala wants requires faith and devotion to understand it.

One of the gifts given to us by Allah Subhanahu Wa Ta'ala is the State of Indonesia. This country has 17,508 islands inhabited by more than 360 tribes spread from Sabang to Merauke.²Indonesia also has 25,000 species of plants and 400,000 types of animals and fish, second only to Brazil.³In 2022, Indonesia will still have 128 million ha of forest. which consists of conservation forest areas (Natural Conservation Forest Areas-Natural Conservation Forest Areas) has an area of 27.4 million ha. Protected forests covering an area of 29.7 million ha. Production forests are limited to 26.8 million ha. Production forest 29.3 million

¹ Al-quran surat Al-An'am Ayat 59

² <https://kemlu.go.id/canberra/id/read/indonesia/2186/etc-menu#:~:text=Indonesia%20merupakan%20negara%20kepulauan%20terbesar,lebih%20dari%20360%20suku%20bangsa>. (diakses pada 11 April 2023)

³ <http://bkipm.kkp.go.id/bkipmnew/public/files/regulation/JUKNIS%20PEMETAAN%20SEBARAN%20JADDI.pdf> (diakses pada 10 April, 2023)

ha. And the area of forest that can be converted is 12.9 million ha.⁴

According to researchers from the Indonesian Institute of Sciences (LIPI), Andria Agusta, in Indonesia there are still around 7,500 types of medicinal plants out of 50 thousand types of plants.⁵ This is a gift from God *Subhanahu Wa Ta'ala*. With the presence of these medicinal plants, we hope that progress in the field of medical treatment can be much better than other countries.

Technological developments in the era of globalization are increasingly modern and advanced. Herbal plants are also starting to progress in terms of utilization and management. But the government does not just release it without supervision, because there are several plants that must receive strict supervision from the government, such as plants that contain addictive substances such as marijuana.

Regulations regarding the use of addictive substance gardens are regulated in Law Number 35 of 2009 concerning Narcotics, which includes marijuana, opium and several plants that contain other addictive substances. This law has triggered new problems among society, namely the inclusion of marijuana in class I narcotics and its use in medical purposes is prohibited in article 8 paragraph (1).⁶

The public's response to this is quite varied. There are those who agree with the government, there are also those who firmly reject it. One of them was the founding of the Indonesian Marijuana Circle Movement (LGN) community, which was initially just a group of University of Indonesia students who studied marijuana. From this community, the Sativa Nusantara Foundation (YSN) was born, a foundation which operates in the field of scientific research on marijuana.⁷

In Islamic law, there is no text that clearly prohibits marijuana. In practice, marijuana is also used as a food ingredient, so it can be punished the same as other food spices such as turmeric, bay, ginger and so on. However, if it is used incorrectly or excessively, such as burning it like a cigarette, then this is not permitted, because this will bring great harm.

One of the rules of *fiqhiyyah* is that humans must stay away from anything that can cause damage, both to themselves and others. As the rule says "Laa dhoror walaa dhiror" which means the prohibition against doing harm to oneself or others. And if we refer to government regulations through Law Number 35 of 2009, then this is in line with the principles of *Saddu Dzariah* *fiqh*.⁸

Therefore, this research will discuss the potential for legalizing marijuana in Indonesia from a study of the *Fiqh* Rules of *Fathu Dzariah* and *Saddu Dzariah* with the axis of history and Narcotics legislation in Indonesia.

RESEARCH METHODS

The method in this research uses normative legal research or doctrinal law with a philosophical and historical approach as well as a conceptual approach.⁹ This research uses a philosophical and historical approach to study and analyze the history of marijuana and the regulations that accompany it in the national and international scope. This type of research is descriptive research that uses and explains the phenomena that are currently occurring. This research uses secondary data originating from literature studies in the form of data originating from books, journals, literacy, and opinions of legal experts as well as several other sources that can support the success of this research.

⁴ Kementerian Lingkungan Hidup dan Kehutanan : <https://lokadata.beritagar.id/chart/preview/luas-hutan-di-indonesia-1482633530#:~:text=Total%20luas%20hutan%20di%20Indonesia%20sebanyak%20128%20juta%20ha> (diakses pada 10 April 2023))

⁵ *Republika*, edisi 28 Mei 2015. Hal: 28

⁶ Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika

⁷ Abiyu, Mohammad Darry, et al. Strategi Gerakan Lingkar Ganja Nusantara Dalam Memperjuangkan Legalisasi Ganja di Indonesia. *Jurnal Politik Muda*, 2016, 5.3: 300-310.

⁸ <https://food.detik.com/info-kuliner/d-6179362/ini-fatwa-mui-terkait-penggunaan-ganja-sebagai-campuran-makanan> (diakses pada 10 April 2023)

⁹ Dimiyati, Khudzaifah, and Kelik Wardiono. "Metodologi Penelitian Hukum." *Fakultas Hukum UMS, Surakarta*, 2004.

RESULTS AND DISCUSSION

A. Potential for Marijuana Legalization in Indonesia

In 1927, when Dutch colonialism was still colonizing Indonesia, they banned narcotics of any kind including marijuana, opium and heroin through *Verdovende Middelen Ordonnantie* or Anti-Narcotics Law. They did this on the grounds that a conference had been held in The Hag called the International Opium Convention. At the conference, 13 countries agreed to ban the distribution of marijuana, opium and heroin. The results of this conference are solely for trade competition, not aimed at maintaining health.¹⁰

Long before that, Aceh Province had used marijuana as an ingredient for daily necessities, such as an ingredient in food seasoning, used in clothing making materials, as a pest repellent in coffee fields, used in medicine as a pain reliever, or used for religious activities. And Acehnese marijuana itself has become a traditional heritage of the Acehnese people¹¹

Meanwhile, in Indonesia itself, after post-independence, marijuana only received special attention during the New Order era, namely during President Soeharto. President Soeharto ratified the United Nations Single Convention on Narcotics Drugs through Law Number 8 of 1976, which criminalized the use and use of marijuana.¹²

As a result, at the end of 1970, the government completely eradicated Acehnese marijuana. Under the pretext that the proceeds from the marijuana were used to help the Free Aceh Movement (GAM) separatist group who wanted to separate Aceh from Indonesia. And in 1997, the government openly launched a large campaign that marijuana was a very dangerous plant, which apparently this was not done because of the results of any scientific research. And the criminalization of marijuana became even greater when we entered the Reformation era with the issuance of Law Number 35 of 2009.¹³

Several efforts have been made to eliminate discrimination against marijuana, one of which is through a community called *Lingkar Ganja Nusantara* (LGN). LGN itself was initially just a community of University of Indonesia students who liked to study marijuana, until finally LGN was successfully formed. LGN believes that Law Number 35 of 2009 is a form of criminalization of marijuana, its prohibition only plagiarizes results from other countries, not through scientific research carried out independently.¹⁴

It is not only LGN that is making efforts to legalize marijuana through legal review, there are several parties who feel that this law needs to be revised in relation to placing marijuana in class I narcotics. However, the BNN remains adamant and guarantees that there will be no loopholes. for efforts to legalize marijuana.

B. Potential for Legalization of Medical Marijuana

Law Number 35 of 2009 places Marijuana in Category I Narcotics, and then in article 8 paragraph (1) which reads

"Class I narcotics are prohibited from being used for health care purposes"

However, paragraph 2 explains that limited amounts of Class I narcotics can be used for scientific research and development after obtaining a recommendation from the Food and Drug Supervisory Agency (BPOM).¹⁵

¹⁰ Kumar, T. Harish. *Human Evolution and Cannabis: The Ultimate Gift*. Lulu. com, 2017.

¹¹ Maule, W. J. Medical uses of marijuana (*Cannabis sativa*): fact or fallacy?. *British journal of biomedical science*, 2015, 72.2: 85-91.

¹² Nusantara, Lingkar Ganja. *Sekarang aku, besok kamu! Advocate ourself*. 2014.hal 33

¹³ <https://www.kompas.com/skola/read/2020/02/02/193000069/sejarah-ganja-di-indonesia-dilarang-belanda-hingga-diusulkan-diekspor?page=all> (diakses pada 9 April 2023)

¹⁴ Mohammad Darry Abiyu, *Loc. Cit.*

¹⁵ Undang-Undang Nomor 35 Tahun 2009

There have been many efforts made, until most recently a member of Commission V of the Aceh DPR, M Rizal Falevi, proposes that the legalization of medical marijuana be included in the priority scale in the regional Legalization Program. He has plans regarding the establishment of medical marijuana regulations in the form of Qonun. This refers to Minister of Health Regulation Number 16 of 2022 which regulates procedures for using narcotics for the development of science and technology. Aceh itself has literature regarding the use of marijuana in the medical sector, so the hope is that there will be a Qonun that regulates the use of medical marijuana in Aceh and that it can be used in medical activities and in hospitals there and can become a source of regional income.¹⁶

Testing Law Number 35 of 2009 was carried out by a mother named Dwi Pertiwi. He proposed a review of Law Number 35 of 2009 Article 6 paragraph (1) letter a and Article 8 paragraph (1). This happened because he had a child who suffered from Cerebral Palsy and was treated in the state of Victoria, Australia. However, this therapy was stopped while in Indonesia because of regulations that prohibited the use of marijuana, even medically.

Testing this law has received support from several parties. Member of Commission III DPR, Taufik Basri, said that there is quite a long way to go if you want to legalize marijuana through scientific research. So, it cannot be immediately equated with the characteristics of several countries with Indonesia in legalizing marijuana oil for health services.¹⁷

The judge handling the case said that the risk was too great to grant this request, adding that expert testimony revealed that there were other drugs that sufferers could use besides marijuana. And finally the judge rejected the application in its entirety by issuing Decision Number 106/PUU-XVII/2020.¹⁸ What Taufik Basri said as a member of Commission III of the DPR was not without background. Our society is far from being well organized.

In general, the use of narcotics in society is determined by three factors, namely:

1. Benefit, meaning that every substance or object consumed can provide benefits or effects for the user. For example, use ginger drink to relieve a sore throat.
2. Personally, there is an urge to a person when he wants to consume something, whether it comes from physical encouragement or psychological encouragement.
3. Surrounding environment. This factor is the most important in this case. A person who often uses herbal medicine or herbal medicine in his environment will recover more quickly when he is sick than when he uses conventional medicine.

The number of marijuana users identified by the BNN has increased from 2019 to 2022 by 0.15%, and 56.7% of the number of narcotics users are marijuana.¹⁹

C. Potential for Marijuana Legalization in the Saddu Dzariah Principles

In Islam, there is no text that clearly mentions marijuana. The scholars agree that marijuana and other types of plants that can intoxicate or diminish the mind are equated with Khamr. Khamr in language means closing, and Imam Al-Qurthubi explained that Khmar means being able to close the mind, block or obstruct it.²⁰

The Saddu Dzariah rule itself consists of two words, namely Saddu and Dzariah. Saddu itself means covering something that is defective or damaged and filling up holes,²¹ while Dzariah means wasilah or the way for something to happen.²²

Shaykh Ibnu Qayyim Al-Jauzi believes that the meaning of *Saddu Dzariah* is The path or

¹⁶ <https://www.cnnindonesia.com/nasional/20221004155559-12-856268/dpra-usul-legalisasi-ganja-medis-masuk-prolegda-prioritas-aceh-2023> (diakses pada 11 April 2023)

¹⁷ <https://www.mkri.id/index.php?page=web.Berita&id=17459&menu=2> (diakses pada 11 April 2023)

¹⁸ PUTUSAN NOMOR 106/PUU-XVIII/2020

¹⁹ <https://puslitdatin.bnn.go.id/konten/unggahan/2022/07/IDR-2022.pdf> (diakses pada 11 April 2023)

²⁰ Irfan, Nurul. *Fiqh jinayah*. Amzah, 2022.

²¹ Al-Mishri, T. Muhammad bin Mukarram bin Manzhur al-Afriqi. *Lisan al-'Arab*. Juz 3 Hal. 207

²² Ibid

intermediary can be in the form of something that is prohibited or permitted.²³ So the essence of understanding *Saddu Dzariah* is an effort to decide on an act that is considered permissible (permissible) so that greater harm (haram) does not occur.

There is a Hadith from Umm Salamah, that Rasulullah has prohibited every intoxicating substance (muskir) and debilitating substance (mufattir).²⁴

Some scholars view this hadith as a weak hadith (dhaif), but Ibn Hajar views this hadith as a hasan hadith. The scholars also think that "Mufattir" in the hadith above is any substance that can cause a feeling of calm/relaxed (istirkha') and weakness/weakness (futuur) in the human body.²⁵ Ibnu Hajar also believes that there are texts that forbid marijuana in this case because marijuana can make people feel calm and weaken.²⁶

In the case of marijuana being haram, it is not because the texts directly point out that it is haram to eat pork, but because the effects caused by marijuana are similar to the effects caused by consuming Khamr. And this prohibition is not based on illat (reason), but the prohibition of marijuana is in accordance with the facts that occurred (al-waqi).

D. Potential for Marijuana Legalization in Fathu Dzariah's Rules

Fathu Dzariah's rules are the opposite of Saddu Dzariah's rules. Fathu Dzariah also comes from two words, namely Fathu and Dzariah, where Fathu itself comes from Arabic *يفتح – فتح* which linguistically means opening, winning, or emitting from the source. The word Fathu Dzariah comes from Tarkib Idhafi, which is an Arabic structure consisting of mudhof-mudhof ilaih.²⁷

Fathu Dzariah's rules are not quite popular rules in society, unlike Saddu Dzariah's rules. Because this rule focuses on exceptions, exceptions which in the religion are prohibited or forbidden. Therefore, the use of this rule must be very careful.²⁸

There are several 'ulama' who agree on the use of Fathu Dzariah's rules, as stated by Shaykhul Islam Ibn Taimiyyah "Something that is prohibited for reasons of sadd adz-Dzari'ah, not because it is haram because of the original law, then that prohibition can be used to achieve the problem that bigger and does not cause a bigger mafsadah"²⁹ then Ibnu Qayyim Al-Jauzi also argued "Something that is forbidden for reasons of sadd adz-Dzari'ah, becomes permissible if there is a greater mashlahah"³⁰ This sentence is almost the same as what Imam as-Syathibi said, "The road to destruction must be closed if it does not result in greater benefits."³¹

There was a case that attracted the sympathy of many people in 2017, namely the Fedelis case in the West Kalimantan area. Briefly, Fedelis was arrested by the BNN because he had several marijuana plants, which he used as medicine for his wife who was suffering from an illness. *Syringomyelia*. Because surgery was not possible, Fedelis looked for another alternative through extraction of the marijuana plant which turned out to be in a better direction for his wife. Fedelis was finally arrested and after 32 days while Fedelis was in prison, his wife breathed her last breath.³²

Ibnu Hajar in the book *Bulughul Maram*, which was narrated by Imam Abu Dawud, explicitly

²³ Jauziyyah, Ibnu al-Qayyim. A'lam al-Muqi' in, *Beirut: Dar al-Kutub al-'Ilmiyyah*, 1996.

²⁴ HR Abu Dawud no. 3689 & Ahmad no. 26676

²⁵ Qal'aji, M. R., Qunaibi, H. S., & Sanu, Q. M. *Mu'jam lughah al-fuqaha': 'Arabi-Inklizi-Ifransi ma'a kashshaf 'Arabi-Inklizi-Ifransi bi-al-mustalahat al-waridah fi al-mu'jam. Dictionary of Islamic legal terminology: Arab-English-French*. Dar al-Nafa'is. 1996. Hal 342

²⁶ Wakaf, Kementrian; KUWAIT, Urusan Agama. Al-Mausu 'ah Al-Fiqhiyyah Al-Kuwaitiyyah. *Kuwait: Daar Al Salasil*, 2006.

²⁷ Al-Zabidi, Muhammad bin Muhammad bin'; Razzaq, Abdil. Taj al-'arus min jawahir al-qamus. *Dar al-Hidayah*, 1965., juz 7, h. 6

²⁸ Abu Zahra, Muhammad. Malik Hayatuhu wa Ashruhu wa Arauhu wa Fiqhuhu. 1982.h. 354

²⁹ Ibn Taymiyyah, Ahmad. Majmu' al-Fatawa. *Mahmud Qasim, Comp.). Riyadh*, 2005.

³⁰ Al-Jauziyyah, Ibnu Qayyim. I'lam al-Muwaqqi' in 'an Rabb al-'Alamin. *Beirut: Dar al-Jil*, 1973.. Juz 1 hal. 92

³¹ Al-Shatibi, Ibrahim Al-Gharnati. Al-Muwafaqat Fi Usul Al-Fiqh. *Beirut: Dar al-Kutub al-'Ilmiyyah*, 1975.

³² <https://www.cnnindonesia.com/nasional/20170731142646-12-231457/kisah-fidelis-antara-cinta-ganja-dan-ancaman-penjara> (diakses pada 9 April 2023)

forbids tobacco and the like, but he confirmed that there are some scholars who are of the opinion that it is Makruh or hated because few people can benefit from it.³³

The Shafi'i school itself allows the use of narcotics using the rules of Adh-dhorurotu Tubihu Mahdhurat. Imam An-Nawawi said "If it is necessary to consume some to reduce the pain when amputating a hand, then there are two opinions among the Shafi'iyah which is permissible."

The basis of Fathu Dzariah's rules is to allow or reveal something that is haram to prevent harm or greater injustice. In the case experienced by Fedelis, this rule can specifically be applied because it concerns a human life. But if this rule is used to legalize marijuana on a mass scale, then this rule cannot be used because it will cause even greater harm.

CONCLUSION

Conclusion

Indonesia strictly prohibits everything related to marijuana in Law Number 35 of 2007. The update in this law from the previous law is that marijuana is included in Category I narcotics so that it cannot be used for medical purposes.

This has caused a lot of controversy in society, considering that marijuana is also used as a medicine for several chronic diseases. Several efforts through education, outreach and constitutionalism have been and are being made to eliminate the decriminalization of marijuana, but to date have not produced any significant results.

In Islamic law, Ganja itself is interpreted the same as Khamr, which is clearly haram. But along the way, marijuana has the potential to cure and alleviate several chronic diseases that conventional medicine has not been able to reach. So in this case Islam provides a way from several opinions of the ulama which allow its use in urgent situations.

Saddu Dzariah's rules in this case emphasize that marijuana is absolutely haram and should not be used and all forms of efforts that lead to the use of marijuana are acts that must be prevented. But in Fathu Dzariah's rules, the use of marijuana is permissible as long as it is in a very emergency situation. and can threaten a person's life, the use of marijuana is permitted.

Suggestion

The need for marijuana plants in the medical world is very large and has potential. Some crimes in society related to marijuana are forced by circumstances, which are really needed but are illegal. The government should provide a platform for those who need marijuana, and of course with very strong regulations. This will make illegal marijuana sales decline and will continue to decrease over time.

The law is a reflection of society. Marijuana will never become a useful item if the government and society do not have the good will to improve themselves in facing something new. Great trust will also be given to people who have great values.

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³³ Al-Asqalani, Al-Hafiz Ibnu Hajar. *Bulughul Maram*. Pustaka Al-Kautsar, 2015,hal: 960

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