



Weighing of the criminalization of cannabis in Indonesia narcotic law with international human rights law perspective

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ABSTRACT

The criminalization against the use of cannabis also leads to the limitation of access to medicine and research to explore the benefit of drugs choices related to cannabis substances. this article explores the negative consequences of Indonesian criminalization policy towards cannabis use in Indonesian drug law against human rights and to what extent the human rights regime should prevail over the war on drug narrative. The research uses the qualitative method with library research, laws and statutes analyses on cannabis personal use or policy on medical cannabis.

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Introduction

In the global drug law and policy, three international treaties become the mainstream of national drug policy around the globe concerning drug law and policy (Böllinger, 2004; Seddon, 2020; Flacks, 2018). The member of the UN consequently and the member of the international drug control conventions takes these treaties into their national policy and laws. The treaties are the Single Convention on Narcotic Drugs 1961 (United Nations, 1971), the Convention on Psychotropic Substances (United Nations, 1975), and United Nations Convention against Illicit in Narcotic Drugs and Psychotropic Substances (United Nations, 1988). These three international drug control conventions were issued to control and regulate the use of drugs nationally and internationally, including Indonesia as a state member (Law No. 8, 1976).

As a state member of the international treaties, some obligations should comply with the convention and reporting mechanism. Above all that, all international treaties should be equally implemented as an obligation under international law based on good faith (Vienna Convention on the International treaties, 1980). It is important to ensure that the entire treaties are ratified by the country based on the context of both of the treaties' aims and national context. Therefore, it is crucial to interpret the treaties grounded in the good faith and view the national interest as a substantial issue. The issue of the international drug control conventions should be also coherent with international human rights law, as a law issued by the United Nations and claimed by most of the nations around the world. However, there are some incoherent between international drug control conventions interpretation based on the concept within with the international human rights treaties (Bewley-Taylor, 2003; Room & Reuter, 2012; Sergio, 2022). This is one of the main legal and practice issues that appears in most of the national drug laws and policies when they were created and implemented.

The conflict between human rights protection and international drug control conventions practices by implementing harsh laws on drugs is common in many states, including Indonesia (Barret, 2010; Putranti, 2022). To balance the interest among those two international laws, it is important to ensure the human rights principles apply and are implemented (Takahashi, 2009; Marune et al.,

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2021). There are many international human rights norms that should not be violated in all circumstances and there are the human rights principles required to be applied in entire domestic legislation regardless as membership of the international human rights law, such as the non-discrimination principles, and justice, and the implementation of the prohibition of torture or slavery as an erga omnes norms in international law. Those norms and principles in human rights law should prevail since the human rights principles inherited in the international human rights law are the fundamental rights that cannot be violated in many circumstances and some of them are a part of customary international law that should be fulfilled as a state obligation (Bassiouni, 1996; Windari, & Effendi, 2021).

The debate of the drug control conventions is caused by the bias that appears within the conventions themselves (Danenberg et al., 2013). The Drug Control Conventions provide the long historical context of colonialism and imperialism that give them the domination of power states versus powerless states in the process of negotiation during the pre-international drug control conventions agreement till the international drug control convention was drafted and created. Most of the producers of the drugs (opium for example) at the time are powerless and being colonized by the drafter states of the convention, such as Asian and Latin American countries (Boister, 1998).

This research is normative juridical research and use a qualitative approach by observing the consequences of criminalizing the use of cannabis contained in the Narcotics Law no. 35 of 2009 (Narcotics Law) and whether the International Drug Control Conventions which have been ratified by the Government of Indonesia provides an opportunity for policy changes. This study will look at various international human rights law instruments, drug law and policies from other countries and internationally to help analyze the consequences of the criminalization policies on health, research and criminal penalties implemented by the Indonesian government.

This article explores the negative consequences of Indonesian criminalization policy towards cannabis use in Indonesian drug law against human rights and to what extent the human rights regime should prevail over the war on drug narrative.

Literature Review

In Indonesia, it is crucial to read and understand the context of the establishment of the convention to perceive the need for new perspective towards international law and international treaties on Narcotics (Paoli et al., 2012). Since not only due to Indonesia's membership in international drug control conventions, it is also a responsibility as an independent country to protect the health and constitutional rights of the citizens which is again contained in other international agreements (Room, 2005). Equality among International Conventions that Indonesia has subjugated, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights, and the Convention Against Torture as an inseparable part of national and international law in Indonesia. Specifically, regarding the ICESCR on the right to health in article 12 which also refers to the definition of health from the WHO, it provides a line and balance between the international drug control conventions with the international human rights law so that the factor considering the Single Convention on Narcotics is to ensure the availability of narcotics for health and scientific purposes (Leechaianan & Longmire, 2013).

One type of narcotic that has become a concern in recent years is cannabis (marijuana/ganja). Various countries have made policy changes regarding cannabis, especially the use of medical cannabis (Room, 2012). Unfortunately, in Indonesia, cannabis is included in Category I which cannot be used for health services and limits the development of science or research. The use of cannabis for oneself or the benefit of one's health is a criminal act with a prison sentence and ultimately contributes to the high rate of overcapacity in prisons. This is what makes the urge to reform narcotics policy to be carried out immediately. Interpretation of international drug control conventions must be adjusted to the real conditions that exist (Alam et al., 2020). The criminal approach (criminalization) has a negative impact in the form of torture for people who use drugs. For this reason, the recommendation given is to prioritize a health-based approach as a more effective way to reduce the supply-demand of narcotics compared to a sanctions-based approach (Perdana et al., 2021). Especially the case for substances that are widely needed for health services or other controlled uses by the government. UNODC states that a health-based approach is more effective in suppressing the use of illegal narcotics (black market) than a criminal approach (Wall et al., 2022). International drug control conventions in principle do not prohibit the change from a criminal approach to a health approach through decriminalization or regulation (Ekici, 2016). This article will try to analyze the consequences of criminalizing cannabis for health services and its implications for the right to health and other social injustices.

Indonesian Policy and Law on Cannabis

The urgent need for the reinterpretation of International Drug Control Conventions

Cannabis is the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated (Collins, 2021). In the Commentary to the Single Convention it is further explained that "It may finally be noted that it follows from the context that the term "cannabis" covers in article 2, paragraph 6, also "cannabis resin" and in article 49, paragraph 2, "cannabis", "cannabis resin" and "extracts and tinctures of cannabis". Under the Narcotics Law and its appendix, Indonesia includes cannabis in Category I and it leads to the prohibition to use cannabis in medical and limited access to research and science. The research on science on Category I only applies regard to the eradication goals and not the scientific purposes as stated in the International Drug Control Conventions (Tetty et al., 2022).

Indonesia has carried out a very rigid interpretation resulting in the loss of context and drug policy perspective in controlling narcotics under its jurisdictions. This has prevented Indonesia from developing much in narcotics policy governance along with advances in technology, science in the health and social fields of the world. The narcotics market in terms of supply reduction and especially the use of narcotics with a harm reduction perspective in the demand reduction policy has also become stagnant and even for drug supply, Indonesia is facing problems apart from being a consumer of narcotics trafficking originating from the illicit drug market as well as being a producer of narcotics such as the Amphetamine-type Stimulants.

The Classification of drugs is important for Indonesia to be revisited since each classification has consequences in many fields, one of which is access to drugs, treatment, and diverting from criminal law to the treatment for the personal use of drugs. The Single Convention on Narcotics 1961 and Psychotropic Convention 1971 provides the space for the state to guarantee the right to health. The Preamble Convention states, "The parties, Concerned with the health and welfare of mankind (1961)

Being concerned with the health and welfare of mankind (1971)".

Further, the two Conventions state that:

"Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes (1961)".

"Recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted (1971)".

Although preambles are not legally binding, they do provide an overview of the spirit of an international instrument. The essence of this Preamble must be interpreted in the context of health, availability of medicines, and also the purpose of developing science and not only prohibiting through criminalization of legal use by countries and criminal punishment for people who use drugs. The overarching concern for the 'health and welfare of mankind' expressed within the convention's preambles, required a dual goal: reducing the availability of drugs to prevent abuse and dependence that constitutes a serious evil for the individual and is fraught with social and economic danger to mankind, while at the same time ensuring adequate availability because their medical use is indispensable for the relief of pain and suffering (Lehner, 2021).

The core of these two conventions is the ability of the state to control the substances that are included in the classification list and the use of these substances for health and scientific purposes and services. The Single Convention on Narcotics 1961 focuses on the prohibition of the distribution of narcotics without a permit, not the use of health which is granted a license by the State Party. In fact, through the 1972 Single Convention on Narcotics Protocol, there is a debate over the use of narcotics that are not for the benefit of health and science – for example, cultural and social communities are allowed as part of the so-called quasi-medical or traditional (traditional use) (E/3527, p. 3). This makes how the countries participating in the single narcotics convention can develop their policies in accordance with the objectives of the state ratifying the convention, namely to regulate substances so that they can be controlled and prevent the entry of narcotics trafficking without a permit (Carpentier et al., 2018).

Classification of substances that have been made since 60 (sixty) years ago is certainly very dynamic, as well as substances derived from Cannabis (Fransiska, 2018). Many countries participating in the Drug Control Conventions have adopted the classification of cannabis-based on various needs, especially medical and cultural needs (Fransiska et al., 2011). This is because this Convention is not an agreement that has the nature of automatic implementation and becomes a codification of Narcotics Law (as seen with the birth of other conventions related to substances which are then accompanied by their regulatory model). Another thing is that this international drug control convention is obliged to respect the views of each member in accordance with the development of the law and legal system of the member countries along with their domestic needs for cannabis in the context of health and science (Robertson, 2021). The flexibility of international drug control conventions can be seen in the adjustment of classification and the mechanism of state compliance with conventions which are increasingly showing the dynamics of member states in adjusting the health and scientific needs of the country. Many countries have made adjustments and reformed their country's policy regulations regarding the use of cannabis, one of which is Portugal, Germany, Canada, Dutch, even currently in Asia such as Thailand, Vietnam and Malaysia. These countries decriminalize the use of substances under Category I. In many other countries, health services using Category I are carried out in various health programs for people who need cannabis substances.

Transform in How to Regulate Cannabis stated that "The moral question also looms large in drug policy debates. A simplistic understanding of illicit drug use as fundamentally immoral, or even 'evil', provides all the justification many need for a punitive enforcement response. We argue there is a key distinction between moral judgments on individual private conduct, and moral policy and law-making. Ultimately, our goal is to present and explore a range of policies and measures that minimize the potential harms and maximize the potential benefits associated with cannabis, both on a personal and societal level. Transform has referred to this pragmatic approach as the 'ethics of effectiveness'. Encouraging regulation of cannabis use with strict controls and aimed at ensuring the provision of health services is not only a legal issue but also an ethical issue for effective policy. Seeing the propaganda of fear and the stigma of "evil" from those associated with narcotics, especially cannabis is not only an ineffective policy but also very unethical. This is important view that should be considered, especially when the government's debate on drug focuses on moral perspective (Mutiarin., 2019).

The War on Drugs, which became the spirit in penetrating the illicit market and the agitation of racism and bias, has become a narrative that needs to be countered in Indonesia. Alvaro Teullet in his dissertation stated, “This convention continued the same line as that approved in 1971 and the protocol of amendment to the 1961 convention in relation to allowing alternatives or additions to imprisonment around drug-related offenses. And in this lies a fundamental part of the essence of the flexibility of the three conventions, given that these grant possibilities to the States on what penalties to apply. The fact that many States have decided to apply restrictive measures that led them to fight the "War on Drugs", does not imply that the conventions do not grant other possibilities to the States”. Thus, the Government of Indonesia needs to redefine and reinterpret the understanding of narcotics policy based on the Drug Controlled Conventions.

Criminalization towards people who use cannabis

In the context of narcotics policy for cannabis and other substances, Indonesia's narcotics policy has a very strong criminalization pattern. The domination of the punitive element gave rise to a number of serious problems in drugs and particularly in narcotics governance and the Indonesian criminal justice system. Therefore, it is important to encourage alternative Indonesian narcotics policies that are non-criminal (non-penal) and place narcotics back into the discourse on health issues that require health policy as the main approach (Fransiska, 2018). Combating narcotics that is echoed by imprisoning narcotics users has resulted in many violations of human rights. Various countries have tried to put the problem of narcotics in the realm of health which has now brought a number of benefits. These include controlling the level of narcotics use, easing the burden on the criminal justice system, which is already too heavy, minimizing stigma and discrimination against narcotics users, as well as improving the ability of health services (Godwin, 2016).

Indonesian Narcotics Law becomes problematic in translating the International Drug Controlled Convention (Sugihartati & Susilo, 2019). The criminalization of cannabis use for any purpose is punishable by either imprisonment or rehabilitation as a punishment, including people associated with cannabis. There are two main issues relating to cannabis consumption or use in Indonesian drug law. First, is the scheduling of cannabis in Category I has led to the prohibition in advance research on medical cannabis as well as the use of cannabis to be one of the options in medical treatment. The article on the drug law states: Narcotics can only be used for the benefit of health services and/or the development of science and technology". The law also prohibits Narcotics on Category I for health services. Second, the drug law precisely creates the inability to define people who use drugs and people who produce and sell drugs for economic benefit in the illegal market. The drug threshold that has been used is unable to create the boundaries between people who use drugs and sell and produce drugs. The intention of the aim of carrying drugs is absent despite the new Attorney Guideline Number 11 and 18 of 2021. The Attorney guideline put the intention as one of the criteria to the convict people relates to drugs activities, however, the drug mules who carry drugs are still invisible to carried out regarding the protection towards them regardless the vulnerabilities such as the victims of trafficking in person.

This issue has an impact on the perpetuation of the punitive approach and consistently contributes to the rate of inflow of state detention centers and correctional institutions, which currently have overcrowded conditions (overcrowded) (Fransiska, 2021). Every year the rate of addition of incarcerated people in the prisons in Indonesia increases, along with the high number of arrests for narcotics cases as shown in the Table 1 and creates complicated problems with the current COVID-19 pandemic situation.

Table 1: Over Capacity in the Prison

No	Year	Inmate	Capacity	Advantages
1	2015	176,754	119,797	147%
2	2016	204,551	119,797	170%
3	2017	232,081	123,481	188%
4	2018	256,273	126,273	202%
5	2019	269,846	130,512	206%

Source: Zulkifri & Ejo Imandeka, 2020.

The trend of crime in Indonesia is averagely stagnant, especially for conventional crimes such as theft and persecution that from 36.874 cases in 2014 reduce to 35.412 in 2017. However, narcotics crimes are increasing even after the issued of Law on Narcotics No. 35 of 2009 which provides an 'alternative' to punishment in the form of rehabilitation. The data above shows that from 19.280 cases on drugs offences in 2014 increase to 35.412 cases in 2017, it is doubled within 3 (three) years. Emphasizing the deterrent effect by giving the heaviest punishment, even the death penalty, does not have significant implications for decreasing narcotics cases, on the contrary, it is increasing. Various Court Decisions, strengthen the sentence for everyone who uses narcotics because the act is considered an activity that is contrary to the spirit of the War on Drugs.

Especially regarding the use of cannabis-type narcotics that are against the law, data shows that the trend of crimes relating to cannabis is increasing. In Indonesia, according to the 2019 national survey on drug abuse and illegal trafficking, which had been undertaken by the National Narcotics Agency and covered all 34 provinces of the country, the rate of past-year drug use in the country reached 1.80 percent, equivalent to approximately 3.5 million people aged 15–64, of whom 3.2% were students. The most widely used drugs were crystalline methamphetamine, cannabis, amphetamine-type stimulants, and other psychotropic substances.

In addition to grammatical issues and the interpretation of the Narcotics Law, substantial issues such as policies that prioritize punishment, criminalization need to be reviewed. Another thing that contributes to the overcapacity of prisons is the paradigm or mindset in dealing with the problem of using narcotics, especially cannabis which does not see the context of needs, for example Cannabis for national purposes in areas other than criminal law. Removing the punitive approach to people who use cannabis as a personal use will create various innovations and approaches in narcotics policy in Indonesia, and will significantly reduce the overcrowding in prisons or detention centers.

The implication of criminalization against cannabis for personal use

The right to health

In the data on the need for drugs issued by the International Narcotics Control Board (INCB) every year, Indonesia is a country with a large population (approx. 270 million population) but has a very low demand and availability of substances for health care purposes. The use of Category I Narcotics (morphine, fentanyl, cannabis) is very minimal compared to other countries which have less population and have the best health services. In 2017-2019, Indonesia ranked 134th out of a total of 179 countries as licensed and reported licit narcotics usage, with the largest population composition compared to other Asian and African groups. In Asia, the use of narcotics for health services or the development of Indonesian science and technology ranks 34 out of a total of 44 countries under Sri Lanka, Syria, and Bhutan. For Cannabis, Indonesia does not have a record of its usage. Whereas in many other countries, even Asia such as Iran and India, the need for cannabis for domestic medicine is quite high. This means that various countries continue to produce (manufacture), send (distribution), and use (consumption) Category I narcotics, especially cannabis for health services at home and abroad, and the development of science and technology. This becomes one of the bases for determining how important a substance is needed and how its governance is capable to meet the minimum substance needs in the country for the benefit of the state and the society in its territory.

Article 28H (1) of the Constitution of the Republic of Indonesia guarantees the right to health for health services to all. One of the characteristics of the right to health is that the right is the progressive realization (progressive fulfillment), and cannot be decreased (regressive) and is given and fulfilled without discrimination (non-discrimination principles). Misinterpretation of the prohibition is very detrimental to Indonesia, especially regarding access to health services.

The Committee for Economic, Social and Cultural Rights provides a detailed explanation of the meaning of the right to health as regulated in Article 12 of the International Convention on Economic, Social and Cultural Rights (ICESCR) through General Comment No. 14. This right to health, including enjoyment of the highest standards, also includes the right to health of people who use drugs. The state must not deny or limit the access of a narcotics user in accessing medical care (physical or psychological) or deny or limit access to the provision of essential medicines, especially to assist individuals in using narcotics either for themselves or for others in the best health interest for the individual.

The right to health using narcotics is stated in Article 38 of the 1961 Single Convention on Narcotics which requires the state to have 4 (four) basic principles that are important in health management. First, the Single Convention on Narcotics states: "The state has an obligation to provide care and rehabilitation for narcotics users (if needed) and not to impose penalties on them". The second principle is that the state must not discriminate in any form against narcotics users regarding their right to health. The principle of non-discrimination is an important principle that means that the State must not differentiate and is obliged to provide equal treatment to people who use drugs and non-people who narcotics users. The condition that a people who use drugs consumes drugs from the black market (illegal use) cannot be used as a reason to provide discrimination as stated in Article 2 paragraph (2) of the International Convention on Economic, Social, and Cultural Rights. Third, in order to fulfill the highest standards of the right to health, the state is justified in making justified distinctions against people who use drugs, especially their medical interests. The purpose of this distinction is solely to achieve the right to the highest standards of health care. For example, rehabilitation measures are carried out for people who use cannabis who requires medical intervention. Finally, the principle of freedoms contained in human rights must be respected by the state. The principle of individual rights and freedoms in fulfilling the right to health must be considered by the state with evidence of an objective assessment and free from bias and stigma, for example the state can understand the extent to which health interventions are given to those who experience dependence or those who fall into the category of problematic drug use. If people who use cannabis does not fall into these two categories, forcing health interventions, such as going to a rehabilitation center, will violate the principle of freedom and a person's right to control his own body and health as well as the right to be free from intervention in the form of unapproved medical treatment (non-consensual medical treatment).

Regarding rights of health, the General Comment sets out four criteria by which to evaluate the right to health:

- i. Availability. Functioning public health and healthcare facilities, goods and services, as well as programs, have to be available in sufficient quantity. This should include the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics, and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs as defined by the WHO Action Programmed on Essential Drugs.
- ii. Accessibility. Health facilities, goods, and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

- a. Non-discrimination: Health facilities, goods, and services must be accessible to all, in law and fact, without discrimination on any of the prohibited grounds.
 - b. Physical accessibility: Health facilities, goods, and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous population, women, children, adolescents, older persons, persons with disabilities, and a person with HIV/AIDS, including in rural areas.
 - c. Economic accessibility (affordability): Health facilities, goods, and services must be affordable for all. Payment for health care services, as well as services related to the underlying determinants of health, must be according to the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all.
 - d. Information accessibility: Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.
- iii. Acceptability. All health facilities, goods, and services must be respectful of medical ethics and culturally appropriate, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned.
 - iv. Quality. Health facilities, goods, and services must be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

All these principles must be the basis for the state in developing and implementing policies related to the use or consumption of narcotics, including cannabis. However, the view that narcotics, especially cannabis, have health benefits seems far from the view of the Indonesian government. Indonesia still considers the dangers of narcotic substances to be an important basis for making plans to eradicate narcotics. In his report, The President of Indonesia mandated the National Narcotics Agency to implement a new national action plan for the prevention and eradication of narcotic drug abuse and circulation for the period 2020–2024. The action plan builds upon the previous one, which was implemented during the period 2018–2019. Actions included in the plan are the provision and dissemination of information related to the dangers of drugs, the establishment of an anti-drug task force, and the inclusion of relevant topics in educational materials and training materials for officials. The plan is to be implemented in cooperation with various ministries and authorities in the country. There is no plan regarding the assess the drug benefit based on the scientific and health purposes, especially for assessing cannabis.

As a result of this punitive policy which has implications for criminalization and not the use of a health context, the solution offered by the Government of Indonesia is to build rehabilitation facilities in prisons, instead of reducing the prison population by building an important fence for law enforcement to not always punish people who use drugs, particularly for those who use cannabis for the benefit of their health or their family members. The Indonesian government report states, “In January 2020, the Government of Indonesia adopted a 15-action point resolution addressing the drugs situation in correctional facilities in the country. The action points include the provision of medical assistance and social rehabilitation to over 21,000 prisoners who use drugs, as well as addressing overcrowding to prevent the circulation of illegal drugs within prisons”. Even for the prevention of substance use, which should be included in prevention in the health sector, program limitations also occur. The Ministry of Home Affairs of Indonesia issued ministerial regulation No. 12, 2019 (replacing a previous regulation from 2013), pursuant to which provincial and local governments and village heads are committed to conducting demand reduction activities within their jurisdictions. Such activities may be focused on raising awareness, early detection, community empowerment, or providing medical treatment and/or rehabilitation services. However, the linkage between health, human rights and science are far from the discussion on those national and local policy and approaches, since the focus is merely regarding the eradication for ensuring the zero tolerance of drug use and abstinent approach for people who use drugs.

Drug Research

In interpreting the context of the 1961 Single Convention, unfortunately, the Indonesian government only interprets the prohibition of the use of narcotics. This is stated in various articles in the Narcotics Law as follows:

Article 8:1:

“Narcotics Category I is prohibited from being used for the benefit of health services”.

The classification is regulated in Article 6:1 which reads:

Narcotics as referred to in Article 5 are classified into: Category I Narcotics; Category II Narcotics; and Category III Narcotics.

Article 7 of the Narcotics Law states "Narcotics can only be used for the benefit of health services and/or the development of science and technology in the context of law enforcement and not the right to health (see the comment of the drug law). As a result of the prohibition on the use of health services, Indonesia has misinterpreted the 1961 Single Narcotics Convention which did not prohibit it but allow the state to be able to control drugs in ensuring the state had the availability of narcotics drugs for the benefit of health and science (medical and scientific purposes) as well as preventing the circulation of narcotics without a permit. When there are

individuals whose health needs to be intervened because they have problematic effects due to substance use, Article 36 and Article 38 of the 1971 Psychotropic Convention ensure that they do not punish, but carry out health and social interventions by stating that "Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abuser of drugs shall undergo measures of treatment, education, after-care, rehabilitation, and social reintegration."

This article in the Narcotics Law also contradicts the aims and objectives of the 1961 Single Convention and the Narcotics Law itself. First, to create a prosperous, just and prosperous Indonesian society that is materially and spiritually evenly distributed based on Pancasila and the Law. In the 1945 Constitution of the Republic of Indonesia, the quality of Indonesia's human resources as one of the national development capitals needs to be maintained and improved continuously, including their health status. The second objective in the preamble explains that to improve the health status of Indonesian human resources to realize the welfare of the people, it is necessary to make efforts to improve the field of treatment and health services, among others by seeking the availability of certain types of Narcotics which are urgently needed as drugs as well as preventing and eradicating the dangers of abuse, and illicit trafficking of Narcotics and Narcotics Precursors. The third objective is that Narcotics on the one hand are drugs or materials that are useful in the field of treatment or health services and the development of science and on the other hand, can also cause dependence which is very detrimental if misused or used without strict and careful control and supervision. The reading of the article that narcotics are not allowed for health services is very detrimental to the Indonesian state, which is only based on the security context, and forgets that the purpose of the Single Convention on Narcotics 1961 and the Narcotics Law No. 35 Year 2009 include the welfare and health of citizens and citizens of the world. In many other countries, research using substances in narcotics is developing in line with the development of science and technology and efforts to provide health services to the community. In 2020, the Thai government took the initiative to amend their drugs law by issuing Kratom (*Mitragyna speciosa*), a plant-based psychoactive substance that is not included in the international control list, which is out of category V. In contrast, Indonesian authorities are considering whether to place kratom under national control as a Category I of Narcotics, which would make it illegal in the country. Before taking such a decision, during the period 2020–2024, Indonesia will undertake further research on the issues, including health, sociological, Socio-economic, ecological, and alternative development considerations, surrounding such a scheduling decision. However, this commitment is still far from the realization.

The drug research and scientific approaches lead the world changes on drug and its policy. In 2021, Charite Hospital in Berlin, Germany, conducted two clinical studies of psilocybin (category I of the Indonesian Drug Law) for use in treating depression or other mental health problems such as eating disorders. The current research on psychedelic, as one of the substances is increasing. Since 2000, the John Hopkins University developed research and clinical studies related to the use of psychedelics. The researcher is focusing their studies on how psychedelics may affect behavior, mood, cognitive abilities, and brain function. Researchers to test how the LSD, psilocybin, and MDMA (all narcotics Category I in Indonesia), may help patients with PTSD and depression. For cannabis, particularly The Government of Thailand is considering a proposal to remove cannabis from the narcotics list by means of a ministerial regulation of the Ministry of Public Health, under which research would be conducted on the effects of cannabis in medicines, cosmetics, and herbs, in line with the Government's policy of boosting the country's competitiveness in the production of cannabis-based products. This regulation would allow for the cultivation of the cannabis plants specified in the regulation by individuals and corporations, subject to conditions on trade and possession. The Food and Drug Administration of Thailand joined the country's national network of medical. Eventually, in 2020, the Government of Thailand initiated a cannabis cultivator to organize a training course on planting techniques for farmers, community enterprise groups, and agricultural cooperatives.

The development of research in Indonesia for Category I narcotics, especially Cannabis has not started yet, and this has made the underdevelopment of the capability to respond to science and technology, from black market to the obligations of the state in the right to health are running stale. In International drug control conventions, mentioned that classification is the right of every country as long as all is done with good intentions for the development of health services and the ability to control substances by ensuring the distribution permit is in accordance with the allocation. The state has full authority over Category changes or arrangements by reviewing the objectives of the Convention and the Law in its country. This classification of substances should not be done as a subjugation over politics and geopolitics at the time of the 1961 Single Convention was formed, but rather the availability and access to health services that are currently urgently needed by Indonesia to ensure the fulfillment of the needs for Category I drugs, especially cannabis who have been examining scientifically by other countries regarding its benefits and the prevention of the negative effect of use. Indonesia has fully legal obligation to realization and reach fulfilment of better-quality health care by improving the innovation of drugs and providing alternatives of the essential medicines relates to cannabis use for certain health conditions.

Conclusions

Indonesia is a country member of international drug control conventions as well as being a member of various international treaties concerning human rights. In Indonesia, seemingly the position of international human rights law is indeed lower than international drug control conventions, but it should be emphasized that the various principles in human rights are normatively higher than the rules in international drug control conventions which have flexibility in practice. The principles of non-discrimination and freedom are principles that are included in customary international law. Norms against torture and slavery are also jus cogen norms which are very important to be protected by the state regardless of whether the state is a participant in the convention or the state regulates this in its national law. The flexibility of meaning and application in practice at the international drug control conventions must be

interpreted in good faith by each participating country. Good faith certainly comes from submitting to legal norms that are universal and not based on stigma, bias, and discrimination such as the war on drugs's narrative. The war on drugs has become an obsolete thing that is no longer a narrative for many countries in making changes and reforming their drug policies. The international drug control of conventions provides a very large space for participating countries to adjust the context control over narcotics or drugs, one of which is by ensuring that the state issues permit, conducts monitoring, and regulates policies based on scientific evidence. This is what many countries are doing in developing science and health services using cannabis and its derivatives. The Indonesian government is still prioritizing the criminalization of the use of narcotic substances, including cannabis and other substance in Schedule I. This makes a consequence that is easy to measure but difficult to resolve, namely overcapacity in prisons and rehabilitation or force medical intervention as a part of punishment. In result, this overcapacity and the coercive medical intervention causes violations of human rights in various ways, the most important of which is the right to health. The right to health in prisons was responded to superficially by providing establishment to rehabilitation in prisons, and not changing the paradigm that the personal use of drugs can be decriminalized, not all people who use drug should be forced into rehabilitation. The coercion of health interventions must comply with the rules of voluntary and research-based as a minimum standart of the right to health.

One of the steps taken by various countries in overcoming overcapacity in the prisons or detention centers is to ensure that the classification of narcotics is based on credible and up-to-date scientific evidence, which allows a substance to be reclassified if supported by science. The Indonesian government needs to consider removing the prohibition on the use of narcotics Category I for the benefit of health services. Reinterpreting the drug control conventions needs innovative based research and examining the negative consequences of criminalization. Indonesia can start the constructive interpretation of drug control conventions through examining cannabis use and its implication scientifically since many countries have been rethinking of drug policy by decriminalizing or regulating drug use, especially for the cannabis use.

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