



A Study of Maslahah Al - Mursalah on Efforts to Legalize Marijuana for Medical Needs in Indonesia in The Aspect of Legal Exceptions

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<p>Track Record Article</p> <p>Accepted: 25 August 2022 Revised: 30 November 2022 Published: 29 December 2022</p> <p>How to cite : Khoir, N. (2022). A Study of Maslahah Al - Mursalah on Efforts to Legalize Marijuana for Medical Needs in Indonesia in The Aspect of Legal Exceptions. <i>Contagion : Scientific Periodical of Public Health and Coastal Health</i>, 4(2), 367-375.</p>	<p style="text-align: center;">Abstract</p> <p><i>In this descriptive qualitative study (library research), al-Maslahah Mursalah looks at legal methodology (usul fiqh) in the context of efforts to make medical marijuana legal in Indonesia. It is normative and looks at legal exceptions. The research findings conclude: First, al-Maslahah Mursalah is one of the Islamic legal methodologies appropriately used as an argument for the legalization of marijuana for medical needs in Indonesia, taking into account: (a). Al-Maslahah Mursalah is a real and general maslahah. (b). Judged by common sense as a true maslahah-really in line with the purpose of shara'. (c). Judged by common sense as the ultimate maslahah and having been in line with the objectives of shara' does not clash with the arguments of shara'. (d). Al-Maslahah Mursalah was practised with the narrow conditions of life. Second, the study of al-Maslahah Mursalah on the aspect of legal exceptions to the legalization of marijuana for medical needs in Indonesia is quite open through (a). The process of study and research by representative institutions to find the content of marijuana as an alternative medicine and therapy; if it becomes the only ingredient contained in cannabis content, then legalization can be categorized as an emergency or an exception to the law. The purpose of rukshah is to maintain benefits and reject kemafsadatan. Therefore, according to the scholars of ushul, the law of using rukshah is permissible /ibahah. (b). Suppose the results of the study find the content of marijuana as an alternative medicine and therapy. In that case, it becomes the basis for disclosing the value of the legalization of marijuana for medical purposes. The values of benefit will create the fulfilment of basic human needs consisting of the maintenance of religion, the maintenance of reason, the maintenance of property, the maintenance of the soul, and the maintenance of offspring/honour.</i></p> <p>Keywords: <i>Al - Maslahah Mursalah, , Law of Exception, Medical Marijuana, Rukshah</i></p>
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INTRODUCTION

The world of health will continue to experience challenges with the emergence of various dangerous and deadly diseases ongoing and constant in the course of human life. The development of globalization, urbanization and environmental or climate change, human interaction with wild animals, disturbance of natural ecosystems, unhealthy living patterns, food consumption patterns and others are factors that provide changes with the emergence of various diseases even in recent years Indonesia has its own vulnerability to the phenomenon of the emergence of new infectious disease categories (new emerging infectious diseases) which come suddenly and spread rapidly with potentially large-scale damaging implications as well such as avian influenza, degue fever, Mers - Cov infection, COVID- 19 and others.

The prevalence of diverse diseases in Indonesia hinders medical research and development, necessitating proactive measures to improve healthcare provision. The health sector is experiencing growth, but there is still a need for improvement in hospitals,

infrastructure, and specialized physicians and nurses (Dewi, 2020). Access to novel pharmaceuticals and healthcare services is limited in Indonesia, with KOMPAS analysis showing limited availability of pharmaceutical items. Evi Yulin, Vice Chairman of the International Pharmaceutical Manufacturers Group, highlighted this issue during a media event. A study by the Pharmaceutical Research and Manufacturers of America revealed that Indonesia accounted for only 9% of the 460 new drugs introduced worldwide between 2012 and 2021 (Purbanto, 2023).

Medications derived from certain ingredients in Indonesia are subject to restrictions or prohibitions under both statutory and Islamic law for their use in medical contexts. Cannabis, a substance with therapeutic potential, is one example of a substance with pharmacological activity (Lingkar Ganja Nusantara (LNG), 2019); Mahonen, 2018). Cannabis is composed of cannabinoid compounds, with the psychoactive tetrahydrocannabinol (THC) component being the primary component. CBD, another compound with pharmacological effects but lacks intoxicating properties, has anti-seizure properties and has received regulatory approval from the FDA in the United States. In conclusion, improving healthcare provision in Indonesia is crucial for addressing the challenges posed by diverse diseases and enhancing overall well-being.

Law No. 35 of 2009, which regulates the use of marijuana, has led to a comprehensive approach to its regulation. The entire components of marijuana are classified under the class I drugs classification, including other psychoactive substances like heroin, cocaine, and methamphetamine (Ariyanti, 2017). This encompasses the incarceration of those engaged in the cultivation, possession, storage, or management of class 1 narcotics, which may lead to a maximum penalty of 800 million. The present world population is estimated to be over 8 billion individuals (Hidayatun, 2020).

The possession of narcotics classified as class 1, in quantities beyond 1 kg or 5 tree trunks, may lead to the imposition of more severe criminal sanctions. In instances pertaining to substances classified as non-botanical drugs, the legally mandated punishment consists of a period of incarceration that spans from four to twelve years. The act of committing serious criminal threats is associated with significant legal consequences, including potential life imprisonment, death penalty, life imprisonment, or imprisonment for a duration spanning from 5 to 20 years (Suriangka, 2017).

The state's efforts to enforce the prohibition on marijuana usage include activities such as cultivating, tending to, possessing, storing, controlling narcotics, as well as engaging in the

sale, purchase, and facilitation of transactions involving class one narcotics. The conveyance, dispatch, or transfer of class 1 narcotics also carry significant criminal risks (Aldino, 2018).

The use of marijuana for medical purposes is strictly prohibited in Indonesia, with stringent legal measures and severe criminal consequences associated with its usage. The Indonesian government's firm stance on this matter reflects its firm stance on marijuana use. Several foreign countries, including European countries and American states, are leading the way in the legalization of marijuana for medicinal applications. Thailand has emerged as the inaugural Asian nation to enact legislation legalizing the use of medicinal and industrial marijuana.

Islamic law prohibits the consumption of medicinal marijuana due to its potential for harm, which can lead to impaired rational thinking and criminal acts. The prohibition is based on the Quran, the sunnah, and *ijtihad*, which draw from sources such as the Quran, the teachings of the Prophet Muhammad, and independent legal reasoning (Karima, 2021).

Marijuana is classified as *haram lidzatihi*, akin to the prohibition of pork, and *haram li dlararihi*, a substance prohibited due to its potential for harm. The principle of "*laa dharara wa laa - dhirara*" emphasizes the avoidance of both causing harm and being subjected to harm. However, the use of bang and other intoxicating substances in limited quantities may render them permissible.

Medicinal properties of marijuana have been substantiated by Professor Apt. Zullies Ikawati, Ph.D., who highlights the presence of phytochemical constituents with pharmacological properties, such as cannabidiol (CBD), which has several pharmacological properties, including its potential as an anti-seizure agent. CBD has undergone pharmaceutical development and received FDA approval in the United States, such as Epidiolex, which is recommended as an adjunctive treatment for seizures associated with Lennox-Gastaut Syndrome (LGS) or Dravet Syndrome (DS) in cases where previous pharmaceutical interventions have demonstrated efficacy. However, the repercussions outweigh the advantages and have a significant impact on human well-being, justifying the prohibition of marijuana (Rampakakis, 2020). The *ijtihad* technique, *qias* (analogy), can be used to argue that marijuana can be considered akin to alcohol, with its inherent properties bearing resemblance to those of alcohol.

The Indonesian Fatwa Commission IV initiated efforts to allow marijuana for medical purposes, with the intention of thoroughly discussing the matter through further discourse. The MUI aims to contribute by offering religiously grounded solutions based on a comprehensive assessment of potential benefits. Law No. 35/2009 on Narcotics also

underscores that marijuana falls under the category of class 1 narcotics, prohibiting its usage for medicinal purposes (Imaduddin, 2022; Rasdianah, 2018). The debate surrounding the legalization of marijuana for medical purposes in Indonesia is centered around the concept of *Maslahah al-Mursalah*, a methodology based on the principles of benefit. This study aims to explore the potential benefits and harms associated with the use of marijuana for medical purposes within the framework of Islamic law.

The research problem is to elucidate the position of *al-Maslahah Mursalah* as a methodology in Islamic jurisprudence and analyze its relation to legal exemptions for the legalization of marijuana for medical purposes in Indonesia. The results of this study provide important implications in various aspects, including institutional, scientific, social, and legal aspects.

Islamic law emphasizes providing benefits to humanity, which is crucial for the welfare of individuals (Anggara, 2021). The law is adaptable, equitable, accessible, and ensures advantages. Benefits can be effectively enforced if they align with the pursuit of goodness and pleasure (Al-Zuhaili, 2005). Conversely, laws that inflict harm must be rejected as they contradict the fundamental mission of the law, which is to promote the welfare of individuals (Djazuli., 2013; Al Jaziri, 2017).

The concept of *Maslahah al-Mursalah* is divided into three parts: *Maslahah mu'tabarah*, meaning the benefit is known through the *nash* explicitly explains and recognizes its existence; *Maslahah mulghah*, meaning *maslahat* contrary to the provisions of the *nash*; and *Maslahah al-Mursalah*, meaning that *maslahah* is not explained by the *nash* but is considered in line with the purpose of *shara'* as a basis for realizing the good desired by humans and avoiding harm (Al – Alwani, 1994). The scholars of *usul fiqh* provide requirements for the acceptance of *Maslahah al-Mursalah*, such as a non-rejective *nash*, a vague benefit, and a general public interest related to the public interest in general. The concept of *Maslahah al-Mursalah* holds significant legal propositions, and this study aims to analyze and explore the potential benefits of legalizing marijuana for medical purposes in Indonesia, specifically in relation to legal exceptions.

METHODS

This research is classified as normative library research (*usul fiqh*), which evaluates legal products as norms, legal doctrines, and legal theory (*usul fiqh*). In order to address the legal issues under investigation, data are collected from various library materials, including books, journals, and other sources. Examining the *ijtihad al-Maslahah Mursalah* methodology

regarding medical marijuana legalization initiatives in Indonesia, with a specific emphasis on legal exceptions, is the primary objective of this study. This investigation focuses on the al-Maslahah Mursalah methodology as a proposition that will assess, delineate, and elevate the worth of the advantages associated with the legalization of medical marijuana.

This study employs the *usul fiqh* science approach, a fundamental methodology and science of sources in Islamic jurisprudence. It is a science comprising a collection of methods for comprehending the sources and propositions of Islamic law. A thorough examination of these methods will enable one to discern the intention of sharia regulations and, at the very least, acceptable assumptions pertaining to the sources and propositions. This scientific discipline examines deciphering the origins of arguments used to support the position taken and the substance of the law.

The origin of legal material refers to the individual or entity from which data is gathered facts obtained through a review of relevant literature, standards, or regulations pertinent to legal research. The sources utilized in this investigation are classified as either primary or secondary. Primary sources consist of information collected initially or directly from the subject by researchers in the field. The primary sources utilized in this study consist of the Koran, hadiths, and *ijtihad* products as described in classical and contemporary *usul fiqh* texts, with a particular focus on marijuana. Secondary sources include corroborating materials such as comprehensive narcotics regulations and scientific works that incorporate jurists' opinions pertinent to the research topics.

Data collection techniques utilized in this study involved searching for pertinent materials to the research topic. Collecting library materials is followed by reading, comprehending, researching, and analyzing books pertinent to the medical uses of cannabis and al-Maslahah Mursalah. This is carried out in order to refine the issue being investigated. Coding and processing the gathered information facilitates the intended data collection procedure.

The collected data is analyzed to the greatest extent possible using normative legal analysis methods. This includes identifying the views of jurists, scholars of *usul fiqh*, and others regarding al-Maslahah Mursalah and analyzing the legalization of marijuana, its effects, and the benefits' values.

In order to ascertain whether the research being conducted is scientific, data validity is applied to the acquired data during testing. Validity evaluations for qualitative research data encompass confirmability, credibility, transferability, and dependability assessments. The researcher determines how much the data under investigation can be relied upon by conducting

a credibility test. An approach utilized in qualitative research to assess external validity is the transferability test. A dependability test examines whether the research procedure can be repeated or replicated by others. A confirmability test examines the research outcomes linked to the procedure that was executed.

RESULTS

An Examination of al - Maslahah Mursalah Aspects of Legal Exceptions to the Legalization of Marijuana for Medical Needs in Indonesia

Islamic law, through the legal *istinbat qiyas* method, has determined that marijuana is haram, including for medicinal purposes. Marijuana is analogized by the nature of the equation with alcohol, as both have an intoxicating element. The rules of *usul fiqh* emphasize "Laa dhaarar walaa dhirar" (It is not permissible to cause or cause harm to oneself and it is not permissible to harm others). In the context of medical interests, if there is no need to use haram goods for medicine, it should be avoided.

As the medical world develops and various diseases emerge, there are efforts to make marijuana an alternative to medical needs . This requires Islamic law to respond dynamically in answering legal needs to create human benefits as the purpose of sharia. Initially, the prohibition of legalizing marijuana for medical purposes was part of the creation of human benefits (Qadrina, 2022). However, if the legalization of marijuana for medical use becomes an alternative medicine and therapy, it is also part of the process of creating human benefits.

Efforts to legalize marijuana in medical needs are quite open, with a note of thought after the existence of: 1) The process of study and research by representative institutions to find the content in marijuana that has absolutely no alternative. If it is the only ingredient contained in marijuana, then legalization can be categorized as an emergency. Efforts to do so fall into the category of legal exceptions; 2) The next step is the *istidlal* process through the *ijtihad* method, departing from the research results that the only alternative marijuana is to explore the values of existing benefits through the legal methodology of *al-Maslahah Mursalah*.

The law of *rukshah* or *takhfif* (relief) is an exception law that is different from the law of *azimah*. *Rukshah* can allow or provide exceptions to general principles because of necessity (*al-hajat*) and compulsion (*ad-dharurat*) (Jalaluddin, 1983). According to Ulemas, the law of using *rukshah* is permissible in the form of exempting a *mukallaf* from carrying out legal demands (*azimah*) in emergency conditions. The legalization of marijuana for medical needs aims to create human benefits and reject damage in human life. The purpose of the law is to

implement these benefits and reject harm, and if interests are not examined carefully, they may disappear from human life and stop the growth of the law (Muis, 2021).

The process of finding the values of benefit towards the legalization of marijuana for medical needs is oriented towards the process of legal istinbat, which is an istidlal process in the form of peeling, parsing, and analyzing to answer desired legal issues. The appropriate method used is al-Maslahah Mursalah, which is defined as something that is good according to reason with consideration can realize expertise or avoid harm to humans, and is in harmony with the purpose of Shar' in establishing the law.

Al-Maslahah Mursalah provides an important role in extracting the law of the exclusion aspect (rukshah), which becomes the basis for determining the law through al-Maslahah Mursalah (Romli, 1999; Abdurrahman, 2008). The discovery of maslahat values requires efforts to legalize marijuana in medical needs to be legalized. The values of these benefits will create the fulfillment of basic human needs consisting of maintenance of religion, maintenance of reason, maintenance of property, maintenance of soul, and maintenance of offspring/honor.

The process of finding benefits through al-Maslahah Mursalah must pay attention to the requirements: (a) it is maslahah hakiki and general, meaning it can be accepted by common sense that it brings benefits to humans and avoids harm from humans as a whole; (b) it is judged by common sense as maslahah hakiki and in line with the purposes of Shar'; (c) it is practiced in a needy condition, and (d) it is practiced in a needy condition to prevent difficulties.

After the discovery of maslahat values through studies or research and clinical trials, the use of marijuana as a therapeutic drug is permissible. If it is the only ingredient contained in marijuana, it falls into the emergency category, and when referred to as an alternative medicine and therapy, it is purified purely like CBD, the dose is measured, and the treatment is supervised by a competent doctor. However, strict supervision is necessary due to the potential for abuse and the need for careful control over the use of marijuana.

CONCLUSIONS

The current state of legal exceptions in Indonesia regarding the legalization of marijuana for medical purposes is characterized by a very lenient approach. In-depth studies and research can be conducted to explore the potential benefits of legalizing marijuana, focusing on uncovering unique properties and components that may not have any viable alternatives. The procedure of istidlal al-Maslahah Mursalah is utilized to uncover the underlying values of benefit. The provision of these advantages will contribute to the

satisfaction of fundamental human needs, encompassing the preservation of religious beliefs, the preservation of rationality, personal possessions, spiritual well-being, and the preservation of familial ties and social standing.

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