RATIO DECIDENDI OF THE CONSTITUTIONAL COURT DECISION NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF *CANNABIS SATIVA* IN HEALTH SERVICES FROM THE PERSPECTIVE OF *FIQH SIYASAH DUSTURIYAH*

THESIS

BY:

A RIZKI MUNSHIF SYA'BANI

NIM 210203110019

CONSTITUTIONAL LAW STUDY PROGRAM (SIYASAH)

FACULTY OF SHARIA

MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY

MALANG

2024

RATIO DECIDENDI OF THE CONSTITUTIONAL COURT DECISION NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF *CANNABIS SATIVA* IN HEALTH SERVICES FROM THE PERSPECTIVE OF *FIQH SIYASAH DUSTURIYAH*

THESIS

BY:

A RIZKI MUNSHIF SYA'BANI

NIM 210203110019

CONSTITUTIONAL LAW STUDY PROGRAM (SIYASAH)

FACULTY OF SHARIA

MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY

MALANG

2024

STATEMENT OF AUTHENTICITY OF THESIS

For the sake of Allah SWT,

With awareness and a sense of responsibility for scientific development, the author stated his thesis with the title:

"*RATIO DECIDENDI OF THE* CONSTITUTIONAL COURT DECISION NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF *CANNABIS SATIVA* IN HEALTH SERVICES FROM THE PERSPECTIVE *OF FIQH SIYASAH DUSTURIYAH*"

It is really a thesis that is prepared by itself based on the rules of writing scientific papers that can be accounted for, not duplicated or transferred data belonging to others, except for those mentioned in the references, both in the footnotes and the bibliography correctly. If later this thesis research is the result of plagiarism of other people's works either partially or in whole, then this thesis as a prerequisite for getting a bachelor's degree title is declared null and void.

Malang...28..... November 2024

A Rizki Munshif Sha'bani

NIM. 210203110019

APPROVAL PAGE

After reading and correcting Thesis A Rizki Munshif Sya'bani NIM. 210203110019 Constitutional Law Study Program (Siyasah), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang with the title:

"*RATIO DECIDENDI OF THE* CONSTITUTIONAL COURT DECISION NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF *CANNABIS SATIVA* IN HEALTH SERVICES FROM THE PERSPECTIVE *OF FIQH SIYASAH DUSTURIYAH*"

So the supervisor stated that the Thesis Proposal had met the scientific requirements to be submitted and tested at the Board of Examiners.

Know
Head of Study Program

Dr. Musleh Harry, S.H., M.Hum
NIP. 196807101999031002

Malang, 18 December 2024
Supervisor

Dr. Mustafa Lutfi, S.Pd., S.H., M.H.
NIP. 198405202023211024

MINISTRY OF RELIGIOUS AFFAIRS OF
MAULANA MALIK IBRAHIM STATE ISLAMIC
UNIVERSITY MALANG
FACULTY OF SHARIA
Jl. Gajayana 50 Malang Tel. (0341) 551354 Fax. (0341)
572533

PROOF OF CONSULTATION

Name : A Rizki Munshif Sya'bani
NIM : 210203110019
Study Program: Constitutional Law (*Siyasah*)
Supervisor : Dr. Mustafa Lutfi S.Pd., S.H., M.H.
Thesis Title : *Ratio Decidendi* Constitutional Court Decision Number 13/PUU-XXII/2024 concerning the Utilization of *Cannabis Sativa* in Health Services *Fiqh Perspective Siyasah Dusturiyah*

No.	Day/Date	Consultation Materials	Signature
1.	Monday, 24 June 2024	Discussion of the title and outline of the thesis proposal	
2.	Friday, 2 August 2024	Discussion on thesis proposal revision	
3.	Tuesday, August 6, 2024	Discussion on thesis proposal revision	
4.	Wednesday, August 7, 2024	Signing (ACC) of the proposal seminar	
5.	Tuesday, October 8, 2024	Discussion of the results of the proposal seminar	
6.	Monday, October 14, 2024	Thesis outline discussion	
7.	Wednesday, 6 November 2024	Discussion of Problem Formulation 1 & 2, as well as discussion of problem formulation outline 3	
8.	Friday, 15 November 2024	Discussion Chapter 3 Problem Formulation 1-3	
9.	Tuesday, 19 November 2024	Revision of the discussion of problem formulation 1-3 and Chapter 4 Conclusion	
10.	Thursday, 28 November 2024	Discussion of Revision Chapter 4 Conclusion and Abstract	
11.	Monday, December 2, 2024	ACC Thesis.	

Malang, December 2024
Know
Head of the Constitutional Law Study Program (*Siyasah*)

Dr. Musleh Harry, SH., M.Hum.
NIP. 196807101999031003

VERIFICATION PAGE

The board of thesis examiners of Mr. A Rizki Munshif Sya'bani NIM 210203110019, a student of the Constitutional Law Study Program (Siyasah) of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang with the title:

"RATIO DECIDENDI OF THE CONSTITUTIONAL COURT DECISION NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF CANNABIS SATIVA IN HEALTH SERVICES FROM THE PERSPECTIVE OF FIQH SIYASAH DUSTURIYAH"

Have been declared PASSED with a grade:.....

Examiner:

1. Sheila Kusuma Wardani Amnesti, S.H., M.H.
   NIP. 198905052020122003
   Ketua

2. Dr. Mustafa Lutfi, S.Pd., S.H., M.H.
   NIP. 198405202023211024
   Sekretaris

3. Dr. H. Aunul Hakim, Lc, S.Ag. M.H.
   NIP. 196509192000031001
   Penguji Utama

Malang, 18 Desember 2024
Dekan Fakultas Syariah,

Prof. Dr. Sudirman MA, CHARM.
NIP. 197708222005011003

MOTTO

الناس نيام فإذا ماتوا انتبهوا

"Man falls asleep (dream), so when he dies he will wake up"

Ali ibn Abi Talib

مَا أَنْزَلَ اللهُ دَاءً إِلَّا أَنْزَلَ لَهُ شِفَاءً

"Allah does not send down sickness unless He also sends down the antidote"

(HR. Bukhari)

إِذَا حَكَمْتُمْ فَاعْدِلُوا، وَإِذَا قَتَلتُم فَأَحْسِنُوا، فَإِنَّ اَللَّهَ مُحْسِنٌ يُحِبُّ اَلْمُحْسِنِينَ

"If you decide the law, do it fairly. And if you kill, do it with ihsan, for Allah is the Most Ihsan and loves those who do ihsan."

(HR Ath-Thabrani)

LITERACY GUIDELINES

In writing scientific papers, the use of foreign terms is often unavoidable. In general, according to the General Guidelines for Indonesian Spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following is a table of transliteration guidelines as a reference for writing scientific papers.

A. CONSONANT

The list of Arabic letters and their transliteration into Latin letters can be seen in the following table:

Arabic	Indonesia	Arabic	Indonesia
أ	`	ط	ṭ
ب	B	ظ	ẓ
ت	T	ع	‘
ث	Th	غ	Gh
ج	J	ف	F
ح	ḥ	ق	Q
خ	Kh	ك	K
د	D	ل	L
ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sh	ء	’
ص	ṣ	ي	Y
ض	ḍ		

The hamzah (ء) located at the beginning of the word follows its vowel without being given any signs. If the hamzah (ء) is located in the middle or at the end, then it is written with a sign (').

B. VOCAL

Arabic vowels, such as Indonesian, consist of single vowels or monitaring and double vowels or diphthongs

Arabic single vowels whose symbols are in the form of signs or transliterations are as follows:

Arabic Letters	Name	Latin Letters	Name
اَ	Fatḥah	A	A
اِ	Kasrah	I	I
اُ	Ḍammah	U	U

Arabic double vowels whose symbols are in the form of a combination of harakat and letters, transliteration is in the form of a combination of letters, namely:

Sign	Name	Latin Letters	Name
ا ي َ	Fatḥah and yes	Ai	A and I
ا و َ	Fatḥah and the kite	Iu	A and U

Example:

كَيْفَ: *kaifa*

هُؤُلْ : *haula*

C. MADDAH

Maddah or long vowels whose symbols are in the form of dignity and letters, transliterations are in the form of letters and signs, namely:

Dignity and Letters	Name	Letters and Signs	Name
ا ى َ	Fatḥah and alif or ya	Ā	a and the line above
ي	Kasrah and yes	Ī	i and the line above

ـُو	Ḍammah and the kite	Ū	u and the line above

Example:

مَا تَ: *māta*

رَمَى: *ramā*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

D. TA' MARBŪṬAH

There are two transliterations for ta marbūṭah, namely: ta marbūṭah who lives or has the dignity of fathah, kasrah, and dammah, the transliteration is [t]. While ta marbūṭah who dies or gets breadfruit, the transliteration is [h].

If the word ending in ta marbūṭah is followed by a word that uses the slang word al- and the reading of the two words is separate, then ta marbūṭah is transliterated with ha (h).

Example:

رَوْضَةُرَوْضَةُ الأ طفَا **:** *rauḍah al-aṭfāl*

المَدِيْنَةُ الْفَضِيْلَة **:** *al-madīnah al-fāḍīlah*

الْحِكْمَةُ **:** *al-ḥikmah*

E. SYADDAH (*TASYDID)*

Syaddah or tasydīd which in the Arabic writing system is symbolized by a tasydid() sign, in this transliteration it is symbolized by a repeating letter (double consonant) given a syaddah sign. Example:

رَبَّنَا :*rabbanā*

نَجَّينَا :*najjainā*

الْحَقُّ :*al-ḥaqq*

الْحَجُّ :*al-ḥajj*

نعمَ :*nu''ima*

عَدُوٌّ :*'aduwwu*

If the letter ى has *tasydid* at the end of a word and is preceded by the letter with the dignity of kasrah (ِ‍ـ), then it is transliterated like the letter *maddah* (1). Example:

عَلِيٌّ :*'Alī* (not *'Aliyy* or *'Aly*)

عَرَبِيٌّ : *'Arabī* (not *'Arabiyy* or *'Araby*)

F. SLANGWORD

The slang word in the Arabic writing system is pronounced with the letter ال (alif lam ma'rifah). In this transliteration guideline, the slang word is transliterated as usual, al-, both when it is followed by the letters syamsiah and the letters qamariah. Props do not follow the sound of the direct letters that follow them. Adjectives are written separately from the word that follows them and are connected by a horizontal line (-). Examples:

الشَّمْسِ : *al-syamsu* (not *ash-syamsu*)

اَلزَّلْزِلَةُ : *al-zalzalah* not *az-zalzalah*)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bilādu*

G. HAMZAH

The rule of transliteration of the letter hamzah to an apostrophe (') only applies to hamzahs that are placed in the middle and end of the word. However, if the hamzah is located at the beginning of the word, it is not symbolized, because in Arabic it is in the form of alif.

Examples:

تَأْمُرُونَ : *ta muruna*

Also available : *al-nau*

شَيْءٌ : *syai'un*

اُمِرْتُ : *umirtu*

H. WRITING ARABIC WORDS COMMONLY USED IN INDONESIAN

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are already common and part of the Indonesian treasury, or have often been written in Indonesian writing, are no longer written according to the above transliteration method. For example, the word Qur'an (from the Qur'an), sunnah, hadith, special and general. However, if the words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

Fizilal al-Qur'an

Al-Sunnah qabl al-tadwin

Al-Ibarat Fi 'Umüm al-Lafz is the secret of şüş al-sabab

I. LAFZAL-JALALAH (الله)

The word "Allah" which is preceded by a particle such as jarr and other letters or is positioned as mudaf ilaih (nominal phrase), is transliterated without the letter hamzah. Example:

دِينُ اللَّهِ : *dinullah*

As for ta marbūṭṭah at the end of the word which is based on lafz al-jalālah, it is transliterated with the letter [t]. Example:

هُمْ فِي رَحْمَةِ اللهِ : *hum fi rahmatilläh*

J. CAPITAL LETTERS

The Arabic writing system does not recognize capital letters (All Caps), in its transliteration, these letters are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of one's name (person, place, month) and the first letter at the beginning of a sentence. If the personal name is preceded by the sandang (al), then the one written with capital letters remains the initial letter of

the personal name, not the initial letter of the adjective. If it is located at the beginning of the sentence, then the letter A of the adjestic uses a capital letter (Al). The same applies to the initial letters of reference titles preceded by the slangword al-, both when it is written in the text and in the reference notes (CK, DP, CDK, and DR).

FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيْم

Alhamdulillahirabbil'alamin. All praise be to Allah for all His blessings, mercy, and help that Allah always gives, the Most Merciful and Most Merciful, so that the author of the thesis entitled "*Ratio Decidendi* Decision of the Constitutional Court Number 13/Puu-XXII/2024 concerning the Utilization of *Cannabis Sativa* in Health Services from the Perspective *of Fiqh Siyasah Dusturiyah*" has been completed well. Do not forget that prayers and greetings are always offered to the uphold that we always hope for intercession in the *last yaumil* in the future, namely the Prophet Muhammad صلى الله عليه وسلم who has brought us from the age of jahiliyah to the era of Islam. Hopefully they will become an ummah who always strives to carry out their sunnah and hopefully they will be classified into the group of people who believe and are devout until the end of their lives. *Amen*.

Thank you very much for all the direction, teaching, and guidance that has been given, with all humility the author would like to express his infinite gratitude to:

1. Prof. Dr. H. M. Zainuddin, MA., as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. Sudirman, M.A., CAHRM. as the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang.
3. Dr. Musleh Harry, SH, M.Hum., as the Head of the Constitutional Law Study Program (Siyasah) of the Faculty of Sharia, Maulana Malik Ibrahim Islamic University, Malang.

4. Dr. Mustafa Lutfi, S.Pd., S.H., M.H., as the author's supervisor who has dedicated his time, thoughts, energy, and sincerity in providing direction, lessons, and experiences, as well as motivation in completing the writing of this thesis.
5. The Board of Thesis Examiners in this study, the author would like to thank you for the criticism, suggestions, and recommendations in improving this research.
6. Jundiani, S.H., M.Hum as the author's guardian lecturer while studying at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang. Thank you for providing guidance, advice, support and motivation during the course.
7. All lecturers of the Constitutional Law Study Program, Thank you for all the knowledge, guidance and experience during the study process. May he be rewarded with goodness from Allah SWT.
8. All lecturers of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang who have provided learning to us. With sincere intentions, may their deeds all be part of worship to get the pleasure of Allah SWT.
9. Dad's beloved family, Ibuk, Mas and Mbak. Infinite gratitude to the author's family for the love and affection that never diminishes, for the prayers that are always offered and the advice that never tires to give. Hopefully always. get mercy, pleasure and protection from Allah SWT.

10. The writer's friends during their education in Malang that cannot be mentioned one by one. Thank you for your kindness and help and being a family overseas. May Allah give the best reward for all of you.

With the completion of this thesis report, it is hoped that the knowledge we have gained during the lecture can provide charitable benefits for life in this world and the hereafter. As a human being who is never far from mistakes, the author really hopes for forgiveness as well as criticism and suggestions from all parties for the sake of good efforts in the future.

Malang..... November 2024

A Rizki Munshif Sha'bani
NIM. 210203110019

ABSTRACT

A Rizki Munshif Sya'bani. NIM 210203110019, 2024. "*Ratio Decidendi* of the Constitutional Court Decision Number 13/PUU-XXII concerning the Utilization of *Cannabis Sativa* in Health Services from the Perspective *of Fiqh Siyasah Dusturiyah*." *Thesis.* Constitutional Law (*Siyasah*). Faculty of Sharia. Maulana Malik Ibrahim State Islamic University, Malang. Supervisor Dr. Mustafa Lutfi, S.Pd., S.H., M.H.

.**Keywords:** *Ratio Decidendi, Cannabis Sativa, Fiqh Siyasah Dusturiyah*.

The Constitutional Court's Decision Number 13/PUU-XXII/2024 is a decision related to the testing of Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and its Protocols, which is related to the classification of marijuana. This study discusses several things, namely: 1) The basis of the applicant's application in submitting *a judicial review* of Law Number 8 of 1976 against the 1945 Constitution; 2) *The ratio of the judge's decision* in the Constitutional Court Decision Number 13/PUU-XXII/2024 from the perspective of the Theory of Justice; 3) The Judge's consideration of rejecting the applicant's application in its entirety from the perspective *of fiqh siyasah dusturiyah*

This research is classified as a normative law type of research, with the approach methods used, namely *statute approach, case approach,* and *conceptual approach*. The legal materials used are sourced from three types, including primary legal materials in the form of legal provisions, secondary legal materials such as books and journals related to research, and tertiary legal materials in the form of legal dictionaries and websites. The collection technique used is *library research.* The analysis method used is a qualitative juridical analysis method.

The results of the study concluded that 1) The basis of the applicant's application has been able to prove *legal standing* before the Constitutional Court in accordance with the provisions of Article 51 paragraph (1) and has also proven its constitutional loss in the form of not being able to access the use of medical marijuana in health services according to the mandate of the constitution. 2) *Ratio decidendi* Regarding efforts to legalize medical marijuana, according to the consideration of the constitutional judge, it cannot be granted because there is no scientific evidence of research conducted in Indonesia regarding the use of medical marijuana providing benefits or disadvantages. Judges in their consideration use legal interpretations in the form of grammatical, systematic, and teleological interpretations. 3) The Constitutional Judge's Consideration of Rejecting the Applicant's Application in its entirety from the perspective *of fiqh siyasah dusturiyah* prioritizes rejecting greater harm than taking advantage of some groups in line with the principles of fiqhiyyah rejecting mudharat is more important than taking benefits, therefore the constitutional judge asks the government to conduct comprehensive research and assessment to be able to see the value of the benefits.

ABSTRAK

A Rizki Munshif Sya'bani. NIM 210203110019, 2024. "*Ratio Decidendi* Putusan MK Nomor 13/PUU-XXII tentang Pemanfaatan *Cannabis Sativa* Pada Pelayanan Kesehatan Perspektif *Fiqh Siyasah Dusturiyah*." *Skripsi.* Hukum Tata Negara (*Siyasah*). Fakultas Syariah. Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing Dr. Mustafa Lutfi, S.Pd., S.H., M.H.

Kata Kunci: *Ratio Decidendi, Cannabis Sativa, Fiqh Siyasah Dusturiyah*.

Putusan Mahkamah Konstitusi Nomor 13/PUU-XXII/2024 merupakan putusan yang berkaitan dengan pengujian Undang-Undang Nomor 8 Tahun 1976 tentang Ratifikasi Konvensi Tunggal Narkotika 1961 beserta Protkolnya, yang mana undang-undang ini berkaitan dengan penggolongan ganja. Penelitian ini membahas beberapa hal yakni 1) Dasar permohonan pemohon dalam mengajukan *judicial review* UU Nomor 8 Tahun 1976 terhadap UUD 1945; 2) *Ratio decidendi* hakim dalam Putusan Mahkamah Konstitusi Nomor 13/PUU-XXII/2024 perspektif Teori Keadilan; 3) Pertimbangan Hakim menolak permohonan pemohon seluruhnya persektif *fiqh siyasah dusturiyah*

Penelitian ini merupakan tergolong penelitian jenis hukum normatif, dengan metode pendekatan yang digunakan yaitu *statute approach, case approach,* dan *conceptual approach.* Bahan hukum yang digunakan bersumber dari tiga jenis diantaranya bahan hukum primer berupa ketentuan perundang-undangan, bahan hukum sekunder seperti buku dan jurnal yang berkaitan dengan penelitian, dan bahan hukum tersier berupa kamus hukum dan website. Teknik pengumpulan yang digunakan ialah *library research.* Metode analisis yang digunakan merupakan metode analisis yuridis kualitatif.

Hasil penelitian menyimpulkan bahwa 1) Dasar permohonan pemohon telah dapat membuktikan *legal standing* di hadapan Mahkamah Konstitusi sesuai dengan ketentuan Pasal 51 ayat (1) dan juga telah membuktikan kerugian konstitusionalnya berupa tidak dapat mengakses pemanfaatan ganja medis dalam pelayanan kesehatan sesuai amanat konstitusi. 2) *Ratio decidendi* terkait upaya legalisasi ganja medis menurut pertimbangan hakim konstitusi tidak dapat dikabulkan sebab belum adanya bukti ilmiah penelitian yang dilakukan di Indonesia mengenai pemanfaatan ganja medis memberikan kebermanfaatan atau kerugian. Hakim pada pertimbangannya menggunakan penafsiran hukum berupa interpretasi gramatikal, sistematis, dan teleologis. 3) pertimbangan hakim konstitusi menolak permohonan pemohon seluruhnya dalam perspektif *fiqh siyasah dusturiyah* lebih mengedepankan untuk menolak kemudharatan yang lebih besar daripada mengambil manfaat sebagian golongan selaras dengan kaidah fiqhiyyah menolak mudharat lebih utama dibandingkan mengambil manfaat, karenanya hakim konstitusi meminta pemerintah untuk melakukan penelitian dan pengkajian secara komprehensif untuk dapat melihat nilai maslahahnya.

الملخص

رزقي منشف سيباني رقم التسجيل٢١٠٢٠٣١١٠٠١٩ ، ٢٠٢٤ نسبة قرار المحكمة الدستورية رق بشأن استخدام القنب الهنديفي الخدمات الصحية من منظور فقه السياسة الشرعية الدستورية .''الرسالة .القانون الدستوري (السياسة الشرعية .)كلية الشريعة .الجامعة الإسلامية الحكومية مولانا مالك بن إبراهيم مالانج .المشرف الدكتور مصطفى لطفي، د .مصطفى لطفي، دكتوراه في الشريعة الإسلامية.

الكلمات المفتاحية :النسبة العقدية، القنب الهندي، القنب ساتيفا، فقه السياسة الدستورية.

إن قرار المحكمة الدستورية رقم PUU-XXII/2024/13 هو قرار يتعلق بالنظر في القانون رقم 8 لعام 1976 بشأن التصديق على الاتفاقية الوحيدة للمخدرات لعام 1961 وبروتوكولها، ويتعلق هذا القانون بتصنيف القنب. يناقش هذا البحث عدة أمور، وهي 1) الأساس الذي استند إليه مقدم الطلب في تقديم طلب المراجعة القضائية للقانون رقم 8 لسنة 1976 على دستور عام 1945؛ 2) نسبة قرارات القضاة في قرار المحكمة الدستورية رقم PUU-XXII/2024/13 من منظور نظرية العدالة؛ 3) النظر في قرار القاضي برفض الالتماس بالكامل من منظور فقه السياسة الشرعية.

يصنف هذا البحث على أنه بحث قانوني معياري من حيث المنهجية المستخدمة وهي المنهج التشريعي، ومنهج السوابق القضائية، والمنهج المفاهيمي. وقد تم الحصول على المواد القانونية المستخدمة من ثلاثة أنواع، وهي المواد القانونية الأولية المتمثلة في الأحكام القانونية، والمواد القانونية الثانوية مثل الكتب والمجلات ذات الصلة بالبحث، والمواد القانونية الثالثة المتمثلة في القواميس القانونية والمواقع الإلكترونية. أما أسلوب الجمع المستخدم فهو البحث المكتبي. أما أسلوب التحليل المستخدم فهو أسلوب التحليل القانوني النوعي.

وخلصت نتائج الدراسة إلى أن (1) أن أساس الالتماس قد تمكن من إثبات صفته القانونية أمام المحكمة الدستورية وفقًا لأحكام الفقرة (1) من المادة 51، كما أثبت خسارته الدستورية المتمثلة في عدم إمكانية الحصول على استخدام القنب الطبي في الخدمات الصحية كما ينص الدستور. 2) لا يمكن التسليم بنظر القضاة الدستوريين في مسألة تقنين القنب الطبي، لأنه لا يوجد دليل علمي على أن الأبحاث التي أجريت في إندونيسيا بشأن استخدام القنب الطبي توفر فوائد أو أضرارًا للقنب الطبي. وقد استخدم القاضي في نظره التفسير القانوني في شكل تفسيرات نحوية ومنهجية وغائية. 3) إن نظر القاضي الدستوري في رفض التماس مقدم الطلب من منظور فقه المقاصد الشرعية في رفض التماس مقدم الطلب من منظور فقه المقاصد الشرعية في رفض الضرر الأكبر أولى من الأخذ بالمنافع من بعض الفئات تمشياً مع القاعدة الفقهية رفض المباح أولى من الأخذ بالمنافع، ولذلك طلب القاضي الدستوري من الحكومة إجراء بحوث ودراسات شاملة لتتمكن من معرفة قيمة المباح.

TABLE OF CONTENTS

STATEMENT OF AUTHENTICITY OF THESIS ii
APPROVAL PAGE iii
PROOF OF CONSULTATION iv
VERIFICATION PAGE v
MOTTO vi
LITERACY GUIDELINES vii
FOREWORD xiii
ABSTRACT xvi
ABSTRAK xvii
الملخص xviii
TABLE OF CONTENTS xix
TABLE LIST xxii
IMAGE LIST xxiii
CHAPTER I 1
INTRODUCTION 1
A. Background 1
B. Problem Formulation 18
C. Research Objectives 18
D. Research Benefits 18
1. Theoretical Benefits 19
2. Practical Benefits 19
E. Research Methods 19
1. Type of Research 20
2. Method of Approach 20
3. Source of Legal Materials 22
4. Legal Materials Collection Techniques 24
5. Legal Material Analysis Method 24
F. Previous Research 25

G. Systematics of Writing 36

CHAPTER II 38

LITERATURE REVIEW 38

A. Conceptual Definition 38

B. Theoretical Framework 39

1. Fiqh Siyasah 39

2. Theory of Constitutional Interpretation 45

3. Theory of Justice 47

CHAPTER III 50

RESEARCH RESULTS AND DISCUSSION 50

A. Basis for the Applicant's Application in Filing *a Judicial Review* of Law No. 8 of 1976 50

1. Legal Standing of the Applicant in Filing *a Judicial Review* 51

2. Constitutional Rights of the Applicant Who Are Aggrieved by the Applicable Positive Legal Provisions 57

3. Protection of Constitutional Rights to Health through Access to Judicial *Review* 63

B. *Ratio Decidendi* Hakim in the Constitutional Court Decision Number 13/PUU-XXII/2024 68

1. Summary of the Constitutional Court Decision Number 13/PUU-XXII/2024 70

2. Examining *the Ratio of Dicedendi* Constitutional Court Decision Number 13/PUU-XXII/2024 Perspective of Justice Theory 74

3. Judges' Interpretation Methods on *the Ratio of Dicedendi* Constitutional Court Decision Number 13/PUU-XXII/2024 86

***C.* Judge's Consideration of Rejecting the Petitioners' Application in the Constitutional Court Decision Number 13/PUU-XXII/2024 *Fiqh Perspective of Siyasah Dusturiyah* 94**

1. Measuring the Method of Consideration and Interpretation of the Judge Rejecting the Applicant's Application in Regulating the Regulation of the Utilization of *Cannabis Sativa* in Health Services: *Fiqh Perspective of Siyasah Dusturiyah* 98

2. Cannabis Sativa Utilization *Policy Reconstruction Design* in Health Services in Indonesia: A Comparative Record with Other Countries.. 104

3. Regulatory Paradigm of the Utilization of *Cannabis Sativa* in Health Services in Indonesia between Reality and Legal Implementation. 115

CHAPTER IV 123

COVER 123

A. Conclusion 123

B. Suggestion 124

BIBLIOGRAPHY 126

CURRICULUM VITAE 139

TABLE LIST

Table 1. 1 Countries that legalize marijuana for medical use 6
Table 1. 2 Cases/Requests for Medical Use of Cannabis..... 9
Table 1. 3 Previous research 29
Table 3. 1 Summary of the Constitutional Court Decision Number 13/PUU-XXII/2024 72
Table 3. 2 Identification of Constitutional Interpretation Methods Used by Constitutional Judges in Constitutional Court Decision Number 13/PUU-XXII/2024 88
Table 3. 3 Types of Countries Regulating Cannabis Use 110

IMAGE LIST

Figure 3. 1 Chart of Stages of Judge's Consideration to Decision 83
Figure 3. 2 Reconstruction Flow of Cannabis Sativa Utilization in Indonesia ... 121

CHAPTER I

INTRODUCTION

A. Background

Research related to the use of cannabis (*cannabis sativa*)[1] in Indonesia has actually been submitted to conduct an in-depth study related to the benefits of cannabis. The research submission was carried out by the Sativa Nusantara Foundation which explores related to medical marijuana. This institution already has a permit issued by the Ministry of Health based on the Ministry of Health's license No: LB.02.01/III.3/885 in researching the context of medical marijuana in Indonesia. In reality, the research has been delayed based on the fact that the research requires a large amount of money and is not a priority agenda.[2] The use of marijuana as a drug in the development of human knowledge is not a new thing, because nowadays it is known that marijuana has a content known as *cannabinoid compounds.*[3] The components of the compounds contained in *the cannabinoid* are *Tetrahydrocannabinol* (THC) and *Cannabidiol* (CBD). [4]

[1] Cannabis has a Latin name *Cannabis Sativa*, is a plant that is generally cut, dried, and chopped and then formed into cigarettes. Marijuana has addictive properties so that it has an impact on the user to hallucinate. Quoted from the book Dini Lutfiyani, Achmad Irwan Hamzani, and Kus Rizkianto, *Cannabis for Medical Controversy: A Comparison of Indonesia and Thailand* (NEM Publishers, 2023). 11

[2] Rahmi Ayunda and Vina Vina, "Opportunities and Challenges of Legalizing the Use of Cannabis for Medical Purposes in Indonesia Reviewed from the Perspective of the Health Law," *CoMBInES - Conference on Management, Business, Innovation, Education and Social Sciences* 1, no. 1 (March 26, 2021): 331–40.

[3] Cannabis contains hundreds of chemical compounds, there are 104 cannabinoids that have been identified in cannabis. The function of cannabinoid compounds in the body is appetite, movement regulation, pain regulation, and concentration. See in the article Mahardian Putranto and Yovita Arie Mangesti, "The Use of Medical Cannabis in Treatment and Its Regulation in Indonesia," *Journal Evidence Of Law* 3, no. 1 (January 17, 2024): 10–19, https://doi.org/10.59066/jel.v3i1.582.

[4] In more detail, THC is an active compound that can make users experience *Euphoria* (prolonged pleasure without cause, but it should also be noted that the benefits of THC in a medical context are as an antibiotic and anti-pain. Meanwhile, CBD compounds are non-psychoactive compounds that have no impact *Euphoria*, the benefits of this compound in the medical context, are as an anticonvulsant to reduce seizures, antiemetic to reduce nausea. References from the article ENDANG WAHYATI YUSTINA et al., "Legalization of Medical Marijuana in Indonesia from the Human Rights Perspectives: Lessons Learned from Three ASEAN Countries," *The Lex Scientia Law Review* 7, no. 2 (November 30, 2023): 569–628.

The Indonesian government has regulated in the laws and regulations in Indonesia related to the existence of *cannabis sativa*. The regulation began in the era of the new order, namely President Soeharto, who has ratified *the United Nations Single Convention on Narcotics Drugs* through the birth of Law No. 8 of 1976. The policy of ratifying the law can be interpreted as Indonesia is a country that plays an active role in combating the danger of narcotics to humans at large.[5] The step chosen to provide more comprehensive regulations, the Government of Indonesia then issued Law No. 22 of 1997 concerning Narcotics.

Over time, as a result of the feeling that the regulation of the law was not in accordance with the existing conditions, the law was revoked into Law No. 35 of 2009 concerning Narcotics (Narcotics Law). The existence of *cannabis sativa* in narcotics laws is a criminal act if it is used in a medical or non-medical context, because cannabis is a type of plant or drug that belongs to group I where its use is only devoted to the development of science and technology, and is not allowed to be used in the medical world because it has a high level of dependence.[6]

The legis ratio[7]of the birth of the Narcotics Law is due to the increasing rate of narcotics abuse crimes, so that the need for legal certainty in preventing and eradicating the abuse and circulation of narcotics that are carried out illegally and seriously endanger the life of society, especially the younger generation, is a necessity.[8] The classification of marijuana as part of class I narcotics has a *legal ratio* because the lawmakers adopted the list of narcotics classes as contained in the 1961 Single Convention on Narcotics, in which marijuana is classified as a class IV

---

[5] Zaka Firma Aditya and Sholahuddin Al Fatih, "The Legalization of Medical Marijuana: A Human Rights Law Perspective," *Human Rights in the Global South (HRGS)* 1, no. 2 (December 23, 2022): 109–24, https://doi.org/10.56784/hrgs.v1i2.36.

[6] Maya Watika Alasa and M. Iqbal, "The Crime of Cannabis Abusers (*Cannabis sativa*) and its countermeasures by the Gayo Lues Resort Police (a study in the jurisdiction of the Gayo Lues Resort Police)," *Scientific Journal of Students in Criminal Law* 3, no. 1 (February 17, 2019): 47–57.

[7] Ratio legis simply means the reason for the birth of a rule or law. Ratio legis is the reason, basis of thought, or purpose behind the existence of a law made by lawmakers. Quoted from the page "Ratio Legis: Legal Concept Explained," accessed July 6, 2024, https://getlegalbuddies.com/blog/ratio-legis-legal-concept-explained/.

[8] Secretariat General of the House of Representatives of the Republic of Indonesia, *ANNOTATION of Law Number 35 of 2009 concerning Narcotics* (Jakarta: Center for Monitoring the Implementation of the Law, 2022).

narcotic which is later in the Narcotics Law synonymous with the attachment of group I.[9]

The polemic of the use of marijuana in the medical world then became a debate. There are groups that want the legalization of the use of marijuana which has benefits for people with certain diseases. There are other groups that strongly reject the legalization of marijuana, because it will have an impact on the wider community which has the potential to abuse marijuana which will result in the destruction of the nation's next generation in the future.[10] This condition then gives rise to efforts to legalize marijuana, one of which is through testing the law. The birth of the Constitutional Court since 2003 until now, is an institution that is the *Guardian of the Constitution*, it is said that because its existence is a place for citizens whose constitutional rights are violated in the formation of laws.[11] The submission mechanism is known as *judicial review*, as stated by Mahfud MD, the purpose of the existence of *judicial review* is because the law is a political product, so there is a great potential for the political product to conflict with the provisions in the constitution, namely the 1945 Constitution.[12]

Data in 2020 there was a Dwi Pertiwi mother, who struggled alone in taking care of her child who suffered from *cerebral palsy*[13], along with two other mothers

---

[9] Irsyad Ilyas Trinanda, "Reconstruction of the Regulation of Classification of Cannabis Plants in the Narcotics Law from Class I Narcotics to Class II Narcotics Based on the Right to Health" (Bachelor, Brawijaya University, 2021), https://repository.ub.ac.id/id/eprint/186751/.

[10] Jennifer Claudia and Rasji Rasji, "Analysis of the Pros and Cons of Legalization of Medical Cannabis in Indonesia: A Review of the Contents and Implications," *Kertha Semaya : Journal of Law* 12, no. 4 (December 17, 2023): 705–718, https://doi.org/10.24843/KS.2024.v12.i04.p15.

[11] Diya Ul Akmal and Dea Linta Arlianti, "Dynamics of the Protection of Citizens' Constitutional Rights in the Implementation of Law Testing at the Constitutional Court," *Mulawarman Law Review*, June 30, 2022, 49–70, https://doi.org/10.30872/mulrev.v7i1.780.

[12] Maria Madalina, MRFI Laxamana, and Kaharudin Aldian, "Progressive Law Enforcement in Judicial Review Cases: Pancasila Study as a Test Stone for Testing the Law against the Constitution," *Assembly Journal* 1 (2020), https://www.mpr.go.id/img/jurnal/file/1618378045_file_mpr.pdf#page=10.

[13] Cerebral Palsy, also known as cerebral palsy, is a condition in which motor skills are impaired, generally occurring in infants or children during their growth period. Until now, cerebral palsy is a disease for which there is no cure. View in Web Siloam Medical Team, "What is Cerebral Palsy? These are the Causes, Symptoms, & Treatment," What is Cerebral Palsy? These Causes, Symptoms, & Treatment, accessed June 21, 2024, https://www.siloamhospitals.com/informasi-siloam/artikel/apa-itu-cerebral-palsy.

then applied for a legal test.[14] To be precise, the test of the law was carried out in Law No. 35 of 2009 against the 1945 Constitution. The testing was carried out because there were unmet rights for their children suffering from *cerebral palsy* , one of which needed an alternative through medical cannabis treatment (*cannabis sativa*). The test of the law was then applied to the Constitutional Court which was later known as the Constitutional Court Decision No. 106/PUU-XVIII/2020.

The Constitutional Court's Decision No. 106/PUU-XVIII/2020 in the Constitutional Court's ruling states that the subject matter of the Petitioners' application is unreasonable according to the law, which then reads "Rejecting the petitioners' application in its entirety".[15]Considering that the Constitutional Court adjudicates at the first and last level so that the Constitutional Court's decision is *final and binding*, it means that the decision has been final and binding on all elements of society, so it must be followed and obeyed by every group. The use of marijuana in the medical world, as expected by the petitioners, cannot be done and is still a criminal offense if marijuana is used in health services.[16]

---

[14] Dwi Pertiwi is a mother who has a child named Musa Ibn Hassan who has a disease *cerebral pulsy*. In 2016, Dwi carried out physiotherapy through marijuana in the form of incense (smoke). This has been proven to reduce the seizures experienced by Moses, therefore when he arrived in Indonesia, Dwi Pertiwi tested the law related to the legalization of medical marijuana. Ikhwan Hastanto, "Chat with the Plaintiff's Mother of the Narcotics Law so that Medical Marijuana is Legal in Indonesia," *Vice* (blog), October 11, 2021, https://www.vice.com/id/article/k7848m/profil-dwi-pertiwi-penggugat-uu-narkotika-di-mahkamah-konstitusi-agar-ganja-medis-legal-di-indonesia.

[15] The reason for the judge's rejection of the applicant's application is because despite the benefits of treatment using narcotics, it is not in line with the negative potential that arises if there is no readiness starting from the study, structure, and legal culture of the community. In addition, there is no comprehensive scientific research on the use of marijuana, so it is difficult for the Constitutional Court to be able to consider medically, philosophically, sociologically, and juridically. See in the judge's consideration in the Constitutional Court Decision No. 106/PUU-XVIII/2020.
The Constitutional Court's decision which read rejected means that the application by the constitutional judges is considered that the law in question does not contradict the 1945 Constitution either formally or materially. See in Book Constitutional Court Procedural Law Drafting Team, *Procedural Law of the Constitutional Court* (Jakarta: Secretariat General and Clerk of the Constitutional Court, 2010), 138 https://library.habi.ac.id/repository/2016/21.pdf.

[16] Erik Dwi Prassetyo, "Legalization of Medical Marijuana (Analysis of Constitutional Court Decision Number 106/PUU-XVIII/2020)," *Journal of Legal Analysis* 5, no. 2 (September 25, 2022): 147–62,
https://doi.org/10.38043/jah.v5i2.3735.

Cannabis is a plant that is included in the narcotics category.[17] As explained in Law No. 35 of 2009 concerning Narcotics in general provisions, it is stated that narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence, which are differentiated into groups as attached to the Narcotics Law.[18] The sound in the law can be understood that narcotics are seen as something that has a negative impact on society, including cannabis *sativa*.

Narcotics in general are indeed an object that can have a bad impact on society, considering that the effects given can provide dependence and addiction so that it has great potential to affect the intellect and soul of its users. Therefore, the abuse of narcotics, including marijuana, can be detrimental to the user.[19] Even so, in the medical world, narcotics are one of the alternatives that have benefits in the treatment process or cure the disease experienced. For example, marijuana, in its content there is a CBD compound (*cannabidol*) which research conducted by Emilio Perucca (2017) related to cannabis as a treatment for epilepsy.[20] The result is that the use of *the cannabidol* compound has a significant effect on people with epilepsy in the form of reducing the frequency of seizures.[21]

The results of research on the benefits of cannabis in the medical world have an impact on the existence of people who want the use of cannabis in health

---

[17] Alasa and Iqbal, "The Crime of Cannabis Abusers (*Cannabis sativa*) and its countermeasures by the Gayo Lues Resort Police (a study in the jurisdiction of the Gayo Lues Resort Police)."
[18] Republic of Indonesia, "Law No. 35 of 2009 concerning Narcotics (Statute Book 2009 No. 143, Supplement to Statute Book 5062)" (2009).
[19] Mayang Pramesti et al., "Drug Addiction: Factors, Impacts, and Prevention," *Permas Scientific Journal: STIKES Kendal Scientific Journal* 12, no. 2 (April 28, 2022): 355–68.
[20] Epilepsy is a condition of disorder in the nervous system. The disease experienced by the sufferer is in the form of seizures that appear without a definite trigger. Epilapsis is also one of the diseases for which there is no cure. See in "Getting to Know Epilepsy - Causes, Symptoms, and Treatment," Getting to Know Epilepsy - Causes, Symptoms, and Treatment, accessed June 21, 2024, https://www.siloamhospitals.com/informasi-siloam/artikel/apa-itu-epilepsi.
[21] Wiwin Fauziyah, "The Need for Regulation on the Regulation of Cannabis Use in Indonesia Reviewed from the Perspective of Medical Interests," *Legal Panorama Journal* 7, no. 2 (December 31, 2022): 168–78, https://doi.org/10.21067/jph.v7i2.7702.

services, especially for patients with epilepsy or the like.[22] The cannabis plant has long been a plant that has its own unique value so that it has become a pro-con among the community. In fact, in its history cannabis is a plant that has many uses, for example, since ancient times, cannabis fiber can be used as woven fabric and paper, while the seeds are used as a producer of nutrients and protein.[23] Cannabis has also become a topic of discussion in the international arena. Several developed and developing countries have regulated the use of cannabis in their national laws. The Netherlands, for example, legalizes marijuana with strict provisions such as a minimum age of 18 years and a maximum purchase of 5 grams.[24] The legalization of marijuana in the Netherlands itself aims to use marijuana in the health sector which is its main focus. Thailand is also one of the developing countries that legalizes marijuana freely starting from only consumption purposes and also health services.[25] Below is a table of several countries that have legalized marijuana for medical use.

Table 1. 1 Countries that legalize marijuana for medical use

It	Country	Law Number	Year	Purpose of Legalization of Cannabis
1	Argentina	Law No. 27350 on Medical and Scientific Research on Cannabis Plant	2017	Argentines are allowed to possess, use, and utilize marijuana with provisions for small amounts for personal use that has been licensed. Argentina also in its law in addition to medical use, marijuana can be used for research.
2	Canada	Cannabis Act S.C. 2018, C.16	2018	Canada has essentially legalized marijuana since 2001 in terms of medical use. As for recreation, it has been legalized since 2018. The purpose of this marijuana legalization is intended to maintain the potential for excessive marijuana abuse and the

[22] Pijar Anugerah, "Medical Cannabis: Santi Warastuti and the Struggle to Legalize Medical Cannabis in Search of Treatment for His Child.," BBC News Indonesia, June 28, 2022, https://www.bbc.com/indonesia/indonesia-61956811.
[23] Muhamad Farhan Azwinanto, "Propaganda in the Civilization of Cannabis Plants," *Journal of Socia Logica* 3, no. 3 (August 27, 2023): 331–47, https://doi.org/10.572349/socialogica.v3i3.1026.
[24] Syamsul Malik, Luriana Manalu, and Rika Juniarti, "Legalization of Cannabis in the Medical Sector from a Legal Perspective," *Rechten Journal: Legal and Human Rights Research* 2, no. 2 (2020): 1–9, https://doi.org/10.52005/rechten.v2i2.52.
[25] Lutfiyani, Hamzani, and Rizkianto, *Cannabis for Medical Controversy*.

				abuse of marijuana buying and selling carried out through illicit trade.
3	Australia	The Narcotic Drug Amendment: Bills Digest No. 34, 2016-17	2016	Australia only decriminalizes the use of cannabis in the medical world for people who have a doctor's license or prescription. The government limits each person to two plants of marijuana on the condition that they must be over 18 years old. Australian law still strictly prohibits the use of cannabis for recreational purposes.
4	South Korea	National Control Act No 15939, 2018	2018	Korea is the first East Asian country to legalize marijuana. South Korea's goal in legalizing marijuana is for medical needs. The use of marijuana for recreational purposes is still a criminal offense whether committed in South Korea or abroad.
5	Netherlands	The Dutch Opium Act	2003	Dutch law classifies marijuana as *soft drugs* where marijuana is considered a narcotic that does not have a significant harmful impact. Possession of marijuana is limited to 5 grams per person per day in excess of these provisions can be classified as a criminal offense. The purpose of legalizing marijuana is for medical or individual health.

Source: Data is processed from the author's search results. (2024)

The table above shows that several countries in the world have legalized marijuana. The countries in the table above are classified as implementing liberal ideology, so human rights are an important value to be achieved. The majority of these countries legalize marijuana in terms of medical use, which is done by providing strict provisions regarding the potential abuse of marijuana in each country. The use of marijuana for recreational purposes in some countries is still considered a criminal act (criminal) which can be applied a punishment or fine. The regulation of the legal rules for the use of marijuana is so that it can be benefited

medically and economically and prevent abuse or adverse effects of the existence of marijuana.[26]

In contrast to Indonesia, the provisions of the law related to the abuse of marijuana are categorized as criminal acts that can cause the owner or user to be imprisoned.[27] Until now, the State of Indonesia, both the government and the majority of the public, have a negative view that cannabis is a harmful plant and its use is haram. One of the negative perceptions of marijuana is based on data released by *the Indonesia Drug Report* 2024 where marijuana is the most consumed type of drug in Indonesia at 44.69%, of which users consist of urban and rural residents.[28] The data issued by BNN is certainly one of the reasons for the government not to legalize the use of marijuana in any context, so that to overcome and prevent the abuse of marijuana, Indonesia's positive law has prohibited the use of marijuana, including in health or medical services.

Law No. 35 of 2009 concerning Narcotics in Article 7 states that the use of narcotics is only used in terms of health services, technology and science development.[29] However, further in Article 6 paragraph (1) letter a, the explanation reads that narcotics that are included in group I are narcotics that can be used only for the purpose of developing knowledge and are not used in therapy, and have a high potential to result in dependence.[30] The Narcotics Law in Article 8 paragraph

---

[26] Indra Gunawan Purba, "Juridical Analyst of the Use of Cannabis for Health Purposes in the Perspective of Benefits for the Fulfillment of the Basic Health Rights of Every Citizen," *Journal of Law Rules: Communication Media and Legal Information and Society* 23, no. 2 (January 23, 2024): 209–20, https://doi.org/10.30743/jhk.v23i2.8775.

[27] Fahrizal S. Siagian, Najuasah Putra, and Muhammad Khairul Imam, "Juridical Study of the Crime of Cannabis Growers Based on the Law on Indonesian Narcotics," *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 2, no. 2 (October 31, 2023): 1–10, https://doi.org/10.32734/nlr.v2i2.13563.

[28] There are 5 types of drugs that are consumed in Indonesia according to Indonesia Drug Report 2024 data, including: Ganja, Sabu, Nipam, Trihex and other types of drugs. Cannabis is the number 1 type of drug consumed in Indonesia. Quoted from the report National Narcotics Agency Team, *Indonesia Drug Report*, vol. 6 of 2024 (Jakarta: BNN Center for Research, Data, and Information, 2024).

[29] Indonesia, Article 7 of Law No. 35 of 2009 concerning Narcotics (Statute Book 2009 No. 143, Supplement to Statute Book 5062).

[30] Indonesia. Explanation of Article 6 paragraph (1) of Law No. 35 of 2009 concerning Narcotics (Statute Book 2009 No. 143, Supplement to Statute Book 5062).

(1) explains that class I narcotics are prohibited from being used for health service purposes.[31]

Conversations that have reaped pros and cons have occurred in Indonesia regarding the discourse on marijuana legalization, some people want to legalize marijuana and others still think that marijuana will have a harmful impact on the next generation. If you look at the history in Indonesia, the existence of marijuana is not a new thing. Considering that Indonesia is considered one of the best producers of quality cannabis in Southeast Asia. For example, in Aceh, the use of marijuana is carried out in positive ways. Cannabis has become one of the flavoring spices in the culinary presentation of duck curry where the sauce is cooked together with cannabis.[32] Below the author will present a table that indicates that there is currently an urgency in the use of medical marijuana.

Table 1. 2 Cases/Requests for Medical Use of Cannabis

It	Legal Subject	Case Number/Verdict	Type of Case/Judgment	Brief Description of the Case
1	Fidelis	111/Pid.sus/2017/PN. Sag	Punishment	The cannabis plant was used by Fidelis to treat his wife who had *syringomylia*. Cystic disease contains fluid in the spinal cord that results in pain. Cannabis is used to treat pain and increase appetite. February 19, 2017 BNN arrested Fidelis
2	Ardian Aldiano	1285/Pid.sus/2020/Pn.Sby	Punishment	Ardian has epilepsy, the cannabis plant is used to control seizures when his epilepsy recurs. In February 2020, Ardian was arrested for a crime committed by him
3	Reyndhart Rossy	83/Pid.sus/2020/PN.Kpg	Punishment	Rossy suffers from a neurological disorder and has undergone various medical

[31] Indonesia. Article 8 of Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).

[32] Muhammad Rafli Abdurrahman, "Juridical Review of the Constitutional Court's Decision on the Prohibition of Using Cannabis as a Treatment (Case Study: Constitutional Court Decision Number 106/PUU-XVIII/2020)" (bachelor, National University, 2023), http://repository.unas.ac.id/9493/.

				treatments but has not recovered. In 2019 he consumed marijuana by drinking marijuana boiled water to overcome his disease. Rossy was arrested on November 17, 2019
4	Dwi Pertiwi, Santi Warastuti, and Nafiah Murhayanti	Constitutional Court Decision 106/PUU-XVIII/2020	Judicial Review	Three applicants are mothers of their children who suffer from cerebral palsy. Dwi Pertiwi had done cannabis oil therapy that was burned like incense when in Victoria, Australia. This action is one of the reasons why Dwi applied together with two other mothers to be able to use marijuana in health use. The Constitutional Court rejected the application because there had been no comprehensive research and the negative impact was greater because there was no readiness of legal facilities and infrastructure.
5	Pipit Sri Hartanti and Supardji	Constitutional Court Decision 13/PUU-XXII/2024	Judicial Review	Pipit and Supardji are a married couple who have a child Shita Aske Paramitha who suffers from cerebral palsy. Through the information he obtained, it is related to *cannabis sativa* as a medicine or therapy. The applicant wants to legalize marijuana because many other countries have done this, and WHO has given a recommendation where marijuana was originally in Schedule IV to change to Schedule I. The applicant then applied for a test of the law in Law No. 8 of 1976. The Constitutional Court rejected the application because Indonesia rejected the WHO recommendation so that it was not bound by the necessity of using marijuana in medicine.

Source: data processed from the author's search results. (2024)

The table above is an indicator that in recent years there has been a need that does show that there is an urgency regarding the use of cannabis in health services. The increasing number of community actions in trying to use medical marijuana in health services is proof that the increasing public need for health services through the use of marijuana. Some people who then feel that their rights are not fulfilled to get comprehensive health services as mandated by the 1945 Constitution need to be considered again if they feel that there are restrictions on health services due to a regulation, one of which is the Narcotics Law on the use of marijuana.[33]

The development of technology and science over time, the use of marijuana as a health service began to grow and was needed in Indonesia. Looking at the reality that exists in recent years where there is a need for the use of marijuana as one of the treatment efforts in overcoming diseases, as admitted by Mrs. Santi. Mrs. Santi voiced her need to legalize marijuana because her only child, Pika, has cerebral *palsy*, which can be treated using the use of marijuana.[34] Groups or communities that contribute and struggle in voicing efforts to use cannabis in medical matters, one of which is LGN (Lingkar Ganja Nusantara)[35] where the focus of activities is to educate the public at large regarding the benefits of cannabis in the medical world. So that the negative paradigm of society along with the development of time can see the positive side of the use of marijuana in the medical world.[36]

---

[33] Dwi Putri Gunawan, "Legalization and Maslahah: A Study on the Utilization of Cannabis for Medical Treatment," *IJTIHAD* 38, no. 1 (July 17, 2022): 37–52.

[34] Rocki Caniago et al., "Banning the Use of Cannabis in the Medical Sector: The Case of Anti-Seizure Syrup That Is No Longer Safe for People With Cerebral Palsy," *Syntax Fusion Journal* 3, no. 01 (January 25, 2023): 41–57, https://doi.org/10.54543/fusion.v3i01.240.

[35] LGN is an organization or community that focuses on educating, advocacy, and decriminalizing the use of marijuana, especially in health and industrial issues. LGN has been established since June 2010 and has become a legal entity. LGN remains consistent in educating the public regarding the use of cannabis in the medical world. See in the book Abdul Gafar Irham, *Communication Strategy of the Nusantara Cannabis Circle Organization in Educating Cannabis Plants to the People of Jakarta* (Telkom University, S1 Communication Sciences, 2020), https://repository.telkomuniversity.ac.id/pustaka/158109/strategi-komunikasi-organisasi-lingkar-ganja-nusantara-dalam-mengedukasi-tanaman-ganja-terhadap-masyarakat-jakarta.html. 36

[36] Prassetyo, "Legalization of Medical Marijuana (Analysis of the Constitutional Court Decision Number 106/PUU-XVIII/2020)."

Considering that Indonesia is a country of law, as stipulated in the 1945 Constitution Article 1 paragraph (3).[37] The manifestation of the form of the state of law is the guarantee of the recognition and protection of Human Rights in accordance with applicable laws.[38] Human rights are the freedom that every individual has since birth and is a gift from God Almighty so that its existence is inherent and irrevocable. Human rights are also interpreted as recognition of the essence and dignity of human beings who recognize the ownership of rights as part of everyone's humanity.[39]

One of the components of human rights that must be fulfilled is the right to a healthy life, which is one of the rights that the state is responsible for fulfilling. Considering that health is one of the primary needs for humans. Health is a factor that every human being can do all activities with a good body and soul. Health is also part of the indicator of a prosperous human life, therefore health is an important basic right to be guaranteed.[40] The 1945 Constitution as the Indonesian constitution guarantees the existence of these basic rights in accordance with what is enshrined in the preamble to the 1945 Constitution.[41]

Furthermore, based on the 1945 Constitution Article 28C which reads: "*Each person has the right to develop himself through the fulfillment of his basic needs, the right to education, and the right to utilize science, technology, art, and culture to improve the quality of life and advance the welfare of all people*"[42]

---

[37] Mustafa Lutfi, *Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates* (Law Study Program, Doctoral Program, Faculty of Law, UII, 2023), 62
https://dspace.uii.ac.id/handle/123456789/47577.
[38] Ahmad Zaini, "The State of Law, Democracy, and Human Rights," *Al Qisthas Journal of Law and Politics* 11, no. 1 (September 22, 2020): 13–48, https://doi.org/10.37035/alqisthas.v11i1.3312.
[39] Safira Kanaya Iffat Husna and Fatma Ulfatun Najicha, "Pancasila and Its Relationship to Human Rights in Indonesia," *Civic Education: Media for the Study of Pancasila and Citizenship* 7, no. 2 (December 17, 2023): 104–12, https://doi.org/10.36412/jce.v7i2.7869.
[40] Mikho Ardinata, "State Responsibility for Health Insurance in the Perspective of Human Rights," *Journal of Human Rights* 11, no. 2 (2020): 319–32.
[41] Udiyo Basuki, "Tracing the Constitutionalism of the Right to Health Services as a Human Right," *Justitia Caraka Law Journal* 1, no. 1 (2020): 21–41,
https://doi.org/10.30588/jhcj.v1i1.699.
[42] Republic of Indonesia, "Constitution of the Republic of Indonesia 1945," Article 28C.

Article 28H Paragraph 1 of the 1945 Constitution reads: "*Everyone has the right to live a prosperous life born inward, to live, and to get a good and healthy living environment and the right to receive health services*"[43]

The provisions of the above article provide legitimacy that the 1945 Constitution, which is the constitution in Indonesia, guarantees and recognizes the basic right to health for every individual in society. However, when correlated with the above problems related to the use of marijuana in health services, it seems that the provisions as enshrined in the narcotics law, do not require the fulfillment of the right to health services and the right to use technology and science to improve the quality of life of a person, especially for people with diseases who need alternative use of medical marijuana.

The contradiction in the Narcotics Law regarding the criminalization of the use of marijuana in the medical world with constitutional articles related to the right to get good and healthy health services raises efforts that can be taken for the community or individuals who feel that their constitutional rights are not fulfilled, so that they can make constitutional efforts, namely through the mechanism of testing the law to the authorized institution, namely the Constitutional Court.[44] It is evidenced by the existence of two *judicial reviews* of the constitution, namely the Constitutional Court Decision No. 106/PUU-XVII/2020 and the Constitutional Court Decision No. 13/PUU-XXII/2024. The judge's decision in the two Constitutional Court decisions rejected the applicant's application, so that based on the judge's consideration, there was no conflict between the Constitution and the law tested.

[43] Indonesia. 1945 NRI Constitution Article 28H paragraph 1

[44] The Constitutional Court is one of the state institutions listed in the 1945 Constitution. The Constitutional Court is in the realm of judicial power and is an independent institution. The Constitutional Court has a significant role in the development of democracy and constitution in Indonesia. Lutfi, *Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates*. 3

Judicial review[45] is one of the steps that can be taken if it is felt that the provisions in Law No. 35 of 2009 concerning Narcotics related to the use of marijuana in health services where marijuana is included in the category of group I so that its use cannot be possible. A *judicial review was carried out* regarding the law against the 1945 Constitution, but in fact through the Constitutional Court Decision 106/PUU-XVII/2020 it was stated that the applicant's application was rejected, meaning that the Narcotics Law was declared not contrary to the 1945 Constitution.[46] The application for testing the law related to the use of cannabis in the medical world will be carried out again on January 2, 2024.

This test was carried out on a different law from the previous Constitutional Court Decision related to the use of marijuana in the medical world. The test of the law was carried out in Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending it to Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia. The application was submitted by several applicants, one of whom was Pipit Sri Hartanti's mother, who fought for the fate of her child who suffered from *cerebral palsy* who felt that her constitutional rights were harmed related to the application of Article 1 paragraph (2) of Law No. 8 of 1976 to Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia which discusses the right to health.[47]

The above legal issues can be seen and studied through an Islamic perspective. Considering that neither the Qur'an nor the Hadith there is a provision for nash[48] that discusses in detail related to the use of marijuana. It's just that the

---

[45] Judicial review, according to Jimly Asshidqie, is an effort by judicial institutions to test legal products determined by the legislature or executive as the application of check and balance. See in the book Constitution *Procedural Law of the Constitutional Court*. 83

[46] The Constitutional Court's decision is Final and Binding, through its decision the Constitutional Court determines the direction of the nation and state in the future. Saifullah Saifullah, Mustafa Lutfi, and Abdul Azis, "The Transformation of Islamic Legal Values in the Jurisprudence of Constitutional Court Decisions from the Perspective of Integrative Legal Theory," *De Jure: Journal of Law and Sharia* 12, no. 1 (2020): 1–16.

[47] See in Constitutional Court, "Minutes of Case No. 13/PUU-XXII/2024".

[48] According to ushul fiqh experts, Nash is a phrase that clearly shows the law. The majority of scholars want what is meant by nash is the Qur'an and Sunnah. See in the article Nurul Mahmudah and Nency Dela Octora, "The Relationship Between Lafaz in Ushul Fiqh and Family Law

simple context of the use of marijuana that gives an intoxicating effect by some scholars is equated with drinking *khamr*, which *khamr* has clearly stated in nash is something haram.[49] In line with the hadith narrated by Abu Dawud from Muhammad bin Rafi' An-Naisaburi, namely:

كُلُّ مُخَمِّرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ

It means: "*Everything that is intoxicating is khamar, and everything that is intoxicating is haram."* (HR. Abu Dawud)[50]

The prohibition of marijuana with *khamr* in *fiqh* studies is carried out through *the qiyas* method.[51] The prohibition or ability regarding marijuana is not mentioned in detail from nash or ijma' related to the use of marijuana on health. Scholars have a different opinion[52] about the prohibition of marijuana being *qiyaskan* with *khamr*, because the two are different from objects so that they do not meet the elements of *qiyas* because they are different starting from the content of the substance, form, and the effects it causes.[53]

Problems," *Syakhshiyyah Journal of Islamic Family Law* 2, no. 2 (December 24, 2022): 222–41, https://doi.org/10.32332/syakhshiyyah.v2i2.6169.

[49] There are three opinions in defining what is called khamr. The first opinion (Imam Abu Hanifah) khamr is the name of wine water that is not cooked, when boiling, and strong and zabad (foam) that is present is gone. The second opinion (Imam Abu Yusuf) khamr is that the grape juice is raw when boiling and strong, whether the foam is gone or not, it is no longer boiling or still boiling. The third opinion (Imam Shafi'i) of khmar is that everything is intoxicating. The third opinion is the most superior opinion. See in the book Ahmad al-Mursi Husain Jauhar, *Maqashid Syariah Fil Islam* (Jakarta: AMZAH, 2009). 103-104

[50] Abi Dawud Sulaiman As-Sajastani, *Sunan Abi Dawud* (Baitul Afkar Addauliyah, 1420). No. 3680

[51] The 4 pillars of qiyas that must be fulfilled: 1) Ashal, a legal case that has legal provisions in nash, in this case khamr; 2) Far'i, a legal case that does not contain provisions in the nash, in this case marijuana; 3) illat, relationship or legal reason, in this case khamr and marijuana both have an intoxicating effect; 4) Ashal law, a matter of halal or haram law in nash, in this context khamr is haram. Quoted from Ramli, *Ushul Fiqh* (Yogyakarta: Nuta Media, 2021). 76

[52] Ibn 'Abidin the Hanafiyah scholar allowed marijuana or the like to be consumed in small quantities. Ibn Farhun, a Malikiyah scholar, banned marijuana so that he must still be punished as follows: *Khamr*. Ar Romli, a shafiiyah scholar, allows marijuana on the basis of emergency conditions (needed). The hambali scholars prohibit marijuana or the like as a haram. Quoted from Muhammad Abduh Tuasikal MSc, "Drugs in the Islamic View: Are You Sure You Still Want to Use Drugs?," *Muslim.or.id* (blog), May 2, 2012, quoted from https://muslim.or.id/9077-narkoba-dalam-pandangan-islam.html page.

[53] This difference in views is due to the fact that scholars have ijtihad methods in their respective madzhabs. Of the four conditions for applying the qiyas method related to marijuana and khamr, some scholars argue that the illat requirements of marijuana and khamr are not met, because the effects are different, khamr has an intoxicating effect while marijuana has the potential for relaxation or calming so it is different from khamr. Follow from the article Yusup Sobirin and Oyo Sunaryo

The disparity regarding the prohibition or ability of marijuana as explained above, if correlated with the Constitutional Court's decision regarding the use of marijuana, can be analyzed through methods in Islamic law. The world *of fiqh* in Islam not only discusses the *fiqh of worship* but also the study of *fiqh muamalah*. *Fiqh muamalah* in its discussion includes issues related to the Islamic constitutional system, this is known as *fiqh siyasah*.[54] *Fiqh siyasah* is a field of study in Islamic law which in its focus is related to policies or regulations on the affairs of people's lives in order to deliver to the benefit of the community.[55]

The scope of *fiqh siyasah* that discusses related to legislative issues is *fiqh siyasah dusturiyah*. Correlation uses *fiqh siyasah dusturiyah* in analyzing the decision of the Constitutional Court, because the study *of fiqh siyasah dusturiyah* discusses the principles that are the basis for running a country, in the context of Indonesian law known as the Constitution and the legislation under it. The Constitutional Court's decision, as explained above, is a decision issued by a judge related to the testing of the Law against the 1945 Constitution which is the highest basis in running a country. It can be seen that the relationship between the decisions of the Constitutional Court is analyzed through methods in the study *of fiqh siyasah dusturiyah*. Judges' decisions must basically meet three elements of legal objectives, including: justice, legal certainty, and legal utility. The similarity between *fiqh siyasah* and the purpose of the law can be understood that to be able to realize the benefits for people's lives, it must be in harmony with the purpose of the law which must meet the elements of justice and legal benefits.[56]

Mukhlas, "Islamic Law Views on the Benefits of Legalizing Cannabis for Medical Use," *Equality: Journal of Islamic Law (EJIL)* 1, no. 1 (December 11, 2023): 1–14, https://doi.org/10.15575/ejil.v1i1.478.

[54] Fiqh Ibadah is a fiqh that discusses the relationship between Allah and his creatures (Hablu minallah), while fiqh muamalah broadly means fiqh that discusses the relationship between humans and their fellow humans (Hablu minannas). Fiqh Muamalah in a broad sense includes the following matters: Ahwal Al-Syakhsiah, Muamalah (Economy), Jinayah, Siyasah, Dauliyah. Quoted from the book A. Djazuli, *The Science of Fiqh: The Excavation, Development, and Application of Islamic Law. Revised edition* (Prenada Media, 2021). 55

[55] Muhammad Ramadhan, *Contextualization of Islamic Political Doctrine in Fiqh Siyasah* (Pekalongan: PT Nasya Expanding Management, 2019). 17

[56] Ramadan.. 9

The problem of marijuana legalization is a discussion that requires in-depth consideration of the potential for maslahah (benefits) in the field of health services and the impact of mafsadah (damage) that may arise due to the legalization of marijuana in the social and economic scope. It is relevant if the Constitutional Court Decision No. 13/PUU-XXII/2024 is analyzed from the perspective *of fiqh siyasah*, because law is indeed intended for community life to obtain justice, legal certainty, and legal benefits. In line with the perspective of *fiqh siyasah*, the orientation of policies or the regulation of a law in the state must be based on the benefit of the ummah or the widest possible community.[57] For example, if you look at this context in the view of *fiqh siyasah*, the policies decided must be oriented towards the benefit, considering that there is a rule that reads:

تَصَرُّفُ الْإِمَامِ عَلَى الرَّاعِيَّةِ مَنُوْطٌ بِالْمَصْلَحَةِ

It means: "*policies and government administration over the people must be beneficial*". This rule means that all decisions and legislative policies towards the people must always lead to the benefit and goodness of society in general and in particular.[58] The Constitutional Court's Decision Number 13/PUU-XII/2024 relates to the use of marijuana in the scope of health services, which tests Law No. 8 of 1976 can be seen through *the qawaid fiqh siyasah* above whether government policies related to the prohibition of the use of marijuana are in line with the benefits to be achieved or on the contrary provide mafsadah for the welfare of the community.

Based on the description above, the author is interested in analyzing the Constitutional Court Decision Number 13/PUU-XII/2024 related to the use of marijuana in health services because it can contribute to thinking about the urgency of legalizing marijuana and the basis for the judge's decision to reject the use of medical marijuana. It is also related to Islamic views related to the use of cannabis

[57] Abdul Waid and Niken Lestari, "Contemporary Maqashid Al-Shari'ah Theory in Islamic Law and Its Relevance to National Economic Development," *LABATILA: Journal of Islamic Economics* 4, no. 02 (December 30, 2020): 191–205, https://doi.org/10.33507/lab.v4i01.270.
[58] Achmad Musyahid Idrus, "The Policy of State Leaders in the Perspective of Fiqh Rules: Tasarruf Al-Imam Manutun Bil Maslahah," *Al Daulah : Journal of Criminal Law and Constitutional Affairs*, December 29, 2021, 123–37, https://doi.org/10.24252/ad.v1i1.26278.

in the context of health. It also includes the perspective *of fiqh siyasah* looking at the Constitutional Court's decision on the use of marijuana to provide benefits or mafsadatan. The author wishes to study more deeply so that it can provide a comprehensive understanding with the title "RATIO DICEDENDI DECISION OF THE CONSTITUTIONAL COURT NUMBER 13/PUU-XXII/2024 CONCERNING THE USE OF *CANNABIS SATIVA* IN HEALTH SERVICES FROM THE PERSPECTIVE *OF FIQH SIYASAH* DUSTURIYAH".

B. Problem Formulation

Based on the background description above, the formulation of the problem in this study is:

1. What is the basis for the applicant's application in filing *a judicial review* of Law No. 8 of 1976 related to the use of *cannabis sativa* in health services?
2. What *is the ratio of cannabis* sativa in PMK No. 13/PUU-XXII/2024 regarding the use of *cannabis sativa* in health services?
3. Why did the judge reject the petitioners' application in its entirety in PMK No. 13/PUU-XXII/2024 from *the perspective of fiqh siyasah*?

C. Research Objectives

Based on the formulation of the problem above, the objectives of this normative research are:

1. Knowing and analyzing the basis of the applicant's application in submitting *a judicial review* of Law No. 8 of 1976 related to the use of *cannabis sativa* in health services
2. Analyze and formulate *the ratio of cannabis sativa* in PMK No. 13/PUU-XXII/2024 concerning the use of *cannabis sativa* in health services
3. Analyze and find the basis for the judge's consideration of rejecting the applicants' application in its entirety in PMK No. 13/PUU-XXII/2024 from *the perspective of fiqh siyasah.*

D. Research Benefits

The research conducted by the author is expected to have the slightest benefit, including theoretically and practically. The benefits of this research are as follows:

1. Theoretical Benefits

   This research is expected to provide benefits in the form of contributions to thinking in the field of law so as to increase understanding related to the legalization of the use of cannabis in health services from the perspective of *fiqh siyasah*. Also, it can increase knowledge and treasures, especially to the entire academic community in the Constitutional Law Study Program (Siyasah) Faculty of Sharia UIN Maulana Malik Ibrahim Malang.

2. Practical Benefits

   This research is expected to provide input to policy makers, both legislative and executive, in terms of legalizing the use of marijuana in health services from the perspective of *fiqh siyasah*. The author also hopes that this research can provide additional insight and knowledge to academics in terms of legalization of the use of marijuana in health services from the *perspective of fiqh siyasah*. Finally, it is practically hoped that for the public, this research can provide information related to the legalization of the use of marijuana in health services from the perspective of *fiqh siyasah*.

E. Research Methods

The research method can be said to be a step or strategy to obtain data in conducting a research to solve a problem carried out by the author.[59] Therefore, research methods are an essential factor in terms of conducting a research, because research methods aim to conduct research in a structured, systematic, and maximum manner. Below will be described in relation to the research method to be carried out:

[59] Nur Solikin, *Introduction to Legal Research Methodology* (Pasuruan: Qiara Media Publishers, 2021). 112

1. Type of Research

Legal research[60] is a series of scientific activities based on certain methods, systematics, and thoughts, which aim to study by analyzing something or some specific legal symptoms.[61] In legal research, it is divided into two types, namely normative legal research and empirical legal research.[62] In this study, the type of research is classified as normative legal research. Normative law research[63] can also be called doctrinal law research, which is legal research that positions law as a system of norms, a system of norms in the sense of principles, rules, norms of laws and regulations, doctrines, and court decisions.[64] This research can be said to be normative legal research because in carrying out the object of its study in the form of legal norms, laws and regulations, and court decisions, namely the Constitutional Court decisions. The legal norms studied are related to the use of *cannabis sativa* which is included in class I narcotics in health services which are then tested at the Constitutional Court so that the Constitutional Court Decision No. 13/PUU-XXII/2024 was issued.

2. Method of Approach

The approach in legal research is an effort or means for the author to understand and direct the problem. In order to solve the legal problems

---

[60] Research is a tool or means of strengthening and developing science by trying to find a solution to a problem systematically, with certain methods that are scientifically determined. See in the book Ani Purwati, *Legal Research Methods Theory and Practice* (Surabaya: Jakad Media Publishing, 2020). 3

[61] Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2010). 43

[62] The difference between the two types of legal research lies in the object of the research. Normative law research focuses on the perspective of law as a system of values, conceptual and positive law, law is defined as *sollen*. Meanwhile, empirical legal research is a law that examines itself outside of the elements of huku, concretely on social phenomena that affect legal behavior. See in the book Nurul Qamar and Farah Syah Rezah, *Legal Research Methods: Doctrinal and Non-Doctrinal* (CV. Social Politic Genius (SIGn), 2020). 4-5

[63] Normative juridical research consists of: 1) research on legal principles, 2) research on legal systematics; 3) research on the level of legal synchronization; 4) legal history research; 5) comparative legal research. See in the book Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2021). 12

[64] Another opinion states that normative legal research is a research process to examine law as norms, principles, principles, rules, doctrines, and other legal and literature theories in answering research related to legal problems. Muhaimin Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020). 48

studied, of course, approaches are needed as a handle in compiling good and appropriate arguments. The approach in legal research is useful for authors in obtaining information through various aspects related to the issue to be studied. As quoted by Muhaimin from Peter Mahmud Marzuki, that in the approach to legal research there are 5 types of approaches[65], including[66]:

a. Statute approach
b. Case approach
c. Historical approach
d. Comparative approach
e. Conceptual approach

In this study, the author uses four approaches as agreed by Peter Mahmud, including: *First,* the statute approach, this approach is carried out by examining regulations and laws and regulations that are related to the legal issue being studied.[67] In this legislative approach, the author examines several laws and regulations such as the 1945 Constitution (hereinafter referred to as the 1945 Constitution), Law No. 35 of 2009 concerning Narcotics, Law No. 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and the Protocol Amending It, and others.

Second, the *case approach* is an approach that is carried out by examining cases that are related to the problem being researched which then becomes a court decision that has permanent legal force.[68] In this study, the case approach was carried out in the Constitutional Court Decision No. 13/PUU-XXII/2024 related to efforts to utilize *cannabis sativa* in health services. The location of the object in the *case approach* is in the *ratio of the decision* in giving consideration to the decision.

---

[65] Different opinions state that the normative legal research approach is divided into 7 approaches, including: 1) the legislative approach; 2) conceptual approach; 3) analytical approach; 4) comparative approach; 5) historical approach; 6) philosophical approach; and 7) case approach Johnny Ibrahim, *Normative Legal Research Theory and Methodology* (Malang: Bayu Media, 2006), https://lib.ui.ac.id. 300

[66] Peter Mahmud Marzuki, *Legal Research: Revised Edition* (Prenada Media, 2017). 93

[67] Solikin, *Introduction to Legal Research Methodology*. 58

[68] Solikin. 59

Third, the conceptual approach This approach begins with the doctrines and views that have developed in legal science. Through a conceptual approach, the author can find ideas that give birth to relevant legal principles and concepts related to the problem being researched.[69] This conceptual approach seeks to analyze the use of equitable health services to achieve the benefit of the community with the concept *of fiqh siyasah*. With this *conceptual approach*, it can form legal arguments in answering the legal problems being researched.

3. Source of Legal Materials

In general, there are two types of data collected, namely primary data and secondary data. Primary data is data obtained directly by field survey or interview methods related to community behavior. Meanwhile, secondary data is data obtained through literature searches. Legal materials are classified as secondary data.[70] Peter Mahmud in his book entitled Legal Research states that the term used is legal material and does not use the word data[71], legal material itself is contained in several levels including:

a. Primary legal materials

Primary legal materials are legal materials that have authority. In other words, legal materials that have binding force.[72] These legal materials can be in the form of, for example: 1) laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Law No. 35 of 2009, and so on; 2) official records in making regulations, for example academic studies in making laws and regulations; 3) judges' decisions, for example, Constitutional Court or Supreme Court decisions. In this study, the primary legal materials used include:

---

[69] Muhaimin, *Legal Research Methods*. 57

[70] Sigit Sapto Nugroho, Anik Tri Haryani, and Farkhani, *Legal Research Methods* (Sukoharjo: Oase Pustaka, 2020), https://bni.perpusnas.go.id/detailcatalog.aspx?id=211965. 66-67

[71] It is different from Soerjono Soekanto's opinion that he does not use the term legal material, but uses the term secondary data in which there is the term legal material. This difference is due to the fact that the term material refers more to legal material that all already exist in the legal rules. Meanwhile, data is more informational which needs to be sought. Muhaimin, *Legal Research Methods*. 59

[72] Ali *Legal Research Methods*. 47

1) Constitution of the Republic of Indonesia 1945.
2) Article 28H paragraph (2) of the 1945 Constitution.
3) Article 6 paragraph (1) letter a of Law Number 35 of 2009 concerning Narcotics.
4) Article 7 of Law Number 35 of 2009 concerning Narcotics.
5) Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics.
6) Article 1 paragraph (2) of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the protocol that amends it.
7) Article 62 of Law Number 39 of 1999 concerning Human Rights.
8) Constitutional Court Decision Number 106/PUU-XVII/2020.
9) Constitutional Court Decision Number 13/PUU-XXII/2024.
10) Minutes of the Constitutional Court Decision Number 13/PUU/XXII/2024.
11) Minutes of the Constitutional Court Decision Session Number 106/PUU-XVII/2020.

b. Secondary legal materials

Secondary legal materials are all publications related to the law that are informal documents. These publications include in the form of textbooks that discuss a legal problem or issue, legal journals, and legal doctrines or thinkers.[73] Secondary legal material is a clue or explanation related to primary legal material. In this study, the secondary legal materials used are books and journals related to efforts to legalize marijuana in the use of health services and those related to *Fiqh siyasah*. Some of the books used include:

1) The book *Fiqh siyasah*: Implementation of the Benefit of the Ummah in Sharia Signs by H. A. Djazuli;

[73] Muhaimin, *Legal Research Methods*. 60

2) The Book of Fiqh Rules: The Rules of Islamic Law in Solving Practical Problems by H. A. Djazuli;
3) Published Scientific Journal articles related to the legalization of marijuana in health services.

c. Tertiary legal materials

Tertiary legal materials are materials that provide explanations and instructions to primary or secondary legal materials. These legal materials include language dictionaries, encyclopedias, *websites*, and so on that can help provide explanations of primary or secondary legal materials.

4. Legal Materials Collection Techniques

In normative law research, the technique used in collecting secondary data or the three legal materials, is carried out by means of a literature study. The technique of collecting legal materials by way of literature study, also known as "*library research*". The search carried out by studying the Library is passed by reading, seeing, listening or obtained through the internet site.[74] Therefore, the author in conducting research uses primary legal materials in the form of documents, then secondary legal materials and tertiary legal materials to support this research.

5. Legal Material Analysis Method

Analysis is a process of describing some specific symptoms or problems systematically and consistently in the form of an assessment of the data that has been collected with the help of theories that have been provided previously.[75] In this study, a qualitative juridical analysis method is used, which is a method that emphasizes on the aspect of legal analysis with deductive and inductive inference process steps. The understanding of the research object is carried out by formal and argumentative thinking in obtaining a comprehensive understanding of relevant legal aspects. The

[74] Nugroho and Haryani, *Legal Research Methods*. 70
[75] Nugroho and Haryani. 93

presentation of data on the object of qualitative data is expressed in the form of sentences whose processing goes through an analytical, critical, and thorough thinking process. Then the analysis method continues by describing a *ratio of the* final and binding decision of the *Constitutional Court* . This is known as legal science as a prescriptive science where a law and regulation is used that is related to the legal issue being studied, and the problem is analyzed through legal concepts that are related to the legal issue raised.[76]

F. Previous Research

In this sub-chapter, the author will present several previous studies related to the same theme and study. This previous research is a scientific research that has been carried out, generally in the form of theses, theses, dissertations and scientific articles published in journals. The function of the previous research is to avoid plagiarism or similarity of the research object, as well as to see the differences in the previous research in order to find out the originality of the research that the author conducted in this study. Research related to the legalization of marijuana as a treatment has been carried out several studies before. However, research related to the analysis of the Constitutional Court Decision 13/PUU-XXII/2024 concerning the testing of Law No. 8 of 1976 related to the use of *cannabis sativa* in health services has not been researched. This previous research is also a reference for authors in conducting research.

First, a journal article from the Journal of Legal Studies of the Faculty of Law of Janabadra University written by JS Murdomo, et al. (Vol. 6 No. 1 May 2021) entitled "Criminal Law Views on the Legalization of Cannabis in Indonesia".[77] This research is a normative legal research that is recognized through library *research*, the approaches used in the research are historical approach and conceptual approach. The analysis used in presenting the legal materials collected through qualitative descriptive analysis. The object of this research is an academic

---

[76] Nitaria Angkasa et al., *Legal Research Methods as an Introduction* (Lampung: CV. Laduny Alifatama, 2019),
https://digilib.stekom.ac.id/ebook/view/metode-penelitian-hukum-sebagai-suatu-pengantar. 56

[77] J. S. Murdomo et al., "Criminal Law Views on the Legalization of Cannabis in Indonesia," *Journal of Legal Studies* 6, no. 1 (May 20, 2021): 12–19.

manuscript in the formation of laws and regulations. The results of the study stated that marijuana is a psychotropic plant that has actually been used by some people in terms of cooking purposes, crafts from cannabis fiber, and medicine. However, in fact, marijuana does have a negative impact, namely damaging the organs of the body if used continuously. Therefore, in Indonesia itself, marijuana has become a topic of debate between countries in the world. The legalization of marijuana in Indonesia cannot be carried out because the legalization of marijuana plants is considered contrary to legal, psychological, physical, social, and orderly aspects, as well as security. As stipulated in Law No. 39 of 2009 which classifies marijuana in the first group, the first group is not used in terms of health services.

Second, a thesis from the Faculty of Sharia and Law UIN Sunan Kalijaga Yogyakarta written by Azaz Fauzan in 2023, entitled "Juridical Analysis of the Legalization of the Use of Cannabis for Medical Treatment Reviewed from Law Number 35 of 2009 concerning Narcotics (Study of the Decision of the Surabaya District Court Number 1285/PID. SUS/2020/PN. SBY).[78] This research is a type of normative juridical research, which in its approach uses a statute approach, the analysis of legal materials is carried out in an analytical descriptive manner, and the collection is used with *library research*. The result of this study is that Law No. 35 of 2009 concerning Narcotics still prohibits the use of cannabis plants in terms of medical treatment. This is considered inconsistent with the purpose of the establishment of the Narcotics Law which should be the existence of Narcotics for the benefit of health services and/or the development of science and technology. The urgency of legalizing marijuana in terms of medical treatment from this study concludes that cannabis plants can be used in health services, therefore it is necessary to conduct official research to examine the use of marijuana.

Third, a Journal Article written by Indah Woro and Nur Arfiani in the Journal of Health Law and Ethics (Vol. 2 No. 1 March 2022) entitled "The Use of

[78] NIM : 18103040144 Azaz Fauzan, "Juridical Analysis of the Legalization of the Use of Cannabis for Medical Treatment Reviewed from Law Number 35 of 2009 concerning Narcotics (Study of the Decision of the Surabaya District Court Number 1285/Pid.sus/2020/PN. SBY)" (thesis, UIN SUNAN KALIJAGA YOGYAKARTA, 2023), https://digilib.uin-suka.ac.id/id/eprint/62089/.

Medical Cannabis in Rational Medicine and Its Regulation in Indonesia".[79] This type of research is normative legal research, whose approach uses a conceptual approach, then the analysis of legal materials that have been compiled using qualitative descriptive analysis. The results of this study state that marijuana has the potential to be used in rational medicine. However, this is limited by the basis of a legal umbrella policy that has not yet been met. The use and research of marijuana requires structured legal rules so that it can provide protection for authors and related health devices. Rules regarding the legalization of marijuana have a significant impact on science, especially in the health sector. However, its application needs to consider many aspects comprehensively in society.

Fourth, a thesis made by Chynthia Ajeng Wulandari from the Faculty of Law, Sultan Agung Islamic University, Semarang in 2023 entitled "Policy on the Utilization of Cannabis Plants as Medical Treatment in Indonesia".[80] This research is a normative juridical type of research compiled through literature study techniques. The data used is in the form of secondary data, including primary legal materials of laws and rulings related to the use of marijuana, secondary legal materials in the form of relevant journals and books, and tertiary legal materials. This research in conducting its analysis uses a qualitative analysis method in presenting arguments related to the problem being researched. The results of this study state that efforts to use marijuana in the medical world can be said to be still difficult to do. The obstacle is due to strict regulations related to the use of marijuana, considering that Law No. 35 of 2009 on Narcotics strictly prohibits class I narcotics.

Fifth, a scientific article written by Arie Kartika and Tengku Keizerina Devi Azwar in JUNCTO: Legal Scientific Journal (Vol 5 No. 2 December 2023), the

[79] Nur Arfiani and Indah Woro Utami, "The Use of Medical Cannabis in Rational Medicine and Its Regulation in Indonesia," *Journal of Health Law and Ethics*, April 5, 2022, 56–68, https://doi.org/10.30649/jhek.v2i1.45.
[80] Cynthia Ajeng Wulandari, "Policy on the Utilization of Cannabis Plants as Medical Treatment in Indonesia" (undergraduate, Sultan Agung Islamic University, Semarang, 2023), https://repository.unissula.ac.id/31524/.

article is entitled "Law and Globalization on the Legality of Medical Cannabis".[81] This type of research is a normative legal research whose collection uses literature study techniques and document analysis. The results of this study state that the background of medical marijuana legality efforts is due to factors such as social, economic, medical, and political. The legality of medical marijuana is related to knowledge of the benefits of medical marijuana in treatment for the wider community and changes in its legal regulations. Furthermore, the discourse on the rejection of marijuana is based on negative impacts and there is no urgency to use cannabis plants as BNN opied. Economic reasons in legalizing marijuana are considered a wrong action because it can be worrisome if abuse occurs, resulting in medical and rehabilitation costs.

Sixth, a thesis written by Rizki Tutut Gladis from the Faculty of Sharia UIN Malang in 2023 entitled "Analysis of the Decision of the Constitutional Court Number 106/PUU-XVIII/2020 concerning Material Testing of Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution Perspective *of Maslahah Mursalah*". This research is classified as a normative juridical research which uses *a statute approach, conceptual approach,* and *case approach.* This study states that, *First*, the analysis of the legal considerations of the Constitutional Court Decision shows that the provisions of Article 8 paragraph (1) of Law Number 35 of 2009 and Article 28 paragraph (1) of the 1945 Constitution have provided legal certainty to the community and there is no use of marijuana for medical purposes. Regarding the transfer of marijuana from class I narcotics, it is necessary to conduct a comprehensive study by the government. Finally, regarding the implication of the Constitutional Court's Decision according to the perspective of Maslahah Mursalah, the rejection of the application for the use of marijuana because there is no medical benefit for the community.

[81] Arie Kartika and Tengku Keizerina Devi Azwar, "Law and Globalization on the Legality of Medical Cannabis," *JUNCTO: Legal Scientific Journal* 5, no. 2 (December 26, 2023): 187–200, https://doi.org/10.31289/juncto.v5i2.3074.

Previous research that the researcher has mentioned above can be seen in more detailed research differences regarding legal issues, research results, and elements of novelty as will be presented in the table below:

Table 1. 3 Previous research

It	Name/ Title of the Research	Legal issues	Research Results	Difference	Elements of Novelty
1	A journal article from the Journal of Legal Studies of Faculty of Law of Janabadra University written by JS Murdomo, et al. (Vol. 6 No. 1 May 2021) entitled "Criminal Law Views on the Legalization of Cannabis in Indonesia"	1) Why does Indonesia not review the cannabis plant which has been legalized in several countries? 2) What are the positive legal arrangements regarding the legality of cannabis in Indonesia?	The results of the study stated that marijuana is a psychotropic plant that has actually been used by some people in terms of cooking purposes, crafts from cannabis fiber, and medicine. However, in fact, marijuana does have a negative impact, namely damaging the organs of the body if used continuously. Therefore, in Indonesia itself, marijuana has become a topic of debate between countries in the world. The legalization of marijuana in Indonesia cannot be carried out	The difference from the study is that the research was conducted by examining the views of criminal law related to the legalization of marijuana in Indonesia, where *the statue approach* is applied only to Law No. 35 of 2009 concerning Narcotics and the object of the research focuses on academic texts of legislation. Meanwhile, the research conducted by the author is to analyze the Constitutional Court's decision related to efforts to legalize the use of marijuana in health services through *judicial review*, where the decision is then	1) This research is a development of previous studies related to the same theme. 2) The problem being studied is an analysis of legal issues that have existed and re-emerged related to the latest Constitutional Court Decision on the legalization of the use of marijuana in health services, namely in the Constitutional Court Decision No. 13/PUU-XXII/2024 3) The results of this study summarize new problems that arise from the

			because the legalization of marijuana plants is considered contrary to legal, psychological, physical, social, and orderly aspects, as well as security. As stipulated in Law No. 39 of 2009 which classifies marijuana in the first group, the first group is not used in terms of health services.	analyzed from the perspective *of fiqh siyasah*.	Constitutional Court Decision 13/PUU-XXII/2024 which is then analyzed with the theory of constitutional interpretation and the perspective *of fiqh siyasah* 4) The findings from the results of research related to the Constitutional Court Decision No. 13/PUU-XXII/2024 use the perspective *of fiqh siyasah* and the theory of justice is to provide a comprehensive view between *maslahah* (benefit) and *mafsadah* (harm).
2	A thesis from the Faculty of Sharia and Law UIN Sunan Kalijaga Yogyakarta written by Azaz Fauzan in 2023, entitled "Juridical Analysis of the Legalization of the Use of Cannabis for Medical Treatment Reviewed from Law Number 35 of 2009 concerning Narcotics (Study of the Decision of the	1) Is the legalization of the use of marijuana for medical treatment in accordance with Law No. 35 of 2009 concerning Narcotics? 2) How is the urgency of legalizing marijuana for medical treatment reviewed from Law No. 35 of 2009	The result of this study is that Law No. 35 of 2009 concerning Narcotics still prohibits the use of cannabis plants in terms of medical treatment. This is considered inconsistent with the purpose of the establishment of the Narcotics Law which should be the existence of Narcotics for the benefit of	The difference in this study, this study focuses on the urgency of legalizing marijuana for medical treatment, whose juridical analysis was carried out in the Surabaya District Court Decision No. 1285/PID. SUS/2020/PN. SBY related to Law 35/2009 on Narcotics. Meanwhile, the research conducted by the author is to analyze related	

	Surabaya District Court Number 1285/PID. SUS/2020/PN. SBY)	concerning Narcotics?	health services and/or the development of science and technology. The urgency of legalizing marijuana in terms of medical treatment from this study concludes that cannabis plants can be used in health services, therefore it is necessary to conduct official research to examine the use of marijuana.	to the legalization of marijuana looking at the Constitutional Court Decision No. 13/PUU-XXII/2024 which is then analyzed using the perspective *of fiqh siyasah.*	
3	Journal article written by Indah Woro and Nur Arfiani in the Journal of Health Law and Ethics (Vol. 2 No. 1 March 2022) entitled "The Use of Medical Cannabis in Rational Medicine and Its Regulation in Indonesia".	1) How is the use of medical marijuana in rational medicine? 2) How is the use of marijuana regulated in Indonesia	The results of this study state that marijuana has the potential to be used in rational medicine. However, this is limited by the basis of a legal umbrella policy that has not yet been met. The use and research of marijuana requires structured legal rules so that it can provide protection for authors and	The difference in the research is that this study focuses on looking at the potential use of marijuana in rational treatment which is hindered in terms of policy, namely Law 35/2009 on Narcotics. Meanwhile, the research conducted by the author is to analyze efforts to legalize marijuana in health services	

			related health devices. Rules regarding the legalization of marijuana have a significant impact on science, especially in the health sector. However, its application needs to consider many aspects comprehensively in society.	as seen from the Constitutional Court Decision 13/PUU-XXII/2024 which is then analyzed from the perspective *of fiqh siyasah*.	
4	The thesis was made by Chynthia Ajeng Wulandari from the Faculty of Law, Sultan Agung Islamic University, Semarang in 2023 entitled "Policy on the Utilization of Cannabis Plants as Medical Treatment in Indonesia".	1) What is the policy on the use of cannabis plants as medicine in Indonesia 2) What are the obstacles and solutions in the formation and implementation of policies on the use of cannabis as medical treatment in Indonesia	The results of this study state that efforts to use marijuana in the medical world can be said to be still difficult to do. The obstacle is because of strict regulations related to the use of marijuana, considering that Law No. 35 of 2009 on Narcotics strictly prohibits class I narcotics.	The difference between the research and the researcher's lies in its purpose where the research aims to analyze efforts to legalize medical marijuana which is only focused on the laws and regulations and the Constitutional Court Decision 106/PUU-XVIII/2020 as well as the factors that inhibit the use of cannabis as medicine in Indonesia. Meanwhile, the author's research focuses on	

				analyzing the latest legislation and Constitutional Court Decision 13/PUU-XXII/2024 related to *judicial review* in terms of the use of marijuana in health services which is then analyzed using *the perspective of fiqh siyasah*.	
5	Scientific article written by Arie Kartika and Tengku Keizerina Devi Azwar in JUNCTO: Legal Scientific Journal (Vol 5 No. 2 December 2023), the article is entitled "Law and Globalization on the Legality of Medical Cannabis".	1) The influence of globalization on the legality of cannabis in policy change 2) The legality of medical marijuana is associated with the Constitutional Court Decision 105/PUU-XVIII/2020	The results of this study state that the background of medical marijuana legality efforts is due to factors such as social, economic, medical, and political. The legality of medical marijuana is related to knowledge of the benefits of medical marijuana in treatment for the wider community and changes in its legal regulations. Furthermore, the discourse on the rejection	The difference between this study and the research conducted by the author lies in the purpose of the study aimed to analyze the law and the influence of globalization from the regulation of the use of marijuana abroad on regulatory changes in Indonesia. Meanwhile, the research conducted by this author focuses on efforts to legalize marijuana through judicial review and analyzing the	

			of marijuana is based on negative impacts and there is no urgency to use cannabis plants as BNN opied. Economic reasons in legalizing marijuana are considered a wrong action because it can be worrisome if abuse occurs, resulting in medical and rehabilitation costs.	Constitutional Court Decision related to the use of marijuana in health services. Furthermore, the research conducted by the author uses *a siyasah fiqh analysis* knife in reviewing the Constitutional Court Decision No. 13/PUU-XXII/2024	
6	The thesis written by Rizki Tutut Gladis from the Faculty of Sharia UIN Malang in 2023 entitled "Analysis of the Constitutional Court Decision Number 106/PUU-XVIII/2020 concerning Material Testing of Law Number 35 of 2009 concerning Narcotics against the 1945 Constitution*: Maslahah*	1) Analysis of Judges' Considerations of the Constitutional Court's Decision Number 106/PUU-XVIII/2020 2) Judge's considerations in deciding the Constitutional Court Decision Number 106/PUU-XVIII/2020 3) Implications of the Constitutional Court Decision	The results of this study state that, *First*, the analysis of the legal considerations of the Constitutional Court Decision shows that the provisions of Article 8 paragraph (1) of Law Number 35 of 2009 and Article 28 paragraph (1) of the 1945 Constitution have provided legal certainty to the community and there is no use	The difference between this research and the one carried out by the author is the location of the object of the research, where the author analyzes the Constitutional Court Decision Number 106/PUU-XVIII/2020, while the author in this study analyzes the Constitutional Court Decision Number 13/PUU-XXII/2024. The difference also lies in the	

	Mursalah's Perspective".	Number 106/PUU-XVIII/2020	of marijuana for medical purposes. Regarding the transfer of marijuana from class I narcotics, it is necessary to conduct a comprehensive study by the government. Finally, regarding the implication of the Constitutional Court's Decision according to the perspective of Maslahah Mursalah, the rejection of the application for the use of marijuana because there is no medical benefit for the community.	analysis theory used where the author in this study uses the *Fiqh Siyasah Duturiyah Perspective*, while the author uses the *maslahah mursalah analysis knife.*	

Judging from what has been conveyed above and the table that has been presented from previous research, this study has a novelty value in the consideration of the Constitutional Court's decision which is then analyzed from the perspective *of fiqh siyasah*. This study provides an explanation produced by a qualitative juridical analysis related to the use of *cannabis sativa* in health services. The author also examines through the theory of legal interpretation and the theory *of fiqh siyasah*. As well as offering policy directions related to the use of *cannabis sativa* in health services. The results of this study can be considered to provide a

comprehensive view between *maslahah* (benefits) and *mafsadah* (harm) for policy makers related to the use of medical marijuana in health services.

G. Systematics of Writing

The systematics of writing is intended to facilitate research. In this study, it follows the guidelines for writing scientific papers issued by the Faculty of Sharia UIN Maulana Malik Ibrahim Malang. The author divides it into four chapters, including:

I. Chapter 1: Introduction.

This chapter will contain an overview of the research, including the background, or the author's anxiety about the issue of the need for the use of *cannabis sativa* in health services which is hindered by laws and regulations on narcotics that include cannabis in group I so that its use is strictly prohibited. Furthermore, the Constitutional Court's decision rejected the applicant's application in its entirety, so the author in his study tried to describe the need for health services using *cannabis sativa* in treating one of the epilepsy diseases. Then the author relates this legal issue to the *theory of fiqh siyasah*. In this chapter, the author then formulates the problems to be researched, as well as the objectives of the research. The benefits of research are also listed in this chapter both theoretically and practically. Finally, chapter I contains the writing style or systematics in this study.

II. Chapter II: Literature Review.

This chapter will explain the theoretical framework that the author uses as a basis for conducting analysis. The theory presented is a relevant theory and related to the legal issues carried out by the author, especially the analysis of the Constitutional Court Decision No. 13/PUU-XXII/2024 related to efforts to legalize the use of *cannabis sativa* in health services.

III. Chapter III: Results and Discussion.

In this chapter, we discuss and describe the data or legal materials that have been collected which are then processed and analyzed related to the *ratio of the decision* in the Constitutional Court Decision No. 13/PUU-XXII/2024

and the analysis of the Constitutional Court Decision PUU/13-XXII/2024 in the perspective *of fiqh siyasah*.

IV. Chapter IV: Closing.

Finally, this chapter will contain the entire research in the form of conclusions and suggestions from the author related to the research that has been carried out.

CHAPTER II

LITERATURE REVIEW

A. Conceptual Definition

In order to make it easier for readers to understand the meaning of this study, the author provides an explanation related to some of the terms in the title. The purpose of the existence of this operational definition is to avoid misunderstandings of interpretation and provide an equal understanding for readers. The explanation of the term is:

1. *Ratio Decidendi*, is the judge's consideration or the judge's reasons (arguments) that are the basis for deciding a case based on material facts.[82]
2. The Constitutional Court's decision is a statement given in written form by a Constitutional Court Judge, as a state official who has the authority to decide a case and is spoken in a trial that is open to the public, as a result of the examination of a lawsuit case based on a case submitted to the Constitutional Court.
3. *Cannabis sativa*, is a cultivated plant that produces fiber, but it is better known as a psychotropic drug because of the content of tetrahydrocannabinol (THC) which can make the user experience a prolonged feeling of pleasure without cause (*euphoria*).
4. Health Services are all efforts made independently or jointly in an organization to maintain and improve health, prevent, and cure diseases and restore the health of individuals, families, groups, and/or communities.[83]
5. The perspective of *Fiqh siyasah*, is a process or step in researching and studying, as well as an analytical knife that systematically and objectively becomes a tool to solve a problem. This process is carried out based on Islamic law in accordance with the provisions in the Qur'an and Sunnah

[82] Constitution *Procedural Law of the Constitutional Court*. 190
[83] Republic of Indonesia, "Law No. 17 of 2023 concerning Health Statute Book 2023 (105), Supplement to Statute Book (6887)" (2023).

which have *maslahah* values to be realized and avoid harm related to efforts to legalize marijuana in health services in Indonesia through legal testing.

B. Theoretical Framework

The theoretical framework is an important part of its existence in carrying out research, especially in legal research. The preparation of a theoretical framework in legal research, it is necessary to understand related to the theory, starting from its meaning in etymology or terminology along with its functions in a research. The existence of theory in legal research plays a significant role because it can provide assistance in analyzing a legal issue being studied. The theoretical framework is also understood to function as a tool or analytical knife for the problem being studied.[84]

Soerjono Soekanto argued that there are three types that become ramps when preparing a theoretical framework in legal research, the three types of theories include: 1) *grand theory;* 2) *middle range theory*; and 3) *applied theory*.[85] In this study, the author uses three theories that will later be used as analytical knives in carrying out this research, namely *the theory of fiqh siyasah*, the theory of legal interpretation, and the theory of justice. The *theory of fiqh siyasah* as a *grand theory* is a theory that is the basis for other theories in a research. The theory of legal interpretation is then a *middle range theory* that makes this theory aim to make the research in the discussion more focused than *the grand theory*, so that the research carried out is more comprehensive and can answer the issue of research problems. Finally, *the applied theory* used is the theory of justice which functions as a theory that will examine the implementation of policies or decisions whether they are in line with existing legal principles.

1. Fiqh Siyasah

   Fiqh siyasah consists of two words, namely fiqh and siyasah. To provide a deeper understanding, it is necessary to start the understanding of the meaning

[84] Muhaimin, *Legal Research Methods*. 41
[85] Soekanto, *Introduction to Legal Research*. 53

of words. The word *fiqh* etymologically means a deep understanding. While in terms of fiqh terminology, it has a meaning

الْعِلْمُ بِالْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ الْمُكْتَسَبِ مِنْ أَدِلَّتِهَا التَّفْصِيلِيَّةِ

"Knowledge or understanding is related to the laws of Allah (*Shari'ah*) which are amaliyah, which are excavated from detailed evidences of tafsili."[86] Fiqh can also be said to be Islamic law, because it is ijtihadiyah, the sharia law in its understanding has undergone changes and developments in accordance with the situation and environmental conditions of the community.

Meanwhile, *siyasah* etymologically means to regulate, govern, manage, politics, and acts of wisdom. Therefore, it can be understood that *siyasah* has a purpose in terms of regulating, making wisdom, and taking care of all political conformities to achieve something.[87]

Then, if these two words are combined into *fiqh siyasah* , it will have a meaning as one of the aspects of law that discusses related to the arrangement and affairs of human life in order to realize the benefits for human beings themselves. The term *fiqh siyasah* is also commensurate with the word *siyasah syarriyyah*. Some of the definitions related to *fiqh siyasah* or *siyasah shariyyah* according to experts are as follows[88]:

a. According to Ahmad Fati, defining *siyasah shariyyah* is the management of the benefit of mankind based on the provisions of shari'a'.
b. Meanwhile, according to Ibn Aqil, *fiqh siyasah* is an act that leads people closer to the benefit and avoids further evil/deterioration (*mafsadah*), even though it is not regulated by Allah and is not exemplified by the Messenger صلى الله عليه وسلم.
c. Abdul Wahhab Khallaf, defines *siyasah shariyyah* as the management of matters that are general in an Islamic state through the guarantee of the realization of benefits and avoiding harm by not exceeding the

[86] Ramadan *Contextualization of Islamic Political Doctrine in Fiqh Siyasah*. 6
[87] Fatmawati Hilal, *Fiqh Siyasah* (Makassar: Pustaka Almaida, 2015). 1-2
[88] Ramadan *Contextualization of Islamic Political Doctrine in Fiqh Siyasah*. 235-237

boundaries of sharia and general sharia principles, even though it is not in accordance with the opinion of mujtahid. Further related to the general problems referred to by Abd Wahhab Khallaf are:

1) Rules regarding state legislation
2) Rules or policies related to property and finance
3) Determination of laws, courts and rules regarding its implementation
4) Domestic and foreign affairs.

Based on some of the opinions mentioned above, the essence of *fiqh siyasah* includes[89]:

1) Siyasah is related to the rules of human life
2) The ruler is the component that has the authority to manage and regulate
3) The benefit of the people is the purpose of the arrangement
4) The rules made must not contradict the provisions of Islamic sharia

The study *of fiqh siyasah* is more detailed in which there are several scopes of discussion, there are different opinions among scholars related to the object of study in *fiqh siyasah*, but in general the scope of *fiqh siyasah* there are three broad categories as A. Djazuli's opinion, [90]namely:

First, Siyasah Dusturiyyah (political legislation) in this case includes *siyasah tasryiyyah* related to the making of laws by the legislature, *siyasah tanfidiyah* related to imamah, *siyasah qadha'iyyah* related to the judiciary by judicial institutions, and *siyasah idariyah* related to government administration by the executive. *Second, Siyasah Dauliyah*, which deals with the relationship between one country and another, is also known as *siyasah al-kharijiah* (international relations). *Third, Siyasah al-Maliyah* is related to political and economic issues, in which it discusses the management of state revenues including international trade, taxes, banking, zakat, and so on.

---

[89] Ramadan. 19

[90] H.A. Djazuli, *Fiqh siyasah: Implementation of the Benefit of the Ummah in Sharia Signs* (Jakarta: Kencana-Prenada Media, 2018). 31

This research is classified in the field of *fiqh siyasah dusturiyah* studies. The problem in *fiqh siyasah dusturiyah* is related to the relationship between the ruler and his people and also the relationship between the government or state institutions and the society in it. *Siyasah dusturi* has a wide and complex scope so that it is only limited in the realm of legal regulation in a country that is in line with religious principles and is a manifestation for the benefit of human beings in meeting their needs.[91] *Fiqh dusturi* in terms of Muhammad Syafiq as quoted by A. Djazuli *dusturi* is[92]:

اَلدُّسْتُورُ :اَلْقَوَاعِدُ الْأَسَاسِيَّةُ لِلْحُكْمِ فِي أَيَّةِ دَوْلَةٍ كَمَا تَدُلُّ عَلَيْهَا قَوَانِينُهَا وَنُظُمُهَا وَعَادَاتُهُ

"*Dustur is the main principles for the government as contained in its laws and regulations, its regulations, and its* customs". In line with this opinion, Al-Maududi defines the lie with:

صَكٌّ يَنْطَوِى عَلَى الْقَوَاعِدِ الْأَسَاسِيَّةِ الَّتِي يَقُومُ عَلَيْهَا نِظَامُ دَوْلَةٍ

"*a document that contains the basic principles that are the basis for the regulation of a country"*. The word dustur from these two opinions can be interpreted as the same meaning as the Constitution in the Indonesian context or known as *the constitution* in English. The Constitution as a law in a country, is the highest basis so that the laws under it must be in harmony and not contradict the law.[93]

The use of *fiqh siyasah* in determining its laws in a country, uses the same method as used in the *ushul fiqh* method. The *ushul fiqh* and *qawaid fiqhiyyah* methods are more important to use in *fiqh siyasah* because the rules regarding the constitution in Islam are not regulated in detail and clearly in the Quran or Sunnah. The author makes a table related to the method of determining *fiqh siyasah* including[94]:

Table 1.1 Methods in studying *fiqh siyasah*

It	*Fiqh method of siyasah*	Brief explanation of *the fiqh siyasah method*

[91] Djazuli. 47
[92] Djazuli. 52
[93] Hilal, *Fiqh Siyasah*. 101
[94] Djazuli, *Fiqh Siyasah: Implementation of the Benefit of the Ummah in Sharia Signs*. 31-32

1	Al-Qiyas	Qiyas, means to equate a legal problem whose legal provisions are not contained in detail in the Qur'an and to equate the law regulated in the Qur'an because it has legal similarities in both legal cases. Qiyas can be applied in the event of a new legal problem that has a similarity with the old law in a different space and time.
2	Al-Maslahah Mursalah	This method is generally applied to problems that are not regulated in the nash of the Qur'an and As-Sunnah. The use of al-malahah mursalah must be based on research that is carried out accurately, carefully and in-depth.[95]
3	Al-Dzariah	Al-dzariah consists of two forms, namely sadd al-dzariah and fath al-dzariah. The context *of fiqh siyasah* sadd al-dzariah aims to be a means of community control, while fath al-dzariah aims to be a means of community engineering in achieving benefits
4	Al-'Adah	Al-'adah in the method of usul fiqh is known as *'urf*. Al'adah is interpreted as something that is done repeatedly so that it becomes a habit of the community. Al-adah accepted in the *fiqh siyasah* method is *al-'adah ash sahihah* (custom that does not violate sharia'.
5	Al-Istihsan	Istihsan, means to abandon one *qiyas* and apply another. This means that istihsan is to carry out a law that is considered to have a stronger postulate than other postulates than other postulates The purpose of applying this is to choose the best in fulfilling the goals of sharia.
6	Qawaid Fiqhiyah	The rules of kulliyah fiqhiyyah are theories of scholars who are widely used to see the provisions for the implementation *of fiqh siyasah*. These rules are general. For example, the amendment to the 1945 Constitution of the

[95] There are at least 4 conditions that must be met in using maslahah mursalah, including:

a) It is necessary to determine the benefits that are in line with *the maqasid of shhariah*, the spirit of Islamic teachings, the postulates of kulliy and qath'i.
b) The necessity of determining a convincing benefit, meaning that the determination of the benefit must be based on valid scientific research, so that there is no doubt that the rules can provide benefits and distinguish from harm.
c) Must determine the benefits that are beneficial to the wider community, not a small part of the community
d) The necessity of determining benefits that do not cause difficulties, but present convenience, means that it can be implemented. Quoted from Djazuli. 33-34

		Republic of Indonesia did not change during the new order, but when it entered the reform period, there was a change because it was based on the interests of the Indonesian people. In this problem, fiqhiyyah rules can be used in the form of[96]: تُغَيَّرُ الْأَحْكَامُ بِتَغَيُّرِ الْأَزْمِنَةِ وَالْأَمْكِنَةِ وَالْأَحْوَالِ وَالْعَوَائِدِ وَالنِّيَّاتِ "Changes in law are in line with the dimensions of space and time, circumstances, habits, and intentions". In other words, the law is conditional.

Siyasah Dusturiyah, as mentioned above, is one of the objects of study in *fiqh siyasah*. Siyasah Dusturiyah discusses the main principles that are the basis for running a state government in accordance with existing laws and regulations. There are four concepts that are studied in the discussion of siyasah dusturiah, namely the constitution, legislation, *ummah,* and *shura*. The constitution in the study *of fiqh siyasah* is known as dusturi which in terms of dustur means a set of rules that contain basic rules and relationships between each member of society in a country, either in writing (constitution) or unwritten (convention).[97] Furthermore, Abdul Wahhab Khallaf's opinion states that the principles contained in the formulation of the constitution or the constitution are guarantees for the human rights of every group of society and *equality before the law* without any differences through social strata.[98]

The research uses the knife of *fiqh analysis of siyasah dusturiyah* because of the alignment between the concept *of fiqh siyasah dusturiyah* which is oriented to policy arrangements to achieve benefits for the community with the aim of the existence of a country that seeks to bring the widest possible benefits to citizens, so it has relevance if this research is carried out with the knife of *fiqh analysis siyasah*

[96] Ramadan *Contextualization of Islamic Political Doctrine in Fiqh Siyasah*. 35-37
[97] Ramadan. 198
[98] Ali Akhbar Abaib Mas Rabbani Lubis, *Legal Science in the Siyasah Duturiyah Node: Reflections on the Theory and Practice of Constitutional Law in Indonesia* (Yogyakarta: Semesta Aksara, 2019). 13

dusturiyah against the legislation in Indonesia and the Constitutional Court's decision related to the legalization of the use of marijuana in health services.

2. Theory of Constitutional Interpretation

"Constitutional interpretation" is a term for constitutional interpretation.[99] Interpretation of the constitution is the interpretation of the provisions contained in the constitution or the basic law, or *interpretation of the basic law*. What is meant by constitutional interpretation is an interpretation that is used as a method to make legal discoveries (*rechstvinding*) based on the constitution or constitution that is used or developed in the judicial practice of the Constitutional Court. Furthermore, interpretation is a step carried out by the court in the plan to obtain certainty regarding the meaning of the law.[100]

As stated by A. Pitlo and Sudikno Mertokusumo stated that interpretation or interpretation is one of the tools to make legal discoveries that produce a clear explanation related to the text of the law so that the rules and regulations can be applied in connection with a certain event. The judge in making an interpretation must provide an explanation that leads to an acceptable implementation in society related to the legal regulations on concrete events. The interpretation method is a tool or means in knowing the meaning of the law.[101]

There are several interpretation methods that are generally applied by judges, this is as stated by Sudikno and A. Pitlo in their book entitled "Legal Discovery", these methods include[102]:

1) Grammatical Interpretation

Grammatical interpretation is an interpretation method known as providing an explanation of the provisions of the law based on the arrangement of words or language in the sound of the article. This

[99] Heru Setiawan, "Considering Constitutional Complaint as the Authority of the Constitutional Court," *Lex Jurnalica* 14, no. 1 (2017): 146952.
[100] Constitution *Procedural Law of the Constitutional Court*. 63-65
[101] M. Sudikno Mertokusumo and Adriaan Pitlo, *Chapters on Legal Inventions* (Bandung: Citra Aditya Bakti, 1993). 13
[102] Constitution *Procedural Law of the Constitutional Court*. 69-76

grammatical interpretation method has three approaches, including: *noscitur a socis*, *ejusdem generis*, and *expressum facit cassare tacitum.*[103]

2) Teleological/Sociological Interpretation

The teleological interpretation method or also known as sociological interpretation is the meaning of legislation that is associated with the purpose of society, meaning that existing laws but not in accordance with the prevailing societal conditions are then applied to the interests of current events. The provisions of the legislation are relevant to the new social conditions.[104]

3) Systematic/Logical Interpretation

The systematic interpretation method is an interpretation of the provisions of the law through systematic or logical reasoning by relating it to other legislation. This method of interpretation is used because a law is always related to other laws and regulations, so it can be said that a law is part of the entire legislative system.[105]

4) Historical Interpretation

The historical interpretation method consists of two types, including interpretation based on legal history and interpretation based on legal history. Interpretation based on the history of law is an effort to interpret the law through understanding the will or purpose of its lawmakers. Interpretation based on legal history is the interpretation of law through a comprehensive understanding of the context of legal history.[106]

5) Comparative Interpretation

---

[103] Rajali Batubara, "The Role of Legal Interpretation in Judicial Practice in Indonesia," *El-Sirry: Journal of Islamic and Social Law* 2, no. 1 (June 21, 2024): 71–92, https://doi.org/10.24952/ejhis.v2i1.11384.

[104] H. A. Lawali Hasibuan and Alvin Hamzah Nst, "The Method of Interpreting Law as a Tool for Seeking Substantive Justice," *LEGISIA JOURNAL* 15, no. 2 (July 3, 2023): 136–45, https://doi.org/10.58350/leg.v15i2.351.

[105] Rizky Karo Karo, "Interpretation of Judges and the Sense of Justice of the Community," *Judicial Journal* 16, no. 3 (2023): 310–24.

[106] Hasibuan and Nst, "The Method of Interpreting Law as a Tool to Seek Substantive Justice."

The comparative interpretation method is the interpretation of the provisions of the law by comparing one legal rule with another legal rule. Comparison of laws and regulations is generally carried out on the comparison of legal principles or the background of the formation of laws.[107]

6) Futuristic Interpretation

Futuristic interpretation is an interpretation in an effort to *recthvinding* by looking at the application to events or social conditions that may occur in the future. This method of interpretation emphasizes more on the nature of *ius constituendum*.[108]

The interpretation methods mentioned above are some of the interpretations that are generally known in interpreting the law. The method of interpretation in the practice of constitutional justice is a freedom for judges to interpret the constitution in accordance with their understanding and efforts to make legal discoveries. Judges can use several methods of legal interpretation simultaneously in deciding a case in a trial. The Constitutional Court as an institution for interpreting the Constitution is not allowed to focus only on the interpretation of originalism, but other methods of interpretation are needed so that it can realize a democratic state of law and a democratic country based on law.

3. Theory of Justice

The theory of justice is one of the three theories in the philosophy of law to discuss the understanding of the purpose of law.[109] The theory of justice has in some opinions been positioned as the crown of law since the time of Socrates. According to Aristotle, there are two forms of justice, namely distributive

[107] Constitution *Procedural Law of the Constitutional Court*. 73-74
[108] Batubara, "The Role of Legal Interpretation in Judicial Practice in Indonesia."
[109] The purpose of law in the study of legal philosophy consists of legal certainty, legal utility, and justice. Legal Certainty refers to the opinion of Dewa Gede that the formulation of legal norms has been clear and does not have multiple interpretations. Meanwhile, the concept of benefit is based on Jeremy Bentham's view that the purpose of law is based on happiness for as many individuals as possible. See in the book Atmadja I. Dewa Gede and Budiartha I. Nyoman Putu, *Legal Theories* (Malang: Setara Press, 2018). 206-207

justice and corrective justice, both of which are equally vulnerable to the problem of equality or equality in the framework of understanding conception. In the distributive justice section, something is given based on the similarity of an achievement. Meanwhile, corrective justice is given to the problem of a violation so that there is inequality.[110] Meanwhile, John Rawls' opinion on the theory of justice is to proceed from the condition of inequality which must be given concrete rules, so that it can provide benefits to the disadvantaged or the lower class. Furthermore, regarding justice, there are two types of justice theories in law, namely: legal justice theory and social justice theory.[111]

a. The Theory of Legal Justice, in essence, states that what is the benchmark of a justice lies in the procedure. Because the law must be certain, carried out impartially, and seen in the way of *equality before the law*. Therefore, in terms of legal procedural application, the application related to legal norms must be in accordance with concrete cases to protect justice seekers against arbitrary actions of the rulers.
b. The Theory of Community Justice, which is essentially the benchmark for justice as a legal goal, is a good society and the role of law to give birth to actual justice. This term is known as a substantive term.

The focus of the theory of justice as conveyed by John Rawls is on the basic structure of society, the state constitution, the rule of law, the legal system, and the social system. On this basis, Rawls seeks to find principles that determine how the basic structure of society distributes burdens and benefits in order to be said to achieve justice. There are two principles of justice for society, namely *First*, everyone should have an equal right to the system of freedom in general for members of society. *Second,* social and economic differences are regulated in such a way that they can provide protection for weak members of

[110] There are several opinions on the concept of justice theory. As Aristotle's theory of justice is conveyed in the book *Nicomachian Ethics* and John Rawls's theory of social justice in the book *A theoriy of justice*. See in the book Abdul Aziz Nasihuddin et al., *Pancasila Legal Theory* (Tasikmalaya: CV. Elvaretta Buana, 2024). 19-20
[111] Gede and Putu, *Legal Theories*. 207-208

society and related to positions or positions must be wide open to everyone based on *fairness*.[112]

John Rawls further explained that the enforcement of justice with social nuances is required to consider two principles of justice in the form of *first,* giving equal rights and opportunities to the broadest basic freedom, as wide as the same freedom for everyone. *Second*, as much as possible, the social gap that arises can be rearranged so that it can provide equal benefits to the lucky and unfortunate. The view of justice in a legal system that lives in Indonesia is based on the basis of the state, namely Pancasila, which is expressly stated in the fifth precept "Social justice for all Indonesian people".[113]

Justice is a balanced action against rights and obligations. Justice when correlated with the second precept of Pancasila essentially seeks justice by always having a harmonious relationship between individuals and other groups of individuals so that there are fair and civilized social conditions. Social justice in the context of being related to the relationship that lives in society, social justice can be interpreted by: 1) returning lost rights to those who have the right, 2) eliminating fear and persecution in society, 3) realizing equality in the law between each individual. In essence, based on this theory, it can be understood that justice should be available to each group according to its rights and based on its proportionality.[114]

[112] Gede and Putu. 210
[113] Nasihuddin et al., *Pancasila Legal Theory*. 22-23
[114] Nasihuddin et al. 29

CHAPTER III

RESEARCH RESULTS AND DISCUSSION

A. Basis for the Applicant's Application in Filing *a Judicial Review* of Law No. 8 of 1976

The application for testing the law against the constitution in the legal world is known as *judicial review*. In contrast to disputes that occur in other judicial procedural laws, the Constitutional Court is better known as the term "application" and not the term "lawsuit". Maruarar Siahaan argued that the choice of the term application has the meaning of a dominant condition of public interest in the submission of cases that occur in the Constitutional Court.[115] Although the application for testing is carried out only by one individual citizen or a certain group of people, but every application decided by the Constitutional Court, has an impact and influence in general and must be obeyed and followed by all citizens.

Submission of an application for *judicial review* cannot necessarily be done by all citizens, but there are provisions or conditions for individual citizens to be able to apply for testing, one of which is that individuals or community groups must have a legal position before the Constitutional Court court.[116] Legal standing is better known as *legal standing*, further regarding this *legal standing* must be proven by at least having constitutional rights as a citizen.

Constitutional losses are the basis for the applicant in submitting an application, as stated in Article 51 paragraph (1) that "The applicant is a party who considers his constitutional rights and/or authorities to be harmed by the enactment of the law". This constitutional right is closely related to human rights (HAM)

---

[115] Maruarar Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia (Second Edition)* (Jakarta: Sinar Grafika, 2012), 89 https://books.google.com/books/about/Hukum_Acara_Mahkamah_Konstitusi_Republik.html?hl=id&id=-y9sEAAAQBAJ.

[116] Legal position in filing a *judicial review* in Indonesia is only given to legal subjects as contained in Article 51 of Law No. 24 of 2003 jo Law No. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003 concerning the Constitutional Court: Indonesian Citizens, Customary Law Community Unions, Public or Private Legal Entities, or State Institutions. See in the article Reza Pahlevi and Yazid Bustomi, "The Right of Judicial Review of Foreign Nationals in the Indonesian Legal System," *Istinbath : Law Journal* 19, no. 01 (August 26, 2022): 77–95, https://doi.org/10.32332/istinbath.v19i02.4841.

whose existence has been guaranteed in the 1945 Constitution. Jimly Asshiddiqie argued that the human rights provisions contained in the constitution, if classified, can be classified into 4 major groups in the form of civil rights, political, economic, social, cultural, special rights, the right to development, and related to human obligations and state responsibilities.[117] The submission of an application regarding the testing of this law must first prove the aspect of constitutional loss so that it has *legal standing* in front of the constitutional judge.

The effort to submit *a judicial review* is a step in the presence of the Constitutional Court as *the protector of the citizen's constitutional right*. The Constitution has guaranteed human rights which then become constitutional rights for citizens, then the existence of the Constitutional Court is to be a state institution that guarantees the constitutional rights of citizens, accepted for their existence and protected by the state. The position of the Constitutional Court can also be said to be corrective *justice* regarding the relationship between lawmakers and society. Laws made by legislators should have nuances that meet the public interest, therefore if a law is felt by citizens to not fulfill their constitutional rights, then the Constitutional Court as an institution of judicial power becomes the institution authorized to minimize the occurrence of discrepancies.[118] The three things above are important points for the Applicant in submitting *a judicial review.* The author will elaborate in more detail on the basis of the applicant's application in the form of supporting postulates such as *the legal standing* of the applicant, the constitutional rights of the aggrieved applicant, and the protection of constitutional rights through access to legal testing, as follows.

1. **Legal Standing of the Applicant in Filing *a Judicial Review***

Legal standing in the term is also known as *ius standi* which has the meaning of the right to sue, in other words *ius standi* provides an opportunity

[117] Jimly Asshiddiqie, *Introduction to Constitutional Law* (Depok: Rajawali Pers, 2020). 105-108
[118] Mexsasai Indra, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: Kekuatan Putusan Mahkamah Konstitusi Dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945 Di Indonesia," *Constitutional Journal* 20, no. 2 (June 1, 2023): 279–99, https://doi.org/10.31078/jk2026.

for individuals or groups of society to be able to submit or apply in court based on the interests of each of them. *Legal standing* in the legal system is an important concept because it determines which legal subjects have rights so that they can file problems with the court and protect legal interests both individually and a group of people.[119]

The application process for *judicial review* at the initial stage begins with an initial examination by the Constitutional Court (MK) where the purpose is to see and understand the status of the legal position of the applicants before continuing to the stage of discussing the subject matter of legal testing. The submission of applications is carried out by parties who have specific and clear legal interests, so that not all individuals or community groups have legal standing in the propose the constitutionality of a law. Laica Marzuki argued that legal standing rests on the legal position or the right of legal subjects to be able to file a lawsuit at the court table.

The Constitutional Court is a judicial institution that has the authority to be able to test the constitutionality of the law, therefore there are conditions that have been set to be able to submit an application for testing the law at the Constitutional Court. There are two conditions regarding *legal standing* , namely formal requirements and material requirements.[120] The formal requirement in determining *legal standing* is to determine that the Applicant has a direct relationship with the law proposed for testing, while the material requirement in determining *legal standing* is to include the provisions of article norms in the law through the elaboration of the meaning of the legal norms contained in the constitution with abstract characteristics[121]

---

[119] Muhammad Abdi Sabri I. Budahu, "Legal Standing Pemohon Terkait Pengajuan Judicial Review Di Mahkamah Konstitusi: Legal Standing of the Applicant Regarding the Submission of Judicial Review in the Constitutional Court," *Journal of Legal Media* 12, no. 1 (March 20, 2024): 10–28, https://doi.org/10.59414/jmh.v12i1.636.

[120] Constitution *Procedural Law of the Constitutional Court*. 99

[121] This material review focuses on the purpose of the existing legal norms, including whether the legal norms contain legal defects or not, whether the legal norms are fair or not, whether they provide benefits or not, whether they have provided legal certainty or not. The assessment of the norms of

The provisions regarding the initial requirements that must be met for the applicant to be able to have legal standing have been regulated in Law No. 24 of 2003 concerning the Constitutional Court, namely in Article 51 paragraph (1) jo Law No. 7 of 2020 concerning the Third Amendment to Law No. 24 of 2003 concerning the Constitutional Court which reads as follows:

The applicant is a party who considers his constitutional rights and/or authority to be harmed by the enactment of the law, namely:

a. Individual Indonesian Citizens (WNI):
b. The unity of customary law communities as long as they are alive and in accordance with the principles of the Republic of Indonesia:
c. Public or private legal entities; or
d. State institutions

The provisions of the above article are then further regulated by the Constitutional Court contained in the Constitutional Court Decision No. 06/PUU-III/2005 concerning Procedural Guidelines in Law Testing Cases.[122] Three conditions that must be met based on the opinion given by Jimly Asshiddiqie for the Applicant to be declared legally have legal *standing* in *a judicial review case* are the subject of law as a provision of the Constitutional Court Law. *First,* they must be able to prove their identity that they have met the conditions contained in Article 51 of the Constitutional Court Law. *Second,* the relevant parties must be able to prove that they do have guaranteed rights in accordance with the 1945

---

this article needs to use an interpretation method. See in the article Budahu, "Legal Standing of the Applicant Regarding the Submission of Judicial Review at the Constitutional Court." 10-28

[122] The Constitutional Court's decision states that the applicant must first explain the constitutional losses including:

a. The existence of the applicant's constitutional rights granted by the 1945 Constitution;
b. That the applicant's constitutional rights are considered by the applicant to have been harmed by a law under test;
c. That the losses in question are specific (special) and actual or at least potential which according to reasonable reasoning can be ascertained to occur;
d. There is a causal verband relationship between the loss and the enactment of the law that is requested to be tested;
e. There is a possibility that with the granting of the application, the postulated constitutional loss will not or will no longer occur.

Excerpted from the article Ajie Ramdan, "Legal Standing Problems of Constitutional Court Decisions," *Constitutional Journal* 11, no. 4 (2014): 737–58, https://doi.org/10.31078/jk1147.

Constitution. *Third*, the constitutional right is indeed properly detrimental to the person concerned as a result of the enactment of a law.[123]

The Constitutional Court's Decision No. 13/PUU-XXII/2024 in its case, the applicant explained its *legal standing* related to the application for a material test of legal provisions, which in essence the applicant seeks permission related to research on the use of marijuana to later be used in the world of health as a medical treatment. The applicant stated that his status was an Indonesian Citizen (WNI), which was evidenced by the possession of an Identity Card (KTP). The applicant consisted of two people who were a married couple as evidenced by a marriage certificate in 1984, the marriage then gave birth to two biological children.

The applicant felt that the constitutional loss was experienced by one of the children of the applicant named Shita Aske Paramitha whose condition was suffering from epilepsy, the applicant in this case proposed a legal test focusing on being able to seek the use of marijuana so that it could be an alternative treatment for her child. The reason for the applicant to apply for *judicial review* is that it begins with knowledge about alternative treatments using *medical cannabis* through various pages and books, one of which is Hikayat Pohon Ganja.[124]

The applicant in submitting his test application was carried out based on the parents of Shita Aske Paramitha. Representing her child, the applicant seeks to be able to access the use of *medical cannabis* so that the *cerebral palsy* suffered can be effectively controlled and treated. The Applicant in the *judicial review* of the PMK 13/PUU-XXII/2024 case does not contain a determination of support that should be submitted first to the District Court so that then the Applicant can be declared as *a curatele* of a person who

[123] Jimly Asshiddiqie, *Procedural Law Testing Statute* (Jakarta: Sinar Grafika, 2010). 103-104
[124] Indonesian Constitutional Court, "Constitutional Court Decision Number 13/PUU-XXII/2024" (n.d.).

according to the law is considered incapable or unable to act independently in carrying out legal acts.[125]

The applicant who conducted a legal test in this case, although it was filed without a determination of custody, the applicant based on the provisions in Article 47 of Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage which states that[126]:

1) Children who have not reached the age of 18 or have never been married are under the authority of their parents as long as they are not deprived of their power
2) Parents represent the child regarding all legal acts inside and outside the country.

The diction of the above rule can be interpreted that parents have the right to be able to hold power over their biological children who are still minors or unmarried, if their power has not been revoked. In the context of *a quo*, namely Shita Aske Paramitha who is currently unmarried, the applicant as her parents can represent her biological child in carrying out a legal act both inside and outside the court. The applicant in this decision can be declared to have legal *standing* as *the curatele* of Shita Aske.

According to Abdul Mukhtie Fadjar, legal standing is one of the complicated and complex things so that further study is needed at the initial stage of the examination in the trial.[127] The Petitioners in the PMK 13/PUU-XXII/2024 case have precisely had a legal position even though they are in the position of representatives or *curateles* of their biological daughter Shita Aske, as stipulated in Article 4 paragraph (2) of Constitutional Court

[125] Indonesia.
[126] Republic of Indonesia, "Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (Statute Book No. 186 of 2019, Supplement to Statute Book No. 6401)" (2019).
[127] Abdul Mukthie Fadjar, *Constitutional Law and Constitutional Court* (Yogyakarta: Citra Media, 2006). 140

Regulation No. 2 of 2021 concerning Procedural Procedures in Testing the Law,[128] namely:

a. There are constitutional rights and/or authority of the Applicant given by the 1945 Constitution, in this case the constitutional right mandated by the constitution is Article 28H paragraph (2) of the 1945 Constitution which reads, "Everyone has the right to special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice";
b. The Petitioner's constitutional rights and/or authority are harmed by the enactment of a law for which the test is requested, in this context the Petitioner considers the enactment of Article 1 paragraph (2) of Law No. 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics and the Protocol Amending it;
c. The constitutional losses in question are specific and actual or at least potential which according to reasonable reasoning can be ascertained to occur, in this case the Petitioners as the parents of their biological children who have special needs and suffer from *cerebral palsy* apply for *a judicial review of the* content of Article 1 paragraph (2) and its Explanation of Law No. 8 of 1976 tested with Article 28H paragraph (2) of the 1945 Constitution;
d. There is a causal relationship between constitutional losses and the enactment of a law that is requested to be tested, in *the a quo* problem it can be understood that there is a *causal verband* relationship where the constitutional loss is subject to the provisions of Article 1 paragraph (2) and its Explanation of Law No. 8 of 1976;
e. There is a possibility that with the granting of the Application, the constitutional losses as postulated will not occur again, therefore the Petitioner seeks through *judicial review* that the State of Indonesia will have a legal basis that rigidly regulates the use of medical marijuana as an alternative treatment and/or therapy for every person who experiences *cerebral palsy* or the like.

The provisions as outlined above, have clearly and firmly stated that every subject of law can have a legal position before the Constitutional Court if it has a constitutional loss for the enactment of a law. These constitutional rights will be considered by the judge later in deciding whether the constitutional rights owned by the applicant are really harmed

[128] Indonesian Constitutional Court, "Constitutional Court Regulation Number 2 of 2021 concerning Procedural Procedures in Law Testing Cases" (2021), www.mkri.id: 43 pp.

or not, so that the law remains valid or not at the end of the decision. The importance of proving the constitutional rights of the applicant in applying for *judicial review* will be further described by the author as the next postulate below.

2. **Constitutional Rights of the Applicant Who Are Aggrieved by the Applicable Positive Legal Provisions**

Constitutional rights are rights whose existence is guaranteed by the constitution, namely the 1945 Constitution of the Republic of Indonesia, these rights are guaranteed both implicitly and concretely. Various rights that have been enshrined in the constitution are limitations that must not be violated for state administrators in exercising state power, so that each branch of power is required to respect the rights of citizens or human rights that have become part of the constitution of a country.[129]

Theoretically, Indonesia as a country that adheres to the State of Law, so one of the conditions is to guarantee human rights (HAM). Generally, human rights are interpreted as a basic or basic right that human beings have and are a gift from God Almighty in the form of the right to life, the right to be treated equally, and the right to freedom that has characteristics that cannot be violated by anyone.[130]

Normatively, there is a difference between human rights and constitutional rights, both of which have their own meanings. Human rights have characteristics that are more universal or *general*, because they are not limited to a race, ethnicity, gender, and religion. Constitutional rights are more centered on the rights that citizens have in accordance with the provisions of the Constitution. Constitutional rights are part of human rights,

[129] Arie Purnomosidi, "The Concept of Protecting the Constitutional Rights of Persons with Disabilities in Indonesia," *Legal Reflections: Journal of Legal Sciences* 1, no. 2 (April 26, 2017): 161–74, https://doi.org/10.24246/jrh.2017.v1.i2.p161-174.

[130] Herdi Munte and Christo Sumurung Tua Sagala, "Protection of Constitutional Rights in Indonesia," *Scientific Journal of Law Enforcement* 8, no. 2 (December 31, 2021): 183–92, https://doi.org/10.31289/jiph.v8i2.4791.

while human rights are not necessarily included in constitutional rights because of their universal nature.[131]

Constitutional rights are protected in 2 ways, including through the process of legislation and through the application process to the Constitutional Court, namely the Constitutional Court. Through the first way, namely the formation of laws. as one aspect of the legal system. The state of Indonesia, which adheres to democracy, should be in the formation of a law on people's aspirations to be an element that needs to be considered.[132] In line with that, as stipulated in Article 6 paragraph (1) letter b of Law No. 12 of 2011 concerning the Formation of Laws and Regulations and Their Amendments, it is regulated that one of the principles in forming a law is the principle of humanity. The principle of humanity here can be interpreted that the laws and regulations in terms of content material always contain respect and protection for human rights for every Indonesian citizen.[133]

The reality of the process in making the law on community participation involvement and community aspirations is always not fulfilled in it, even though it has been listed as stated in Law No. 12 of 2011. The process of forming laws that tend to be political products generally occurs in terms known as *political bargaining* , which is the process of bargaining in making norms in articles in the law, so that sometimes it is not in line with the public interest.[134]

The path taken in anticipating the things described above, the State is present by providing a zone for the community through the constitution in providing protection of constitutional rights, namely by the mechanism

---

[131] Akmal and Arlianti, "Dynamics of the Protection of Citizens' Constitutional Rights in the Implementation of Law Testing at the Constitutional Court."
[132] Janedjri M. Gaffar, "The Role of the Constitutional Court's Decision in the Protection of Human Rights Related to the Implementation of Elections," *Constitutional Journal* 10, no. 1 (2016): 1–32, https://doi.org/10.31078/jk1011.
[133] Republic of Indonesia, "Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (Statute Book No. 82 of 2011, Supplement to Statute Book 5234)" (n.d.).
[134] Munte and Sagala, "Protection of Constitutional Rights in Indonesia."

of submitting a constitutional lawsuit application to the Constitutional Court which is authorized to conduct the test.[135] The Constitutional Court as the *guardian and protector of the constitution* (Constitution) which is the highest legal rule *(fundamental norm*), so that the Constitutional Court becomes an absolute institution as a protector of constitutional rights and basic rights of every individual citizen. The function of the Constitutional Court here can be said to be the executor *of constitutional review*.[136]

Testing the law, the applicant must list the losses of the constitutional rights as guaranteed in the 1945 Constitution. The doctrine regarding the existence of constitutional damages that is generally considered to exist is that there are five conditions. The five conditions can be classified into two parts, namely *First*, the requirements for the elements that must be met. *Second*, the requirements regarding the procedure for assessing the size of constitutional losses. The first part of the elements that must be fulfilled is in the form of rights or authority and there are losses experienced. The second part regarding the procedure for testing the loss is that the existence of the loss must be specific and actual or potential to occur, there is a causal relationship between the law tested and the loss, and finally the loss is expected not to occur again if the application is granted.[137]

Two conditions regarding the fulfillment of the application for testing the law need to be elaborated so that the applicant can be said to have legal *standing* in the form of testing authority and actual constitutional losses. The Applicant in the Constitutional Court Decision No. 13/PUU-XXII/2024 postulated that the constitutional losses he suffered occurred due to the existence of the content material of Article 1 paragraph (2) and its Explanation contained in Law Number 8 of 1976 concerning the

[135] Munte and Sagala.
[136] Enam Sihombing, "Strengthening the Constitutional Court of the Republic of Indonesia Through Constitutional Complaint," *Law on Drafting Laws and Regulations* 4, no. 2 (2018): 105.
[137] Dian Agung Wicaksono and Enny Nurbaningsih, "Ratio Legis Determination of Taxpayers as Legal Status in Testing the Law by the Constitutional Court," *Constitutional Journal* 17, no. 3 (November 10, 2020): 461–94, https://doi.org/10.31078/jk1731.

Ratification of the 1961 Narcotics Single Convention.[138] According to the applicant, this article is contrary to and not in accordance with the mandate of the constitution Article 28H paragraph (2) of the 1945 Constitution which reads:

"Everyone has the right to special convenience and treatment to obtain equal opportunities and benefits to achieve equality and justice".[139]

Article 1 paragraph (2) and its explanation in Law Number 8 of 1976, according to the applicant, its existence is a barrier for the applicant to obtain convenience and special treatment to obtain equal opportunities and benefits in achieving equality and justice for the applicant's child who suffers from *cerebral palsy*. [140]

Law Number 8 of 1976 is a law that ratifies the Single *Convention on Narcotic Drugs 1961* and is also the basis for the making of Law Number 35 of 2009 concerning Narcotics. The context of the above legal rule is declared detrimental according to the applicant because the applicant's child who suffers from *cerebral palsy* needs treatment efforts through the use of marijuana (*cannabis*) which is considered to have therapeutic benefits to overcome and control the disease experienced.[141]

The relationship between Article 28H paragraph (2) of the 1945 Constitution and the applicant's right to obtain the use of medical marijuana is because: *First*, the right to health, namely medical marijuana has the potential to be useful in helping various medical conditions such as epilepsy, chronic pain and others. *Second,* equality and justice as mandated by Article 28H paragraph (2) of the 1945 Constitution guarantees both things, which means that everyone gets the same access to effective medical treatment, one of which is through medical marijuana. *Third*, special treatment as in Article 28H paragraph (2) of the 1945 Constitution allows for special treatment for certain groups or groups to obtain equality and justice, in this

[138] Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[139] Indonesia, 1945 Constitution of the Republic of Indonesia.
[140] See Page 65 number 118 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[141] See Page 17 number 54 Indonesia. Indonesia.

context cerebral *palsy* patients are a group that needs special treatment through medical marijuana.[142]

Efforts to obtain these benefits are expressly hindered by the provisions of the Narcotics Law which classifies *cannabis* as a Class I Narcotics, which means that cannabis cannot be used in health service needs and is only intended for its use in the development of science and technology after obtaining a license from the Ministry of Health as the authority to grant permits.[143] Acts that violate as regulated in the Narcotics Law, can be classified as a criminal act, so that health use through cannabis cannot be carried out.

The development of the 1961 Single Convention on Narcotics changed at the *63rd Session of* the CND Reconvened Session held in Vienna, Austria. *Cannabis* which was previously classified as Schedule *IV of the* 1961 Convention was then transferred to Schedule *I* of the 1961 Convention. *Schedule IV* is interpreted as a classification of substances, drugs, or narcotics that have very dangerous content and have no medical benefits, and are very high risk to health. *Schedule I* is intended to classify substances, drugs, or narcotics that have medical benefits but there is a very large risk of abuse.[144]

The applicant in this case postulates that under international law there has been legalization and the ability to use *cannabis* in health services to provide access to effective treatment for various medical conditions and

---

[142] See pages 63-64 of number 112 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

[143] Article 8 of the Narcotics Law states that:

(1) Class 1 narcotics are prohibited from being used for health services

(2) In limited quantities, class I narcotics can be used for the development of science and technology after obtaining the Minister's approval on the recommendation of the Head of the Food and Drug Supervisory Agency.

View Law Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).

[144] Widi Asmoro and Palupi Lindiasari Samputra, "Policy Narrative Analysis: Medical Cannabis Policy in Indonesia," *Update Matrix: Journal of Policy Innovation* 5, no. 1 (June 9, 2021): 13–24, https://doi.org/10.21787/mp.5.1.2021.13-24.

encourage research on the use of medical marijuana.[145] Access to the use of medical marijuana, in fact, in Indonesia is hindered by the existence of the Narcotics Law as described above. The applicant stated that Article 1 paragraph (2) and its amendment to Law No. 8 of 1976 along the sentence "The protocol that amends the 1961 Single Convention on Narcotics is detrimental to the constitutional rights of the petitioners and is contrary to the constitutional mandate of Article 28H paragraph (2) of the 1945 Constitution.

The applicant wishes that the sentence contained in the ratification law be amended with the "Protocol Amending the Single Convention on Narcotic Drugs 1961, up to the 63rd session protocol, including the *Commission on Narcotic Drugs document Sixty-third session Vienna, 2-6 March 2020* which uses the document symbol E/CN.7/2020/CRP.19". According to the applicant, the change in diction can provide legitimacy for the use of marijuana in the medical world and health services so that they can get special services for those who experience certain medical conditions in line with the mandate of Article 28H paragraph (2) of the 1945 Constitution. [146]

The constitutional loss of the applicant in filing *a judicial review* according to the author's analysis is the applicant's right to be able to pursue his constitutional rights guaranteed in the provisions of the 1945 Constitution. The Single Convention on Narcotics is the basis for the birth of the Narcotics Law which classifies cannabis into Group I. This classification for applicants has an impact on the inaccessibility of *cannabis sativa* to be used in the realm of health services. According to the applicant, the limited access to medical marijuana is a constitutional loss that is contrary to the constitutional mandate in Article 28H paragraph (2) of the 1945 Constitution, namely obtaining convenience and special treatment to

[145] See page 59 of the number 102 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[146] See page 86 numbers 120-121 Indonesia. Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

obtain benefits in achieving equality and justice. This article, in the view of the applicant, is an implicit message to get special treatment as well as the medical condition experienced by the applicant, so that the use of medical marijuana is an effort to obtain benefits in achieving equal access and justice in accordance with constitutional rights in the 1945 Constitution.

Constitutional losses regarding convenience and special treatment in the context of obtaining treatment through medical marijuana are the basis for the applicant to conduct a legal test. In line with that, the Constitutional Judge stated that the applicant could prove his constitutional right to be potentially harmed based on the existence of the 1961 Single Convention on Narcotics Law. The fulfillment of the conditions for constitutional losses is the basis for the judge to be able to consider the postulates submitted by the applicant. Access to legal testing for applicants is one of the efforts to protect constitutional rights for citizens. Regarding the protection of constitutional rights, the author will further describe as in the postulates below, the constitutional protection protected in this context *judicial review* regarding the constitutional right to health.

3. **Protection of Constitutional Rights to Health through Access to Judicial *Review***

The Constitutional Court is the guardian and protector of the constitution which is the highest legal rule for the State of Indonesia. As a judicial institution, the Constitutional Court can be said to be the protector of constitutional rights for all citizens who are part of the constitution. The form of protection of constitutional rights for citizens is in the form of testing the law known as *judicial review*. The function of the Constitutional Court is to carry out the function *of constitutional review*.[147]

Constitutional review is a product of a government system based on the idea of achieving a state of law (*rule of law*) and *protection of fundamental rights*, which has two main objectives, namely: *First*,

[147] Munte and Sagala, "Protection of Constitutional Rights in Indonesia."

maintaining the function of the democratic system in each executive, judicial, and legislative institutions. *Second*, to maintain and protect the basic rights of each individual citizen from violations that may occur as a result of one branch of power.

The constitutional mandate gives the Constitutional Court the authority to be able to maintain the inconsistency of the existing laws under the Constitution, so that the constitutional rights owned by the people are not violated. It is very important to safeguard and protect the constitutional rights from the formation of laws which generally contain the political interests of the lawmakers.[148] The birth of the Constitutional Court is in line with the understanding of *the rechtstaat* (state of law) where the Constitutional Court is the guardian of constitutionalism. As an institution that carries out the task of protecting the constitution, the Constitutional Court is a place to guard human rights enshrined in the constitution and become a constitutional right for citizens.[149]

The understanding of Constitutionalism is actually a state understanding that provides access or constitutional ways to protect the existence of human rights through the establishment of institutions in the state government system. The concept of constitutionalism can be said to have provided the value of justice, because in the formation of state institutions it is arranged with the division of state power to be able to protect human rights. Therefore, the law as a law formed by the legislative power, needs to be supervised by every citizen through access to other institutions, namely the judiciary, in this case it is the authority of the Constitutional Court to test the law against the Constitution.[150]

---

[148] Akmal and Arlianti, "Dynamics of the Protection of Citizens' Constitutional Rights in the Implementation of Law Testing at the Constitutional Court."

[149] Fantika Setya Putri and Gayatri Dyah Suprobowati, "The Existence of the Constitutional Court of the Republic of Indonesia on the Affirmation of Citizens' Constitutional Rights," *Souvereignty* 1, no. 4 (December 16, 2022): 626–34, https://doi.org/10.13057/souvereignty.v1i4.92.

[150] Mario Agritama S. W. Madjid and Muh Ilham Akbar, "A Review of the Principles of Constitutionalism in the 1945 Constitution as a Result of Amendments and Discourse on Its Amendments," *Journal of Law and Human Rights Wara Sains* 2, no. 03 (March 31, 2023): 152–62, https://doi.org/10.58812/jhhws.v2i03.239.

The law is a guide between two things, namely, legal certainty and justice. Justice can be said to be the embodiment of the people's sovereignty, while legal certainty can be seen as a manifestation of the rule of law. The enactment of the law is the application of the balance between the rule of law and the sovereignty of the people which is a unit in a democratic state of law.[151] The law testing system can be said to have a role as a guardian and control to be able to prevent the quality of legislation that is not in line with the constitution.

The testing of laws that are the authority of the judicial institution, namely the Constitutional Court, is to measure the validity and *validity*[152] of legal products issued by legislative, executive, and judicial institutions against the applicable Constitution. The existence of law testing can not only be understood as a tool for judicial institutions in supervising the legal products of legislative and executive institutions, but also understood as an access or way for every citizen who feels that his or her constitutional rights are harmed by the enactment of a law.[153]

Constitutional rights that are part of human rights as detailed in Article 28 (28A-28J) of the Constitution when divided generally into three things: *First*, the right to civil and political freedom, as well as the right to life, freedom of religion, thought, freedom from all forms of discrimination, and the right to voice. *Second*, social and cultural rights, such as the right to work with a decent income, gender equality, decent livelihood, the right to physical and mental health services, and the right to education. *Third*, the

---

[151] Budahu, "Legal Standing of the Applicant Regarding the Submission of Judicial Review at the Constitutional Court."

[152] The law can be operationally applicable if it meets 3 conditions, including:

1) *Juristiche geltung* (juridical enforceability), that is, every rule of law will immediately take effect if juridically the formal requirements are met
2) *Soziologische geltung* (sociological practicability), namely the rule of law has the power of practicability when the rule has been clearly alive in society
3) *Filosofische geltung* (philosophical action), that is, the law has actionability if the rules contained in the law are in harmony with the *recth idee*

See in the book Anik Iftitah et al., *Introduction to Law* (Banten: Sada Kurnia Pustaka, 2023).

[153] Budahu, "Legal Standing of the Applicant Regarding the Submission of Judicial Review at the Constitutional Court."

right to solidarity, as well as the right to self-development, the right to a peaceful life, and to get a healthy and clean environment.[154]

The applicant in the Constitutional Court Decision No. 13/PUU-XXII/2024 in testing the law seeks to protect the constitutional right in the form of health which has been guaranteed by the 1945 Constitution of the Republic of Indonesia. The Constitutional Court in the social sphere, its existence is to guarantee that every citizen has the same right to benefit from public facilities and public services. One of these rights is in the form of health rights and other social services. The role of the Constitutional Court in conducting *judicial review* of groups that may be discriminated against or blocked from accessing in accordance with their constitutional rights, so that the Constitutional Court strives to provide equal and fair treatment as much as possible.[155]

The applicant argued that his constitutional rights were harmed because his access to treatment through the use of medical marijuana was hindered by the existence of a law in force in Indonesia. In general, the constitutional rights of the applicant that are violated regarding the constitutional right to health as enshrined in the 1945 Constitution of the Republic of Indonesia include[156]:

1) The right to life: Article 28A, Article 28I (1), and Article 28B (2) which are the right to live and maintain life and livelihood, as well as the right to survival, growth and development.
2) The right to self-development: Article 28C (1) is the right to develop oneself through the fulfillment of basic needs, education, and the benefit of science and technology, arts and culture

[154] The protection of human rights contained in Chapter XA of the 1945 Constitution is the content material of the manifestation of *Universal Declaration of Human Rights* (DUHAM) by the United Nations. Excerpted from the article Salahudin Pakaya and Ismet Hadi, "The Right of Citizens to Be Protected as a Human Right in the Constitution," *At-Tanwir Law Review* 3, no. 1 (March 1, 2023): 110–23, https://doi.org/10.31314/atlarev.v3i1.2345.
[155] Devi Anggreni et al., "The Role of the Constitutional Court in Guaranteeing the Rule of Law in Indonesia," *Hutanasyah : Journal of Constitutional Law* 3, no. 1 (August 31, 2024): 11–26, https://doi.org/10.37092/hutanasyah.v3i1.868.
[156] Munte and Sagala, "Protection of Constitutional Rights in Indonesia."

3) The right to health and a healthy environment: Article 28H (1) and Article 28B (1) which are the right to be able to live a prosperous life both physically and mentally, as well as the right to obtain health services.
4) Right to freedom from discrimination: Article 28H (2) the right to convenience and special treatment to obtain special benefits to obtain equal opportunities and benefits in order to achieve equality and justice.

The specific rights that the applicant submitted as an application to be tested before the Constitutional Court are broadly associated with Constitutional Rights [157] , namely Article 28H paragraph (2) of the Constitution which dictatively provides the right to ease of access and special treatment in obtaining equal benefits to achieve equality and justice. The context with the situation of the applicant who experiences a certain medical condition in the form of *cerebral palsy* certainly requires special treatment, so that he can get effective treatment for his treatment. The applicant in terms of special treatment in question is in the form of the use of medical marijuana in health services.

Judicial review at the Constitutional Court functions to provide protection of constitutional rights for every citizen. The birth of the Constitutional Court in the Indonesian constitutional system is indeed oriented so that the constitutional law as a *grundroid* remains consistent and exists in the ranks of the state government and all elements of society.[158] The

[157] The 40 constitutional rights guaranteed in the 1945 Constitution of the Republic of Indonesia can be categorized into 14 groups including: The right to citizenship, the right to life, the right to self-development, the right to freedom of thought & choice, the right to information, the right to decent work & livelihood, the right to ownership & housing, the right to health and a healthy environment, the right to legal certainty and justice, the right to freedom from threats, the right to protection, the right to fight for rights, and the right to government.
See in National Commission on Anti-Violence Against Women (Komnas Perempuan) (Indonesia), *40 Constitutional Rights of Every Indonesian Citizen in 14 Clusters: Know Your Rights* (National Commission on Anti-Violence Against Women (Komnas Perempuan), 2020).
[158] Putri and Suprobowati, "The Existence of the Constitutional Court of the Republic of Indonesia on the Affirmation of Citizens' Constitutional Rights."

Constitutional Court has a significant role in protecting the rights of vulnerable groups, because in reality it may happen that policies issued by the government, both legislative and executive, do not directly discriminate, but can have a detrimental impact on a certain group or group. The existence of the Constitutional Court in this context presents the protection of minority rights and that all regulations issued by the government can provide the principles of equality and justice.[159]

The protection of this constitutional right is a responsibility in protecting and upholding human rights contained in the constitution. The fulfillment of constitutional rights is the responsibility of every state institution and government, as well as every citizen. Access to *judicial review* is one of the ways to protect constitutional rights that are felt to be unfulfilled for citizens due to the enactment of a legal provision. The three postulates above, as explained in detail by the author, are important aspects of their existence in submitting an application before the Constitutional Court court. *Legal standing* and constitutional losses are the basis for the applicant to have legal standing. The legal position possessed is the reason for the constitutional judge in considering the postulates of the applicant's application in the legal test. The judge's consideration of the postulates of the application becomes the basis for the judge to determine the decision of the Constitutional Court to reject, accept, or accept an application for testing the law against the constitution.

B. *Ratio Decidendi* Hakim in the Constitutional Court Decision Number 13/PUU-XXII/2024

The Constitutional Court Decision Number 13/PUU-XXII/2024 is a decision issued by a Constitutional Court Judge related to the testing of the law in Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the protocol that changes it to the Constitution of the Republic of Indonesia in 1945. The ruling in testing this law relates to the use of *cannabis*

[159] Anggreni et al., "The Role of the Constitutional Court in Ensuring the Rule of Law in Indonesia."

sativa in health services. This decision is the second time that an application has been submitted by citizens who feel that their constitutional rights are harmed as a result of the enactment of a law, in this context is the prohibition of the use of *cannabis sativa* in health services as expected by the petitioners who examined the law before the Constitutional Court.[160]

The author below further elaborates on the judge's considerations in deciding the application for *judicial review* in the Constitutional Court Decision Number 13/PUU-XXII/2024, in describing this, the author begins a discussion related to the main point of the Constitutional Court's decision regarding the use of *cannabis sativa* in health services in which the applicant exercises his constitutional right to Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961. The main point of the overview of the Constitutional Court's decision is the essence of the flow of issuing the decision of the constitutional judge starting from the issue being tested to the final and binding decision decided by the Constitutional Court.[161]

Furthermore, to understand the Constitutional Court's decision, the author elaborates on the analysis of the Constitutional Court's decision. This ratio *decidendi analysis* is a step to understand the basis of the judge's consideration in deciding a case. An understanding of this can find out what is the basis for the constitutional judge to reject the applicant's application, so that the constitutionality of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics is declared not to be contrary to the constitutional rights guaranteed in the 1945 Constitution.

---

[160] SUSANA RITA KUMALASANTI, "MK Reaffirms the Importance of Studying the Use of Cannabis for Medical Use," kompas.id, March 20, 2024, https://www.kompas.id/baca/humaniora/2024/03/20/mk-kembali-tegaskan-pentingnya-kajian-penggunaan-ganja-untuk-medis.

[161] The main point of the overview of the Constitutional Court's decision is a summary based on the content of the Constitutional Court's decision, explaining important points regarding the content of the decision using its own language while still in accordance with the problems in it. See in Ruangguru Tech Team, "Definition, Overview, Structure, Characteristics, Examples & How to Make," October 8, 2024, https://www.brainacademy.id/blog/mengenal-ikhtisar.

The author also analyzes the interpretation method used by the Constitutional Judge in providing legal considerations to the Constitutional Court's decision. The Constitutional Court as an institution that can be said *to be the soul and the highest interpreter* of the constitution has the right and authority to interpret the provisions of the constitution, the [162] interpretation of judges is the basis for legal considerations for constitutional judges in providing meaning and explanation of the constitutionality of a law against the 1945 Constitution. The three things above are the author's postulates in supporting the analysis of *the decidendi ratio* in the Constitutional Court Decision Number 13/PUU-XXII/2024 related to the use of *cannabis sativa* in health services. Below the author will elaborate in more detail related to the main points of the Constitutional Court's decision, the analysis of legal considerations carried out by judges, and finally the method of interpretation of the constitution contained by judges in issuing the Constitutional Court Decision.

1. **Summary of the Constitutional Court Decision Number 13/PUU-XXII/2024**

   Cannabis or more commonly known in Indonesia as cannabis is a plant whose existence is considered by some people to be a plant that has a negative impact because it leads to things that cause addiction, disease, and even death for its users. This statement about marijuana is not fully justified by some other people, because along with the development of technology and science today, especially in the medical world, there are groups who think that marijuana can be used as a treatment to overcome or treat crucial diseases.[163]

   Indonesia itself is a country that generally views that cannabis is a plant that has a bad effect because it can inhibit and damage the lives of the nation's next generations.[164] This can be seen through the regulatory rules set

[162] Indra, Saragih, and Muhtar, "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia."
[163] Akmal Fauzan, "Basic Criticism of Hans Kelsen's Theoretical Positivism School (Case Study on the Polemic of Cannabis Legalization in Indonesia)," *At-Tanwir Law Review* 2, no. 2 (August 30, 2022): 142–54, https://doi.org/10.31314/atlarev.v2i2.2025.
[164] Lutfiyani, Hamzani, and Rizkianto, *Cannabis for Medical Controversy*. 2

in Indonesia, where Indonesia has been committed from the beginning to be part of combating the negative impact of the existence of narcotics, one of which is regarding marijuana. The use of marijuana in the medical world, which is expected by some people in Indonesia, certainly cannot be realized because it is hindered by the negative paradigm that generally grows and develops in the majority of Indonesian society.[165]

Regulations regarding marijuana are contained in Law No. 35 of 2009 concerning Narcotics, in which marijuana is part of Class I Narcotics.[166]This Group I narcotics means that narcotics whose use cannot be used in health services and are only intended for the development of science and technology, due to their high dependence so that there is a potential for abuse. The Indonesian government in this case certainly has the goal of trying to maintain the quality of human resources in Indonesia to avoid the negative impact of the existence of marijuana and realize its welfare through maintaining the improvement of the quality of public health.[167]

The condition as described above, gave birth to a polemic that occurred among groups of people, regarding the use of marijuana in the world of health. In fact, narcotics, especially marijuana, have a negative impact that has the potential to be abused due to the effect of dependence, but on the other hand it has benefits in the world of science development and health services.[168] The culmination is the testing of the law regarding the use of marijuana in the health world, because several groups feel that their constitutional rights are harmed by the prohibition of the use of marijuana as regulated in Indonesia's positive law. The testing of this law then gave birth

[165] Fauzan, "Basic Criticism of Hans Kelsen's Theoretical Positivism School (Case Study on the Polemic of Cannabis Legalization in Indonesia)."
[166] Article 6 paragraph (1) Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).
[167] Mir'atul Firdausi, Aufi Imaduddin, and Faridatul Ulya, "The Dilemma of Medical Cannabis Use in Indonesia (An Analysis of the Perspective of the Constitutional Law in Indonesia and Islamic Law)," *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 2 (October 30, 2022): 164–85, https://doi.org/10.51675/jaksya.v3i2.254.
[168] Firdausi, Imaduddin, and Ulya.

to the Constitutional Court Decision No. 13/PUU-XXII/2024 related to the use of marijuana in the medical world. An overview of the Constitutional Court Decision No. 13/PUU-XXII/2024 will be contained in the table below:

Table 3. 1 Summary of the Constitutional Court Decision Number 13/PUU-XXII/2024

Applicant	The applicant consists of two applicants, namely Applicant I Pipit Sri Hartanti who is a housewife (IRT) and Supardji a Private Employee who has given his power of attorney to Singgih Tomi Gumilang, S.H., M.H. and the legal representatives of Sitomgum *Law Firm.*
Applicant's Argument	The content of Article 1 paragraph (2) along with its Explanation of Law of the Republic of Indonesia Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It [Statute Book of the Republic of Indonesia Number 36 of 1976, Supplement to Statute Book Number 3085] along the sentence 'Protocol Amending the Single Convention on Narcotics 1961', is declared contrary to the 1945 Constitution and does not have binding legal force, as long as it is not construed as "Protocol Amending the Single Convention on Narcotic Drugs 1961, up to the 63rd session protocol, including the document of the Commission on Narcotic Drugs Sixty-third session Vienna, 2–6 March 2020, which uses the document symbol: E/CN.7/2020/CRP.19".
Constitutional Court Legal Considerations	• Article 24C paragraph (1) of the 1954 Constitution in conjunction with Article 10 paragraph (1) letter a of Law No. 24 of 2003 concerning the Constitutional Court states that the Court has the authority, including adjudicating at the first and last level, where the decision is *final and binding* to assess the Law against the 1945 Constitution. The regulation tested is Article 1 number 2 of Law No. 8 of 1976, so that the Constitutional Court has the authority to adjudicate *a quo application* • *According* to the Constitutional Court, the Petitioners have been able to prove the

	existence of causes and consequences related to the loss of their constitutional rights, both actually and potentially, due to the enactment of the Law for which the test is requested • The Constitutional Court, based on its legal considerations, stated that Article 1 number 2 of Law 8/1976 and its Explanation have not violated the Petitioner's constitutional rights as stipulated in Article 28J paragraph (2) of the 1945 Constitution. The Petitioners' arguments according to the Constitutional Court are not legally grounded
Amar Verdict	Amar Constitutional Court Decision Number 13/PUU-XXII/2024 is "Rejecting the Petitioners' Application in its entirety".

The main point of the overview of the Constitutional Court Decision No. 13/PUU-XXII/2024 as in the table above is a brief overview of the applicant's application in submitting efforts to legalize the use of marijuana in health services until the decision issued by the Constitutional Judge. This decision is the second decision after previously conducting *judicial review* in the Constitutional Court Decision Number 106/PUU-XVIII/2020. The court in this case still stands not to legalize marijuana classified as a class I narcotic because there is no concrete evidence carried out through a comprehensive review and research after the Constitutional Court's decision.[169]

This decision cannot be separated from the ijtihad of the Constitutional Judges through consideration of all legal aspects regarding the application for a constitutionality test applied for by the applicant. The Constitutional Court's decision reaffirms that the use of marijuana in the medical world cannot be carried out and reminds the government to immediately conduct comprehensive research so that the problem of *a quo*

[169] Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

decision can be immediately resolved and get a rational and scientific answer.[170]

The above description has explained the essence of the Constitutional Court's decision Number 13/PUU-XXII/2024 related to the use of *cannabis sativa* in health services. The Constitutional Court's decision stated that the judge rejected the applicant's application so that the decision stated that the law tested by the applicant did not contradict the provisions of constitutionality in Article 28 H paragraph (2) of the 1945 Constitution. For a more detailed explanation of the judge's legal considerations in deciding the case, the author will elaborate on the postulates below to examine *the judge's decidendi ratio* in the Constitutional Court Decision Number 13/PUU-XXII/2024, then the author will examine through the perspective of justice theory to provide a comprehensive understanding of the Constitutional Court's decision.

2. **Examining *the Ratio of Dicedendi* Constitutional Court Decision Number 13/PUU-XXII/2024 Perspective of Justice Theory**

The state of law in carrying out its functions generally has three important indicators, including: *supremacy of law*, *due process of law, and equality before the law*. One of the important indicators in a country of law is *the supremacy of law*, where this principle emphasizes the basic value of law through aspects of legal certainty, utility, and justice. As Aristotle argued in the ethical school that the existence of law is aimed at bringing justice in accordance with its rights, while Bentham gave the opinion that the existence of law is to achieve the happiness of citizens as much as possible, in this case the law provides benefits.[171]

The Constitutional Court as an implementation to achieve the state of law, its existence is aimed at becoming *the guardian of the constitution*, so

[170] Lyhal on Page 101 number 3.10 Indonesia.
[171] Aldi Pradani and Winsherly Tan, "Analysis of the Grant of Clemency for Perpetrators of Narcotics Crimes," *Journal of Legal Analysis* 5, no. 1 (April 25, 2022): 40–55, https://doi.org/10.38043/jah.v5i1.3443.

the Constitutional Court has a function which generally aims to bring justice and enforce the law. The Constitutional Court in its decision-making is always required to consider aspects of justice, legal certainty and legal benefits. The explanation above can be understood that the Constitutional Court, which is a place for citizens who feel that their constitutional rights are not fulfilled by the state, can conduct *a judicial review* so that the Constitutional Court can provide a sense of justice.[172]

The Constitutional Court is one of the three branches of state power. The Constitutional Court is an organ of the state that was born from the 1945 Constitution, whose existence and position are part of the judicial power. The birth of the Constitutional Court itself is aimed at being able to present justice and enforce the law in accordance with the authority it has according to the constitution. The Constitutional Court in this case can be understood as the background of its formation is to uphold the supremacy of the constitution.[173]

The authority of the Constitutional Court is contained in Article 24C paragraph (1) of the 1945 Constitution which reads:[174]

"The Constitutional Court has the authority to adjudicate at the first and last level whose decision is final in order to test the law against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide the dissolution of political parties, and decide disputes about the results of general elections".

In exercising its authority, the Constitutional Court gives a decision in accordance with the provisions of the relevant legal sources, both written and unwritten, to be used as a legal basis in adjudicating. As in Article 53 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power states that:[175]

---

[172] Prassetyo, "Legalization of Medical Marijuana (Analysis of the Constitutional Court Decision Number 106/PUU-XVIII/2020)."
[173] Constitution *Procedural Law of the Constitutional Court*.
[174] Article 24C Indonesia, 1945 Constitution of the Republic of Indonesia.
[175] Republic of Indonesia, "Law No. 48 of 2009 concerning Judicial Power (Statute Book No. 157 of 2009, Supplement to Statute Book No. 5076)" (n.d.).

"Determination and Decision as referred to in paragraph (1) must contain the judge's legal considerations based on appropriate and correct legal reasons and grounds"

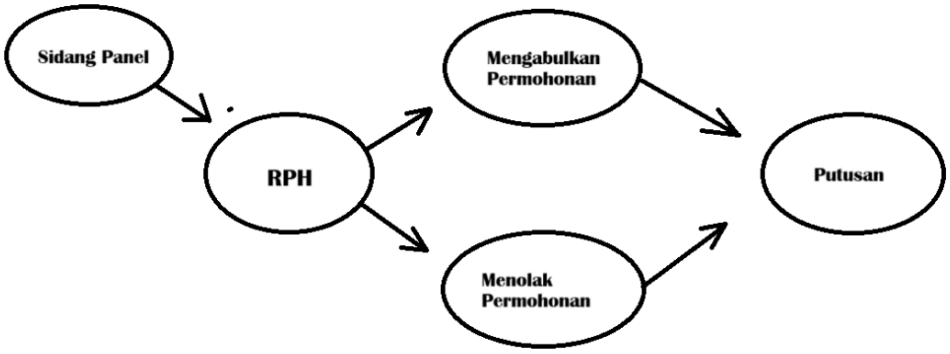
The judge's consideration in a Constitutional Court decision is closely related to constitutional principles, which are based on an understanding of constitutionalism in the form of guarantees for people's rights and limitations of power. For a Constitutional Court decision, a legal consideration has a crucial position, because it is the juridical core of the decision. There are at least three components of the requirements for a judge's decision to meet the elements of legal consideration, including: *First*, consideration in accordance with the law, which means that the judge in giving his decision must be in harmony with the provisions of the law, both formally and materially. *Second*, Consideration is in accordance with justice, which means that the judge's decision must always strive to fulfill the sense of justice, because the main purpose of the law is to realize justice. *Third*, consideration in accordance with the benefits of law means that the judge in issuing his decision must consider the aspect of the benefit of citizens, because the decision of the Constitutional Court has an impact on every individual in the country.[176]

Legal considerations in the Constitutional Court's decision consist of two parts, including the first part of legal considerations regarding the authority of the Constitutional Court to examine and adjudicate, in the first part it also contains considerations regarding *the legal standing* of the applicant if the authority of the Constitutional Court is in accordance with the mandate of the constitution. The second part of the legal consideration of the subject matter is in the form of consideration of legal issues that will later determine the Constitutional Court's decision.[177]

[176] Trinanda, "Reconstruction of the Regulation of Classification of Cannabis Plants in the Narcotics Law from Class I Narcotics to Class II Narcotics Based on the Right to Health."
[177] Constitution *Procedural Law of the Constitutional Court*. 57

The judge's legal considerations contain two things, namely *the Decidendi Ratio* and *the Orbiter Dictum*. *Ratio decidendi* is the judge's consideration that is the basis for giving a decision contained in the verdict, so that the *ratio decidendi* and the verdict are mutually attached and have legal force. Regarding *the arbiter dictum* is interpreted as a judge's consideration that does not have legal force because there is no significant relationship to the legal issue and the verdict, generally *the arbiter dictum* by the judge is used as an analogy in building arguments for legal considerations.[178]

Figure 3. 1 Chart of Stages of Judge's Consideration to Decision



Source: Author's Creation (2024)

This legal consideration has a function to be a tool in explaining the core of the judge's consideration related to an application through the study of legal issues. First, the Panel Session is held after the application is recorded in the register to assess the completeness and clarity regarding the issue or application material. Second, the Examination Stage which was then carried out by the Judges' Consultative Meeting (RPH) behind closed doors and was only attended by Constitutional Court Judges, Registrars, and

[178] Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia (Second Edition)*. 204

Substitute Registrars. This RPH stage contains judges' considerations which will later become legal considerations. Third, it is the stage of reading the decision after determining the results of the RPH to grant or reject the application. To provide ease of understanding, below is displayed a chart of the stages of the judge's consideration until it becomes a decision.

The Constitutional Court's Decision Number 13/PUU-XXII/2024 is related to testing the constitutionality of the norms contained in Article 1 number 2 of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending it. The Constitutional Judge in his legal considerations first assesses the authority of the Constitutional Court and also considers the *legal standing of* the applicant in submitting *a judicial review*. In accordance with the provisions of Article 24C paragraph (1) of the 1945 Constitution, the Constitutional Court is authorized to adjudicate at the first and last level whose decision is final in examining the law against the 1945 Constitution.[179] Furthermore, regarding the legal position of the Applicant in submitting the application, according to the Constitutional Court, the applicant has been able to outline the existence of *a causal verband* relationship related to the loss of constitutional rights as mandated by the constitution, either actually or potentially as a result of the enactment of the rule requested to test its constitutionality.[180]

The applicant for the examination of Article 1 number 2 of Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending it to the Constitution of the Republic of Indonesia in 1945 was submitted by two applicants, namely Pipit Sri Hartanti and Supardji who are a husband and wife who have given power of attorney to lawyers who are members of Sitomgum *Law Firm*.[181] The

[179] Article 24C paragraph (1) Indonesia, 1945 Constitution of the Republic of Indonesia.
[180] See Page 90 Paragraph [3.5]Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[181] View Page 1 Indonesia. Constitutional Court Decision Number 13/PUU-XXII/2024.

Petitioner postulates that there are constitutional rights that are harmed due to the enactment of Article 1 Number 2 of Law No. 8 of 1976 and its Explanation which reads:

Article 1 Number 2 of Law 8/1976:[182]

> "Confirm:... 2. Protocol Amending *the Single Convention on Narcotic Drugs (1961*); copies of the text of which are attached to this law".

Explanation of Article 1 of Law 8/1976:[183]

> "Indonesia submits a requirement to Article 48 paragraph (2) based on the principle of not accepting an obligation to file international disputes in which Indonesia is involved with the Constitutional Court, especially if such disputes have a political aspect."

The above article, according to the applicant, as contained in the 1961 Single Convention on Narcotics, does not prohibit or use Class I Narcotics as a whole in the context of scientific development and the use of health services.[184] The latest development is based on *the Report on the Reconvened Sixty-Third Session* [2-4 December 2020], *the Commission on Narcotics Drugs* (CND), issued by the *UN Economic and Social Council*, E/2020/28add.1 held a vote by relevant countries on the elimination of *cannabis* and *cannabis resin* from *Schedule IV of the* Single Convention on Narcotic Drugs 1961 to *Schedule I.*[185] The Government's stance in this case rejects the results of the CND decision.[186]

---

[182] Republic of Indonesia, "Article 1 number 2 of Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It (Statute Book 1976)" (1976).

[183] Indonesia. , "Explanation of Article 1 of Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It (Statute Book 1976)" (1976).

[184] ByPublic Relations FHUI, "The Use of Cannabis in the Medical Field from the Perspective of Legal Certainty and Benefits by Wahyu Andrianto, S.H., M.H. – Faculty of Law, University of Indonesia," accessed November 4, 2024, https://law.ui.ac.id/penggunaan-ganja-di-bidang-medis-dari-perspektif-kepastian-dan-kemanfaatan-hukum-oleh-wahyu-andrianto-s-h-m-h/.

[185] *Schedule I* is interpreted for substances or drugs that have medical benefits but there is still a great risk of abuse, while *Scedule IV* for substances or drugs that have no medical benefits and are very dangerous, so they pose a negative risk to health. See in Page 50 point 90. Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

[186] By BNN Public Relations, "Voting Results at the Reconvened 63rd Session of the Commission on Narcotics Drugs Related to Cannabis and Cannabis Resin," December 9, 2020, https://bnn.go.id/hasil-voting-pada-reconvened-63rd-session-commision/.

The Constitutional Court judge in the Constitutional Court Decision Number 13/PUU-XXII/2024 weighed because the constitutionality issue has similarities with the Constitutional Court Decision Number 106/PUU-XVIII/2020 which also issues the use of marijuana in health services, so that the legal considerations cannot be separated and have a relationship. Regarding the subject matter of the petitioner's application in the Explanation of Article 1 of Law 8/1976[187], according to the Court, it is the government's attitude in responding to Article 48 of the 1961 Single Convention on Narcotics which essentially stipulates that any dispute that cannot be resolved in the prescribed manner regarding the application of the convention, will be referred to the International Court of Justice.[188]

The government's stance regarding the regulation of Article 48 of the 1961 Single Convention on Narcotics is that it refuses to file an international dispute in which Indonesia is involved in the International Court of Justice.[189] The Constitutional Court in understanding the government's stance is Indonesia's foreign policy which as a sovereign country, in other words, sovereign to be able to protect the entire nation and spill Indonesian blood based on the principle *of protection of the people* and the principle of *state sovereignty*. Based on this description, according to the Constitutional Court, the petitioners' argument regarding Article 1 number 2 of Law No. 8 of 1976 is contrary to Article 28H paragraph (2) of the 1945 Constitution is not valid according to law.[190]

---

[187] Explanation of Article 1 "Indonesia submits a requirement to Article 48 paragraph (2) based on the principle of not accepting an obligation to file an international dispute in which Indonesia is involved to the International Court of Justice, especially if such a dispute has a political aspect. Indonesia, Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It (Statute Book 1976).

[188] Article 48 Point 2 "Any such dispute which cannot be settled in the manner prescribed shall be reffered to the international court of justice for decision United Nation, "Single Convetion on Narcotic Drugs 1961" (1961).

[189] "United Nations Treaty Collection," accessed November 4, 2024, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6#21.

[190] See page 95 paragraph [3.10.1] Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

The Government of Indonesia in terms of the use of marijuana, as contained in the official document *Conference Room Paper* E/CN.7/2020/CRP.24 emphasized that the Recommendation of the (*Expert Committee on Drug Dependence*) of the Government of Indonesia expressed its objections and emphasized to voice in the commitment to uphold the long-standing consensus on narcotics. According to the Indonesian government, the negative impact of marijuana use is greater than its benefits in the world of health.[191] The Indonesian government also emphasizes that there is sovereignty in regulating the use of illegal drugs for a national law, this is aimed at safeguarding and protecting citizens from the negative effects of narcotics in general, and marijuana in particular.[192]

This government step can be concluded that Indonesia has not adopted and ratified as the development issued by the *Commission on Narcotic Drugs Reconvened sixty-third session, in Vienna on 2-4 December 2020*, so it can be said that Indonesia has no obligation and is not bound to legalize the use of cannabis in health services. Even though there has been a shift in *cannabis* from *Schedule IV* to *Schedule I*, the Indonesian government still stands to prohibit the use of cannabis in health services as in Class I Narcotics in Law 35 of 2009 concerning Narcotics.

The condition that there has been no concrete and in-depth assessment and research after the issuance of the Constitutional Court Decision Number 106/PUU-XVIII/2020 and during the submission of the application for the Constitutional Court Decision Number 13/PUU-XXII/2024, the Constitutional Judge considered that the use of *cannabis* in health services is difficult and cannot be realized or accepted rationally,

[191] Muhammad Zainul Muttaqien, "The Views of the Acehnese People on the Use of Cannabis," *Journal of Syntax Admiration* 5, no. 10 (October 16, 2024): 3901–13, https://doi.org/10.46799/jsa.v5i10.1540.
[192] See page 100 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

because medically, philosophically, sociologically, and juridically cannot be fulfilled for the use of cannabis in Service.[193]

The Constitutional Court, in handling this discourse, asked the Government to conduct research both jointly with the private sector and on its own to comprehensively examine the use of *cannabis sativa* in health services so that issues such as in *the a quo* decision can be resolved and find answers rationally and scientifically.[194] This consideration is also based on the increasing number of aspirations in the community regarding the need for the use of cannabis on the basis of health and humanitarian interests.[195] The Constitutional Court's decision in its ruling stated that the Petitioners' application was rejected in its entirety, because the petitioner's argument was unreasonable according to law.[196]

The Constitutional Court as an institution of judicial power whose function is to protect and enforce the constitution, all decisions of constitutional judges must always prioritize aspects of justice, certainty, and legal utility.[197] As in legal philosophy, the purpose of the existence of law is to achieve justice, legal certainty and legal utility. One of the objectives of law, which is often an important indicator in the implementation of law, is the aspect of justice which is in line with Aristotle's opinion that "law can only be carried out in relation to justice".[198] Justice is a condition in which there is a balance in the implementation of free will and the interests of each individual or society in the implementation of social and state life.[199]

---

[193] Prassetyo, "Legalization of Medical Marijuana (Analysis of the Constitutional Court Decision Number 106/PUU-XVIII/2020)."
[194] Caniago et al., "Prohibition of the use of cannabis in the medical sector."
[195] Malik, Manalu, and Juniarti, "Legalization of Cannabis in the Medical Sector from a Legal Perspective."
[196] Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[197] Isaiah Fabian Davis and Amalia Putri Maharani, "The Role of Judges in Deviating Special Minimum Sanctions for Narcotics Abuse Based on Progressive Legal Theory," *Journal of Law: ALETHEA* 7, no. 2 (August 30, 2024): 149–64, https://doi.org/10.24246/alethea.vol7.no2.p149-164.
[198] Nasihuddin et al., *Pancasila Legal Theory*. 19-20
[199] Serlika Aprita and Rio Adithya, *Philosophy of Law* (Depok: Rajawali Pers, 2020). 20

The Constitutional Court's Decision Number 13/PUU-XXII/2024 can be analyzed through the theory of justice, in this context whether the judge's decision has fulfilled the aspect of justice, but the understanding of the presence of the aspect of justice cannot be separated from the other two aspects, namely the aspect of legal certainty and legal utility. Before discussing the justice aspect of the Supreme Court's decision above, it will begin with the aspect of legal certainty and then the aspect of usefulness first.

Legal certainty as conveyed by Utrech that legal certainty has two meanings, namely: *First,* there is a rule that has a general nature so that each individual understands what medicine is allowed and what is prohibited. *Second,* legal protection for each individual from the arbitrariness of the ruler.[200] *The ratio decidendi* in the Constitutional Court Decision Number 13/PUU-XXII/2024 has appropriately met the aspect of legal certainty, because the judge in his consideration is based on a provision of the applicable law which regulates related to the ability or impermissibility will be appropriate, in this context the use *of cannabis* in health services, through this decision has also provided legal protection for the applicant to test the law

The Constitutional Court's decision is also required to meet the aspect of legal utility. The aspect of legal utility is the view of Jeremy Bentham's school of utilitarianism, which in his original opinion argues that the purpose of the existence of law is oriented towards human benefits. The benefit here is in the form of the *greatest happiness of the community as much as possible (the greatest happiness the greatest number*).[201] Looking at the legal considerations in the Constitutional Court decision 13/PUU-XXII/2024, it can be understood that the rejection of the application for the use of cannabis in health services is due to the nature of *cannabis* itself which has great

[200] Oksidelfa Yanto, *The State of Law: Certainty, Justice, and Usefulness (In Indonesia's Criminal Justice System* (Bandung: Pustaka Reka Cipta, 2020). 28
[201] Gede and Putu, *Legal Theories*. 207

potential to be able to have negative effects on the wider community, compared to the benefits of its use even in the medical realm. This can be said that the constitutional judge in the decision prioritizes benefits through protection for the wider community to avoid the potential negative potential that can occur if the use of marijuana is carried out.

The Constitutional Court's Decision Number 13/PUU-XXII/2024 is also needed to be analyzed through the aspect of justice, because justice as described above, is one of the aspects whose existence is important in the scope of law. The community and state always want the presence of justice, so that there is a balance in carrying out other aspects. Regarding justice here, it is appropriate to use analysis through social justice or social justice proposed by John Rawls, according to him in the theory of justice focuses on the basic structure of society, the constitution of the country, the rule of law, the legal system, the social system, and institutions. On this basis, Jhon Rawls seeks to organize how the basic structure of society distributes the burdens and benefits in achieving justice.

The theory of *social justice* according to John Rawls has two core principles of justice for society, namely: *First*, the ownership of the right to freedom that must be owned by individuals and at large for society. *Second*, socio-economic differences should be arranged in such a way that they can provide protection for the weakest (incapable) members of society and the principle of *fairness* in positions or positions that are open to the community.[202] If analyzed in relation to the context of the Constitutional Court's decision above, then this social difference as Jhon Rawls' opinion must be regulated in such a way as to provide protection to the weak community, in this context the weak community is citizens who need the use of marijuana in health services, it is said to be weak because it is a group that

[202] Zainal Arifin Mochtar and Eddy. O.S Hiariej, *Fundamentals of Law: Understanding the Rules, Theories, Principles, and Philosophy of Law* (Depok: Rajawali Pers, 2024). 338

wants to meet their life needs in the form of welfare and health so that they feel justice as groups of people who do not experience this.

The ratio of judges in the Constitutional Court Decision Number 13/PUU-XXII/2024 if analyzed through the theory of justice, it can be said that it has not met the aspect of justice, because the prohibition of the use of marijuana in health services is very detrimental to some people who are experiencing difficulties as experienced by the applicant that their daughter who is suffering from *cerebral palsy* and have made treatment efforts but are not effective and efficient in their impact on the development of their health. Based on this, the Constitutional Court ordered the Government to immediately conduct a comprehensive study and research, so that problems regarding the issues in the Constitutional Court's decision can find answers that can be accepted rationally and scientifically.[203] The results of the research on the use of cannabis in health services can later be a reference for policy makers, namely both the legislature and the executive in making a shift from the existence of *cannabis* in national law, so that the people of the country get justice, benefits, and legal certainty in its entirety.[204]

The Constitutional Court related to the testing of laws related to the ratification of the 1961 Single Convention on Narcotics in its decision stated that it rejected or could not grant the applicant's application due to the facts proven in the trial in the absence of comprehensive research conducted in Indonesia, so that the judge's consideration was difficult to accept medically, philosophically, juridically, and sociologically in accepting the legalization of the use of marijuana for services health. The legal considerations issued

[203] Kompas Cyber Media, "Constitutional Court Asks the Government to Immediately Review Medical Cannabis for Health Needs," KOMPAS.com, July 21, 2022, https://nasional.kompas.com/read/2022/07/21/09080991/mk-minta-pemerintah-segera-kaji-ganja-medis-untuk-kebutuhan-kesehatan.

[204] Justice in law in the form of social justice leads to political ethics. According to political ethics, justice is the responsibility of the state to present justice that is individual, to be more social justice according to what the community feels. As in the 5th precept of Pancasila, so that in this context the realization of social justice is the obligation of the legislature and the executive as the former of the law. See in the book Gede and Putu, *Legal Theories*.

by the judge certainly use the interpretation methods chosen by the Constitutional Judge in describing and explaining the constitutional meaning of the Law to the 1945 Constitution. The author in the last postulate below, will analyze the interpretation method of constitutional judges which is the basis for legal considerations in issuing Constitutional Court Decision Number 13/PUU-XXII/2024 regarding the use of *cannabis sativa* in health services.

3. **Judges' Interpretation Methods on *the Ratio of Dicedendi* Constitutional Court Decision Number 13/PUU-XXII/2024**

The Constitutional Court is a judicial power institution that has the authority to conduct *judicial review* of the 1945 Constitution. The authority given to the Constitutional Court is an effort to ensure that the provisions of the legislation formed by the legislative or executive institutions are in line with and do not contradict the constitution, namely the 1945 Constitution. The authority of the Constitutional Court in carrying out the testing of laws is generally only in determining the constitutionality or unconstitutionality of a law being tested, this is often understood with the term *negative legislator*.[205]

The birth of the Constitutional Court until now has always been a space for every citizen who feels that his constitutional rights as guaranteed by the 1945 Constitution are harmed or violated or the enactment of a law. This was initiated by Hans Kelsen's theory which constructed a pattern related to *stufenbau des recht* which became a guideline for many countries in the order of legislation. The Constitution here is the top of the rules, so every regulation whose position is under the 1945 Constitution must be in

[205] Rangga Wijaya, "The Function of the Constitutional Court in Testing the Law against the 1945 Constitution," *IJOLARES : Indonesian Journal of Law Research* 1, no. 1 (March 30, 2023): 23–27, https://doi.org/10.60153/ijolares.v1i1.5.

harmony and in harmony with the Constitution, if there is a conflict, it is the authority of the Constitutional Court in canceling a law.[206]

The authority in carrying out *judicial review* of the 1945 Constitution is *mutatis mutandis* gives an authority for the Constitutional Court to interpret the constitution. The testing of the law carried out by the constitutional court, the institution of judicial power, is based on its decision in accordance with the provisions of phrases, verses contained in the article or the entire article of the law that is tested with the constitution. The Constitutional Court can also be said to be the only institution that has the authority in terms of interpreting the constitution, because *judicial review* of the constitution is only the authority possessed by the Constitutional Court.[207]

The interpretation of the constitution as in general in legal science regarding legal interpretation, always occurs because it is impossible for a law or regulation to have a concrete nature and does not require further interpretation in its implementation. Judges in carrying out a test of the law, of course, need an appropriate interpretation method to be able to see the suitability of the law to the 1945 Constitution.[208] Interpretation of the constitution means that the effort to convey the meaning or intent of a term or a collection of terms that exist in the norms of the formulation of articles or verses. Interpreting the constitution can also be understood as providing explanations or information to be able to understand the meaning and masculate of a law.[209]

---

[206] Munawara Idris, Syamsul Bachri, and Naswar, "The Constitutional Court's Authority to Handle Constitutional Complaint Cases Through Constitutional Interpretation," *Alauddin Law Development Journal* 5, no. 2 (August 13, 2023): 317–31, https://doi.org/10.24252/aldev.v5i2.35592.

[207] Wijaya, "The Function of the Constitutional Court in Testing the Law against the 1945 Constitution."

[208] Rivaldo Edward Palendeng and Jadmiko Anom Husodo, "Analysis of the Interpretation of the Constitution of Constitutional Court Judges in the Formulation of the Constitutional Court Decision No.97/PUU-XIV/2016 concerning the Inclusion of Belief Streams in Identity Cards and Family Cards," *Res Publica: Journal of Public Policy Law* 3, no. 3 (December 23, 2020): 303–12, https://doi.org/10.20961/respublica.v3i3.46910.

[209] Syawaluddin Hanadi, "The Authority of the Constitutional Court in Interpreting the Constitution of the Republic of Indonesia in 1945," *Expose: Journal of Legal and Educational Research* 16, no. 1 (April 13, 2019): 349–60, https://doi.org/10.30863/ekspose.v16i1.92.

The Constitutional Court's Decision Number 13/PUU-XXII/2024 in its decision by the Constitutional Judge has provided regarding *the ratio decidendi* , which then became a legal consideration for the Constitutional Court in issuing a decision. These legal considerations are generated through the interpretation of the constitution carried out by the Constitutional Judge. The author tries to look at the interpretation of the constitution used by the judge in issuing the Constitutional Court's decision. There is basically no difference in the interpretation of the constitution that is expressly related to the interpretation of the law. As stated by Sudikno, the legal interpretation that is generally used by judges in giving their verdicts has 6 interpretation methods, including: 1) grammatical interpretation; 2) teleological or sociological interpretation; 3) systematic or logical interpretation; 4) historical interpretation; 5) comparative or comparative interpretation; 6) futuristic interpretation.[210]

Regarding this method of interpretation, there is no order or hierarchy, but it is a freedom for judges to use the method of interpretation to provide an appropriate explanation in accordance with the constitutional principles. The author tries to analyze what interpretation methods the constitutional judges use in deciding the application for testing the law in the Constitutional Court Decision Number 13/PUU-XXII/2024, to provide convenience regarding the analysis of the methods used by constitutional judges, the author describes in the form of a table, as below.

Table 3. 2 Identification of Constitutional Interpretation Methods Used by Constitutional Judges in Constitutional Court Decision Number 13/PUU-XXII/2024

It	Judge's Name: Contents of Interpretation	Types of Interpretation Methods	Information

[210] Constitution *Procedural Law of the Constitutional Court*. 70-77

1	**Daniel Yusmic P. Foekh:**[211] That before the Court considers the norms of Article 1 number 2 of Law 8/1976 which is the subject of the Petitioners' application, the Court will first carefully observe the Explanation of Article *a quo*, where in the inclusion/quotation of the Explanation of Article 1 number 2 of the Law a quo, the Petitioners wrote that the explanation of the article is "Quite clear". The Court found the legal fact that the Explanation of Article 1 of Law 8/1976 cited by the Petitioners was not exactly the same as the Explanation of Article 1 of Law 8/1976 attached to the evidence of the application, namely evidence P-2, which reads: "Indonesia submits a requirement to Article 48 paragraph (2) based on the principle of not accepting an obligation to file international disputes to which Indonesia is involved to the International Court of Justice, especially when such disputes have a political aspect". If the Petitioners look closely at the two articles and their explanations which are the subject of testing the a quo Law, it is clear that the	Grammatical Interpretation[212]	Grammatical interpretation is essentially an interpretation that emphasizes the structure of the language contained in the law to provide meaning or explanation of an object.[213] The judge's consideration as stated "first the court pays attention to the explanation of *article a quo*" according to the author's understanding is the way the constitutional judge interprets using the grammatical method through an objective explanation and understanding of the content of the legislative text. From the grammatical interpretation method, the Constitutional Court found that there was an inaccuracy of the applicant in postulating in accordance with the content of the Explanatory text in Article 1 number 2 of Law 8/1976.

[211] See [3.10.1] page 93 in Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[212] Grammatical interpretation, also known as textual interpretation, is the simplest interpretation in explaining the meaning of a law through understanding the word arrangement or language. See in the article Nor Fadillah, "Analysis of the Interpretation Method of the Constitutional Court in the Formulation of Decision Number 91/PUU-XVIII/2020 Regarding the Formal Testing of Law Number 11 of 2020 concerning Job Creation," *Lex Renaissance* 7, no. 4 (2022): 726–44, https://doi.org/10.20885/JLR.vol7.iss4.art4.
[213] Constitution *Procedural Law of the Constitutional Court*. 70-71

	Explanation contained in Article 1 is an Explanation of numbers 1 and 2. The explanation is a unity both for number 1 and for number 2 of Article 1 of Law 8/1976. This means that there is no separation of explanations between number 1 and number 2 of the a quo law as stated by the Petitioners in their application. Therefore, according to the Court, the Petitioners were inaccurate in citing the Explanation of Article 1 of Law 8/1976. However, related to the content of the Explanation of Article 1 of Law 8/1976 which is part of the object of testing, according to the Court, the existence of the Explanation of Article 1 of the Law a quo is a response/response of the Government of Indonesia to Article 48 of the Single Convention on Narcotic Drugs 1961.		
2	**Daniel Yusmic P. Foekh:**[214] That with regard to the provisions of Article 48 of the 1961 Single Convention on Narcotics, as well as based on the Explanation of Article 1 of Law 8/1976, Indonesia submits a reservation to Article 48 paragraph (2) of the 1961 Single Convention on Narcotics by affirming the Indonesian government's	Systematic Interpretation[215]	Systematic interpretation has the meaning of interpretation through the explanation of a law that is associated with other laws and regulations, because of course a law and regulation has a relationship with other

[214] See [3.10.1] page 95 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

[215] Systematic interpretation is the meaning of a provision of legislation after seeing the relationship between the law and other laws. This interpretation is carried out because a law is actually part of the entire legislation, so it certainly has a relationship or relationship with other laws. Excerpted from article Idris, Bachri, and Naswar, "The Constitutional Court's Authority to Handle Constitutional Complaint Cases Through the Interpretation of the Constitution."

	stance that it does not accept an obligation to file an international dispute in which Indonesia is involved to the International Court of Justice, especially if the dispute has a political aspect. According to the Court, the Indonesian government's attitude/decision not to engage in obligations to the International Court of Justice regarding the interpretation and application of the Single Convention on Narcotics, especially in the event of a political dispute, is part of Indonesia's foreign policy as a sovereign country, especially sovereign in determining its foreign policy stance to be free from the threat of illicit narcotics trafficking so that there is no security instability domestic. Thus, the Petitioners' argument related to the phrase "... along with the Explanation of Article 1 number 2 of Law 8/1976" which is contrary to Article 28H paragraph (2) of the 1945 Constitution which guarantees convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice is unreasonable according to law.		laws.[216] The considerations as contained in this part, according to the author, belong to a systematic interpretation in which the Constitutional Judge associates Law 8/1976 with Article 48 of the 1961 Single Convention on Narcotics, so that it can be understood according to the Constitutional Judge that the existence of Article 1 number 2 of Law 8/1976 is the government's response to Article 48 of the 1961 Single Convention on Narcotics.
3	**M. Guntur Hamzah:**[217] With the absence of evidence regarding comprehensive study and research after the	Teleological or Sociological Interpretation[218]	Teleological or sociological interpretation is an interpretation that is

[216] Constitution *Procedural Law of the Constitutional Court*. 72
[217] See in [3.10.2] page 101 Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.
[218] Teleological or sociological interpretation is an interpretation when the meaning of legal provisions is aimed at the social aspect. The current social conditions and conditions of the

	Constitutional Court's decision, the desire to make marijuana or cannabis substances for health services, again, is difficult for the Court to consider and justify the reason for its rationality, both medically, philosophically, sociologically, and juridically. Through the a quo ruling, it is important for the Court to reaffirm that the Government immediately conducts a special, in-depth and comprehensive study/research on the use of cannabis for medical purposes in Indonesia. This is important for the Court to affirm in the a quo decision to ensure that the issue is immediately resolved and answered rationally and scientifically. This needs to be considered because there are more and more people's aspirations regarding the need to use marijuana for health benefits and humanitarian reasons.		carried out based on the purpose of the truth. Through this interpretation, the Constitutional Judge relates laws and regulations to the social conditions that exist in society.[219] The author classifies this judge's consideration into a teleological or sociological interpretation because in his consideration the Constitutional Judge stated that in the absence of evidence regarding comprehensive studies and research related to the use of marijuana in health services, it is difficult to consider *a quo* application both medically, philosophically, sociologically, and juridically. And the judge asked the government to immediately conduct in-depth research, because the aspirations of the community are increasingly related to the use of marijuana in health services on the basis of health interests, so this is

community are associated with laws and regulations so that they are made in real time with the new social conditions. Quote from Anwar Hafidzi and Panji Sugesti, "The Interpretation of the Constitutional Court on the Testing of Government Regulations in Lieu of Law," *AL IMARAH: JOURNAL OF ISLAMIC GOVERNMENT AND POLITICS* 4, no. 2 (2019): 97–110.

[219] Constitution *Procedural Law of the Constitutional Court*. 71-72

			important to consider. According to the author, the Constitutional Court Judge emphasizes the sociological aspects that exist in society regarding the use of marijuana in health services, therefore the judge's consideration according to the author is classified as a teleological or sociological interpretation.

Source: Author's Search Results (2024)

Based on the table above, it can be understood that the Judge's Consideration in issuing the Constitutional Court Decision Number 13/PUU-XXII/2024 as described in the table above, the Constitutional Judge uses three methods of legal interpretation, including: 1) grammatical interpretation, 2) systematic interpretation, 3) teleological or sociological interpretation. Constitutional judges are not basically emphasized to use one of the interpretation methods, but it is free for judges to choose the interpretation method that will be used in explaining a law and regulation in testing its constitutionality against the 1945 Constitution[220]. Judges take advantage of their abilities according to their respective legal understandings, so that each of the judges may have conflicts and differences in interpreting the constitution on an object of issue.[221]

Judges in using their legal interpretation methods are the freedom they have to choose the interpretation method that is the basis for explaining the interpretation of the provisions of the 1945 Constitution. The

[220] Nurus Zaman, "The Role of Dissenting Opinions in Constitutional Court Judgements: Perspectives of Judges and Legal Interpretation," *Constitutional Journal* 21, no. 3 (September 1, 2024): 482–500, https://doi.org/10.31078/jk2138.

[221] Tanto Lailam, "Interpretation of the Constitution in Testing the Constitutionality of the Law against the 1945 Constitution," *Journal of Legal Media* 21, no. 1 (June 30, 2014): 19, https://doi.org/10.18196/jmh.v21i1.1159.

interpretation of the constitution by the judge is part of the legal consideration, so that it has binding force and becomes an explanation that can be understood by the applicant related to the decision submitted to test the law. The above postulates have been explained by the author in relation to *the judge's ratio decidendi* in giving the Constitutional Court Decision Number 13/PUU-XXII/2024, the three postulates essentially explain that the judge's consideration in rejecting the applicant's application is based on considerations regarding the aspects of benefits and potential abuse that can have a negative impact on the wider community if there is no comprehensive research conducted in Indonesia. So that efforts to legalize the use of marijuana in health services are something that cannot be realized according to the views and legal considerations of the Constitutional Court. The author will then examine and analyze the decision of the Constitutional Court from the perspective *of fiqh siyasah dusturiyah*, this is relevant because the orientation of both is to achieve blessings for the ummah or the wider community.

C. Judge's Consideration of Rejecting the Petitioners' Application in the Constitutional Court Decision Number 13/PUU-XXII/2024 *Fiqh Perspective of Siyasah Dusturiyah*

Efforts to legalize medical marijuana in Indonesia as stated in the Constitutional Court Decision Number 13/PUU-XXII/2024 are not the first time Indonesian citizens have requested the use of medical marijuana in health services in Indonesia. The first time the test of the law related to the use of *cannabis sativa* was in the Constitutional Court Decision Number 106/PUU-XVIII/2020 where the test was carried out in the Explanation of Article 6 paragraph (1) letter a and Article 8 paragraph (1) of Law Number 35 of 2009 concerning Narcotics against Article 28C paragraph (1) and 28H paragraph (2) of the 1945 Constitution.[222] The

[222] Brigitta Belia Permata Sari, "Constitutional Court Rejects Lawsuit by Ortu Anak with Cerebral Palsy Who Asks for Legalization of Medical Cannabis," detiknews, accessed November 17, 2024, https://news.detik.com/berita/d-7251264/mk-tolak-gugatan-ortu-anak-cerebral-palsy-yang-minta-legalkan-ganja-medis.

application resulted in a decision by the Constitutional Judge stating that the Constitutional Court rejected the petitioners' application in its entirety. This rejection decision can be interpreted that the provisions of the legislation do not contradict and still have constitutionality to the article of the 1945 Constitution that is tested.[223]

The re-testing was carried out by Indonesian citizens related to the use of *cannabis sativa* in health services as stated in the Constitutional Court Decision Number 13/PUU-XXII/2024. The Constitutional Court's decision ultimately remained consistent in rejecting the applicant's application in terms of efforts to legalize the use of medical marijuana in Indonesia. The Constitutional Court judge in issuing the Constitutional Court's decision, of course, considers both philosophical, sociological, and juridical aspects, as well as medical aspects in the context of the use of medical marijuana.[224] Legal considerations regarding the legalization of medical marijuana through the Constitutional Court's decision are required to consider all aspects because the Constitutional Court's decision will have a wide impact on the general public, therefore it must be appropriate for the decision issued by the Constitutional Court so that both the applicant and the wider community get the values of a legal purpose.[225]

The effort to legalize medical marijuana as requested by the Petitioners before the Constitutional Court, is based on the benefits of medical marijuana for

---

[223] Article 56 paragraph (2) in Law 24/2003 reads that the rejected decision is a decision "in the event that the law in question does not contradict the 1945 Constitution, either in terms of formality (formation) or material (substance) in part or in whole, then the decision states that the application is rejected. See in Republic of Indonesia, "Law No. 24 of 2003 concerning the Constitutional Court (Statute Book No. 203 No. 98, Supplement to Statute Book No. 4316)" (2003), https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003.

[224] The judge's decision in a court case, is required in his consideration to look at the philosophical aspect which means that the judge must weigh the value of justice in deciding the case, the sociological aspect means that the judge's decision needs to weigh the social value of the impact of his decision on society whether it is fair and wise, the juridical aspect is that the judge in deciding must be in harmony and not out of the provisions of the law, and finally the medical aspect means whether the use of *Cannabis Sativa* These are in accordance with the values of effective health services. Excerpted from the article Muhammad Akbar and Syahrul Bakti Harahap, "Judge's Considerations in Deciding the Case of Class 1 Narcotics Abuse Crime for Yourself," *Journal of Smart Law (JSH)* 1, no. 1 (September 28, 2022): 229–37, https://doi.org/10.55299/jsh.v1i1.154.

[225] Syawaludin and Arif Wibowo, "Analysis of Problems Occurring in the Final and Binding Constitutional Court Decision: The Constitutional Court," *Multidisciplinary Research Journal* 1, no. 2 (December 31, 2022): 103–9, https://doi.org/10.58705/jpm.v1i2.64.

Indonesian citizens who experience deficiencies or abilities in their medical conditions. In obtaining the benefits of medical marijuana, it can be understood that the legalization of medical marijuana is intended to obtain the benefits of marijuana without violating the rule of law and gain access to effective health services against the development of medical conditions as experienced by the applicant.[226]

The basis for legalizing marijuana, even though it is placed in a position of its usefulness in the world of health, cannot be applied immediately, because the existence of marijuana in Indonesia is a substance or object that has a negative impact on the wider community. Therefore, the Constitutional Court's decision when accepting an application for testing the law related to the use of *cannabis sativa* in Indonesia is a decision that must consider the benefits and disadvantages that will be caused to the wider community in general.[227]

Legal considerations regarding the benefits and disadvantages that will arise from the legalization of medical marijuana in health services as contained in the Constitutional Court's decision, can be studied in the realm of Islamic treasure knowledge. The Islamic world which not only discusses matters related to worship issues, but also regulates social issues (*muamalah*). The study of the application of Islam in this realm of practice is known as *Fiqh Muamalah*. The scope of the *fiqh muamalah* is divided into more detail, in which there are ijtihad issues related to legal affairs and aspects of state administration known as *fiqh siyasah*.[228] The study of *fiqh siyasah* is the area of ijtihad ulama which discusses matters related to the regulation of people's lives in realizing aspects of benefits for the wider community. More specifically, *fiqh siyasah* is a science in which it discusses the regulation of

[226] Abdul Haris Muda Nasution, "Criminal Law Policy on the Use of Marijuana-type Narcotics as Emergency Treatment to Maintain Life," *RECTUM JOURNAL: Juridical Review of Criminal Handling* 6, no. 2 (September 18, 2024): 266–75, https://doi.org/10.46930/jurnalrectum.v6i2.4755.
[227] Agung Risky Saputra Marpaung and Frans Simangunsong, "The Urgency of Using Cannabis for Persons with Disabilities for Medical Purposes Reviewed from Ius Constitutum," *Axiology: Journal of Education and Social Sciences*, May 23, 2023, 39–47, https://doi.org/10.47134/aksiologi.v4i1.148.
[228] Siti Nor Asma, "The Position of Fiqh Siyasah in Islamic Law," *Lex Sharia Pacta Sunt Servanda: Journal of Islamic Law and Policy* 1, no. 2 (May 30, 2024): 32–37.

the affairs of the ummah (citizens) with all the forms of policies or laws issued by the ruler or policy maker (government) to realize the aspect of benefit.[229]

Furthermore, in the discipline *of fiqh siyasah*, it is divided into 3 parts, including: *fiqh siyasah dusturiyah*, *fiqh siyasah dauliyah*, and *fiqh siyasah Maliyah*.[230] One of the divisions in *fiqh siyasah* that specifically discusses related to the basic rules of the state or legislation is in *fiqh siyasah dusturiyah*. The area of discussion contained in *fiqh siyasah dusturiyah* is related to the main aspects that are the basis for statehood contained in the provisions of laws or the constitution.

It is relevant if the Constitutional Court's decision is studied in the view *of fiqh siyasah dusturiyah*, because the two are closely related in terms of the provisions contained in the Constitution. In line with that, the Constitutional Court's decision as mentioned above, must prioritize the aspect of usefulness or loss for the wider community. It is the same with the discussion of *fiqh siyasah dusturiyah* which in regulating its policies must consider the aspects of *maslahah* (benefits) and *the aspects of harm* (harm) to the wider community in general. The author in this section will outline the discussion into 3 parts, including: the judge's consideration in rejecting applications related to the use of *cannabis sativa* in health services through the perspective *of fiqh siyasah dusturiyai*, the next discussion is related to the design of the reconstruction of the policy on the use of medical marijuana in Indonesia, and finally the paradigm of regulation of the use of medical marijuana between reality and implementation Legal.

---

[229] Ramadan *Contextualization of Islamic Political Doctrine in Fiqh Siyasah*. 17-18

[230] Some experts in the field of fiqh siyasah divided the object of study *Fiqh Siyasah* into 8 parts as according to Hasbi Ash-Shiddieqy that *Fiqh Siyasah* The objects of study are: *Siyasah Dusturiyah Syariyyah, Siyasah Tasryi'iyyah, Siyasah Qadhaiyyah, Siyasah Maliyah, Siyasah Idariyah, Siyasah Dauliyah, Siyasah Tanfiziyyah, Siyasah Harbiah.* Quoted from the book Djazuli, *Fiqh Siyasah: Implementation of the Benefit of the Ummah in Sharia Signs*.

1. **Measuring the Method of Consideration and Interpretation of the Judge Rejecting the Applicant's Application in Regulating the Regulation of the Utilization of *Cannabis Sativa* in Health Services: *Fiqh Perspective of Siyasah Dusturiyah***

The establishment of the state in the context of Islam aims to achieve a useful and safe world life in the world. In line with what Ibn Khaldun said that the purpose of the establishment of the state is to seek the benefit of religion and the world in the realm of the interests of the hereafter.[231] More specifically, Fazlur Rahman's opinion regarding the state's goals includes maintaining the integrity and integrity of the state, protecting the implementation of laws and policies and maintaining order for every citizen so that it can realize the welfare of citizens as a whole.[232]

The state's goal in achieving the benefits as outlined above, the existence of the state has its duty in actualizing the benefits for the entire community. The study *of fiqh siyasah dusturiyah* divides this task into three parts, including: *First, al-sulthah al-tasryiri'iyyah* which is the legislative power in forming a legal provision in the country that is in line with sharia values. *Second, al-sulthah al-tanfidziyyah* is the executive power in carrying out and implementing the provisions of the laws that have been made in the realm of *tasryiri'iyyah*. *Third, al-sulthah al-qadha'iyyah* is a judicial power that is tasked with maintaining and maintaining the provisions of laws and regulations in a country.[233]

---

[231] The state in the Islamic view is a tool in achieving prosperity in human life through the application and protection of Islamic values, and the purpose of the establishment of the state is to protect human beings from arbitrariness between groups (society) where the state has the right to regulate coercive regulations so that they can be obeyed. Quoted from the book Muhammad Iqbal, *Fiqh Siyasah: Contextualization of Islamic Political Doctrine* (Jakarta: Prenadamedia Group, 2014). 155-157

[232] Sudarti Sudarti, "Relations between Religion and the State: An Analysis of the Political Thought of Soekarno and Fazlur Rahman," *Politica: Journal of Islamic Constitutional Law and Politics* 7, no. 2 (December 30, 2020): 69–91, https://doi.org/10.32505/politica.v7i2.1985.

[233] Separation *al-Sulthah* (power) is a characteristic of a country that is stated to have implemented democratic values, because a government power is not only centered in one power (leader). Each institution has equality in controlling and supervising the duties and functions of each other institution. Quote from the article Alfan Khairul Ichwan, "The State Government System of Al-Ahkam As Shulthaniyah and Its Relevance in Indonesia," *INTERDISCIPLINARY JOURNAL ON LAW, SOCIAL SCIENCES AND HUMANITIES* 3, no. 2 (November 30, 2022): 150–68, https://doi.org/10.19184/idj.v3i2.33051.

The Constitutional Court in the context *of fiqh siyasah dusturiyah* can be equated with the realm of *al-sulthah al-qadha'iyyah* where its duties and functions are to maintain existing laws and laws and be implemented in a country. As Article 24C paragraph (1) of the 1945 Constitution states that the authority of the Constitutional Court is to adjudicate at the first and last level in examining the law against the Constitution whose decision is *final* and *binding*.[234] Therefore, the existence of the Constitutional Court is often said to be *the guardian of the constitution* which is tasked with safeguarding the constitution from inconsistencies for the community. The similarities between *al-sulthah al-qadha'iyyah* and the Constitutional Court can be seen that both have the same task in the form of maintaining and maintaining the implementation of laws and regulations that apply in a country.[235]

The authority possessed by the Constitutional Court in testing the law, when seen in the study of *al-sulthah al-qadha'iyyah,* can be classified into *the territory of al-mazalim,* which in terminology has the meaning of judicial power whose task and function is to solve problems that occur due to the misappropriation of state rulers (governments) in making or implementing policies so as to violate the interests of human rights that owned by the community.[236] In line with this, one of its powers is to conduct *judicial review* if a citizen feels that his constitutional rights contained in the 1945 Constitution are violated by the enactment of a law made by the government (legislative and executive).[237]

The Constitutional Court Decision Number 13/PUU-XXII/2024 as mentioned at the beginning of the sub-chapter, states that the Constitutional Court's decision can be analyzed in the study *of fiqh siyasah dusturiyah*,

---

[234] Article 24 C paragraph (1) Indonesia, 1945 Constitution of the Republic of Indonesia.
[235] Eza Tri Yandy et al., "The Principle of Checks and Balances in Islamic State Administration Studies," *Journal of Mediasas: Media of Sharia Science and Ahwal Al-Syakhsiyyah* 7, no. 1 (June 30, 2024): 165–83, https://doi.org/10.58824/mediasas.v7i1.118.
[236] Iqbal *Fiqh Siyasah: Contextualization of Islamic Political Doctrine*. 158
[237] Queensly Siska Seroy, "The Competence of the Constitutional Court in Enforcement of Human Rights," *LEX ADMINISTRATUM* 9, no. 6 (June 22, 2021), https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/34397.

because between the two, both the Constitutional Court Decision and the Policy decided in the science *of Fiqh siyasah dusturiyah* have similarities to bring justice and benefits to every society who wants these two important things.[238] Moreover, in this context, the issue of constitutionality contained in the Constitutional Court's decision is related to the use of medical marijuana in health services. This Constitutional Court decision can be studied with the views and values contained in the realm *of fiqh siyasah dusturiyah* which seeks all decisions and legal rules in line with what sharia wants to achieve.

Steps or methods in analyzing a policy or decision through the perspective *of fiqh siyasah dusturiyah* The methods used are the same as the methods in *fiqh*, including: *qiyas, al-maslahah mursalah, al-dzariah, al-'adah, al istihsan,* and *qawaid fiqh siyasah.*[239] This method can be used in this context, the Constitutional Court Decision Number 13/PUU-XXII/2024 related to the use of *cannabis sativa* in health services is reviewed from the methods contained in the fiqh *siyasah dusturiyah* study. The author will describe the *fiqh method* that can be used in examining legal issues regarding efforts to legalize medical marijuana in health services in Indonesia.

The first method that can be used in examining the use of *cannabis sativa* in health services through the perspective *of fiqh siyasah dusturiyah* is the *qiyas method.* This method can be interpreted by looking for a *'legal problem*, which sees a problem against another problem at a different time and place, a problem can be applied equally if it has a legal similarity with the problem that is seen by the law.[240] *Qiyas* is used because regarding the use of medical marijuana, there is no legal basis that is concretely mentioned in the Qur'an or As-Sunnah, so the method of studying the law is used *by Qiyas* as a basis. The view of Islamic law sees marijuana as relying on the

[238] Asma, "The Position of Fiqh Siyasah in Islamic Law."
[239] Djazuli, *Fiqh Siyasah: Implementation of the Benefit of the Ummah in Sharia Signs*. 31-32
[240] Ahmad Junaidi, *Maqashid Al-Shari'ah & Islamic Law* (Depok: Pena Salsabila., 2021). 85

effect it causes, which is intoxicating, so that this marijuana is *qiyas-kan* with khamr which causes the same effect.

Qiyas-kan *cannabis with khamar, it is necessary to fulfill several elements through* the qiyas method[241], including:

a. *Ashal*, maqis alaih, is a legal case that has legal evidence in the Qur'an or Hadith. *Ashal* here is khamr.
b. *Fara*', maqis is a case in which legal provisions are not contained in the Qur'an and Hadith. *Fara'* is the use of cannabis.
c. *Hukm Ashal*, which is a rule or legal postulate regarding what *Ashal* is lawful or forbidden according to sharia. *Hukm Ashal* is that the use of khamr is haram.
d. *Illat*, which is the characteristic on which the law is regulated in *Ashal. The illat* here is the existence of *khamr* which has an impact on intoxication.

Regarding the use of *the qiyas method* in terms of the use of marijuana, it is associated with khamr, some scholars have a different view because the content between the two objects is different, starting from the substance, form, content and effects given. The four elements as mentioned above, the fourth condition is considered inappropriate because the effects caused by marijuana are different from the intoxicating khamr. Therefore, *the qiyas* regarding khamr and marijuana are dropped because one of the conditions is not met.[242]

The second method that can be used in examining the legalization of the use of medical marijuana is the *maslahah mursalah method*. This method is a method that emphasizes in the aspect of receiving the benefits and staying away from the mudharat to always maintain *the maqasid of sharia*. Generally, the application of *maslahah mursalah* is applied in the context of

[241] Himalaya Azzahra, "The Relevance of Fiqh Rules to the Legalization of Cannabis as a Medicinal Plant from the Perspective of Siayasah Syar'iyyah," *JOURNAL AL TASYRI'IYYAH*, June 22, 2023, 27–40, https://doi.org/10.24252/jat.vi.38428.
[242] Sobirin and Mukhlas, "Views of Islamic Law on the Benefits of Legalizing Cannabis for Medical Use."

problems that have no law in the Qur'an and Sunnah.[243] As the use of marijuana in medical matters for health services which is not contained in detail in the sharia postulates. The discussion of the consideration *of marijuana maslahah* and *mursalah* certainly needs to look at its usefulness and the disadvantages it causes. The use of medical marijuana if you see its *benefits*, marijuana can be used as a medicinal plant that is useful for overcoming and controlling certain diseases such as *cerebral palsy* as well as the context of the Constitutional Court's decision that is requested for testing.

Another consideration when viewed in terms of harm to efforts to legalize the use of medical marijuana, the impact that may be caused is that there can be the circulation and abuse of marijuana in various aspects, such as the economy where the possibility of an increase in illicit trade in narcotics (marijuana) causes disruption of monetary stability and the national economy as a result of the crime of marijuana. The government, in responding to such negative potential, places efforts to legalize medical marijuana as something that requires careful attention because of the impact of the losses it will cause.[244] The world *of fiqh* here can then be seen that it has its characteristics in the form of flexibility depending on opinions that are in accordance with the conditions, space, and time where the rules are enforced as long as they are in harmony with the principles and values of the Shari'a. Regarding the provisions such as medical marijuana, which when seen in the provisions of the Qur'an and Sunnah there is no evidence that concretely regulates the haram of marijuana.[245] This potential requires an in-depth research on the use of medical marijuana so that the aspects of

[243] Junaidi, *Maqashid Al-Shari'ah & Islamic Law*. 92
[244] Azzahra, "The Relevance of Fiqh Rules to the Legalization of Cannabis as a Medicinal Plant from the Perspective of Siayasah Syar'iyyah."
[245] Nurlaelatil Qadrina and M. Chaerul Risal, "Legalization of Cannabis as a Medicinal Plant: Perlukah?," *JOURNAL AL TASYRI'IYYAH*, June 20, 2022, 48–58, https://doi.org/10.24252/jat.vi.30201.

maslahah and *mudharat* for the community can be seen specifically and appropriately, especially in the health sector.

Considerations regarding *the benefits* and *harmharat* of the use of medical marijuana in the view of *fiqh siyasah dusturiyah* can be studied through the *qawaid fiqhiyyah* method. This method is a theory in looking at policies or decisions from the perspective *of fiqh siyasah*.[246] Regarding the author's analysis here, it is associated with the use of legalization of medical marijuana in health services. The Constitutional Court's decision regarding the testing of the law here certainly considers the aspects of its benefits and harms to the wider community. Regarding this, there are relevant fiqhiyyah rules in the context of the Constitutional Judge's Decision contained in the Constitutional Court Decision Number 13/PUU-XXI/2024.

أَذَا تَعَارَضَ مَفْسَدَتَانِ رُوعِيَ أَعْظَمُهُمَا ضَرَرًا بِإِرْتِكَابِ أَخَفِّهِمَا

Meaning of the rule: "*When faced with two conflicts of faith, it should be noted that it is to reject one of the beliefs that has a greater degree of harm, and at the same time accept one of the beliefs that has a smaller degree of harm."*[247]

This rule, if contextualized with the Constitutional Court's Decision regarding the use of *cannabis sativa*, can be understood that the Constitutional Judge in rejecting the applicant's application because the potential harm will be greater if its use is legalized, besides the decision of refusal is undeniable that at the same time there is a danger for the applicant who is experiencing a medical condition *of cerebral palsy*. Such a situation is based on the consideration of the Constitutional Court in accordance with *the qawaid fiqhiyyah* which reads

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبُ الْمَصَالِحِ

[246] Djazuli, *Fiqh Siyasah: Implementation of the Benefit of the Ummah in Sharia Signs*. 36
[247] H. A Djazuli, *Fiqh Rules: The Rules of Islamic Law in Solving Practical Problems* (Jakarta: Kencana-Prenada Media, 2021). 74-75

The meaning of the rule: "*rejecting damage (mafsadah) takes precedence over attracting benefits".*[248] In the context of the Constitutional Court's decision regarding efforts to legalize cannabis, constitutional judges prefer to avoid the damage that can arise if the legalization of medical marijuana is carried out without comprehensive research readiness and adequate regulations. Therefore, the Constitutional Court in its consideration asked the government to immediately conduct research based on scientific standards so that finding answers to the problem of medical marijuana use in Indonesia provides more benefits or harms. The author in the postulates below will explain the design of the reconstruction of the policy on the use of medical marijuana, because the Constitutional Court has provided a way for the government to conduct research on the benefits of *cannabis sativa*, so that later it can be considered in reconstructing the law on the use of medical marijuana in Indonesia.

2. Cannabis Sativa Utilization *Policy Reconstruction Design* in Health Services in Indonesia: A Comparative Record with Other Countries

Policy reconstruction consists of two words, namely reconstruction and policy. Reconstruction in the contemporary legal dictionary means that reconstruction is an effort to reorganize.[249] Another definition of reconstruction in the Political Dictionary written by B.N Marbun states that reconstruction is the arrangement to return something to its original place, the arrangement of an existing material and then rearranged according to its existence.[250] Furthermore, the definition of policy reconstruction is almost the same as meaningful legal reconstruction as a step in rearranging the idea or concept of a law. The purpose of legal reconstruction efforts is to lead to the discovery of legal will, written or unwritten, moral will, and community will.

---

[248] Nashr Farid Muhammad Washil and Abdul Aziz Muhammad Azzam, *Qawa'id Fiqhiyyah* (Jakarta: AMZAH, 2013). 21

[249] Martin Basiang, *The Contemporary Law DIctionary: Dictionary of Contemperer Law* (Jakarta: PT Gramedia, 2016). 417

[250] B.N. Marbun, *Political Dictionary* (Jakarta: Pustaka Sinar Harapan, 1996). 469

Policy reconstruction in this context is about the reconstruction of the provisions of the law regarding the use of medical marijuana in health services in Indonesia. Regulations regarding the use of marijuana are contained in the provisions of Law Number 35 of 2009 concerning Narcotics. Cannabis in the law is a group I which means, its use is only intended for the development and improvement of science through research, while its use in the medical realm is prohibited and can be classified as a criminal act of narcotics abuse.[251]

The determination of marijuana in a certain group in the Narcotics Law, has the purpose as contained in Article 4 letter a of Law Number 35 of 2009 concerning Narcotics which states that "the purpose of the Narcotics Law is to ensure the availability of narcotics for the benefit of health services and/or the development of science and technology".[252] If you look at the consideration of the Narcotics Law, namely in letter b, it is contained that in an effort to improve the health status of Indonesian human resources to achieve a people's welfare, efforts are needed to improve the field of health services and treatment, one of which is through the availability of certain types of narcotics that are indeed needed to be used as a drug in addition to carrying out efforts to prevent and eradicate the danger of abuse and illicit circulation Narcotic.[253]

The purpose of ensuring the availability of narcotics in meeting the needs of health services as regulated in the Narcotics Law, is in line with the mandate of the 1945 Constitution where the right to health is the right of every citizen to be guaranteed its existence and is the responsibility of the state in ensuring the affordability of health service facilities by every group of society.[254] Regarding the availability of certain narcotics for health

[251] Stevanus Rolando Lalala, "Regulation of Cannabis Oil for the Benefit of Science and Media Development According to Law No. 35 of 2009 concerning Narcotics," *LEX PRIVATUM* 13, no. 2 (January 4, 2024), https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/54017.
[252] Article 4 Letter a in the Law Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).
[253] Consideration of letter b Indonesia. .
[254] Ardinata, "State Responsibility for Health Insurance in the Perspective of Human Rights."

services, in this case marijuana is classified as a type of narcotics that should be used for health services. The use of narotics in the Narcotics Law is regulated regarding certain groups that can be used for health service needs.[255]

The classification of marijuana into Group I in the Narcotics Law is based on Law Number 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It.[256] The 1961 Single Convention on Narcotics in the *List of Drugs in Schedule* classifies marijuana on *schedule IV*, which means that marijuana is a substance that has very dangerous content, very limited medical use, and the potential for abuse is very crucial.[257] If correlated with group I of the Narcotics Law, it can be understood that *schedule IV* of the 1961 Single Convention on Narcotics has similarities with Group I of the Narcotics Law where marijuana cannot be used for its use in the medical world because of its very dangerous content and impact of use.

The classification of marijuana in the *List of Drugs in Schedule* as contained in the 1961 Single Convention on Narcotic Drugs then changed where on December 2, 2020 there was a vote issued by *the Commission on Narcotics Drugs (CND)* stating that the United Nations (UN) accepted the recommendation of the *World Health Organization (WHO)* to eliminate *cannabis* and *cannabis resin* from *Schedule IV.*[258] The existence of marijuana in the 1961 Single Convention on Narcotics is then classified as Schedule *I*, which means that marijuana is a substance whose content has medical use but still has a high potential for abuse.[259]

---

[255] Fauziyah, "The Need for Regulation on the Use of Cannabis in Indonesia Reviewed from the Perspective of Medical Interests."
[256] Chitto Chumbhadrika, "The Urgency of Classifying Synthetic Cannabis into Group I of Law No. 35 of 2009 concerning Narcotics," *IBLAM LAW REVIEW* 4, no. 2 (May 31, 2024): 143–57, https://doi.org/10.52249/ilr.v4i2.478.
[257] Lutfiyani, Hamzani, and Rizkianto, *Cannabis for Medical Controversy*. 36-37
[258] Nevy Rusmarina Dewi and Melina Nurul Khofifah, "Transition of Cannabis Classification in the UN Drug Control Agreement: Legalization Steps," *Legal Treasures* 3, no. 2 (April 5, 2021): 59–69, https://doi.org/10.15575/kh.v3i2.11801.
[259] Nasution, "Criminal Law Policy on the Use of Marijuana-type Narcotics as Emergency Treatment to Maintain Life."

The classification *of cannabis sativa* into *schedule I* contained in the 1961 Single Convention on Narcotics is a legitimacy that in the international world the existence of cannabis can be used and utilized in health services with the provision of supervision so that there is no abuse that can harm the community. The Indonesian government has changed its policy on the classification of marijuana contained in the 1961 Single Narcotics Convention, positioning itself to reject the WHO recommendations and the results of the *CND*'s decision to legalize the use of *cannabis* to meet health service needs.[260]

The policy regarding marijuana in the Single Convention on Narcotics then became the basis for the petitioner's petition as stated in the Constitutional Court Decision Number 13/PUU-XXII/2024, which according to international regulations marijuana can be used to meet medical needs, therefore for some groups of people who support efforts to legalize medical marijuana, they want the Indonesian government to reconstruct the policy on the existence of marijuana in the Narcotics Law. So that its use can be used for the benefit of health services. This opinion is in line with the provisions of the Explanation of Article 6 paragraph (3) of the Narcotics Law which states that "the adjustment of narcotics classification is based on considerations of international agreements and national interests".[261]

Legal reconstruction that can be done if you want to make an effort to legalize medical marijuana in health services is a change in the classification of marijuana contained in the Narcotics Law, where the status of marijuana is in group I The status of its existence is moved to group II, so that the use of *cannabis sativa* can be used to meet the needs of health

[260] Viku Paoki and Haniah Hanafie, "LGN as an Interest Group (Study of the Efforts of the Nusantara Cannabis Circle (LGN) in the Amendment of Law No. 3 of 2009 concerning Narcotics," *INDEPENDENT: Journal of Indonesian and Global Politics* 2, no. 1 (April 11, 2021): 33–40, https://doi.org/10.24853/independen.2.1.33-40.

[261] Article 6 paragraph (3) of the Law Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).

services.[262] Furthermore, regarding the transfer of marijuana into group II as explained in Article 6 paragraph (1) letter b that class II narcotics are narcotics that can be used as treatment whose use is the last option and can be used for therapy.[263] The explanation of the article on class II narcotics, meaning that the legalization of medical marijuana as a drug in health services does not mean that marijuana is the first choice in making treatment efforts for people with certain diseases, so that in determining *the drug of choice* by doctors, essential drugs will be prioritized and if the treatment is not effective, then medical marijuana is used as the last choice as a drug in services health.[264]

For most people in Indonesia and also the government regarding the legalization of medical marijuana, often the concern only focuses on the impact of abuse, whereas for some groups who support the legalization of medical marijuana, the main orientation is to focus on meeting the needs of health services that are strictly regulated and supervised so that the existence of medical marijuana is not traded freely and moreover used for needs recreational.[265] This is in line with what is contained in the Narcotics Law that narcotics that can be used as drugs can only be circulated after a distribution permit from the Minister of Health and has been registered with the Food and Drug Supervisory Agency (BPOM). The use of medical

---

[262] Leonie Lokollo, Yonna Beatrix Salamor, and Erwin Ubwarin, "Policy on the Formulation of Narcotics Laws in the Legalization of the Use of Cannabis as a Medicinal Ingredient in Indonesia," *Belo Journal* 5, no. 2 (2020): 1–20.

[263] See in the Explanation of Article 6 paragraph (1) letter b Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).

[264] Essential Medicines are the most necessary drugs of choice in health services for the community, including diagnosis, prolactis, therapy, and are listed in the List of Essential Medicines set by the minister. Correlation with marijuana if classified into group II, the drug of choice is the main priority used to become the drug of choice, then if the essential drug used is not effective, then marijuana can be used as the drug of last choice as stipulated in the Narcotics Law. The definition of essential medicine is taken from Minister of Health, "Regulation of the Minister of Health Number HK.02.02/MENKES/068/I/2010 concerning the Obligation to Use Generic Drugs in Government Health Service Facilities | Directorate General of Pharmaceuticals and Medical Devices," accessed November 24, 2024, https://farmalkes.kemkes.go.id/unduh/permenkes-068-2010/.

[265] Nur Immawati Amaliyah, Parid Sidik, and Abd Gani, "Basic Criticism of Hans Kelsen's Theory of Positivism (Case Study on the Polemic of Cannabis Legalization in Indonesia)," *Pagaruyuang Law Journal* 8, no. 1 (July 28, 2024): 1–16, https://doi.org/10.31869/plj.v8i1.5696.

marijuana as a class II narcotic is of course still strictly monitored through criminal provisions and strict procedures.[266]

International regulations regarding the transfer of marijuana into *schedule I* as stated in the 1961 Single Narcotics Convention do not directly change the provisions contained in national law, namely the Narcotics Law, but Indonesia as a country that ratified the 1961 Single Narcotics Convention can understand that the UN decision on the transfer of marijuana into certain groups so that it can be used in the medical field can be understood that globally politics has changed regarding the relevance of marijuana classification related to its use.

The change in global political perspective on the use of medical marijuana in meeting the needs of health services when viewed internationally from various countries, can generally be divided into three major groups that have their own characteristics. Three types of countries are related to their regulations regarding the use of marijuana, including: *First*, countries that still strictly prohibit the use of marijuana, meaning that marijuana for countries in this type is a substance or substance whose existence has a great impact on danger. The existence of marijuana is controlled with very strict regulations on circulation and use. These strict rules are often oriented towards criminal law provisions for offenders who can be imprisoned if they commit abuse.[267]

Second, countries that provide leeway to the use of marijuana (medical needs), meaning that in this type of country provides limited control over the use of marijuana that is only devoted to medical and research purposes. The state in the second type of regulation still prohibits the abuse

[266] Article 36 paragraph (1) states that "narcotics in the form of drugs can only be circulated after obtaining a distribution permit from the Minister. Furthermore, paragraph (3) states that "a distribution permit from the minister is obtained by registration with BPOM. View Laws Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).

[267] Aristo Pangaribuan, "The Dynamics of Cannabis Policy in Global and Indonesian Legal Politics," *Journal of Law & Development* 54, no. 1 (March 31, 2024): 31–50, https://doi.org/10.21143/jhp.vol54.no1.1583.

of marijuana for purposes other than medical and research, but in its provisions, if abuse occurs, rehabilitation is carried out and not punished (imprisonment). *Third*, a country that regulates the *use* of medical marijuana softly, meaning that regulations regarding the use of marijuana in this country, either for medical needs or recreational needs, are a legal and permissible action by the state, because of the lack of control over the use of marijuana in the country.[268] The author will make a table about the countries contained in the three types as outlined above, so that it can be understood that international countries have legalized and strictly prohibited the use of marijuana.

Table 3. 3 Types of Countries Regulating Cannabis Use

It	Country Type	Country
1	Strictly prohibit the use of marijuana	Indonesia, Afghanistan, Algeria, Armenia, Bahrain, Bolivia, Bosnia, Brunei, Cameroon, China, Congo, Cuba, East East, Andorra, Angola, Antigua, Azerbaijan, Bahamas, Bangladesh, Belarus, Bhutan, Bolivia, Bosnia, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Cook Island, Cuba, Djibouti, Dominica, Egypt, El Salvador, Equatorial, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Gabon, Gambia, Greenland, Grenada, Guatemala, Guinea,

[268] Pangaribuan. "Cannabis Policy Dynamics in Global and Indonesian Legal Politics,"

		Guyana, Haiti, Honduras, Hong Kong, Iceland, Iran, Iraq, Jordan, Kazakhstan, Kenya, Kiribati, Kosovo, Kuwait, Kyrgyzstan, Laos, Latvia, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Madagascar, Malaysia, Maldives, Mali, Marshal Island, Mauritania, Mauritius, Micronesia, Monaco, Mongolia, Myanmar, Nigeria, Papua New Guinea, Palau, Paraguay, Saudi Arabia, Serbia, Vietnam, Yemen.
2	Loosening the use of marijuana (medical and research)	Brazil, Argentina, Finland, Austria, Albania, Bermuda, Chile, Croatia, Greece. Albania, Barbados, Belgium, Bermuda, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Ghana, Hungary, Ireland, Japan, North Korea, South Korea, Lebanon, Morocco, New Zealand, Norway, North Macedonia, Pakistan, Panama, Peru, Poland, Portugal, Rwanda, San Marino, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland
3	Legalize the use of cannabis (medical, research, and recreational)	Australia, Netherlands, Canada, Uruguay, *US*

		(Washington, California, Colorado), Thailand, South Africa, Mexico, and Luxemborg, Colombia, Georgia, Germany, Israel, Italy, Jamaica, Malta

Source: Author's Search Results (2024)

The table above shows that basically the majority of countries in the world are classified as first-type countries which strictly prohibit the use of marijuana in their countries. The difference in the regulation of marijuana use in each country is based on the ideological background that grows and develops in their respective countries. The third type of state that regulates the free use of marijuana, whether for recreational or medical purposes, is often based on the ideology of liberalism that generally develops to promote individual freedom and the state does not have the intervention to regulate the morality of each individual.[269] Currently, many countries are also taking the middle way as the type of countries in the second group, where these countries benefit from the use of marijuana in meeting medical needs, but by strictly prohibiting its use for recreational purposes so that there is no negative impact on marijuana abuse.[270]

The Indonesian government is classified into the first type as described above, which is a country that strictly prohibits the use of marijuana for both medical and recreational purposes. The Narcotics Law as a legal rule that regulates the use of marijuana, expressly prohibits the use of marijuana and facilitates the use of marijuana as a criminal offense that can cause a person to be convicted (imprisoned) for violating provisions related to the use of marijuana. The development of technology and science then gave rise to some groups who argued that regulations regarding the use of

[269] Anhar Aswan, "Comparative Analysis of the Legal System on the Legalization of Cannabis in Several Countries" (other, Hasanuddin University, 2022), https://repository.unhas.ac.id/id/eprint/17139/.
[270] Pangaribuan, "The Dynamics of Cannabis Policy in Global and Indonesian Legal Politics."

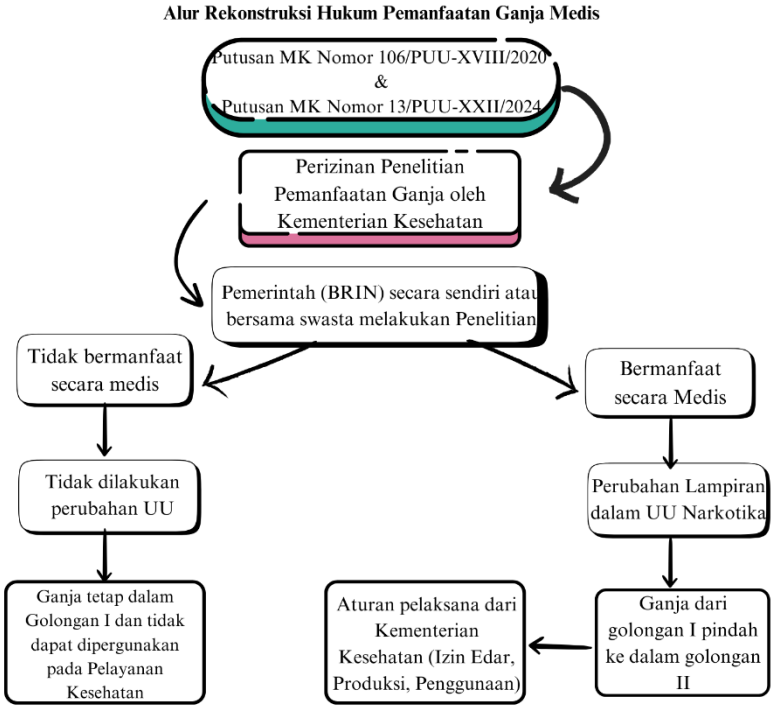
cannabis in Indonesia were no longer relevant to the needs and circumstances of society both nationally and internationally.

The existence of an application to test the law regarding efforts to legalize medical marijuana, proves that some people are trying to utilize medical marijuana without violating the law, therefore those who support the legalization of medical marijuana want the Indonesian government to regulate and revise provisions regarding the use of medical marijuana intended for health service needs in Indonesia.[271] Moreover, according to international regulations, provisions regarding the use of marijuana can be used for medical needs and scientific development.

The discourse on the legalization of medical marijuana in Indonesia, by the Constitutional Court then in consideration of the Constitutional Court's decision, asked the government to conduct a comprehensive study and research, so as to find a solution regarding the consideration of legalizing marijuana in meeting medical needs.[272] Research on the use of marijuana is intended to be the basis for reconstructing the legal provisions contained in the Narcotics Law regarding the use of marijuana, whether changes are needed or vice versa, the current Narcotics Law is still relevant to be applied in Indonesia. The author in this case provides a scheme of juridical stages if the Indonesian government will reconstruct the policy regarding the use of marijuana for health service needs.

[271] Fauziyah, "The Need for Regulation on the Use of Cannabis in Indonesia Reviewed from the Perspective of Medical Interests."
[272] Indonesia, Constitutional Court Decision Number 13/PUU-XXII/2024.

Figure 3. 2 Reconstruction Flows of Cannabis Sativa Utilization in Indonesia



Source: Author's Creation (2024)

The diagram of the scheme above is a flow that can be done if the Indonesian government will take steps to legalize the use of marijuana in health services. This can happen because the Constitutional Court in its decision to test the law regarding the use of marijuana contained in the Constitutional Court Decision Number 13/PUU-XXII/2024 has provided a way for the government to conduct a comprehensive assessment and research so that scientific evidence regarding the use of marijuana in Indonesia is medically beneficial or not can be found.[273] The use of medical marijuana in health services in Indonesia can be *an ius constituendum* if indeed the legalization of medical marijuana is realized for its use.

Based on the description above, according to the author's analysis of the international regulations in the 1961 Single Convention on Narcotic

[273] Indonesia. Constitutional Court Decision Number 13/PUU-XXII/2024.

Drugs regarding the transfer *of cannabis* into *Schedule I* , although it does not directly apply to every country that ratifies the convention, but the change of cannabis to *scedule I* It can be said that it is a sign that politically internationally marijuana has proven to be medically beneficial in health services. The social situation in society where there are groups who want to use it medically, the government should open a space for research and assessment that is carried out comprehensively. Research on the use of medical marijuana will later be an indicator to answer the demands of the community, both those who support or reject the legalization of medical marijuana, so that there is scientific evidence that marijuana in Indonesia can be used medically or have a more negative impact on society.

The government, as part of the responsibility given by the state to meet the needs of the right to health for every citizen in accordance with the mandate of the constitution, should look at the needs of every group of society, including those who want the use of medical marijuana for health services, which for some of them existing health services have not been considered effective and can achieve welfare value for citizens who experience certain medical conditions. The legalization of medical marijuana in Indonesia is a policy that requires consideration of the benefits and disadvantages that will arise in the future, therefore the author in the postulates below tries to elaborate on the use of *cannabis sativa* in health services seen from the reality and implementation of the law in Indonesia.

3. Regulatory Paradigm of the Utilization of *Cannabis Sativa* in Health Services in Indonesia between Reality and Legal Implementation.

One of the aspects that is very crucial for every human life as a creature created by God, is the aspect of health. Health is one of the important indicators in assessing the welfare of a community.[274] Since the emergence of the concept of human rights enshrined in the Universal Declaration of

[274] Marpaung and Simangunsong, "The Urgency of Using Cannabis for Persons with Disabilities for Medical Purposes Reviewed from Ius Constitutum."

Human Rights (DUHAM) in Article 25 of the Human Rights it is said that: "everyone has the right to live at a decent standard for his or her health and well-being and that of his family, including the right to obtain food, housing, and health services".[275] In line with the text of the article in the DUHAM, regarding the right to health as contained in the Indonesian constitution Article 28H states that: "(1) Everyone has the right to live a prosperous life in birth and mind, to reside, and to obtain a good and healthy living environment and to obtain health services, and in paragraph (2) everyone has the right to obtain facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice. [276] The mandate of the 1945 Constitution concretely stipulates that the right to health is a right that is constitutionally recognized for its existence and must be protected by the state.[277]

One of the steps in fulfilling the right to health for every citizen is to provide health services in accordance with the needs and medical conditions experienced. The right to health is closely related to adequate health services, health services include the availability of medicines whose function is to help health in accordance with the special attention needed.[278] One of the types of drugs is narcotics. Narcotics as contained in the consideration of letter c of the Narcotics Law regulation which reads that "Narcotics are drugs or substances that have benefits in the field of medicine or health services and scientific development and can cause very detrimental dependence if abuse

[275] Article 25 "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." United Nation, "Universal Declaration of Human Rights" (1945).

[276] Article 28H paragraphs (1) and (2) Indonesia, 1945 Constitution of the Republic of Indonesia.

[277] Salma Laitupa and Fadli Yasser Arafat Juanda, "The Government's Responsibility for the Provision of Proper Health Service Facilities," *Beru'-Beru': Journal of Community Service* 2, no. 1 (June 22, 2023): 60–74, https://doi.org/10.31605/jipm.v2i1.2655.

[278] Bernardinus Putra Benartin and Asmin Fransiska, "The Prohibition of the Use of Class I Narcotics for Health Services Seen from the Protection of the Right to Health in Indonesia," *Journal of Development Law Paradigm* 5, no. 02 (2020): 236–52, https://doi.org/10.25170/paradigma.v5i02.2120.

occurs without strict supervision".[279] This consideration can be understood that the existence of narcotics as a type of drug, needs to be supervised so that there is no abuse that can have a bad impact on individuals or society.

The substance of narcotics that until now has experienced the dynamics of its use in health services is marijuana. *Cannabis sativa* as another term for the type of marijuana, is a type of narcotics whose existence in Indonesia is still experiencing pros and cons in the community to be used as a medicine in health care providers.[280] Indonesia's positive law regarding marijuana, it is stipulated that marijuana is a class I narcotic as contained in Article 8 paragraph (1) of the Narcotics Law that "class I narcotics are prohibited from being used for the purpose of health services".[281] Regarding the prohibition of the use of marijuana in the medical world in the law of the Narcotics Law, it is inversely proportional to the international regulations contained in the 1961 Single Convention on Narcotics, where marijuana is a substance whose existence can be used in health services and scientific development.[282]

The provisions of marijuana in the 1961 Single Convention on Narcotics were initially a substance that was considered not to have benefits for medical needs, but along with the development of science and technology, the components in marijuana began to be found to have benefits in the medical world.[283] The development of the benefits of marijuana in the medical world then internationally experienced pro and con dynamics, because although marijuana can be used in the medical world, excessive

---

[279] Consideration of letter c in law Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).
[280] Alifa Putriana, Dimas Satriawan Rusdianto, and Deden Najmudin, "Syubhat on the Legal Use of Medical Cannabis in Islamic Criminal Law and Positive Law," *Tashdiq: Journal of Religious Studies and Da'wah* 2, no. 1 (December 30, 2023): 11–20, https://doi.org/10.4236/tashdiq.v2i1.1653.
[281] Article 8 paragraph (1) Indonesia, Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 of 2009, Supplement to Statute Book 5062).
[282] Barik Ramdhani Pababbari, "Juridical Analysis of Medical Marijuana According to Law No. 35 of 2009 concerning Narcotics," *VOX POPULI* 4, no. 2 (2021): 95–108, https://doi.org/10.24252/vp.v4i2.24236.
[283] Anastasia Aprinda Putri Gusna, "Positive Legal Perspectives in Indonesia on Cannabis Treatment" (S1, Atma Jaya University Yogyakarta, 2023), https://e-journal.uajy.ac.id/28724/.

abuse of marijuana can have a negative impact on social sustainability. Moreover, in Indonesia, which has long strictly prohibited the use of marijuana in both the medical and recreational worlds.[284]

The prohibition of the use of marijuana in Indonesia is due to the fact that the negative views of the general public and the government attached to marijuana are a haram substance and are not beneficial in any aspect. This view is because the existence of marijuana in Indonesia has long been abused for recreational needs by some people, causing the negative impact of marijuana.[285] This condition is the cause of the positive side and benefits of marijuana is often not understood by some people in Indonesia. Some groups of people who support the legalization of medical marijuana, see the existence of marijuana not only from the negative side, but need to be seen from the positive side because internationally what happens in other countries is proven that marijuana through studies and research has found medical benefits from the compounds contained in it.[286]

Various countries in the world have legalized marijuana to meet medical needs. Some of them are Germany (6 grams of ownership), Mexico (5 grams of ownership), the Netherlands, Peru (8 grams of ownership), Switzerland (4 kilograms of ownership). Some countries that have legalized marijuana to meet medical needs have different regulatory characteristics according to different restrictions on marijuana ownership. [287] The development of marijuana legalization is one of the factors because of the WHO recommendation which was later decided by *CND* to remove

[284] Pangaribuan, "The Dynamics of Cannabis Policy in Global and Indonesian Legal Politics."
[285] Fahrizal S. Siagian, "Criminal Liability of Cannabis Growers Based on the Law on Narcotics," *Scientific Studies of Law and State* 2, no. 2 (December 4, 2023): 65–78, https://doi.org/10.35912/kihan.v2i2.2412.
[286] Salsabila Layla PutriHasan, "Hemp Makassar: Establishment, Obstacles and Community Response to the Struggle for the Legalization of Medical Cannabis," *Emic* 7, no. 1 (June 28, 2024): 47–64, https://doi.org/10.46918/emik.v7i1.2252.
[287] Aditya Gamal Burmawi, "Reformulation of Criminal Law Policy Against Class I Narcotics Abusers 'Cannabis'" (masters, Criminal Law, 2024), https://repository.unja.ac.id/62266/.

marijuana from *the schedule IV* group changed to only schedule *I* so that its existence can be used for medical needs and scientific development.[288]

Indonesia regarding the development of cannabis in the medical world, is still closed to see the positive value that cannabis has, even though the regulations of the Narcotics Law that apply in Indonesia classify the types of narcotics are based on international rules, namely the 1961 Single Convention on Narcotics.[289] The reality that occurs in Indonesian society today, some groups show the need for the use of marijuana in health services. As happened in the 2017 case, namely Fidelis Arie where he is an Indonesian citizen who tried to use marijuana as a medicine to treat his wife, but the positive law that applies in Indonesia has strictly prohibited the use of marijuana as a group I cannot be used for health service needs, causing his actions to be classified as a criminal offense.[290]

The need for the use of marijuana in the medical world can be seen in the reality that occurred with the application for testing the law carried out before the Constitutional Court, namely in the Constitutional Court Decision Number 106/PUU-XVIII/2020 and the Constitutional Court Decision Number 13/PUU-XXII/2024. Both rulings are a sign that the growing reality in society regarding the need for the use of medical marijuana is something that needs to be considered. The paradigm that is owned by those who support medical marijuana is an effort to fulfill effective health services for people with certain medical conditions, this does not mean that the

---

[288] Fay Cilla Tamara Alya Tanjung, "Demands for Cannabis Legalization in Indonesia and Thailand: A Study of the Role of the Nusantara and Highland Cannabis Rings in Cannabis Legalization." (bachelorthesis, Political Science Study Program, Faculty of Social and Political Sciences, Syarif Hidayatullah State Islamic University, Jakarta, 2024), https://repository.uinjkt.ac.id/dspace/handle/123456789/78282.

[289] Alya Clara Angelita and Rugun Romaida Hutabarat, "Criminalization of the Use of Ketamine as a Narcotics Based on Law Number 35 of 2009 concerning Narcotics," *Adigama Law Journal* 5, no. 1 (August 22, 2022): 1291–1314.

[290] Shira Carmela et al., "Friedman's Law Enforcement Theory Regarding the Problem of Narcotics Use for Medical Purposes Relevance to Moral and Legal Considerations," *Nusantara: Journal of Education, Arts, Science and Social Humanities* 1, no. 02 (2023), https://journal.forikami.com/index.php/nusantara/article/view/571.

legalization of medical marijuana can be used without supervision and control that should be strictly carried out by the state.[291]

The government as part of the state has the responsibility to fulfill good health service facilities as stated in the 1945 Constitution in article 34 paragraph (3) which reads "The state is responsible for the provision of proper health service facilities and public service facilities". [292] The responsibility that the country has, should provide space for research and studies that are carried out comprehensively to provide a scientific basis for the question of whether medical marijuana can be applied in Indonesia or not. The state has obligations related to the fulfillment of human rights where there are three values, including: 1) respect, 2) protect, 3) fulfill.[293]

Human rights include the right to health in which there are several components, namely: availability, access to health, acceptability based on ethics and culture, health quality is carried out without discrimination. The restrictions contained in Article 8 of the Narcotics Law can be understood that the state in this case does not fulfill the state's obligation to fulfill human rights in the value of "protecting", because the state should protect and prevent from restricting access to the right to health for citizens, which in this context is the protection of efforts to access health services through medical marijuana treatment. Article 8 of the Narcotics Law from the point of view of state obligations related to human rights is also not in line with the value of "fulfilling", because the state should regulate in the provisions of the law to be able to fulfill access to health and science and not obstruct it.[294]

---

[291] Prassetyo, "Legalization of Medical Marijuana (Analysis of the Constitutional Court Decision Number 106/PUU-XVIII/2020)."
[292] Article 34 paragraph (3) Indonesia, 1945 Constitution of the Republic of Indonesia.
[293] Fheriyal Sri Isriawaty, "The State's Responsibility in Fulfilling the Right to Public Health Based on the 1945 Constitution of the Republic of Indonesia," *Legal Opinion* (Journal:eArticle, Tadulako University, 2015), https://www.neliti.com/publications/145729/.
[294] Benartin and Fransiska, "The Prohibition of the Use of Class I Narcotics for Health Services Seen from the Protection of the Right to Health in Indonesia."

The state's obligation related to human rights through fulfilling the needs of health services using medical marijuana as described above, can be said to be a policy that requires in-depth consideration. This comprehensive consideration is needed, because although the reality that occurs regarding medical marijuana is needed in Indonesia, the obstacles and challenges are community behavior and legal readiness which can be said to be inadequate. There are still many polemics related to the legalization of medical marijuana in Indonesia that must be resolved, related to the readiness of the community's legal culture, which until now cases of narcotics abuse, especially marijuana, which are still high in 2024, have touched 9,982,094.23 grams in Indonesia. The Indonesia Drug Report 2024 data is the reason for the government to be very careful in carrying out marijuana trafficking, because mistakes in regulating the existence of narcotics can worsen the conditions of narcotics abuse that occur in Indonesia.[295]

The regulatory paradigm in determining the legalization of medical marijuana, according to the author's analysis, is a policy that requires consideration of many things, especially substantive law and adjective law which are complementary to each other in guaranteeing the rights and obligations of legal subjects that have been formulated. Readiness in regulating medical marijuana in Indonesia also needs to look at the ability of the resources they have in terms of monitoring and overcoming the problem of narcotics abuse, especially marijuana. Consideration of legalization of cannabis in the medical world despite the fact that internationally cannabis has been used in health services and public needs for medical cannabis through legalization efforts in Indonesia, it is still very necessary to conduct in-depth research and assessment for the Indonesian government because in reality the implementation of the law on the existence of medical cannabis in Indonesia is still very worrying, so the policy regarding the use of cannabis

[295] Cannabis is a substance with high abuse in Indonesia, see in the article Mariduk Lumban Tobing, Muhammad Azhali Siregar, and Henry Aspan, "Legal Implications of Drug Use in Traditional Medicine Based on a Health Law Perspective," *International Journal of Synergy in Law, Criminal, and Justice* 1, no. 2 (October 1, 2024): 206–13.

It is hoped that it will not worsen and increase the negative impact of narcotics abuse in Indonesia.

Based on the three postulates that the author has described above, regarding the judge's consideration of rejecting the applicant's application in the Constitutional Court Decision Number 13/PUU-XXII/2024 is because there is no scientific evidence that has been carried out in Indonesia to be the basis for the legalization of medical marijuana as an effective alternative to health services, therefore it is difficult to consider the benefits and disadvantages that will arise if legalizing medical marijuana. This is in line with *the view of Fiqh Siyasah Duthuriyah* , that in determining policies, it is preferable to avoid the harm rather than take the benefits, because currently the public's unpreparedness for the legalization of medical marijuana according to the consideration of the constitutional judge is greater in terms of mudharat if applied in Indonesia before there is a comprehensive research.

The constitutional judge's consideration also assessed that although international regulations marijuana has been used to meet the needs of health services and in various countries medical marijuana has been used, it cannot be the basis for application in Indonesia because the developing legal conditions and culture have different characteristics in each country. The Constitutional Court has provided a way for the government to conduct studies and research so that it can be considered to reconstruct policies regarding the use of medical marijuana. Finally, the paradigm in regulating the use of medical marijuana is highly dependent on the reality and implementation of the law in Indonesia, so that the policy of using medical marijuana can provide benefits and not cause an increase in narcotics abuse, especially marijuana.

CHAPTER IV

COVER

A. Conclusion

Based on the author's presentation of the results and discussion above, it can be concluded that:

1. The Petitioner has outlined its constitutional losses that are violated by the enactment of a law. The applicant in the Constitutional Court Decision Number 13/PUU-XXII/2024 explained that his constitutional loss was violated due to the existence of Law Number 8 of 1976 concerning the Ratification of the 1961 Single Convention on Narcotics, which resulted in the applicant not being able to access health service needs through *cannabis sativa treatment*. Access *to judicial review* at the Constitutional Court is a step in an effort to protect the constitutional rights of health owned by applicants. *The legal standing* of the applicant is the reason for the judge to be able to consider the postulates of the applicant's application.
2. *Ratio was determined by* the Constitutional Court Decision Number 13/PUU-XXII/2024 rejecting the applicant's application, the Constitutional Judge's consideration was due to the absence of scientific evidence carried out regarding *research on the use of cannabis sativa* in Indonesia, so that the legalization effort was difficult to accept based on philosophical, sociological, juridical, and medical considerations. The judge's consideration, when viewed from the perspective of legal objectives, has fulfilled the aspect of legal certainty that medical marijuana in Indonesia cannot be legalized as in other countries, and the aspect of legal benefits that prioritize the benefit for the wider community not to legalize marijuana. The aspect of justice in the Constitutional Court's decision can be said to have not been fulfilled because people who experience medical conditions that require medical marijuana still cannot access medical marijuana for their health services and continue to suffer losses. Therefore, the Constitutional Court asked the government to conduct a comprehensive study

to find answers in regulating the legalization policy of medical marijuana with an impact on benefits or losses. Constitutional judges in their legal considerations use the method of interpreting the constitution, which in the Constitutional Court Decision Number 13/PUU-XXII/2024 uses legal interpretation: grammatical, systematic, and teleological interpretation.

3. The judge's consideration of rejecting the applicant's application is because of the potential damage that will arise if marijuana legalization is carried out without the readiness of the legal structure, which can have a greater harm impact on the wider community. The perspective of *fiqh siyasah dusturiyah* sees this as in line with the fiqhiyyah rule which reads "rejecting harm is more important than attracting benefits" so that the constitutional judge's decision regarding the use of medical marijuana in Indonesia, prioritizes the aspect of rejecting harm rather than benefiting some groups. Research and study of medical marijuana in Indonesia can later be considered by the government to be able to construct a policy on the use of medical marijuana, because the legalization of medical marijuana in other countries cannot be the basis for the legalization of medical marijuana in Indonesia without conducting independent research and assessment. The paradigm of regulating the benefits of medical marijuana is highly dependent on the reality and implementation of the law that occurs in Indonesia, therefore caution in weighing the benefits or disadvantages needs to be considered in legalizing *cannabis sativa* in health services.

B. Suggestion

Based on the discussion above, there are several suggestions related to the above research, namely as follows:

1. The government conducts comprehensive research and assessments in accordance with scientific standards to be considered in revising the provisions of the law related to the use of *cannabis sativa* in Indonesia can be beneficial for people who need effective health services, this is to provide a sense of justice in accessing health rights for people who experience certain medical conditions, such as *cerebral palsy*.

2. The perspective of *fiqh siyasah dusturiyah* can be used as a basis for considering a policy either in the decision of the Constitutional Court or in the legislative policy made by the legislative institution. *Fiqh siyasah dusturiyah* as a principle that orients policies for the community to achieve benefits in accordance with Islamic values.
3. The government and the public should be able to see medical marijuana from the positive side, and not only from the negative side, because efforts to legalize medical marijuana are aimed at its use in health services with provisions that are strictly supervised so that abuse does not occur. Legalization of marijuana does not mean that marijuana can be used for recreational needs, therefore public understanding of the positive side of the use of medical marijuana can provide a positive paradigm for the marijuana legalization plan.

BIBLIOGRAPHY

Abdurrahman, Muhammad Rafli. "Juridical Review of the Constitutional Court's Decision on the Prohibition of Using Cannabis as a Treatment (Case Study: Constitutional Court Decision Number 106/PUU-XVIII/2020)." Bachelor, National University, 2023. http://repository.unas.ac.id/9493/.

Aditya, Zaka Firma, and Sholahuddin Al Fatih. "The Legalization of Medical Marijuana: A Human Rights Law Perspective." *Human Rights in the Global South (HRGS)* 1, no. 2 (December 23, 2022): 109–24. https://doi.org/10.56784/hrgs.v1i2.36.

Akbar, Muhammad, and Syahrul bakti Harahap. "The judge's consideration in deciding the case of class 1 narcotics abuse for oneself." *Journal of Smart Law (JSH)* 1, no. 1 (September 28, 2022): 229–37. https://doi.org/10.55299/jsh.v1i1.154.

Akmal, Diya Ul, and Dea Linta Arlianti. "Dynamics of the Protection of Citizens' Constitutional Rights in the Implementation of Law Testing at the Constitutional Court." *Mulawarman Law Review*, June 30, 2022, 49–70. https://doi.org/10.30872/mulrev.v7i1.780.

Alasa, Maya Watika, and M. Iqbal. "The Crime of Cannabis Sativa Abuse and Its Enforcement by the Gayo Lues Resort Police (A Study in the Jurisdiction of the Gayo Lues Resort Police)." *Scientific Journal of Students in Criminal Law* 3, no. 1 (February 17, 2019): 47–57.

Ali, Zainuddin. *Legal Research Methods*. Jakarta: Sinar Grafika, 2021.

Amaliyah, Nur Immawati, Parid Sidik, and Abd Gani. "Basic Criticism of the School of Positivism of Hans Kelsen's Theory (Case Study on the Polemic of Cannabis Legalization in Indonesia)." *Pagaruyuang Law Journal* 8, no. 1 (July 28, 2024): 1–16. https://doi.org/10.31869/plj.v8i1.5696.

Angelita, Alya Clara, and Rugun Romaida Hutabarat. "Criminalization of the Use of Ketamine as a Narcotics Based on Law Number 35 of 2009 concerning Narcotics." *Adigama Law Journal* 5, no. 1 (August 22, 2022): 1291–1314.

Anggreni, Devi, Ahmad Fuadi, Fitriyani Fitriyani, and Muhammad Ibn Al-Kautsar. "The Role of the Constitutional Court in Ensuring the Rule of Law in Indonesia." *Hutanasyah : Journal of Constitutional Law* 3, no. 1 (August 31, 2024): 11–26. https://doi.org/10.37092/hutanasyah.v3i1.868.

Angkasa, Nitaria, Yulia Kusuma Wardani, Zulkarnain, Yennie AgustinMR, Ali Faisal, Rita Susanti, Gunawan, Husni Mubaroq, and Maya Shafira. *Legal Research Methods as an Introduction*. Lampung: CV. Laduny Alifatama, 2019. https://digilib.stekom.ac.id/ebook/view/metode-penelitian-hukum-sebagai-suatu-pengantar.

Grace, Incandescent. "Medical Cannabis: Santi Warastuti and the Struggle to Legalize Medical Marijuana in Search of Treatment for His Child." BBC News Indonesia, June 28, 2022. https://www.bbc.com/indonesia/indonesia-61956811.

Aprita, Serlika, and Rio Adithya. *Philosophy of Law*. Depok: Rajawali Press, 2020.

Ardinata, Mikho. "State Responsibility for Health Insurance in the Perspective of Human Rights." *Journal of Ham* 11, no. 2 (2020): 319–32.

Arfiani, Nur, and Indah Woro Utami. "The Use of Medical Cannabis in Rational Medicine and Its Regulation in Indonesia." *Journal of Health Law and Ethics*, April 5, 2022, 56–68. https://doi.org/10.30649/jhek.v2i1.45.

Asma, Siti Nor. "The Position of Fiqh Siyasah in Islamic Law." *Lex Sharia Pacta Sunt Servanda: Journal of Islamic Law and Policy* 1, no. 2 (May 30, 2024): 32–37.

Asmoro, Widi, and Palupi Lindiasari Samputra. "Policy Narrative Analysis: Medical Cannabis Policy in Indonesia." *Update Matrix: Journal of Policy Innovation* 5, no. 1 (June 9, 2021): 13–24. https://doi.org/10.21787/mp.5.1.2021.13-24.

As-Sajastani, Abi Dawud Sulaiman. *Sunan Abi Dawud*. Baitul Afkar Addauliyah, 1420.

Asshiddiqie, Jimly. *Procedural Law Testing Laws*. Jakarta: Sinar Grafika, 2010.

———. *Introduction to Constitutional Law*. Depok: Rajawali Press, 2020.

Aswan, Anhar. "Comparative Analysis of Legal Systems Against Cannabis Legalization in Several Countries." Other, Hasanuddin University, 2022. https://repository.unhas.ac.id/id/eprint/17139/.

Ayunda, Rahmi, and Vina Vina. "Opportunities and Challenges in Legalizing the Use of Cannabis for Medical Purposes in Indonesia Reviewed from the Perspective of the Health Law." *CoMBInES - Conference on Management, Business, Innovation, Education and Social Sciences* 1, no. 1 (March 26, 2021): 331–40.

Azaz Fauzan, NIM: 18103040144. "Juridical analysis of the legalization of the use of cannabis for medical treatment is reviewed from Law Number 35 of 2009 concerning Narcotics (Study of the Surabaya District Court Decision Number 1285/Pid.sus/2020/PN. SBY)." Thesis, UIN SUNAN KALIJAGA YOGYAKARTA, 2023. https://digilib.uin-suka.ac.id/id/eprint/62089/.

Azwinanto, Muhamad Farhan. "Propaganda in the Civilization of the Cannabis Plant." *Journal of Socia Logica* 3, no. 3 (August 27, 2023): 331–47. https://doi.org/10.572349/socialogica.v3i3.1026.

Azzahra, Himalayas. "The Relevance of Fiqh Rules to the Legalization of Cannabis as a Medicinal Plant from the Perspective of Siayasah Syar'iyyah." *JOURNAL AL TASYRI'IYYAH*, June 22, 2023, 27–40. https://doi.org/10.24252/jat.vi.38428.

Basiang, Martin. *The Contemporary Law DIctionary: Dictionary of Contemperer's Law*. Jakarta: PT Gramedia, 2016.

Basuki, Udiyo. "Tracing the constitutionalism of the right to health care as a human right." *Journal of Law Caraka Justitia* 1, no. 1 (2020): 21–41. https://doi.org/10.30588/jhcj.v1i1.699.

Coal, Rajali. "The Role of Legal Interpretation in Judicial Practice in Indonesia." *El-Sirry: Journal of Islamic and Social Law* 2, no. 1 (June 21, 2024): 71–92. https://doi.org/10.24952/ejhis.v2i1.11384.

Benartin, Bernardinus Putra, and Asmin Fransiska. "The prohibition of the use of class I narcotics for health services is seen from the protection of the right to health in Indonesia." *Journal of Development Law Paradigm* 5, no. 02 (2020): 236–52. https://doi.org/10.25170/paradigma.v5i02.2120.

BNN, by Public Relations. "Voting Results at the Reconvened 63rd Session of the Commission on Narcotics Drugs Related to Cannabis and Cannabis Resin," December 9, 2020. https://bnn.go.id/hasil-voting-pada-reconvened-63rd-session-commision/.

Budahu, Muhammad Abdi Sabri I. "Legal Standing of the Applicant Regarding the Submission of Judicial Review in the Constitutional Court." *Journal of Legal Media* 12, no. 1 (March 20, 2024): 10–28. https://doi.org/10.59414/jmh.v12i1.636.

Caniago, Rocki, Antonius Agung Susilo, Jonathan Valensius, and Muhammad Daffa. "Banning the use of cannabis in the medical sector: The case of anti-seizure syrup that is no longer safe for people with cerebral palsy." *Journal of Syntax Fusion* 3, no. 01 (January 25, 2023): 41–57. https://doi.org/10.54543/fusion.v3i01.240.

Carmela, Shira, Andi Kavenya Noorhaliza, Rizky Dwie Afrizal, and Tsaniya Salma Azzahra. "The theory of law enforcement according to Friedman related to the issue of the use of narcotics for medical purposes is relevant to moral and legal considerations." *Nusantara: Journal of Education, Arts, Science and Social Humanities* 1, no. 02 (2023). https://journal.forikami.com/index.php/nusantara/article/view/571.

Chumbhadrika, Chitto. "The Urgency of Classifying Synthetic Cannabis into Group I of Law No. 35 of 2009 on Narcotics." *IBLAM LAW* REVIEW 4, no. 2 (May 31, 2024): 143–57. https://doi.org/10.52249/ilr.v4i2.478.

Claudia, Jennifer, and Rasji Rasji. "Analysis of the Pros and Cons of Legalization of Medical Cannabis in Indonesia: A Review of the Contents and Implications." *Kertha Semaya : Journal of Law* 12, no. 4 (December 17, 2023): 705–18. https://doi.org/10.24843/KS.2024.v12.i04.p15.

Davis, Isaiah Fabian, and Amalia Putri Maharani. "The role of judges in deviating from the special minimum sanctions for narcotics abuse based on progressive legal theory." *Journal of Legal Sciences: ALETHEA* 7, no. 2 (August 30, 2024): 149–64. https://doi.org/10.24246/alethea.vol7.no2.p149-164.

Dewi, Nevy Rusmarina, and Melina Nurul Khofifah. "Transition of Cannabis Classification in the UN Drug Control Agreement: Legalization Steps." *Khazanah Hukum* 3, no. 2 (April 5, 2021): 59–69. https://doi.org/10.15575/kh.v3i2.11801.

Djazuli, H. A. *Fiqh Rules: The rules of Islamic law in solving practical problems*. Jakarta: Kencana-Prenada Media, 2021.

Djazuli, H.A. *Fiqh Siyasah: Implementation of the Benefit of the Ummah in Sharia Signs*. Jakarta: Kencana-Prenada Media, 2018.

Djazuli, Prof. H. A. *The Science of Fiqh: The Excavation, Development, and Application of Islamic Law. Revised edition*. Prenada Media, 2021.

House of Representatives of the Republic of Indonesia, Secretariat General. *ANNOTATION of Law Number 35 of 2009 concerning Narcotics*. Jakarta: Center for Monitoring the Implementation of Laws, 2022.

Fadillah, Nor. "Analysis of the Constitutional Court's Interpretation Method in the Formulation of Decision Number 91/PUU-XVIII/2020 Related to the Formal Testing of Law Number 11 of 2020 concerning Job Creation." *Lex Renaissance* 7, no. 4 (2022): 726–44. https://doi.org/10.20885/JLR.vol7.iss4.art4.

Fadjar, Abdul Mukthie. *Constitutional Law and the Constitutional Court*. Yogyakarta: Citra Media, 2006.

Fauzan, Akmal. "Basic Criticism of Hans Kelsen's Theoretical Positivism School (Case Study on the Polemic of Cannabis Legalization in Indonesia)." *At-Tanwir Law Review* 2, no. 2 (August 30, 2022): 142–54. https://doi.org/10.31314/atlarev.v2i2.2025.

Fauziyah, Wiwin. "The need for regulation of the use of cannabis in Indonesia is reviewed from the perspective of medical interests." *Journal of Legal* Panorama 7, no. 2 (December 31, 2022): 168–78. https://doi.org/10.21067/jph.v7i2.7702.

FHUI, ByPublic Relations. "The Use of Cannabis in the Medical Field from the Perspective of Legal Certainty and Benefits by Wahyu Andrianto, S.H., M.H. – Faculty of Law, University of Indonesia." Accessed November 4, 2024. https://law.ui.ac.id/penggunaan-ganja-di-bidang-medis-dari-perspektif-kepastian-dan-kemanfaatan-hukum-oleh-wahyu-andrianto-s-h-m-h/.

Firdausi, Mir'atul, Aufi Imaduddin, and Faridatul Ulya. "The Dilemma of the Use of Medical Cannabis in Indonesia (An Analysis of the Perspective of the Constitutional Law in Indonesia and Islamic Law)." *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 2 (October 30, 2022): 164–85. https://doi.org/10.51675/jaksya.v3i2.254.

Gaffar, Janedjri M. "The Role of the Constitutional Court's Decision in the Protection of Human Rights Related to the Implementation of Elections." *Journal of the Constitution* 10, no. 1 (2016): 1–32. https://doi.org/10.31078/jk1011.

Gamal Burmawi, Aditya. "Reformulation of Criminal Law Policy Against Class I Narcotics Abusers 'Cannabis.'" Masters, Criminal Law, 2024. https://repository.unja.ac.id/62266/.

Gede, Atmadja I. Dewa, and Budiartha I. Nyoman Putu. *Legal Theories*. Malang: Setara Press, 2018.

Gunawan, Dwi Putri. "Legalization and Maslahah: A Study on the Utilization of Cannabis for Medical Medicine." *IJTIHAD* 38, no. 1 (July 17, 2022): 37–52.

Gusna, Anastasia Aprinda Putri. "Positive Legal Perspectives in Indonesia on Cannabis Treatment." S1, Atma Jaya University Yogyakarta, 2023. https://e-journal.uajy.ac.id/28724/.

Hafidzi, Anwar, and Panji Sugesti. "Interpretation of the Constitutional Court on Testing Government Regulations in Lieu of Laws." *AL IMARAH: JOURNAL OF ISLAMIC GOVERNMENT AND POLITICS* 4, no. 2 (2019): 97–110.

Hanadi, Syawaluddin. "The Authority of the Constitutional Court in Interpreting the Constitution of the Republic of Indonesia in 1945." *Expose: Journal of Legal and Educational Research* 16, no. 1 (April 13, 2019): 349–60. https://doi.org/10.30863/ekspose.v16i1.92.

Hasibuan, H. A. Lawali, and Alvin Hamzah Nst. "The Method of Interpreting Law as a Tool to Seek Intrinsic Justice." *LEGISIA JOURNAL* 15, no. 2 (July 3, 2023): 136–45. https://doi.org/10.58350/leg.v15i2.351.

Hastanto, Ikhwan. "Chat with the Plaintiff's Mother of the Narcotics Law so that Medical Marijuana is Legal in Indonesia." *Vice* (blog), October 11, 2021. https://www.vice.com/id/article/k7848m/profil-dwi-pertiwi-penggugat-uu-narkotika-di-mahkamah-konstitusi-agar-ganja-medis-legal-di-indonesia.

Hilal, Fatmawati. *Fiqh Siyasah*. Makassar: Pustaka Almaida, 2015.

Husna, Safira Kanaya Iffat, and Fatma Ulfatun Najicha. "Pancasila and its relationship with human rights in Indonesia." *Civic Education: Media Studies of Pancasila and Citizenship* 7, no. 2 (December 17, 2023): 104–12. https://doi.org/10.36412/jce.v7i2.7869.

Ibrahim, Johnny. *Normative Law Research Theory and Methodology*. Malang: Bayu Media, 2006. https://lib.ui.ac.id.

Ichwan, Alfan Khairul. "The State Government System of Al-Ahkam As Shulthaniyah and Its Relevance in Indonesia." *INTERDISCIPLINARY JOURNAL ON LAW, SOCIAL SCIENCES AND HUMANITIES* 3, no. 2 (November 30, 2022): 150–68. https://doi.org/10.19184/idj.v3i2.33051.

Idris, Munawara, Syamsul Bachri, and Naswar. "The authority of the Constitutional Court to handle constitutional complaint cases through the interpretation of the Constitution." *Alauddin Law Development Journal* 5, no. 2 (August 13, 2023): 317–31. https://doi.org/10.24252/aldev.v5i2.35592.

Idrus, Achmad Musyahid. "The Policy of State Leaders in the Perspective of Fiqh Principles: Tasarruf Al-Imam Manutun Bil Maslahah." *Al Daulah : Journal of Criminal Law and Constitutional* Affairs, December 29, 2021, 123–37. https://doi.org/10.24252/ad.v1i1.26278.

Iftitah, Anik, Ady Purwoto, Kurniawan, Herlina Manullang, Nuryati Solapari, July Esther, Geofani Milthree Saragih, et al. *Introduction to Law*. Banten: Sada Kurnia Pustaka, 2023.

Indonesia, Constitutional Court. Constitutional Court Regulation Number 2 of 2021 concerning Procedural Procedures in Law Testing Cases (2021). www.mkri.id: p. 43.

———. Constitutional Court Decision Number 13/PUU-XXII/2024 (n.d.).

Indonesia, Republic. Law No. 8 of 1976 concerning the Ratification of the Single Convention on Narcotics 1961 and the Protocol Amending It (Statute Book 1976) (1976).

———. Law No. 12 of 2011 concerning the Establishment of Laws and Regulations (Statute Book No. 82 of 2011, Supplement to Statute Book 5234) (n.d.).

———. Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage (Statute Book No. 186 of 2019, Supplement to Statute Book No. 6401) (2019).

———. Law No. 17 of 2023 concerning Health Statute Book 2023 (105), Supplement to Statute Book (6887) (2023).

———. Law No. 35 of 2009 concerning Narcotics (Statute Book No. 143 2009, Supplement to Statute Book 5062) (2009).

———. Law No. 48 of 2009 concerning Judicial Power (Statute Book No. 157 of 2009, Supplement to Statute Book No. 5076) (n.d.).

———. Law No. 24 of 2003 concerning the Constitutional Court (Statute Book No. 203 No. 98, Supplement to Statute Book No. 4316) (2003). https://peraturan.bpk.go.id/Details/44069/uu-no-24-tahun-2003.

———. 1945 Constitution of the Republic of Indonesia. Accessed May 12, 2024. http://peraturan.bpk.go.id/Details/101646/uud-no--.

Indra, Mexsasai, Geofani Milthree Saragih, and Mohamad Hidayat Muhtar. "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia: The Strength of Constitutional Court Decisions in Testing the Law against the 1945 Constitution in Indonesia." *Journal of the Constitution* 20, no. 2 (June 1, 2023): 279–99. https://doi.org/10.31078/jk2026.

Iqbal, Muhammad. *Fiqh Siyasah: Contextualization of Islamic Political Doctrine*. Jakarta: Prenadamedia Group, 2014.

Irham, Abdul Gafar. *Communication Strategy of the Nusantara Cannabis Circle Organization in Educating Cannabis Plants to the People of Jakarta*. Telkom University, S1 Communication Sciences, 2020. https://repository.telkomuniversity.ac.id/pustaka/158109/strategi-komunikasi-organisasi-lingkar-ganja-nusantara-dalam-mengedukasi-tanaman-ganja-terhadap-masyarakat-jakarta.html.

Isriawaty, Fheriyal Sri. "State Responsibility in Fulfilling the Right to Public Health Based on the 1945 Constitution of the Republic of Indonesia." *Legal Opinion*. Journal:eArticle, Tadulako University, 2015. https://www.neliti.com/publications/145729/.

Jauhar, Ahmad al-Mursi Husain. *Maqashid Syariah Fil Islam*. Jakarta: AMZAH, 2009.

Junaidi, Ahmad. *Maqashid Al-Shari'ah & Islamic Law*. Depok: Pena Salsabila., 2021.

Karo, Rizky Karo. "Judge's Interpretation and Community's Sense of Justice." *Judicial Journal* 16, no. 3 (2023): 310–24.

Kartika, Arie, and Tengku Keizerina Devi Azwar. "Law and Globalization of the Legality of Medical Cannabis." *JUNCTO: Legal Scientific Journal* 5, no. 2 (December 26, 2023): 187–200. https://doi.org/10.31289/juncto.v5i2.3074.

Health, Minister. Regulation of the Minister of Health Number HK.02.02/MENKES/068/I/2010 concerning the Obligation to Use Generic Drugs in Government Health Service Facilities | Directorate General of Pharmaceuticals and Medical Devices. Accessed November 24, 2024. https://farmalkes.kemkes.go.id/unduh/permenkes-068-2010/.

Constitution, Court. Minutes of Case Number 13/PUU-XXII/2024 (2024).

Constitution, the team that drafted the court procedural law. *Procedural Law of the Constitutional Court*. Jakarta: Secretariat General and Clerk of the Constitutional Court, 2010. https://library.habi.ac.id/repository/2016/21.pdf.

KUMALASANTI, SUSANA RITA. "The Constitutional Court Reaffirms the Importance of Studying the Use of Cannabis for Medical Use." kompas.id, March 20, 2024. https://www.kompas.id/baca/humaniora/2024/03/20/mk-kembali-tegaskan-pentingnya-kajian-penggunaan-ganja-untuk-medis.

Lailam, Tanto. "Interpretation of the Constitution in Testing the Constitutionality of the Law against the 1945 Constitution." *Journal of Legal Media* 21, no. 1 (June 30, 2014): 19. https://doi.org/10.18196/jmh.v21i1.1159.

Laitupa, Salma, and Fadli Yasser Arafat Juanda. "The government's responsibility for the provision of proper health care facilities." *Beru'-Beru': Journal of Community Service* 2, no. 1 (June 22, 2023): 60–74. https://doi.org/10.31605/jipm.v2i1.2655.

Lalala, Stevanus Rolando. "Regulation of Cannabis Oil for the Benefit of Science and Media Development According to Law No. 35 of 2009 concerning Narcotics." *LEX PRIVATUM* 13, no. 2 (January 4, 2024). https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/54017.

Lokollo, Leonie, Yonna Beatrix Salamor, and Erwin Ubwarin. "Policy on the Formulation of Narcotics Law in the Legalization of the Use of Cannabis as a Medicinal Ingredient in Indonesia." *Belo* Journal 5, no. 2 (2020): 1–20.

Lubis, Ali Akhbar Abaib Mas Rabbani. *Legal Science in the Siyasah Duturiyah Node: Reflections on the Theory and Practice of Constitutional Law in Indonesia*. Yogyakarta: Semesta Aksara, 2019.

Lutfi, Mustafa. *Legal Politics of the Application of Statesman Requirements in the Selection Process of Constitutional Judge Candidates*. Law Study Program, Doctoral Program, Faculty of Law, UII, 2023. https://dspace.uii.ac.id/handle/123456789/47577.

Lutfiyani, Dini, Achmad Irwan Hamzani, and Kus Rizkianto. *Cannabis for Medical Controversy: A Comparison of Indonesia and Thailand*. NEM Publishers, 2023.

Madalina, Maria, MRFI Laxamana, and Kaharudin Aldian. "Progressive Law Enforcement in Judicial Review Cases: Pancasila Study as a Test Stone for Testing the Law against the Constitution." *Journal of Assembly* 1 (2020). https://www.mpr.go.id/img/jurnal/file/1618378045_file_mpr.pdf#page=10.

Madjid, Mario Agritama S. W., and Muh Ilham Akbar. "Review of the Principles of Constitutionalism in the 1945 Constitution: The Results of Amendments and the Discourse on Its Amendments." *Journal of Law and Human Rights Wara Sains* 2, no. 03 (March 31, 2023): 152–62. https://doi.org/10.58812/jhhws.v2i03.239.

Mahmudah, Nurul, and Nency Dela Octora. "The Relationship Between Pronouncements in Ushul Fiqh and Legal Problems." *Syakhshiyyah Journal of Islamic Family Law* 2, no. 2 (December 24, 2022): 222–41. https://doi.org/10.32332/syakhshiyyah.v2i2.6169.

Malik, Syamsul, Luriana Manalu, and Rika Juniarti. "Legalization of Cannabis in the Medical Sector from a Legal Perspective." *Rechten Journal: Law and Human Rights Research* 2, no. 2 (2020): 1–9. https://doi.org/10.52005/rechten.v2i2.52.

Marbun, B.N. *Political Dictionary*. Jakarta: Pustaka Sinar Harapan, 1996.

Marpaung, Agung Risky Saputra, and Frans Simangunsong. "The urgency of using cannabis for people with disabilities for medical purposes is reviewed from Ius Constitutum." *Axiology: Journal of Education and Social Sciences*, May 23, 2023, 39–47. https://doi.org/10.47134/aksiologi.v4i1.148.

Marzuki, Peter Mahmud. *Legal Research: Revised Edition*. Prenada Media, 2017.

Media, Cyber Compass. "The Constitutional Court Asks the Government to Immediately Review Medical Cannabis for Health Needs." KOMPAS.com, July 21, 2022. https://nasional.kompas.com/read/2022/07/21/09080991/mk-minta-pemerintah-segera-kaji-ganja-medis-untuk-kebutuhan-kesehatan.

Getting to Know Epilepsy - Causes, Symptoms, and Treatment. "Getting to Know Epilepsy - Causes, Symptoms, and Treatment." Accessed June 21, 2024. https://www.siloamhospitals.com/informasi-siloam/artikel/apa-itu-epilepsi.

Mertokusumo, M. Sudikno, and Adriaan Pitlo. *Chapters on Legal Discovery*. Bandung: Citra Aditya Bakti, 1993.

Mochtar, Zainal Arifin, and Eddy. O.S Hiariej. *Fundamentals of Law: Understand the rules, theories, principles, and philosophy of law*. Depok: Rajawali Press, 2024.

MSc, Muhammad Abduh Tuasikal. "Drugs in the Islamic View: Are You Sure You Still Want to Use Drugs?" *Muslim.or.id* (blog), May 2, 2012. https://muslim.or.id/9077-narkoba-dalam-pandangan-islam.html.

Muhaimin, Muhaimin. *Legal Research Methods*. Mataram: Mataram University Press, 2020.

Munte, Herdi, and Christo Sumurung Tua Sagala. "Protection of Constitutional Rights in Indonesia." *Scientific Journal of Law Enforcement* 8, no. 2 (December 31, 2021): 183–92. https://doi.org/10.31289/jiph.v8i2.4791.

Murdomo, J. S., Vidya Ratri Ramadhani, Jovan Ramadhan Gomang, Dery Yoga Wibiyanto, and Lanjar Jalu Nugroho. "Criminal Law Views on Cannabis

Legalization in Indonesia." *Journal of Legal Studies* 6, no. 1 (May 20, 2021): 12–19.

Muttaqien, Muhammad Zainul. "Acehnese people's views on the use of marijuana." *Journal of Syntax Admiration* 5, no. 10 (October 16, 2024): 3901–13. https://doi.org/10.46799/jsa.v5i10.1540.

Nasihuddin, Abdul Aziz, Eko Arief, Kartika Winkar, Nurani Ajeng, Kodrat Alam, and Toni Riyamukti. *Pancasila Legal Theory*. Tasikmalaya: CV. Elvaretta Buana, 2024.

National, Narcotics Agency Team. *Indonesia Drug Report*. Vol. 6 of 2024. Jakarta: BNN Center for Research, Data, and Information, 2024.

Nasution, Abdul Haris Muda. "Criminal Law Policy on the Use of Marijuana-type Narcotics as Emergency Treatment to Maintain Life." *RECTUM JOURNAL: Juridical Review of the Handling of Criminal Acts* 6, no. 2 (September 18, 2024): 266–75. https://doi.org/10.46930/jurnalrectum.v6i2.4755.

Nation, United. Single Convetion on Narcotic Drugs 1961 (1961).

———. Universal Declaration of Human Rights (1945).

Nugroho, Sigit Sapto, Anik Tri Haryani, and Farkhani. *Legal Research Methods*. Sukoharjo: Oase Pustaka, 2020. https://bni.perpusnas.go.id/detailcatalog.aspx?id=211965.

Pababbari, Barik Ramdhani. "Juridical Analysis of Medical Marijuana According to Law No. 35 of 2009 concerning Narcotics." *VOX POPULI* 4, no. 2 (2021): 95–108. https://doi.org/10.24252/vp.v4i2.24236.

Pahlevi, Reza, and Yazid Bustomi. "The Right of Judicial Review of Foreign Nationals in the Indonesian Legal System." *Istinbath : Journal of Law* 19, no. 01 (August 26, 2022): 77–95. https://doi.org/10.32332/istinbath.v19i02.4841.

Pakaya, Salahudin, and Ismet Hadi. "The right of citizens to be protected is a human right in the constitution." *At-Tanwir Law Review* 3, no. 1 (March 1, 2023): 110–23. https://doi.org/10.31314/atlarev.v3i1.2345.

Palendeng, Rivaldo Edward, and Jadmiko Anom Husodo. "Analysis of the Interpretation of the Constitution of Constitutional Court Judges in the Formulation of the Constitutional Court Decision No.97/PUU-XIV/2016 concerning the Inclusion of Belief Streams in Identity Cards and Family Cards." *Res Publica: Journal of Public Policy Law* 3, no. 3 (December 23, 2020): 303–12. https://doi.org/10.20961/respublica.v3i3.46910.

Pangaribuan, Aristo. "Cannabis Policy Dynamics in Global and Indonesian Legal Politics." *Journal of Law & Development* 54, no. 1 (March 31, 2024): 31–50. https://doi.org/10.21143/jhp.vol54.no1.1583.

Paoki, Viku, and Haniah Hanafie. "LGN as an Interest Group (Study of the Efforts of the Nusantara Cannabis Circle (LGN) in the Amendment of Law No. 3 of 2009 concerning Narcotics)." *INDEPENDENT: Journal of Indonesian and Global Politics* 2, no. 1 (April 11, 2021): 33–40. https://doi.org/10.24853/independen.2.1.33-40.

Women) (Indonesia), the National Commission on Anti-Violence Against Women (Komnas. *40 Constitutional Rights of Every Indonesian Citizen in 14 Clusters: Know Your Rights*. National Commission on Anti-Violence Against Women (Komnas Perempuan), 2020.

Pradani, Aldi, and Winsherly Tan. "Analysis of the granting of clemency for perpetrators of narcotics crimes." *Journal of Legal Analysis* 5, no. 1 (April 25, 2022): 40–55. https://doi.org/10.38043/jah.v5i1.3443.

Pramesti, Mayang, Aulia Ramadhani Putri, Muhammad Hafizh Assyidiq, and Aufa Azmi Rafida. "Drug Addiction: Factors, Impacts, and Prevention." *Permas Scientific Journal: STIKES Kendal* 12 Scientific Journal, no. 2 (April 28, 2022): 355–68.

Prassetyo, Erik Dwi. "Legalization of Medical Marijuana (Analysis of Constitutional Court Decision Number 106/PUU-XVIII/2020)." *Journal of Legal Analysis* 5, no. 2 (September 25, 2022): 147–62. https://doi.org/10.38043/jah.v5i2.3735.

Purba, Indra Gunawan. "Juridical Analyst of the Use of Cannabis for Health Purposes in the Perspective of Benefits for the Fulfillment of the Basic Health Rights of Every Citizen." *Journal of Law Rules: Communication Media and Information Law and Society* 23, no. 2 (January 23, 2024): 209–20. https://doi.org/10.30743/jhk.v23i2.8775.

Purnomosidi, Arie. "The Concept of Protection of Constitutional Rights of Persons with Disabilities in Indonesia." *Legal Reflections: Journal of Legal* Sciences 1, no. 2 (April 26, 2017): 161–74. https://doi.org/10.24246/jrh.2017.v1.i2.p161-174.

Purwati, Ani. *Legal Research Methods Theory and Practice*. Surabaya: Jakad Media Publishing, 2020.

Putranto, Mahardian, and Yovita Arie Mangesti. "The Use of Medical Cannabis in Medicine and Its Regulation in Indonesia." *Journal Evidence Of Law* 3, no. 1 (January 17, 2024): 10–19. https://doi.org/10.59066/jel.v3i1.582.

Putri, Fantika Setya, and Gayatri Dyah Suprobowati. "The Existence of the Constitutional Court of the Republic of Indonesia on the Inauguration of Citizens' Constitutional Rights." *Souvereignty* 1, no. 4 (December 16, 2022): 626–34. https://doi.org/10.13057/souvereignty.v1i4.92.

Putriana, Alifa, Dimas Satriawan Rusdianto, and Deden Najmudin. "Syubhat on the Law on the Use of Medical Cannabis in Islamic Criminal Law and Positive Law." *Tashdiq: Journal of Religious Studies and Da'wah* 2, no. 1 (December 30, 2023): 11–20. https://doi.org/10.4236/tashdiq.v2i1.1653.

PutriHasan, Salsabila Layla. "Hemp Makassar: Standing, Obstacles and Community Response to the Struggle for the Legalization of Medical Cannabis." *Emik* 7, no. 1 (June 28, 2024): 47–64. https://doi.org/10.46918/emik.v7i1.2252.

Qadrina, Nurlaelatil, and M. Chaerul Risal. "Legalization of Cannabis as a Medicinal Plant: Necessary?" *JOURNAL AL TASYRI'IYYAH,* June 20, 2022, 48–58. https://doi.org/10.24252/jat.vi.30201.

Qamar, Nurul, and Farah Syah Rezah. *Legal Research Methods: Doctrinal and Non-Doctrinal*. CV. Social Politic Genius (SIGn), 2020.

Ramadhan, Muhammad. *Contextualization of Islamic Political Doctrine in Fiqh Siyasah*. Pekalongan: PT Nasya Expanding Management, 2019.

Ramdan, Ajie. "Legal Standing Problems of Constitutional Court Decisions." *Journal of the Constitution* 11, no. 4 (2014): 737–58. https://doi.org/10.31078/jk1147.

Ramli. *Ushul Fiqh*. Yogyakarta: Nuta Media, 2021.

"Ratio Legis: Legal Concept Explained." Accessed July 6, 2024. https://getlegalbuddies.com/blog/ratio-legis-legal-concept-explained/.

Saifullah, Saifullah, Mustafa Lutfi, and Abdul Azis. "The Transformation of Islamic Legal Values in the Jurisprudence of Constitutional Court Decisions: The Perspective of Integrative Legal Theory." *De Jure: Journal of Law and Shari'iah* 12, no. 1 (2020): 1–16.

Sari, Brigitta Belia Permata. "The Constitutional Court Rejects the Lawsuit of Cerebral Palsy Children Who Ask to Legalize Medical Cannabis." detiknews. Accessed November 17, 2024. https://news.detik.com/berita/d-7251264/mk-tolak-gugatan-ortu-anak-cerebral-palsy-yang-minta-legalkan-ganja-medis.

Seroy, Queensly Siska. "The Competence of the Constitutional Court in Enforcement of Human Rights." *LEX ADMINISTRATUM* 9, no. 6 (June 22, 2021). https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/34397.

Setiawan, Heru. "Considering Constitutional Complaint as the Authority of the Constitutional Court." *Lex Jurnalica* 14, no. 1 (2017): 146952.

Siagian, Fahrizal S. "Criminal Liability of Cannabis Growers Based on the Law on Narcotics." *Scientific Studies of Law and State* 2, no. 2 (December 4, 2023): 65–78. https://doi.org/10.35912/kihan.v2i2.2412.

Siahaan, Maruarar. *Procedural Law of the Constitutional Court of the Republic of Indonesia (Second Edition).* Jakarta: Sinar Grafika, 2012. https://books.google.com/books/about/Hukum_Acara_Mahkamah_Konstitusi_Republik.html?hl=id&id=-y9sEAAAQBAJ.

Sihombing, Six. "Strengthening the Constitutional Court of the Republic of Indonesia Through Constitutional Complaint." *Law on the Drafting of Laws* and Regulations 4, no. 2 (2018): 105.

Sobirin, Yusup, and Oyo Sunaryo Mukhlas. "Islamic Legal Views on the Benefits of Legalizing Cannabis for Medical Use." *Equality: Journal of Islamic Law (EJIL)* 1, no. 1 (December 11, 2023): 1–14. https://doi.org/10.15575/ejil.v1i1.478.

Soekanto, Soerjono. *Introduction to Legal Research*. Jakarta: UI Press, 2010.

Solikin, Nur. *Introduction to Legal Research Methodology*. Pasuruan: Qiara Media Publishers, 2021.

S.Siagian, Fahrizal, Najuasah Putra, and Muhammad Khairul Imam. "Juridical Study of the Crime of Cannabis Growers Based on the Law on Indonesian Narcotics." *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 2, no. 2 (October 31, 2023): 1–10. https://doi.org/10.32734/nlr.v2i2.13563.

Sudarti, Sudarti. "Relations between Religion and State: An Analysis of the Political Thought of Soekarno and Fazlur Rahman." *Politica: Journal of Islamic Constitutional and Political Law* 7, no. 2 (December 30, 2020): 69–91. https://doi.org/10.32505/politica.v7i2.1985.

Syawaludin, and Arif Wibowo. "Analysis of the Problematics that Occurred in the Final and Binding Decision of the Constitutional Court: The Constitutional Court." *Journal of Multidisciplinary Research* 1, no. 2 (December 31, 2022): 103–9. https://doi.org/10.58705/jpm.v1i2.64.

Tanjung, Fay Cilla Tamara Alya. "Demands for Cannabis Legalization in Indonesia and Thailand: A Study of the Role of the Cannabis Circle of Nusantara and Highland Thailand in Legalizing Cannabis." bachelorthesis, Political Science Study Program, Faculty of Social and Political Sciences, Syarif Hidayatullah State Islamic University, Jakarta, 2024. https://repository.uinjkt.ac.id/dspace/handle/123456789/78282.

Team, Ruangguru Tech. "Definition, Overview, Structure, Characteristics, Examples & How to Make," October 8, 2024. https://www.brainacademy.id/blog/mengenal-ikhtisar.

Siloam Medical Team. "What is Cerebral Palsy? These are the causes, symptoms, and treatment." What is Cerebral Palsy? Here are the causes, symptoms, & treatment. Accessed June 21, 2024. https://www.siloamhospitals.com/informasi-siloam/artikel/apa-itu-cerebral-palsy.

Tobing, Mariduk Lumban, Muhammad Azhali Siregar, and Henry Aspan. "Legal Implications of Drug Use in Traditional Medicine Based on a Health Law Perspective." *International Journal of Synergy in Law, Criminal, and Justice* 1, no. 2 (October 1, 2024): 206–13.

Trinanda, Irsyad Ilyas. "Reconstruction of the Regulation of Classification of Cannabis Plants in the Narcotics Law from Class I Narcotics to Class II Narcotics Based on the Right to Health." Bachelor, Brawijaya University, 2021. https://repository.ub.ac.id/id/eprint/186751/.

"United Nations Treaty Collection." Accessed November 4, 2024. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-15&chapter=6#21.

Waid, Abdul, and Niken Lestari. "Contemporary Maqashid Al-Shari'ah Theory in Islamic Law and Its Relevance to National Economic Development." *LABATILA : Journal of Islamic Economics* 4, no. 02 (December 30, 2020): 191–205. https://doi.org/10.33507/lab.v4i01.270.

Washil, Nashr Farid Muhammad, and Abdul Aziz Muhammad Azzam. *Qawa'id Fiqhiyyah*. Jakarta: AMZAH, 2013.

Wicaksono, Dian Agung, and Enny Nurbaningsih. "Ratio Legis Determination of Taxpayers as Legal Status in Testing the Law by the Constitutional Court." *Journal of the Constitution* 17, no. 3 (November 10, 2020): 461–94. https://doi.org/10.31078/jk1731.

Wijaya, Rangga. "The Function of the Constitutional Court in Testing the Law against the 1945 Constitution." *IJOLARES : Indonesian Journal of Law Research* 1, no. 1 (March 30, 2023): 23–27. https://doi.org/10.60153/ijolares.v1i1.5.

Wulandari, Cynthia Ajeng. "Policy on the Use of Cannabis Plants as Medical Treatment in Indonesia." Undergraduate, Sultan Agung Islamic University, Semarang, 2023. https://repository.unissula.ac.id/31524/.

Yandy, Eza Tri, A. Yuli Tauvani, Sulaeman Sulaeman, M. Yusuf, and Muhammad Isa. "The Principle of Checks and Balances in Islamic State Administration Studies." *Journal of Mediasas: Media of Sharia Sciences and Ahwal Al-Syakhsiyyah* 7, no. 1 (June 30, 2024): 165–83. https://doi.org/10.58824/mediasas.v7i1.118.

Yanto, Oksidelfa. *The State of Law: Certainty, Justice, and Usefulness (In the Indonesian Criminal Justice System*. Bandung: Pustaka Reka Cipta, 2020.

YUSTINA, ENDANG WAHYATI, Marcella Elwina Simandjuntak, Mohamad Nasser, John D. Blum, and Sheilla M. Trajera. "Legalization of Medical Marijuana in Indonesia from the Human Rights Perspectives: Lessons Learned from Three ASEAN Countries." *The Lex Scientia Law Review* 7, no. 2 (November 30, 2023): 569–628.

Zaini, Ahmad. "The State of Law, Democracy, and Human Rights." *Al Qisthas Journal of Law and Politics* 11, no. 1 (September 22, 2020): 13–48. https://doi.org/10.37035/alqisthas.v11i1.3312.

Zaman, Nurus. "The Role of Dissenting Opinions in Constitutional Court Judgements: Perspectives of Judges and Legal Interpretation." *Journal of the Constitution* 21, no. 3 (September 1, 2024): 482–500. https://doi.org/10.31078/jk2138.

CURRICULUM VITAE

Personal Data

Name	: A Rizki Munshif Sya'bani
Place, Date of Birth	: Pamekasan, October 22, 2002
Address	: Jl. Basar 91, Bugih Village, Pamekasan District, Pamekasan Regency, Prov. East Java
Email	: riski.munshif24@gmail.com
Mobile Number	: 081252742776

Formal & Non-Formal Education

2008-2009	: Al-Munawwarah Kindergarten
2009-2015	: SDI Al-Munawwarah
2015-2018	: SMP Negeri 1 Pamekasan
2018-2021	: SMA Negeri 1 Pamekasan
2021-2024	: UIN Maulana Malik Ibrahim Malang
2022-2024	: Al-Hikam Student Islamic Boarding School Malang

Organizational Experience

2021-2023	: Member of UNIOR UIN Malang
2022-2023	: Expert Staff of Commission A (Advocacy and Law) Senate of the Faculty of Sharia UIN Malang
2023-2024	: Member of the Ministry of Politics, Law and Security of DEMA UIN Malang

Publication

2024	: Assistance with Halal Certification and Support Banner as Increasing Competitiveness for MSMEs in Sukopuro Village **DOI:** https://doi.org/10.35316/assidanah.v6i1.100-116