

# Legal Transcendence of the Narcotics Policy: Efforts to Humanize Regulations on Medical Usage in Indonesia

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## ABSTRACT

In Indonesia, legal policies on narcotics still orient towards the formal legal paradigm emphasizing prohibition without an adequate room for medical usage. Conversely, in the global practice, several countries have opened room for the limited legalization of the medical usage of certain narcotics, such as the use of cannabis for therapeutic purposes. This research aims to analyze legal policies on narcotics in Indonesia from a transcendental law perspective, with the focus on the efforts to humanize regulations through the values of humanity, morality, and spirituality. By employing the philosophical-normative and case study approaches, this research analyzes the conflict between the prohibition of positive law and citizens' rights to health, as shown in the case of Santi Warastuti and the effort to legalize medical cannabis in Indonesia. Research results show that the legal policies on narcotics in Indonesia are still trapped in normative formalism that neglects the values of humanity and transcendence. Therefore, there needs to be a transcendental value-based reconstruction of law that places the law not merely as an instrument of social control, but also as a facility to maintain life and bring benefit (*maslahah*) to humanity.

**Keywords:** transcendental law, medical narcotics, legal humanization, legal policy, substantive justice.

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## INTRODUCTION

The issue of narcotics in Indonesia is a multidimensional issue that encompasses the aspects of health, law, socio-politics, and morality. Through Law No. 35 of 2009 on Narcotics, the Indonesian government stipulates a mandate which aims to eradicate the misuse and illicit trafficking of narcotics. The articles of this law determines the classification of narcotics into several groups, with Group I as the classification of drugs with the highest level of prohibition, including the prohibition of their use for medical and research needs without a special permit from the government (Aringga & Saputra, 2024). Law No. 35 of 2009 on Narcotics is still highly restrictive, as it inserts cannabis into Group I, making its medical use explicitly

prohibited. Lawmakers need to consider the reformulation of this law to open access to medical cannabis usage with clear mechanisms of control (Lokollo, Salamor, & Ubwarin, 2020).

In the social and medical practices, patients of certain diseases have an urgent need for alternative therapy that involves substances currently categorized as Group I narcotics. A real example was a case of a child with cerebral palsy, named Pika, and the efforts of her mother, Santi Warastuti, to demand the legalization of medical cannabis or at least the cannabidiol extract as a therapy for epilepsy and pain. This case attracted the attention of the public, as it is deemed a reflection of how formal regulations have not yet succeeded in giving a solution to individual suffering (Arlinta, 2025).

Apart from that, in the last several years, there have been demands to revise the Law on Narcotics, so that it is more just and adaptive towards paradigmatic changes in the handling of narcotics that are not only based on criminalization, but also based on health. The legal and regulatory structure of narcotics in Indonesia tends to emphasize penal control over their use, while neglecting the aspect of medical benefits and the needs of patients (Arfiani & Utami, 2022). The Public Relations of the National Narcotics Agency (*Badan Narkotika Nasional/BNN*) openly discusses the urgency to revise Law No. 35 of 2009 on Narcotics, so that its regulations may handle justice, including in the context of the Bill on Narcotics and Psychotropics, which are currently discussed with the involvement of various ministries, institutions, and academicians (BNN Public Relations, 2025b).

Several local juridical analyses have shown that Law No. 35 of 2009 is still problematic in accommodating the use of narcotics for medical purposes. The status of cannabidiol (CBD) in that law is still restrictively categorized as Group I narcotics, even though this substance has the potential to give therapeutic benefits (Kartika, Wahyuni, & Marsella, 2025). Apart from that, the Indonesian legal politics is not yet adequate in separating recreational and medical cannabis, even though the CBD and THC content are significantly different (Endah, Budi, & Sinintha, 2024). Religious analyses also show that from the sharia perspective, the use of cannabis for medical purposes is considerable. Even so, positive regulations in Indonesia still lack such regulations (Wahyu, 2023).

The social movement on medical cannabis legalization in Indonesia, especially through the *Lingkar Ganja Nusantara* (LGN/The Cannabis Circle of the Archipelago), shows that CBD's potential as a therapeutic medicine has become the basis for their advocacy. However, the regulations are still hindered due to a lack of legal certainty and social stigma. The LGN is

not merely a social or medical phenomenon; it is also a moral-religious one. Advocacy based on the *maslahah* (benefit) concept of the sharia proposes that the CBD with low psychoactive effects is considerable as a form of medicine under strict regulations (Mohamed, 2024). From the perspective of the transcendental law, this strengthens the argumentation that, rather than merely the clinical aspect, regulations on medical narcotics encompass spiritual and humanity values.

According to Kuwado (2022), the main hindrances in the discourse on the medical use of narcotics in Indonesia include: (1) Conflicts between positive legal norms: the law prohibits the use of Group I narcotics and the Constitutional Court's Decision on the material test of medical cannabis legalization rejects the substantial legalization of cannabis, while demanding the government to carry out scientific research; (2) Limited local evidence: there is a relatively small number of clinical research in Indonesia which examines the effectiveness of therapy using Group I narcotics or permitted extracts (such as CBD); (3) Social stigma and public perception: many parties perceive narcotics as evil substances without considering their therapeutic element; the concerns for misuse becomes the main argument for their rejection; (4) The void of technical regulations: even though the law regulates that the distribution of narcotics-based medicine must obtain a distribution permit (Article 36 of Law No. 35 of 2009 on Narcotics), not many medical products from Group I has fulfilled regulatory requirements or has been examined by local clinics.

In Indonesia, the issue of cannabis usage for medical needs has come to the fore even more when, through Decision No. 106/PUU-XVIII/2020, the Constitutional Court has again rejected the plea for medical cannabis legalization in which patients and their families submitted under the reason that there is not yet adequate national scientific evidence; thus, the classification of cannabis as Group I narcotics is still maintained (Rianida, Sianturi, Amalia, & Putri, 2025). This decision leads to a controversy, as it places the state in a dilemmatic situation between protecting society from the misuse of narcotics and fulfilling citizens' constitutional right to health.

Further, the Constitutional Court rejects the plea for medical cannabis not because it denies the development of international research, but because Indonesia still does not yet have standardized national scientific evidence on the safety, dosage, and effectiveness of cannabis for therapy. This shows the existence of a regulatory vacuum, which makes medical cannabis inaccessible even for the interest of research, even though Law No. 35 of 2009 on Narcotics

opens room for limited research (Rianida et al., 2025). This condition creates an imbalance between the development of global science and the state's policies, where several other countries have regulated medical cannabis under strict regulations, but Indonesia still maintains the approach of absolute prohibition. This happens even though legalizing medical cannabis is not only urgent from the medical perspective, as it may also bring profit for the state. In the economic sector, it can increase the state income as well as export and import products (Zulfikri & Jaman, 2022).

The Directorate of Narcotics Research of the Riau Regional Police Force and its ranks revealed 861 cases and 1257 perpetrators of narcotics abuse, with the types of crystal methamphetamine, ecstasy, cannabis, and happy five. The total number of crystal methamphetamine abuse cases is 791 cases, with 1153 perpetrators, and evidence of 171,740.82 crystal methamphetamine packets. For ecstasy, there were 51 cases, with 78 perpetrators and evidence of 41,640 pieces of ecstasy pills. Next, for cannabis, there were 18 cases, 25 perpetrators, and evidence of 5,670.37 grams of cannabis. Lastly, for the happy five, there was one case with one perpetrator, and a total of 5,511 pieces of evidence. This data from Riau Province (January-May 2024) is an example of how cases of cannabis are still a minority compared to the misuse of narcotics in the form of crystal methamphetamine and other types, but is still significant in the case of law-enforcing procedures ("Polda Riau Dan Jajaran Ungkap 861 Kasus, 1.257 Tersangka Narkoba," 2024).

Researchers summarize the regulative component in Law No. 35 of 2009 on Narcotics that are relevant for medical usage in Table 1 as follows:

**Table 1.** Regulative Components in Law No. 35 of 2009 on Narcotics that are Relevant for Medical Usage

| No | Article        | Regulative Content   | Potential for Medical Usage/Hindrances  |
|----|----------------|--|---|
| 1. | Article 4      | It regulates the guarantee for the availability of narcotics for health services and/or the development of sciences.     | Potential: It may become the basis to medical law.<br>Hindrances: There is no permit on the medical use of Group I narcotics that has clearly been carried out. |
| 2. | Articles 35-36 | It regulates the distribution of narcotics, including for the interest of health services; distribution permits; and the | Potential: There is regulative structure.<br>Hindrances: There is no example of products from Group I narcotics that has obtained permission.                   |

| No | Article    | Regulative Content   | Potential for Medical Usage/Hindrances   |
|----|------------|--|--|
|    |            | standardization of hospitals/medical rehabilitation.                           |  |
| 3. | Article 54 | It regulates that drug addicts must undergo medical and social rehabilitation. | This shows the orientation for health in criminal law, but has not expanded medical usage as the main form of therapy. |

Public support and a change of public perception on the use of medical cannabis are starting to emerge in Indonesia. There is a public demand for the legalization of medical cannabis strictly for medical usage, and this is especially demanded by families of child patients of cerebral palsy, epilepsy, and chronic pain. There is a strong indication that public sympathy has increased, especially among patients' families and medical workers.

Indonesia has ratified the 1961 Single Convention on Narcotic Drugs as well as related protocols. With domestic laws that adopt this convention, Indonesia has the international obligation to overcome the misuse of narcotics, but must also provide medical access if permitted in the Convention (Aringga & Saputra, 2024). Law No. 35 of 2009 is an amendment of the 1997 Narcotics Law and determines a stricter legal framework in penalization, distribution regulation, and control. However, in the case of the medical usage of Group I prohibited narcotics like cannabis, this law has not specifically regulated the mechanisms to obtain medical permits or clear exceptions, such as for scientific research and development. The government and legislative house have discussed the Bill on Narcotics and Psychotropics to harmonize it with the new Criminal Code (which applies in 2026) by considering the justice aspect in the enforcement of laws and regulations (BNN Public Relations, 2025a).

Regarding the structure of policy comparison and the needs for legal reform, several other jurisdictions have also opened room for medical research and the limited usage of the extract, i.e., the cannabidiol substance. Other international and national regulations show how to achieve a balance between access and control. This is carried out, for instance, through the control of dosages and psychoactive content, the monitoring of its distribution, patient registration, and the existence of a drug monitoring agency. In Indonesia, discourse is not only academic, but has also started to touch the public and policies. The National Narcotics Agency supports the revision of the law; there is discussion on the Bill of Narcotics and Psychotropics;

and there is a demand to clarify the definition and medical mechanism. Apart from that, there are also pressures from human rights advocacy. Regarding the narrative analysis of governmental policies on medical cannabis, it has also been carried out. It was found that governmental narrations still highly emphasize risks and public protection from the usage of cannabis, where the resistance of its implementation is motivated by different beliefs on cannabis as well as the lack of local empirical studies (Asmoro & Samputra, 2021).

From the perspective of transcendental law, this issue does not only regard legal regulations but also concerns the value of morality, substantive justice, as well as the state's responsibility towards suffering. The most significant weakness of the Narcotics Law is the lack of explicit permit mechanisms for medical usage. Thus, patients who require narcotics-based therapy are placed within a highly vulnerable legal position (Bagir, 2024). The transcendental legal approach in this research may respond to this void by emphasizing the values of humanity and the state's responsibility of easing the people's suffering through more inclusive policies. The transcendental legal theory and the prophetic/transcendental approach in Islamic traditions demand that the law becomes more than texts to be complied with. The law must humanize people, free them from their suffering, and reflect society-based humanity and spiritual values. Based on this background, this research will analyze how regulations on narcotics law in Indonesia may be reviewed through the lens of transcendental law, so that they may accommodate the use of medical narcotics as part of the rights for health and humanity.

The transcendental legal theory places the law as a manifestation of morality, spiritual, and humanity values. Rather than a group of mere formal regulations that are enforced in a procedural manner, this concept is rooted from Satjipto Rahardjo's thought on law as a humanistic institution, which emphasizes that the law must return to its basic purpose, namely to humanize people (the humanization of law). The humanization dimension is apparent in the idea that the law must pay attention to human suffering, maintain dignity, and provide solutions, rather than merely imposing sanctions (Raharjo, 2009). Further, moral and spiritual transcendence, as stated by K.H. Sahal Mahfudh through the social *fiqh* (Islamic law) concept, declares that the values of compassion, *rahmat* (blessings), universal humanity, and collectiveness are the ethical foundation that are attached to the culture and religion of Indonesian society. Therefore, the transcendental law perceives that legal norms obtain the highest legitimacy when it reflects the general values of morality and society's spiritual

awareness. Thus, the law does not stop at textuality, but becomes an ethical praxis that is alive and relevant (Mahfudh, 1994).

Moral justification towards the possibility for the usage of medical narcotics from Group I or the application of an emergency exemption (compassionate use) may be based on four main bases, namely: First, human rights for health, as regulated in Article 28H clause (1) of the 1945 Constitution and restated in Law No. 39 of 1999 on Human Rights Article 9 clause (3), which states that every person has the right to obtain health services. Second, the state obligation within the framework of the welfare state, as stipulated in Article 34 clauses (1) and (3) of the 1945 Constitution and Law No. 36 of 2009 on Health, which obliges the government to provide health facilities and access to medicine that society requires, including opening a regulative room for therapy that has scientifically proven to be beneficial, considering that the right for health is a constitutional right and human right that the state must guarantee (Harmiko, 2024). However, the absolute prohibition of Group I narcotics without a medical exemption leads to the violation of the health rights of patients who require alternative therapy.

From the research above, the authors formulate the research problems, namely how policies on narcotics law in Indonesia, especially related to the medical use of Group I narcotic substances, reflect the consistency between national legal norms, international obligations, and constitutional rights for health. The authors also aim to answer how the transcendental legal approach may be used to reconstruct narcotics policies in Indonesia, so that they can become more humanistic and so that they apply substantive justice by emphasizing morally, spiritual, and humanity values.

Based on the background and concept above, this research aims to analyze legal norms (Law No. 35 of 2009 on Narcotics and related regulations), on the position of the medical use of Group I narcotics in Indonesia. It also assesses how other countries, which already have (either full or limited) regulations on medical narcotics, integrate the humanity value and legal control and become a benchmark for policy options in Indonesia. Lastly, it also aims to formulate policy and regulatory proposals that reflect the transcendental law concept, so that narcotic regulations in Indonesia may become more humane and responsive to suffering, while still maintaining control and safety in society.

Therefore, this research emerges as a response to the existence of a gap between legal norms and the reality of human suffering, as well as between legal prohibition and patients' needs to obtain treatment. Laws that only maintain prohibition without providing room for the

people needing help may become an instrument that isolates humanity. The framework of transcendental legal theory becomes highly relevant and urgent to be used as a basis of analysis and as an effort to reconstruct Indonesia's regulations on narcotics law, so that they may become more humane and substantively just, while applying the value of morality.

## RESEARCH METHOD

This research applies the normative juridical (doctrinal) approach (Dimiyati & Wardiono, 2004), focusing on the analysis of positive legal norms governing narcotics regulation in Indonesia. The primary legal framework examined is Law No. 35 of 2009 on Narcotics, complemented by relevant statutory regulations, constitutional provisions, and judicial decisions, particularly the Constitutional Court's Decision No. 106/PUU-XVIII/2020.

To enrich the normative analysis, this research also adopts a philosophical approach, specifically utilizing the perspective of transcendental law. This approach enables the examination of legal norms not only from a formal and procedural standpoint, but also from the dimensions of morality, spirituality, and humanity. In this context, the study draws upon theoretical frameworks developed by Satjipto Rahardjo's progressive law and the concept of social *fiqh* as articulated by K. H. Sahal Mahfudh, emphasizing law as a means of humanization and social welfare.

In addition, a comparative legal approach is applied by examining regulatory models of medical cannabis in selected jurisdictions, namely Thailand and Canada. These countries are chosen due to their established frameworks for the controlled medical use of cannabis, which provide relevant benchmarks for evaluating Indonesia's regulatory limitations and policy gaps.

This research also incorporates a case study approach, focusing on the case of Santi Warastuti, which represents a concrete manifestation of the conflict between prohibitive legal norms and the constitutional right to health. The case is analyzed to illustrate how existing regulations impact individuals in practice and to highlight the urgency of regulatory reform (Nasution, 2008).

The study relies on secondary data, consisting of: (1) Primary legal materials: statutes, constitutional provisions, and court decisions; (2) Secondary legal materials: academic journal articles, books, policy reports, and expert opinions; (3) Tertiary materials: legal dictionaries and supporting references (Ali, 2016).

The authors collected data through library research, involving systematic identification, classification, and review of legal documents, scholarly literature, and policy reports relevant to narcotics regulation and medical cannabis discourse.

The data are analyzed using qualitative juridical analysis, through: (1) statutory analysis: to examine consistency and gaps within existing regulations; (2) conceptual analysis: to interpret transcendental legal principles and their relevance to narcotics policy; (3) comparative analysis: to identify best practices from other jurisdictions; and (4) case analysis: to assess the real-world implications of legal norms. The analytical process is conducted deductively, moving from general legal principles and theoretical frameworks toward specific conclusions regarding the reconstruction of narcotics policy in Indonesia (Wardiono, 2019).

## **RESULTS & DISCUSSION**

### ***Regulations and practice in Indonesia***

The framework of positive law in Law No. 35 of 2009 on Narcotics determines the division of narcotic groups. Group I includes substances, such as cannabis, that are prohibited from being used, owned, or traded, even for medical or research interests, except under highly exclusive permits. Article 4 of Law No. 35 of 2009 states that one of the goals of the law is “to guarantee the availability of narcotics for health services and the development of scientific knowledge.”

However, implementing regulations have not clearly explained the procedures and mechanisms to obtain medical permits for Group I narcotics. Meanwhile, the Constitutional Court’s Decision No. 106/PUU-XVIII/2020 states that the proposal for judicial review on the use of medical cannabis is rejected. However, the Constitutional Court states that there needs to be a scientific review and more concrete regulations from the government. In the juridical-constitutional framework, even though Law No. 35 of 2009 strictly determines strict prohibitions against Group I narcotics, the Constitutional Court’s Decision No. 106/PUU-XVIII/2020 shows that there is still a need for legal legitimacy for the medical use of Group I substances to fulfill the constitutional rights of the people for health (Ilfas, 2023).

Seeing the case of Santi Warastuti, she filed a proposal for medical cannabis legalization for her child, Pika, who suffered from cerebral palsy and epilepsy. This struggle illustrates citizen suffering due to regulations prohibiting the medical use of Group I substances. Pika’s death shows the true risk of lateness in implementing such legal regulations.

There are regulative and institutional hindrances, i.e., the lack of technical regulations that describe how patients may obtain medical access to the substances of Group I narcotics. Also, there is a lack of adequate local clinical research to prove the safety and effectiveness of the medical use (of, for instance, cannabis/cannabis extract) in the Indonesian context. Apart from that, there is a legal and social stigma of law-enforcing apparatuses and the general public that often perceive narcotics as entities that only bring negative effects. Thus, their medical uses are not deemed valid alternatives.

### ***International comparison***

Since the enactment of the Narcotics Act 2019 (an amendment of the former narcotics law), Thailand permits the usage of medical cannabis as well as the research, production, import, and distribution of cannabis under certain licenses. Surveys show that the public has a very high support for policies on the medical use of cannabis. Around 95.1% of respondents approve the permit of the medical usage of cannabis, which is almost the same as those who support the sales of medical cannabis products (Assanangkornchai, Thaikla, Talek, & Saingam, 2022).

However, in the last few years, there have been regulatory concerns after decriminalization in 2022, making the regulations less strict and leading to misuse and access to recreational use. The government redetermines that sales without a medical prescription are limited and buds (cannabis flowers) are classified as a controlled herb (Saksornchai, 2025).

Regarding global production and medical consumption, reports from the International Narcotics Control Board (INCB) of 2024 show that Canada is the main producer of medical cannabis, contributing to 28.8% of the global cannabis production, as well as the main exporter (41.4%) of the total global export. Meanwhile, medical consumption of cannabis in Canada is the most dominant (43.4% of the global medical consumption of cannabis), with Australia (19.7%), Israel (18.3%) as the countries with the second and third highest rate of medical cannabis consumption (International Narcotics Control Board, 2025).

Table 2 summarizes the comparison of regulations on medical cannabis between Indonesia, Thailand, and Canada:

**Table 2.** Regulatory Comparison: Indonesia and Other Countries

| <b>Country</b> | <b>Legal Medical Use of Group I</b>  | <b>Requirements and Control</b>   | <b>Monitoring and Licenses</b>   | <b>Public Support</b>   |
|----------------|--|---|--|---|
| Indonesia      | There is no official medical legalization for Group I; the law prohibits its medical use except for scientific research; and the Constitutional Court rejects the legalization of medical cannabis.                            | There is no clear mechanism to obtain medical permits; there is no official Group I product that has obtained approval; and research is limited.  | There are no agencies that specially regulate medical cannabis; there is low legal certainty for patients and doctors; the Food and Drug Agency/the Ministry of Health/the National Narcotics Agency have not determined specific quality standards. | Public support increases through the advocacy of patients' families; there is no national public survey with high percentage that has been officially released. |
| Thailand       | Cannabis is legal for medical use since 2019; the usage of buds (flowers) requires prescription; buds are classified as a "controlled herb"; and the regulatory strictness was increased after recreational decriminalization. | There are requirements of medical permits, production and distribution licenses; tetrahydrocannabinol (THC) control for products; age limitation; as well as supervision of traditional and pharmacy producers. | The government issues production and distribution certifications; there are licensed medical dispensaries and hospitals; and there are strict regulations for imports and exports.   | Surveys show that there is very high support, 95% of society supports the medical usage of cannabis.  |
|                | Cannabis is legal and regulated for medical and recreational use   | There is the requirement of medical prescription; standard regulations  | The supervisory agency for health and  | There is a high level of public support;  |

| Country | Legal Medical Use of Group I   | Requirements and Control  | Monitoring and Licenses   | Public Support  |
|---------|--|---|---|---|
| Canada  | and medical cannabis products are also widely available since the start of the medical cannabis era. | on production and distribution; and control of THC/CBD content. | medicine as well as the pharmacy agency supervise the quality of cannabis; there is a patient registration and monitoring system. | society is accustomed with the legal access to medical and recreational cannabis; regulations are monitored by the public and are openly debated. |

From the comparison between the countries above, Indonesia should use these countries as examples of how cannabis is legalized for medical/health needs. The legalization of cannabis is not a wrong thing if its development is used for medical needs and followed by monitoring or very strict limitations; or, the medicine distributed may only be obtained through licensed health service providers (Abdurrachman, Sudewo, & Idayanti, 2023).

### *Transcendental values that emerge in the comparison*

From the regulations and practices in Indonesia and comparative countries, several transcendental values emerged or were neglected. First, regarding humanization, in Thailand and Canada, regulations on medical cannabis reflect real efforts to minimize patients' suffering, starting from the access to medical prescription of the product and laboratory tests for quality control. Meanwhile, in Indonesia, the law acknowledges cannabis' potential for health treatment, but in practice, it has not accommodated patients' access to ease their suffering using medical cannabis in concrete cases.

Second, regarding the liberation value, regulations in comparative countries give room for emergency/compassionate use for patients who do not have alternative therapeutical methods that are equally effective. Meanwhile, Indonesia does not yet have such emergency regulations, and patients must await general regulations or official research that are often too late.

Third, concerning the moral-spiritual transcendence value, public policies in comparative societies often insert the considerations of spiritual and social welfare, rather than

mere economic and medical considerations. However, in Indonesia, moral considerations are highly emphasized in advocacy (patients' families, non-governmental organizations, and society), but has not become a formal regulative basis.

### ***Conflicts and risks***

In integrating the medical usage of Group I narcotics, there are conflicts and risks that may often emerge: (1) The risk of misuse: The government and society fear that the legalization of medical narcotics of the Group I category will open room for recreational use; (2) The lack of regulatory readiness: There is a lack of technical guidelines to maintain the quality, a lack of competent medical workers, a lack of human resources to monitor the product distribution, and a lack of certification; (3) Social stigma: There is stigma on patients and doctors regarding the use of narcotics, as well as psychological and cultural hindrances; (4) Changing politics and laws: Policies may change based on changes in government and political pressures may inhibit stable regulations.

Even though there are risks and conflicts, from the analysis of transcendental values, the medical needs for cannabis are not only a clinical question, but also a moral and legal dilemma, where patients who use cannabis for treatment may be categorized as drug abusers according to the Narcotics Law, even though their actions may be perceived as a life-saving act (Ramadan, 2023). Regarding risks and conflicts, hospitals also face this, where the regulatory issue of narcotics plants for medical needs in Indonesia is not merely limited to cannabis. As medical institutions, hospitals even face unclear regulations regarding the ownership of the coca plant for therapeutic objectives, even though this plant has medical potential (Wibawa, Sugiarta, & Widyantara, 2023). This shows that the legal issue of medical narcotics encompasses the aspect of the health institution regulation, and does not merely concern individual users. Medical institutions should become the main actors in demonstrating that the usage of certain substances is not merely for recreational objectives but also to gain their health benefits (Athallah, Izza, & Rizky, 2024).

In the framework of transcendental law, the regulatory limitation for medical institutions, such as hospitals, that want to have the coca plant for therapeutic benefits, neglects the value of humanity and scientific research that may guarantee the rights to health (Wibawa et al., 2023). Therefore, regulatory reconstruction needs to consider the active role of the health institution in the treatment system using medical narcotics. The ownership or planting of

medical cannabis in Indonesia does not have a legal basis, as no explicit permit mechanisms are regulated in Law No. 35 of 2009. As a consequence, health institutions or researchers who need cannabis for therapy or research risk becoming subject to criminalization (Ambarwati, 2025). The categorization of cannabis into Group I narcotics without medical exemption prevents patients and medical workers from obtaining legal protection, even when its usage is carried out for therapeutic needs that are supported by international scientific research (Fauziyah, 2022). The existing legal framework cannot yet accommodate health interests, even though some scientific evidence shows the benefit of medical cannabis. This shows the existence of a gap between medical needs and total criminalization policies regulated in Law No. 35 of 2009. It can be said that Indonesian policies on narcotics tend to have repressive characteristics and are not yet responsive towards the development of scientific knowledge or the needs of humanity.

### *A transcendental analysis: Gaps and value recommendations*

Based on the information above, the authors analyze and summarize the data and regulations in Table 3 as follows:

**Table 3.** A Transcendental Analysis: Gaps and Value Recommendations

| <b>Transcendental Element</b>             | <b>Has it been fulfilled? (Comparative Country)</b>   | <b>Has it not been fulfilled? (Indonesia)</b>   | <b>Value Recommendations</b>   |
|---|---|---|--|
| Humanity/The Acknowledgement of Suffering | Yes. Medical patients in Thailand/Canada are officially acknowledged and given medical access; there are prescription regulation; and medical dispensaries. | Not yet. Patients' suffering lacks regulative answers; there is no formal medical access for Group I substances.  | Regulations must encompass the clause of the acknowledgement of suffering; medical access must be acknowledged as a right; there must be medical permit procedures; and legal protection for patients. |
| Substantive Justice                       | Yes. There is equal access, quality control, technical regulations, and the protection of patients against exploitation.                                    | A fraction of it. There are no practical regulations; there are legal and institutional hindrances; and there is the risk of injustice (only those who have | Regulations must guarantee equal access; there should be regulations on the distribution; there should be subsidies or support if needed; there  |

| <b>Transcendental Element</b> | <b>Has it been fulfilled? (Comparative Country)</b>  | <b>Has it not been fulfilled? (Indonesia)</b>  | <b>Value Recommendations</b>   |
|-------------------------------|--|--|--|
|                               |  | the capability or advocative support will be heard).   | must be transparency of the permit process; and there must be independent monitoring.  |
| Spiritual/Public Morality     | Variative. Even though regulations in comparative countries depend on scientific values, the moral and public factors are considered in public discussions and policy formulation. | It starts to emerge in media and public advocacy, but has not become the formal regulative foundation. | Policies must encompass public consultation, the consideration of moral, and spiritual values in legislation; there must be the consideration of the people's religious values and customs; and public dialogs need to be conducted. |

### ***Policy reconstruction recommendations***

Based on the results of the analysis and transcendental values, the following points are concrete recommendations from the authors:

1. There should be a clause formulation in the Narcotics Law that permits the medical usage of Group I substances in specific and urgent medical conditions, with scientific requirements and strict supervision.
2. There should be implementing regulations (Governmental Regulations/Minister of Health Decisions) which regulate medical permits for patients. There should be a list of medical conditions that may be treated using that substance. The quality standard of products (clinical examinations, THC/CBD content, safety) and safe distribution and prescription must be determined.
3. There should be legal protection for patients and medical workers, i.e., a guarantee that the use of medical substances under official permits will not be imposed with penalization so long as it fulfills the stipulations.
4. There should be the development of local clinical research to prove the effectiveness and safety in the Indonesian context (climate, culture, genetics, and health systems).
5. There should be public education and professional training to decrease the stigma, so that medical practices may be conducted according to the standard.
6. There should be a mechanism of public consultation and independent monitoring, so that transcendental legal regulations reflect the people's voices and their moral/spiritual values.

From the results above, it can be seen that the regulations in comparative countries have combined the legal, medical, and humanity aspects in medical narcotics policies, even though they are not without any challenges. In Indonesia, formal regulations mention the objective of health, but the practical and regulative implementations are still limited, with significant challenges in norms, the lack of local scientific proofs, the lack of supporting institutions, and negative public perceptions. The transcendental legal approach demands that regulations are not only based on positive law but also rooted in the values of humanity and morality, that the law must help human beings in their suffering, protect their honor, and free them from avoidable suffering. From the perspective of transcendental law, regulations on medical narcotics must consider the dimensions of religion and public good (*maslahah/benefit*) through the sharia approach. This perspective strengthens the argument that policies on medical narcotics do not only concern legality but also moral and social values (Firdausi, Imaduddin, & Ulya, 2022).

Therefore, the application of the transcendental legal approach in narcotics policies demand the state not to stop at the enforcement of repressive laws, but also consider the values of humanity, substantive justice, and legal spirituality. The current narcotics regulations in Indonesia still strongly separate medical and recreational use without a special legal framework regulating the medical use of cannabis. This indicates the need for legal reformation, so that humanity, health, and scientific research aspects may be accommodated in narcotics regulations (Malik, Manalu, & Juniarti, 2020). This is in line with the transcendental approach, which demands the law not merely as a prohibition, but also as a facility to maintain life.

In the welfare framework concerning the welfare state ideology in Indonesia, the legal state does not merely determine prohibitions and uphold sanctions, but it must also be responsible for guaranteeing the fulfillment of its citizens' basic rights, including the rights to health. In the context of regulations on the use of medical narcotics, the state has the transcendental obligation to become the establisher of humanist welfare that not only criminalizes the use of narcotics, but also opens medical access that is valid and legally-protected for patients in need. Therefore, if placed within the paradigm of the welfare state, the reconstruction of medical narcotics regulations in Indonesia will become more solid, as the medical use of prohibited substances is not perceived as an action threatened with criminalization, but as part of the state's obligation to protect human life, health, and honor.

## CONCLUSION

The phenomenon of the use of narcotics for medical needs in Indonesia reflects the paradox of legal policies which still orient towards strict prohibition, even though the need for such substances in the therapeutic context can truly be felt by society. The Santi Warastuti case is a concrete example of how the implementation of the positive law has not given a room for humanity for patients requiring narcotic substances, such as medical cannabis, for therapeutic purposes. This situation shows that legal formal regulations have not succeeded in answering the complexity between legal interests, morality, and the rights to health.

Research results show that several countries, such as Thailand and Canada, have carried out a reformation of narcotics regulation by opening a legal route for the use of medical cannabis through strict regulations. This step shows that the legal system may run hand-in-hand with medical consideration and the value of humanity, without neglecting the aspect of control and prevention of misuse. On the contrary, policies in Indonesia still monolithically place narcotics as an object of criminalization, rather than a social engineering one that can be directed to public health interests.

From the transcendental law perspective, the law should not stop at texts and norms, but also reach the spiritual and moral dimensions that become the basis to human existence. The medical use of narcotics needs to be perceived not only from the aspect of legality but also from the perspective of its benefits (*maslahah*) for human life. Laws that merely emphasize prohibition without considering the value of humanity risks losing their moral spirit. The transcendental approach demands that the law is not only sourced from the ratio but also from the ethical and spiritual awareness of the objective of life, i.e., to maintain human life, health, and dignity.

Based on the findings and analysis above, this research recommends that the government and legislators to review Law No. 35 of 2009 on Narcotics by opening a clear and measured legal room for the use of medical narcotics based on scientific research, professional medical monitoring, and public accountability mechanisms. There should also be the formation of an independent ethical and scientific institution to assess the feasibility and safety of using medical narcotics, so that legal decisions are not only based on moral considerations but also scientific rationality and humanity.

Regarding the paradigm of law enforcement, it should be directed to restorative justice and social *masalah*, rather than mere repressive enforcement, by considering the context of usage and the medical purpose of the narcotics user. There should also be the reconstruction of public policies within the framework of transcendental law, so that the law functions as a facility of social healing (healing law). In the end, there should be a meeting of legal, moral, and spiritual aspects as one unity that orients towards human welfare.

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