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Comparative Analysis of Marijuana Criminal Law in Indonesia and Thailand: Insights for Narcotics Law Reform

Arsyanda Shira Salsabila[1*], Faisal[2]
[1]*E-mail: arsyandasalsabila00@gmail.com*
[2]*E-mail: faisal@umsu.ac.id*
[1,2]*Universitas Muhammadiyah Sumatera Utara, Indonesia*
*corresponding author

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Abstract

This study aims to analyze the factors influencing differences in criminal law policies on marijuana between Indonesia and Thailand, and to assess the relevance of this comparison as a basis for reforming narcotics criminal law in Indonesia. The novelty of this research lies in its integration of comparative normative legal analysis to examine both the criminalization policy of marijuana and its implications for drug law reform, contributing theoretically to the development of comparative criminal law scholarship in the Southeast Asian context. The method used is comparative normative legal analysis with legislative, conceptual, and comparative approaches. The legal analysis reveals that policy differences between the two countries are shaped by five interrelated factors: legal history and normative construction, legal and regulatory basis, institutional capacity and implementation, political considerations and national interests, and socio-cultural factors and community stigma. The comparison holds significant relevance for Indonesian legal reform in three areas: reclassification of marijuana from Schedule I to Schedule II, strengthening non-penal and rehabilitative mechanisms, and enhancing human rights-based accountability in narcotics law enforcement. Thailand's experience both its success in legalizing medical marijuana and the failure of its repressive war on drugs constitutes a valuable empirical reference that demonstrates how evidence-based legal reform can produce more equitable and effective narcotics policy outcomes.

INTRODUCTION

Drug abuse has become a serious legal and social problem in various countries, including Indonesia.[1] Narcotics are substances or drugs derived from plants or non-plants, either synthetic or semisynthetic, that can cause decreased or altered consciousness, relieve pain, and lead to dependence.[2] The impact of misuse is not only felt by individual users, but also spreads widely to families, communities and even the nation's future generations. One of the most widely abused types of narcotics in Indonesia is marijuana (Cannabis sativa), which consistently occupies the top position in national narcotics abuse data, including among teenagers and the younger generation.[3]

Under Law Number 35 of 2009 concerning Narcotics, marijuana is categorized as a Schedule I narcotic, meaning it has a very high potential for causing dependency and is not recognized for use in healthcare. Consequently, any form of possession, use, production, or distribution of marijuana without official permission is a crime that can be subject to severe sanctions, ranging from imprisonment to the death penalty, depending on the role and amount of evidence found.[4] Despite these regulations being quite strict, the rate of marijuana abuse in Indonesia continues to increase year after year, demonstrating a gap between applicable legal norms and the social reality on the ground.

The problem becomes even more complex when faced with the phenomenon of drug offenders being children or adolescents. Children are a vulnerable group and crucial to protect, given that they are the nation's future generation, whose future is largely determined by their current physical, psychological, and social well-being. The involvement of children in drug networks, whether as users, couriers, or intermediaries, presents a unique legal dilemma. On the one hand, the state is obligated to impose sanctions for the crimes committed, but on the other, it is also obligated to protect

[1] Dwi Oktafia Ariyanti, Muhammad Ramadhan, and J. S. Murdomo, "The Criminal Law Enforcement Against Illegal Sand Mining Actors," *Jambura Law Review* 2, no. 1 (2020): 30–47, https://doi.org/10.33756/jalrev.v2i1.4376.
[2] Cici Alprionita P Megama and Tania Novelin, "Analisis Hukum Terhadap Status Ganja Sebagai Narkotika Dalam Hukum Pidana Di Indonesia," *Media Akademik (Jma)* 3, no. 7 (2025): 1–12, https://doi.org/ttps://doi.org/10.62281/v3i7.2584.
[3] Muhammad Irfan Kamil and Sulistyanta, "Pengaturan Ganja Medis Dalam Hukum Pidana : Perbandingan Internasional Dan Implikasinya Bagi Indonesia," *Indonesian Journal of Social Sciences and Humanities* 6, no. 1 (2026): 41–46.
[4] Nursariani Simatupang and Faisal, "Narcotics Abuse by Children and Its Prevention," *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no. 2 (2022): 252–59, https://doi.org/10.30596/dll.v7i2.10279.

children's rights and ensure that the legal process is rehabilitative and not merely punitive.[5]

At the international level, there are significant differences in drug policy approaches to cannabis, particularly between Indonesia and other Southeast Asian countries such as Thailand. Differences in interpretation of international legal instruments are a key factor shaping the disparity in policy between the two countries. Both Indonesia and Thailand are bound by the 1961 Single Convention on Narcotic Drugs, which places cannabis in Schedules I and IV, respectively, as narcotics with a high risk of dependence and questionable medical benefits.[6] In addition, both are also bound by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which requires the criminalization of various forms of narcotics-related activities.[7] Thailand, which previously implemented a repressive War on Drugs policy, has now implemented legislative reform by legalizing the use of cannabis for medical purposes through the Narcotics Act No. 7 B.E. 2562 (2019) and its amendment B.E. 2564 (2021). This regulation opens up space for the limited and controlled use of cannabis, particularly for medical, research, and industrial purposes, with strict licensing mechanisms from government authorities.[8] Meanwhile, Indonesia, through Law Number 35 of 2009, still maintains a total prohibitionist model that prohibits all forms of marijuana use, including for medical purposes.[9]

A comparative study of Indonesia and Thailand's legal practices in the context of marijuana policy is relevant, particularly in two key areas: first, the legal status of marijuana and its implications for criminal policy; and second, the legal procedures for juvenile drug offenders. In the first dimension, the comparison shows that Thailand has shifted from a purely repressive approach to a public health approach, while Indonesia

[5] Kirensi Sembiring and Rachmad Abduh, "Prosedur Penanganan Hukum Anak Pelaku Tindak Pidana Narkotika: Perbandingan Hukum Indonesia-Thailand," *Legal Standing : Jurnal Ilmu Hukum* 9, no. 1 (2025): 16–30, https://doi.org/https://doi.org/10.24269/ls.v9i1.11097.
[6] United Nations, "Single Convention on Narcotic Drugs, 1961, as Amended by the 1972 Protocol" (1972).
[7] United Nations, "Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" (1988).
[8] Akbar Yudha Pratama, Ufran, and Lalu Saepuddin, "Studi Komparasi Antara Indonesia Dengan Thailand Terkait Kebijakan Legalisasi Ganja," *Journal Parhesia* 1, no. 1 (2023): 70–81, https://doi.org/https://doi.org/10.29303/parhesia.v1i1.2578.
[9] Anak Agung Gede Triyatna, Putu Eka Trisna Dewi, and Cokorde Istri Dian Laksmi Dewi, "Juridical Analysis of the Regulations on the Use of Cannabis for Medical Purposes in Indonesia (A Comparative Study with Thailand)," *Jurnal Hukum Prasada* 11, no. 1 (2024): 31–36, https://doi.org/10.22225/jhp.11.1.2024.31-36.

still maintains a paradigm of total criminalization of marijuana.[10] This raises academic questions about whether Indonesia's repressive approach is still in line with scientific developments, human rights, and international best practices in drug control.[11]

In the second dimension, Indonesia has a specific legal framework for juvenile offenders through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which emphasizes a restorative and rehabilitative approach through diversion mechanisms. Meanwhile, Thailand regulates the same through the Juvenile Court Act B.E. 2494, which also emphasizes a rehabilitative approach and avoids severe criminal penalties for juveniles.[12] Both systems have similarities in terms of child protection orientation, but differ in the technical mechanisms of their implementation, particularly regarding the age limit for criminal responsibility, the types of sanctions that can be imposed, and the availability of rehabilitation facilities.[13]

The urgency of this research is also reinforced by the fact that the lack of legal literacy among the public regarding the status of marijuana as a Class I Narcotics has led to many violations of the law without any real malicious intent.[14] In addition, the phenomenon of increasing involvement of children in narcotics crimes, especially as users and couriers, demands a legal mechanism that is responsive, proportional, and prioritizes the best interests of children.[15] In this context, a comparative study with Thailand provides valuable perspectives for reforming drug laws in Indonesia, both in terms of criminalization policies and legal procedures for juvenile drug offenders.

Several previous studies have examined this issue from various perspectives. Irfan Kamil and Sulistyanta analyzed the regulation of medical marijuana from a comparative international legal perspective and recommended revisions to the Narcotics Law to allow

[10] Kamil and Sulistyanta, "Pengaturan Ganja Medis Dalam Hukum Pidana : Perbandingan Internasional Dan Implikasinya Bagi Indonesia."
[11] Harianto Frans Semarta PA and Mhd Teguh Syuhada Lubis, "Kebijakan Hukum Pidana Terhadap Pemain Judi Online Dalam Penegakan Hukum Di Indonesia Criminal Law Policy Toward Online Gamblers in Indonesian Law Enforcement," *Justicia Journal* 15, no. 1 (2026): 143–51.
[12] Sembiring and Abduh, "Prosedur Penanganan Hukum Anak Pelaku Tindak Pidana Narkotika: Perbandingan Hukum Indonesia-Thailand."
[13] Triyatna, Dewi, and Dewi, "Juridical Analysis of the Regulations on the Use of Cannabis for Medical Purposes in Indonesia (A Comparative Study with Thailand)."
[14] Gusti Tiya Yolanda Nur Fadhila and Kayus Kayowuan Lewoleba, "Legalization of Medical Cannabis: Indonesia's Regulatory Framework and Lessons from Thailand," *AL RISALAH: Jurnal Ilmu Syariah Dan Hukum* 25, no. 2 (2025): 220–35, https://doi.org/https://doi.org/10.24252/al-risalah.vi.61499.
[15] Zahran Maulana Yusuf, Usep Hidayat, and Evi Priyanti, "Gerakan Sosial Pendorong Kebijakan Regulasi Ganja Untuk Kepentingan Medis Di Indonesia," *Community Development Journal : Jurnal Pengabdian Masyarakat* 5, no. 4 (2024): 6649–53.

for limited legalization of medical marijuana.[16] Pratama, Ufran, and Saepuddin compare marijuana legalization policies between Indonesia and Thailand from the perspective of national interests and socio-economic impacts. Meanwhile, Sembiring and Abduh specifically examine the legal procedures for handling juvenile drug offenders in a comparative study of Indonesian and Thai law.[17] However, no prior research has comprehensively integrated these two aspects analysis of criminal law policies on marijuana and procedures for handling child drug offenders into one complete comparative study grounded in a systematic comparative normative legal framework. The novelty of this research lies not merely in the integration of these two dimensions, but in its theoretical contribution: it applies comparative legal reasoning to demonstrate how differences in legal history, institutional capacity, and political dynamics shape narcotics criminalization policy in ways that have direct implications for law reform. Thailand is selected as the comparison country because it represents the most significant legal reform trajectory in Southeast Asia transitioning from a repressive war-on-drugs model to a regulated medical cannabis framework making it the most instructive comparator for assessing Indonesia's reform potential within a shared regional legal context. Based on this background, the study addresses the following questions: 1) What factors influence the differences in marijuana criminal law policies between Indonesia and Thailand? 2) How relevant is the comparison of Indonesian and Thai policies as a basis for drug criminal law reform in Indonesia?

METHODS

This study uses comparative normative legal research with a descriptive-comparative design. Comparative normative legal research is conducted by examining legal norms contained in legislation, legal doctrine, and scientific works to evaluate, interpret, and compare the regulation and application of criminal law regarding the use of marijuana across jurisdictions. The descriptive-comparative design is used to systematically describe and compare criminal law policies related to marijuana use in Indonesia and Thailand, particularly in relation to the development of narcotics policies and the criminal law approaches applied in both countries.[18] The normative method was chosen

[16] Kamil and Sulistyanta, "Pengaturan Ganja Medis Dalam Hukum Pidana : Perbandingan Internasional Dan Implikasinya Bagi Indonesia."
[17] Pratama, Ufran, and Saepuddin, "Studi Komparasi Antara Indonesia Dengan Thailand Terkait Kebijakan Legalisasi Ganja."
[18] Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016).

because this research focuses on examining criminal law regulations related to marijuana use in Indonesia and Thailand through a literature review.

The legal sources used fall into two categories. Primary legal materials include Law Number 35 of 2009 concerning Narcotics, Law Number 36 of 2009 concerning Health, the 1945 Constitution of the Republic of Indonesia, and Thailand's narcotics regulations (Narcotics Act B.E. 2522) and its amendments. Secondary legal materials include legal textbooks, legal journal articles, and commentaries on relevant court decisions. Tertiary legal materials, including the Great Dictionary of the Indonesian Language (KBBI) and legal dictionaries, are used as supporting sources.

This research uses three approaches. First, a legislative approach to examine regulations related to narcotics, particularly marijuana, in Indonesia and Thailand. Second, a conceptual approach examines legal principles, principles, and theories as the basis for analyzing marijuana criminalization policies. Third, a comparative approach is used to compare Indonesian and Thai criminal laws regarding the classification and regulation of narcotics.[19]

To ensure a systematic comparison, this study uses several analytical indicators: (1) legal regulations regarding marijuana use; (2) forms of criminal sanctions against marijuana users; (3) criminalization or decriminalization policies; (4) law enforcement mechanisms for narcotics crimes; and (5) legal protection and rehabilitation efforts for drug users. These indicators are used as parameters to assess the effectiveness of criminal law policies related to marijuana use in Indonesia and Thailand.

The analytical technique used is qualitative analysis with a prescriptive method, which provides a justification for whether a legal norm is appropriate based on applicable doctrine, theory, and legal systems, then directs the norms that should be applied. The IRAC (Issue, Rule, Analysis, Conclusion) method is applied systematically throughout the discussion: the Issue is identified as the divergence in marijuana criminalization policy between Indonesia and Thailand; the Rule examines the applicable legal instruments in each country; the Analysis employs comparative legal reasoning to assess similarities, differences, strengths, weaknesses, and implications of each legal system; and the Conclusion draws prescriptive recommendations for reforming narcotics criminal law in Indonesia. The legal interpretation technique employed is statutory interpretation analyzing the plain meaning, legislative intent, and systemic coherence of normative provisions alongside comparative interpretation, which examines how the

[19] Abdulkadir Muhammad, "Hukum Dan Penelitian Hukum," *LAW REFORM* 8, no. 1 (2004): 134, https://doi.org/10.20961/hpe.v6i2.1769.

same legal problem is addressed across different jurisdictions.[20] These techniques ensure that the legal argumentation in this study is both internally valid and externally grounded in comparative legal scholarship. Each of the five analytical indicators (legal regulations regarding marijuana use; forms of criminal sanctions; criminalization or decriminalization policies; law enforcement mechanisms; and legal protection and rehabilitation) is applied systematically to both the Indonesian and Thai legal systems before a cross-country comparative assessment is drawn.[21]

RESULTS AND DISCUSSION

1. Factors Influencing Differences in Marijuana Criminal Law Policies in Indonesia and Thailand

The differences in marijuana criminal law policies between Indonesia and Thailand did not emerge suddenly, but are rather the result of an accumulation of various factors that interact in a complex manner. Based on the results of comparative normative legal analysis applying statutory interpretation and comparative interpretation to examine the normative framework, institutional arrangements, and socio-political dynamics in both countries five main factors were identified that explain these fundamental differences: legal history and normative construction, legal and regulatory basis, institutional factors and implementation capacity, political considerations and national interests, and socio-cultural factors and community stigma.

a. Historical Factors of Law and Normative Construction

One of the most fundamental factors shaping the differences in marijuana policy between Indonesia and Thailand is the historical legal background of each country. In Indonesia, narcotics regulation has existed since the Dutch colonial era through the Verdoovende Middelen Ordonnantie (VMO) of 1927, which classified marijuana as a prohibited substance under the International Opium Convention of 1925. This legacy of prohibitive regulation was then continued after independence through the ratification of the Single Convention on Narcotic Drugs of 1961 and the Convention on Psychotropic Substances of 1971, until finally codified in Law Number 35 of 2009 concerning Narcotics, which places marijuana as a Schedule I narcotic.[22]

[20] PA and Lubis, "Kebijakan Hukum Pidana Terhadap Pemain Judi Online Dalam Penegakan Hukum Di Indonesia Criminal Law Policy Toward Online Gamblers in Indonesian Law Enforcement."
[21] Wiwik, *Metode Penelitian Hukum*, *RISTANSI: Riset Akuntansi* (Yogyakarta: Publika Global Media, 2024).
[22] Pratama, Ufran, and Saepuddin, "Studi Komparasi Antara Indonesia Dengan Thailand Terkait Kebijakan Legalisasi Ganja."

The normative construction produced by this long history creates what Malik and Apriyanto call "legal-institutional inertia," a condition in which long-standing legal norms tend to be maintained because they are deeply rooted in the bureaucratic system, law enforcement, and public awareness. Article 8 paragraph (1) of the Narcotics Law expressly prohibits the use of Class I narcotics for health care purposes, and although Article 4 opens up space for the use of narcotics for the development of science and technology, there are no operational derivative regulations that specifically regulate procedures for research into cannabis for medical purposes.[23]

Thailand has a different historical trajectory. Although Thailand also banned cannabis through the Narcotics Act B.E. 2522 of 1979, its long history of traditional medicinal use has made its social acceptance more flexible. Since 2007, Thailand has been working to legalize hemp for textile purposes, and in February 2019, it officially became the first country in Southeast Asia to legalize cannabis for medical purposes. The subsequent revisions to the Narcotics Act, from B.E. 2562 (2019) to B.E. 2564 (2021), demonstrate the dynamism of Thai law, which is more adaptive to scientific developments and national interests.

This difference in normative construction has direct implications for policy latitude. In Thailand, legislative amendments have resulted in a detailed licensing system for the cultivation, production, and distribution of medical cannabis under the supervision of the Thai Food and Drug Administration (FDA). Meanwhile, in Indonesia, existing norms remain prohibitive without adequate operational regulations, so that even Constitutional Court decisions No. 106/PUU-XVIII/2020 and No. 13/PUU-XXII/2024, which recognize the urgency of medical cannabis research, have not been followed by concrete administrative steps.

b. Legal and Regulatory Basis Factors

The second factor, seen from the differences in criminal law policies regarding marijuana between Indonesia and Thailand, is fundamentally rooted in the regulatory construction of each country. In Indonesia, marijuana is categorized as a class I narcotic based on Appendix I of Law Number 35 of 2009 concerning Narcotics. The consequences of this classification are emphasized in Article 8 paragraph (1) of the same law, which explicitly states that class I narcotics are prohibited from being used for health services. This prohibition is absolute and knows no exceptions, thus creating normative tension with Article 7 of the same law, which states that narcotics can be used for health services

[23] Saputra Malik and Teguh Apriyanto, "Barriers To Medical Cannabis Legalization In Indonesia: A Case Study Of Legal, Institutional, And Political Inertia," *Journal Homepage* 8, no. 2 (2026): 706–19, https://doi.org/https://doi.org/10.47006/ijierm.v8i2.710.

and/or the development of science and technology.[24] The internal inconsistency of these two articles creates a normative ambiguity that impacts legal uncertainty, particularly in cases of therapeutically motivated marijuana possession.

This normative conflict becomes even more acute when examined in conjunction with Article 111 paragraph (1), which carries a prison sentence of four to twelve years and a substantial fine for anyone who unlawfully possesses or controls Class I narcotics in plant form. This severe criminal threat leaves no room for discretion for law enforcement officials or judges to consider the context and motivation of the defendant, as evidenced by Sanggau District Court Decision No. 111/Pid.Sus/2017/PN.Sag, which convicted the defendant even though the marijuana possession was intended for his wife's medical treatment. Furthermore, Article 127 paragraph (3), which regulates rehabilitation for drug users, only covers abuse, not medical purposes.[25]

In contrast, Thailand has implemented regulatory reforms in a gradual but structured manner. Starting with the Narcotics Act B.E. 2522 of 1979, which classified cannabis as a category 5 narcotic, Thailand then amended the law through the Narcotics Act (No. 8) B.E. 2564 of 2021, which officially removed cannabis from the category 5 controlled narcotics list effective June 9, 2022. This step was reinforced by the Cannabis Act B.E. 2565 of 2022, which detailed commercial cultivation permits and prohibited recreational consumption for vulnerable groups such as children under 20 and pregnant women.[26] Thailand's regulatory architecture thus demonstrates a graduated regulation approach that clearly separates legally protected medical uses from abuse, which remains criminalized.

c. Institutional Factors and Implementation Capacity

The third factor that differentiates the two countries is the institutional conditions and implementation capacity of each government. In Indonesia, there is significant fragmentation of authority among various institutions mandated to regulate narcotics, namely the National Narcotics Agency (BNN), the Ministry of Health, the Ministry of Law and Human Rights, and law enforcement officials. None of these institutions explicitly assumes a cross-sectoral coordinating role in formulating medical cannabis policy.[27]

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[24] Undang-Undang Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 Tentang Narkotika" (2009).
[25] Indonesia.
[26] Thailand, "Narcotics Act B.E. 2522" (1979).
[27] Muhammad Qardhawi Nazli and Mhd. Teguh Syuhada Lubis, "The Implementation of the Death Penalty Against Narcotics Traffickers From the Perspective of Criminal Law in Indonesia and Thailand," *Law Jurnal* 5, no. 1 (2024): 31–44, https://doi.org/10.46576/lj.v5i1.5749.

This fragmentation is exacerbated by the dominance of restrictive law enforcement approaches. The National Narcotics Agency (BNN), as the primary agency for narcotics management, consistently rejects the WHO-ECDD recommendation regarding the reclassification of marijuana, arguing that its use has the potential to induce euphoria and endanger the public. This stance blocks the opportunity for more evidence-based policies and creates a systemic institutional barrier.[28]

Unlike Indonesia, Thailand has developed a more structured and coordinated institutional framework. The Thai Food and Drug Administration (Thai FDA) serves as the sole authority with exclusive authority to evaluate and issue permits for the production, distribution, and use of medicinal cannabis. The developed licensing system includes detailed technical requirements: GPS-tracked cultivation locations, CCTV installations, security personnel, and Good Agricultural Practice (GAP) standards, all regulated by a single authority that serves as a regulatory "single window."

Technical capacity is also a key differentiator. Thailand, with the support of state universities like Chiang Mai University, has advanced research and development in the field of medicinal cannabis cultivation, including studies on the plant's life cycle, vegetative propagation techniques, and standards for active cannabinoid content. In Indonesia, there are no laboratories officially designated to conduct medicinal cannabis research, and no technical guidelines issued by the relevant authorities. Therefore, despite the existence of regulatory gaps that open up research opportunities, implementation remains stalled.

d. Political Considerations and National Interest Factors

The fourth factor that significantly differentiates the policy direction of the two countries is political considerations and calculations of national interest. In Thailand, the legalization of medical marijuana in 2019 was part of the political platform of the Bhumjaithai Party, led by Anutin Charnvirakul, which won the election. This policy was seen as an instrument of multifaceted national interest: reducing healthcare costs by substituting imported drugs with domestic products, diversifying agricultural export commodities, and attracting medical tourists from across the ASEAN region.[29]

From an economic perspective, Thailand projects a national cannabis market worth around 21 billion baht by 2024. Prior to legalization, Thailand spent an ever-increasing budget on its anti-drugs campaign, from 217 million baht in 1999 to over 10 billion baht

[28] Sarana Rose Sommano et al., "Growing Ganja Permission: A Real Gate-Way for Thailand's Promising Industrial Crop?," *Cannabis Res* 4, no. 1 (2022), https://doi.org/10.1186/s42238-022-00121-4.
[29] Malik and Apriyanto, "Barriers To Medical Cannabis Legalization In Indonesia: A Case Study Of Legal, Institutional, And Political Inertia."

in 2016, while the drug inmate population reached nearly 70% of the prison capacity.[30] A limited legalization policy for medical purposes was subsequently deemed more fiscally efficient than a prohibitive approach, which has proven ineffective.

In Indonesia, the political equation is actually shifting in the opposite direction. The issue of medical marijuana tends to be a low priority on the legislative agenda, in part due to its political sensitivity, given that the majority of Indonesia's Muslim population holds religious views that prohibit narcotics consumption. The government, through the National Narcotics Agency (BNN), consistently asserts that Indonesia, as a sovereign nation, has its own laws and regulations that do not have to follow international recommendations, including those of the WHO.[31] This reflects the dominance of symbolic considerations of sovereignty and religious morality over evidence-based health arguments.

This situation is reinforced by empirical data showing that marijuana was the most abused drug in Indonesia for two consecutive years (2018–2019), reinforcing the government's narrative about the dangers of marijuana and complicating advocacy for policies based on medical benefits.

e. Socio-Cultural Factors and Community Stigma

The fifth factor influencing policy differences is the socio-cultural dimension, particularly regarding the stigma surrounding marijuana and drug use patterns within society. In Thailand, marijuana has strong traditional roots as a medicinal plant used in traditional Thai medicine for centuries. This historical fact provides social capital that facilitates public acceptance of the legalization of medical marijuana.[32]

In contrast, in Indonesia, the social and religious stigma surrounding marijuana is very strong. Marijuana is consistently perceived as an "illicit substance" synonymous with crime and social ills. The case of Fidelis Arie Sudewarto, who was imprisoned for eight months for using marijuana to treat his wife's Syringomelia, is clear evidence of how the existing legal framework criminalizes marijuana use, even in urgent medical contexts. Rather than opening critical discussion, this case demonstrates the limited social and legal tolerance for marijuana use in Indonesia.

This restrictive, prohibitive approach also impacts the treatment of drug inmates. Research on inmates at the Chiang Rai Class I Penitentiary, Thailand, showed that

[30] Malik and Apriyanto.
[31] Saradiba Keysha and Rachmad Abduh, "Esensi Delik Obstruction of Justice Dalam Konstruksi Hukum Pidana," *UNES Law Review* 6, no. 3 (2024): 8289–98.
[32] Kalaivanan Syasyila et al., "Psychosocial Determinants of Recidivism Risk among Incarcerated Individuals with a History of Substance Use: A Systematic Review," *RESEARCH ARTICLE* 2, no. 11 (2025): 1–24, https://doi.org/https://doi.org/10.1371/journal.pone.0327810.

economic factors (especially a track record as a former convict, which hinders employment) and social factors (association with an unfavorable environment) are the main predictors of repeat drug offenses. This finding is relevant to the Indonesian context, where approximately 76% of inmates are drug offenders and the recidivism rate reaches 33% within three years of release.

This comparison of socio-cultural contexts confirms that cannabis criminal law policy cannot be separated from the values, beliefs, and collective experiences within a society. Thailand successfully leverages its traditional medicinal cannabis use as a legitimizing argument for policy reform, while Indonesia is trapped in a social construct that monolithically positions cannabis as a threat without addressing the nuances of its medicinal benefits.[33]

f. Synthesis: Relationship between factors

The five factors outlined above do not stand alone, but interact and reinforce each other. In Thailand, normative reform was supported by strong political will, which was then implemented through adequate institutional infrastructure, in a socio-cultural context relatively more open to controlled cannabis use. On the other hand, the failure to implement the research permit ordered by the Indonesian Constitutional Court illustrates how institutional weakness, political resistance, and social stigma combine to hinder normative change that would otherwise have opened up significant opportunities. A comparative legal reasoning approach reveals that while both countries share formal commitments to international narcotics conventions, they diverge fundamentally in the legal philosophy underlying their domestic policy choices, the institutional architecture for implementation, and the political will to adapt law to evolving social and scientific realities.

Analyzed through multiple legal theoretical lenses, the comparative picture becomes sharper. From the perspective of Satjipto Rahardjo's Progressive Law Theory, Indonesia's legal framework presents a paradox: laws designed to serve human needs function to criminalize them instead, as illustrated by the prosecution of Fidelis Arie Sudewarto for medically motivated marijuana use. Watson's Legal Transplant Theory further illuminates how Thailand successfully adapted international best practices into its domestic legal system demonstrating that transplantation is viable when supported by institutional readiness and social legitimacy and that Indonesia could similarly adopt a graduated regulatory model tailored to its constitutional and cultural context. Marc

[33] Nina Katri J. Gustafsson et al., "Sustained Effects of a Community-Based Intervention Targeting Illicit Drugs in Nightlife: A 20-Year Cross-Sectional Follow-up of 'Clubs against Drugs,'" *International Journal of Drug Policy* 145, no. August (2025), https://doi.org/10.1016/j.drugpo.2025.104937.

Ancel's Criminal Policy Theory underscores that effective narcotics policy must integrate penal and non-penal measures; Indonesia's continued over-reliance on criminalization, evidenced by drug offenders comprising 76% of its prison population, reflects a criminal policy imbalance that generates high recidivism without meaningful deterrence. Finally, Nonet and Selznick's Responsive Law Theory highlights that legal systems must adapt their norms to evolving empirical evidence; Thailand's legislative responsiveness to medical science contrasts sharply with Indonesia's institutional inertia, which has prevented even constitutionally directed research from being operationalized. Together, these frameworks confirm that the policy divergence between the two countries reflects not only different regulatory choices, but deeper differences in legal philosophy, institutional capacity, and the political will to align law with human welfare.

2. The Relevance of Comparative Policies of Indonesia and Thailand as Material for Reforming Criminal Law on Narcotics in Indonesia

a. Point of Equality as the Foundation of Renewal

A comparison of Indonesia and Thailand's narcotics criminal law policies reveals a number of fundamental similarities that can serve as a basis for legal reform efforts in Indonesia. Both countries place narcotics eradication as a top priority in their national criminal law policies and are both committed to regional commitments within the framework of Drug-Free ASEAN 2015. This shared commitment reflects a uniform normative foundation, making a comparative study of the two highly relevant.[34]

Both Indonesia and Thailand adhere to a narcotics classification system based on groups or schedules, although there are differences in the details of the classifications. Both also have specific legal instruments outside of general criminal provisions (lex specialis) to address narcotics crimes. Indonesia regulates this through Law No. 35 of 2009 concerning Narcotics, while Thailand relies on the Narcotics Act BE 2522 (1979) and its amendments, including Narcotics Act No. 7 BE 2562 (2019).[35]

Both countries also recognize the health dimension in drug management. A rehabilitation approach for drug users both victims and perpetrators has been adopted by both countries, albeit to varying degrees and mechanisms. This shared perspective is crucial because effective legal reform requires philosophical common ground so that the

[34] Andika Dwi Amrianto and Indra Hafit Zahrulswendar, "Comparison of Punishment Policies Against Children Narcotics Abuses in Indonesia and Thailand," in *Proceeding of the International Conference on Sustainable Innovation*, vol. 3, 2023, 33–39.

[35] Eviera Riza Indriani and Abdul Madjid, "The Legalization Of Medical Cannabis: A Comparative Approach Of The Thai Narcotics Act B.E.2522 (1979)," *International Journal of Environmental, Sustainability, and Social Science* 3, no. 3 (2022): 638–43, https://doi.org/10.38142/ijesss.v3i3.262.

transplantation of norms from one system to another can work organically, not merely as a formality.[36]

b. Points of Difference as a Source of Inspiration for Renewal

The policy differences between Indonesia and Thailand are actually a rich source of inspiration for reforming Indonesia's narcotics criminal law. There are at least four relevant differences worthy of further study. First, regarding the treatment of children in conflict with narcotics law. Indonesia sets the age of criminal responsibility at 12, while Thailand uses a more tiered approach: children under 12 cannot be punished, children aged 12–14 can only be given probationary counseling, and children aged 14–17 can receive a reduced sentence by half.[37] Thailand's tiered approach is more in line with the principle of the best interest of the child and can serve as a model for revising the Juvenile Criminal Justice System Law in Indonesia.

Second, in terms of the use of marijuana for medical purposes. Thailand has gone one step further by legalizing marijuana for medical purposes through Narcotics Act No. 7 BE 2562 (2019). In contrast, Indonesia still classifies marijuana as a Schedule I Narcotics which is completely prohibited for health service purposes based on Article 8 paragraph (1) of Law Number 35 of 2009. The lawsuit against this article through Constitutional Court Decision Number 106/PUU-XVIII/2020 which was rejected shows that there is still a need for normative reform in Indonesia, considering that a number of concrete cases have proven the therapeutic benefits of marijuana for sufferers of certain diseases such as cerebral palsy and syringomyelia.[38]

Third, regarding the categories of sanctions for drug dealers. Thailand's war on drugs campaign in the early 2000s drew international criticism due to thousands of deaths without transparent trial. Thailand's experience serves as a warning that an overly repressive approach can violate human rights principles, while also providing valuable lessons for Indonesia in enforcing drug laws with dignity.

Fourth, regarding diversion mechanisms and restorative justice. Thailand, through its Juvenile and Family Court, has developed a diversion mechanism involving the Observation and Protection Center (OPC), psychologists, and community representatives

[36] Habsa Arifurrahma, Lola Yustrisia, and Yenny Fitri Z, "Jurnal Edu Research Indonesian Institute For Corporate Learning And Studies (IICLS) Page 25," *Jurnal Edu Research : Indonesian Institute For Corporate Learning And Studies (IICLS)* 6, no. 2 (2025): 28–35, https://doi.org/https://doi.org/10.47827/jer.v6i2.1149.
[37] Muhammad Rafif Nasution and Faisal Riza, "Pencegahan Tindak Pidana Narkotika Yang Dilakukan Anak Melalui Bhabinkamtibmas (Studi Kepolisian Resor Belawan)," *Jurnal Pencerah Bangsa* 3, no. 1 (2023): 233–37.
[38] Moch. Reza Restu Prihatmaja, Hafrida Hafrida, and Tri Imam Munandar, "Penegakan Hukum Pidana Terhadap Pelaku Penambangan Minyak Tanpa Kontrak Kerja Sama," *PAMPAS: Journal of Criminal Law* 2, no. 1 (2021): 57–72, https://doi.org/10.22437/pampas.v2i1.12647.

in developing rehabilitation plans for children involved in drug abuse. In Indonesia, although Law Number 11 of 2012 concerning the Juvenile Criminal Justice System regulates diversion mechanisms, their implementation on the ground including the role of Bhabinkamtibmas (Community Police Officers) in early prevention still requires systematic strengthening.

c. Relevance for Reforming Indonesian Narcotics Criminal Law

Based on the comparison above, there are at least three concrete areas of relevance for reforming Indonesia's narcotics criminal law. First, there is a need to revise the classification of narcotics, particularly marijuana. The Thai model, which moved marijuana from a completely prohibited category to one that can be used for medical purposes under strict supervision, can serve as a reference. Legally, this can be achieved through amendments to the appendix to Law No. 35 of 2009, which moves marijuana from a Schedule I narcotic to a Schedule II narcotic, allowing its use for health services and research under the supervision of the Ministry of Health and the Food and Drug Authority (BPOM).[39]

Second, there is a need to strengthen non-penal mechanisms in handling drug users. Thailand has demonstrated that a structured rehabilitation approach involving social institutions, psychological staff, and the community is more effective in breaking the chain of dependence than imprisonment alone. Indonesia can develop a similar model by strengthening the role of the National Narcotics Agency (BNN), community-based rehabilitation institutions, and encouraging judges to more actively implement the provisions of Article 103 of Law Number 35 of 2009, which allows for the determination of rehabilitation for drug users.[40]

Third, the need to strengthen oversight and accountability in drug law enforcement. Thailand's experience with its internationally criticized war on drugs reminds us that the effectiveness of law enforcement cannot be measured solely by the number of arrests, but also by adherence to the principles of due process of law and human rights. Indonesia needs to strengthen its internal police oversight mechanisms given the discovery of cases of police officers involved in drug abuse and ensure transparency and integrity at every stage of drug case handling.

Overall, a comparison of Indonesian and Thai policies on drug criminal law demonstrates that Indonesian legal reform need not start from scratch. Thailand's experience both its success in legalizing medical marijuana and its tiered juvenile justice

[39] Indonesia, Undang-Undang Republik Indonesia Nomor 35 Tahun 2009 tentang Narkotika.
[40] Abdul Rahman and Dalimunthe Nursariani, "RESPONSES AGAINST POLICE MEMBERS WHO COMMIT (Study at Padangsidimpuan Police)," *Inspiring Law Journal* 2, no. 2 (2025): 23–31.

system, and its failure in a repressive approach that ignores human rights constitutes a valuable empirical laboratory. The ideal legal reform is one that adapts best practices from other legal systems while still considering Indonesia's cultural, social, and constitutional context, as guided by the objectives of national law formation as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia.

CONCLUSION

Based on the comparative normative legal analysis of marijuana criminal law in Indonesia and Thailand, this study concludes that policy differences between the two countries are shaped by five interrelated factors: legal history and normative construction, legal and regulatory foundations, institutional and implementation capacity, political considerations and national interests, and socio-cultural factors and societal stigma. Indonesia maintains a prohibitive approach by classifying marijuana as a Schedule I narcotic prohibited for healthcare purposes, while Thailand has adopted a more adaptive approach through the legalization of medical marijuana and structured state-supervised regulation. These differences demonstrate that the direction of narcotics law policy is determined not only by legal norms, but also by political dynamics, culture, and institutional readiness a finding that confirms the explanatory value of applying Progressive Law Theory, Legal Transplant Theory, Criminal Policy Theory, and Responsive Law Theory in tandem to the analysis of cross-jurisdictional narcotics law reform.

Furthermore, this comparative analysis demonstrates that Thailand's policy holds significant relevance as a basis for reforming narcotics criminal law in Indonesia. Thailand's experience shows that medical marijuana legal reform can be implemented through strict supervision, a rehabilitative approach, and institutional strengthening without abandoning efforts to combat drug abuse. Accordingly, Indonesia needs to consider: (1) reclassifying marijuana from Schedule I to Schedule II to allow medically supervised use; (2) strengthening non-penal rehabilitation mechanisms and reducing over-reliance on imprisonment for drug users; and (3) enhancing law enforcement oversight to uphold due process and human rights principles. Theoretically, this study contributes to comparative criminal law scholarship by demonstrating how multiple legal theories can be integrated to explain the structural conditions that enable or obstruct narcotics law reform offering a replicable analytical model for Southeast Asian jurisdictions assessing similar reform pathways. This study is limited to normative legal analysis and does not incorporate empirical field data; future research should investigate

practical implementation of Thailand's regulatory framework and assess Indonesia's institutional readiness through empirical and socio-legal methods.

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