**Vol. 21 No. 3 December 2025**

**YURISDIKSI**

*Jurnal Wacana Hukum dan Sains*

Universitas Merdeka Surabaya



**ISSN print 2086-6852 and ISSN Online 2598-5892**

# Case Dismissal on Public Interest Grounds in Criminal Offenses Involving Medical-Use Cannabis

**Septiawan Ridho Permadi[1*], Milda Istiqomah[1], Fachrizal Afandi[1]**

[1]Faculty of Law, Brawijaya University Malang, Indonesia

*Corresponding Author Email: setiawangg56@gmail.com

**Article History: Received: September 18, 2025; Accepted: November 21, 2025**

**ABSTRACT**

The authority of the Attorney General to dismiss cases (seponeering) under Article 35 paragraph (1) letter c of Law Number 11 of 2021 represents the application of the opportunity principle in prosecution for the sake of public interest. The development of international research and policies, including the 2020 WHO recommendation concerning the medical and economic potential of cannabis, has created an urgent need to reform law enforcement policies regarding narcotic crimes involving cannabis for medical purposes. This study aims to assess the implementation of the opportunity principle in the context of protecting the public interest in the right to health as guaranteed under Articles 28A and 28H of the 1945 Constitution. The research employs a normative legal method with statutory and conceptual approaches by analyzing prosecutorial regulations, narcotics law, and doctrines of public interest and social justice. The findings indicate that the opportunity principle is a fundamental principle in controlling prosecution that must prioritize public benefit, non-discrimination, and the protection of citizens' constitutional rights. The application of seponeering in cases involving medical cannabis is justified as long as it is grounded in public health benefits, economic potential, and the broader interests of society. This study recommends the establishment of transparent prosecutorial guidelines in assessing public interest, enhanced inter-agency coordination in medical cannabis research, and harmonization of narcotics policies to ensure that the implementation of the opportunity principle is not influenced by political interests but truly serves as an instrument of social justice.

**Keywords**: Seponeering, Principle of Opportunity, Medical Cannabis, Public Interest.

## 1. INTRODUCTION

The Unitary State of the Republic of Indonesia affirms itself as a state based on law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, requiring that all aspects of social, national, and state life be grounded in legal norms. Guarantees of recognition, protection, and fair legal certainty as well as equal treatment before the law are contained in Article 28D of the 1945 Constitution. This principle aligns with the legality principle under Article 1 paragraph (1) of the Indonesian Criminal Code (KUHP), which aims to safeguard human rights as inherent rights of every individual and must be fulfilled by the state in accordance with Law Number 39 of 1999 concerning Human Rights.

As an embodiment of values upheld by society, law is materialized through norms implemented within the legal enforcement system. In the criminal law domain, enforcement is carried out through the criminal justice system, which consists of investigation, prosecution, trial

ISSN print 2086-6852 and ISSN Online 2598-5892

proceedings, and execution of court decisions. Within this system, the Prosecutor's Office holds a strategic role as an institution exercising state power in the field of prosecution independently, as regulated under Law Number 11 of 2021. (Hamdani et al., 2023). The principle of dominus litis reinforces the authority of prosecutors in determining the course of a criminal case, including the Attorney General's special authority to set aside a case for the sake of public interest (seponeering)—a manifestation of the opportunity principle as provided in Article 35 paragraph (1) letter c.

This authority becomes crucial when dealing with cases involving broader social interests beyond mere criminal punishment. One such issue concerns the use of cannabis for medical purposes. Indonesian society was once shaken by the case of Fidelis, who processed cannabis to treat his wife suffering from the rare disease syringomyelia. Although his actions were based on humanitarian grounds and demonstrated positive effects on the patient's condition, Fidelis was still prosecuted, and his wife passed away during his detention. A similar situation re-emerged through the advocacy, who fought for access to cannabis oil therapy for her child with cerebral palsy.(Tomuka, 2017).

Meanwhile, international legal developments reflect a shifting paradigm regarding cannabis. In 2018, the World Health Organization (WHO), through the Expert Committee on Drug Dependence (ECDD), stated that cannabidiol does not carry dependency potential and indeed possesses health benefits. (Fanani, 2011). This scientific evidence encouraged the UN Commission on Narcotic Drugs (CND) on December 2, 2020, to remove cannabis and cannabis resin from Schedule IV of the 1961 Single Convention on Narcotic Drugs, meaning cannabis is no longer classified among the most dangerous substances. This policy shift has opened pathways for research and the development of medical cannabis in various countries.

However, at the national level, cannabis remains classified as a Schedule I narcotic, strictly prohibited for medical use under Article 8 paragraph (1) of Law Number 35 of 2009. The divergence between international policy developments and Indonesia's legal stance creates challenges in law enforcement related to the use of cannabis for medical treatment—particularly when the individual's actions are aimed at preserving life and improving patient well-being.(Ubwarin, 2015).

Considering Gustav Radbruch's theory of legal objectives justice, utility, and legal certainty—law enforcement should respond to scientific developments and societal needs. In this context, the prosecutorial authority to apply seponeering may serve as an adaptive legal mechanism aligned with broader humanitarian interests. Therefore, it is essential to examine the

ISSN print 2086-6852 and ISSN Online 2598-5892

framework and potential application of the authority to dismiss cases for the sake of public interest in narcotics offenses involving medical use of cannabis.

## 2. RESEARCH METHOD

This research is a type of normative (legal) research. According to Peter Mahmud Marzuki, in a conceptual/doctrinal framework, normative legal research is referred to as rule-based or dogmatic research, and naturally, this research is an inventory of positive law and contains prescriptive elements. (Marzuki, 2005). Furthermore, according to Jonaedi Effendi, the objects of normative legal research include legal principles, legal systems, and the level of vertical and horizontal synchronization. Therefore, in order to thoroughly examine the issues in this research, the researcher will present findings relevant to primary legal materials derived from legislation and secondary legal materials obtained from academic literature.(Jonaedi Efendi, 2018). The research approach used consists of a juridical approach and a conceptual approach. (Rizkia & Fardiansyah, 2023).

## 3. RESULTS AND DISCUSSION

### Analysis of the Attorney General's Authority to Set Aside Cannabis Drug Cases on Medical Grounds in the Public Interest

This research provides a comprehensive exposition of the Attorney General's authority to discontinue prosecution (seponeering) in narcotics cases involving cannabis when used for medical purposes and assessed as fulfilling the element of public interest. This authority is permissible based on the principle of opportunity as stipulated in Article 35 letter c of Law Number 11 of 2021 regarding the Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. In this context, seponeering constitutes a manifestation of prosecutorial discretion that prioritizes the interests of the nation, state, and broader society above strictly formalistic legal enforcement. (Hamdani et al., 2023).

The principle of opportunity has been recognized since the colonial era through the Dutch legal system and was subsequently incorporated into Indonesian law. Historically, its implementation in the Netherlands granted prosecutors significant discretion in determining whether a case should proceed, including for social, political, or humanitarian grounds. Japan, as another civil law jurisdiction, also adopted a similar model by providing broad discretionary power to prosecutors, including the ability to defer or halt prosecution if the offender demonstrates good

ISSN print 2086-6852 and ISSN Online 2598-5892

faith, is elderly, or qualifies based on certain social considerations.(Eleanora, 2011). This model later influenced the form of prosecutorial discretion in Indonesia.

In the national context, the implementation of seponeering has not always been free from controversy. During the New Order era, this authority was exercised not solely in the interest of the wider public, but also within the arena of political power.(Gumilang et al., 2023). The Prosecutor's Office reportedly terminated criminal cases involving individuals close to the President, such as corruption cases in Pertamina and other political matters involving state officials. Several prominent figures such as M. Yusuf and Adnan Buyung Nasution—were even offered seponeering on the condition that they submit a written apology to the President. (Nazriyah, 2010). After the reformation era, similar practices persisted, including seponeering in cases involving the commissioners of the Corruption Eradication Commission (KPK), such as the Bibit–Chandra case (2012) and the Abraham Samad–Bambang Widjojanto case (2016), under the justification of maintaining stability in the anti-corruption agenda. These instances demonstrate that the concept of "public interest" in the application of seponeering is often elastic, ambiguous, and susceptible to political utilization.(Sudanto, 2017).

Nevertheless, modern legal development demands a progressive interpretation of the principle of opportunity, one that aligns more closely with substantive justice, social benefit, and the fulfillment of human rights. This becomes particularly relevant when associated with the debate surrounding the use of cannabis for medical purposes.(Latumaerissa, 2019). Under Indonesian positive law, cannabis is classified as a Schedule I narcotic prohibited for medical use pursuant to Article 8 paragraph (1) of Law Number 35 of 2009 on Narcotics. However, Article 8 paragraph (2) provides a legal avenue for scientific research with approval from the Minister and recommendation from the National Agency of Drug and Food Control (BPOM). Meanwhile, international scientific findings—including those from the WHO Expert Committee on Drug Dependence (ECDD)—recognize proven pharmacological benefits of cannabis in treating epilepsy, cancer, multiple sclerosis, cerebral palsy, glaucoma, Alzheimer's disease, lupus, Parkinson's disease, neurological disorders, and chronic pain.(Heryanto, 2024). The ECDD report later influenced global policy change, including the removal of cannabis from Schedule IV of the 1961 Single Convention on Narcotic Drugs, although it remains in Schedule I, permitting only tightly regulated medical and research use.

Subsequently, several states undertook legal reform. Thailand legalized medical cannabis in 2019 and developed it as a health and economic commodity. Pakistan, a country with Islamic legal foundations, legalized CBD use in 2020 following the UN's rescheduling of cannabis

ISSN print 2086-6852 and ISSN Online 2598-5892

acknowledging medical value.(Thomas, 2014). South Korea continues to prohibit recreational cannabis yet has allowed medical access under strict licensing procedures through the Korean Orphan Drug Center since 2018. Other states such as the United Arab Emirates, Saudi Arabia, Yemen, and Iraq maintain full prohibition based on moral and sharia-based legal principles.

In Indonesia, public discourse intensified following the case of Fidelis Arie Sudewarto, who independently used cannabis extract to treat his wife suffering from syringomyelia with severe physical deterioration and open wounds, after conventional medical methods failed. Medical findings indicate that medical cannabis contains cannabidiol (CBD), a non-psychoactive compound distinct from tetrahydrocannabinol (THC) found in recreational cannabis.(Fernando & Yunaldi, 2024). CBD has been clinically proven to possess analgesic, anti-seizure, neuroprotective, anti-inflammatory properties and to support neural cell regeneration. Despite his humanitarian motive, Fidelis was arrested and convicted. Tragically, 32 days after his arrest, his wife passed away.(Sudirdja, 2019). This incident raised constitutional and ethical questions concerning the state's role when citizens face medical emergencies while access to alternative therapy remains legally restricted.

Correspondingly, the Constitutional Court, in Decisions Number 106/PUU-XVIII/2020 and Number 13/PUU-XXII/2024, affirmed that the state is obliged to conduct research and assessment on the medical potential of Schedule I narcotics, including cannabis, as a constitutional mandate to fulfill the right to health under Article 28H of the 1945 Constitution of the Republic of Indonesia and the right to life under Article 28A. The Court emphasized that such research constitutes an urgent necessity requiring follow-up through new governmental policies and regulations.(Marune & Hartanto, 2023).

From the perspective of Gustav Radbruch's theory of the purposes of law, ideal law must reflect three fundamental elements: justice, utility, and legal certainty. Where positive law produces extreme injustice (schreiende Ungerechtigkeit), justice must prevail over legality. Therefore, applying seponeering to medical cannabis cases represents a choice aligned with substantive justice, considering the offender's subjective circumstances, humanitarian motives, and broader social impact. In line with Jeremy Bentham's utilitarian view, legal policy must provide the greatest benefit to the greatest number of people. Meanwhile, Satjipto Rahardjo argues that law must serve humanity, not the reverse. Law is not a mechanical institution bound solely to procedural certainty but a moral institution grounded in conscience, empathy, and humanity. Accordingly, within this research context, seponeering is understood as a manifestation of

ISSN print 2086-6852 and ISSN Online 2598-5892

progressive law—law that evolves with scientific developments, societal needs, and moral dynamics.

Considering the legal, sociological, medical, and philosophical reasoning, this study concludes that the Attorney General may lawfully discontinue prosecution in cases involving cannabis-related offenses when its use is demonstrably for medical purposes and in the public interest, as contemplated in the elucidation of Article 35 letter c of the Law on the Prosecutor's Office. However, to prevent seponeering from once again becoming a political instrument, internal guidelines and a joint deliberative mechanism between Public Prosecutors and the Attorney General are required. With such safeguards, seponeering can function as a transformative legal instrument that upholds constitutional values, protects citizens' rights, and guides Indonesia's legal system toward a more humanistic, scientific, democratic paradigm grounded in the objectives of law: justice, utility, and legal certainty for all Indonesian people.

**Reformulation of the Use of Cannabis for Medical Purposes with the Aim of Criminalization in Legislation**

This discussion demonstrates that Indonesia's criminal law and narcotics policy are the result of a legal-political construction developed by the state to regulate societal behavior with the aim of maintaining order, public safety, and ensuring the right to health. Legal norms, as products of state authority, bind all citizens and are enforced through criminal and administrative sanctions. In the context of narcotics, the function of law is not solely a mechanism of social control, but also a tool of social engineering as conceptualized by Roscoe Pound. Accordingly, narcotics regulation should ideally be adaptive to advancements in scientific knowledge and global social change.(Triwati, 2021).

The historical development of narcotics regulation in Indonesia reflects a significant paradigm shift. At the outset, under Law No. 8 of 1976, cannabis was still regarded as a plant that could be used for medical purposes and research. However, following the enactment of Law No. 22 of 1997 and later Law No. 35 of 2009, cannabis was classified as a Schedule I narcotic, defined as a substance with no recognized medical benefit and high potential for dependency. Under this classification, the use of cannabis for healthcare purposes became prohibited. (Yusmar et al., 2021). This regulatory stance was reaffirmed through Ministry of Health Regulation No. 30 of 2023, which included cannabis plants, THC, and their derivatives in the Schedule I narcotics list.

However, this classification is no longer aligned with developments in international scientific research. The WHO, through the Expert Committee on Drug Dependence, removed cannabis from Schedule IV of the 1961 Single Convention, which previously categorized cannabis

ISSN print 2086-6852 and ISSN Online 2598-5892

as a substance of the highest danger with no medical value.(Yusmar et al., 2021). The WHO concluded that cannabis possesses therapeutic potential for numerous medical conditions—ranging from chronic pain, Parkinson's disease, multiple sclerosis, Crohn's disease, and appetite disorders associated with HIV/AIDS, to potential benefits in cancer treatment. Furthermore, the WHO recommended removing *"extracts and tinctures of cannabis"* from the strictest narcotics classification, noting that various extract-based preparations, including medical cannabis oil, sublingual formulations, therapeutic vaping products, and the oral spray Sativex—have been safely used in multiple countries under regulated medical standards.(Ratnasari et al., 2021).

Meanwhile, Indonesia's legal framework in principle acknowledges narcotics availability for health purposes as stipulated in Article 4 of Law No. 35 of 2009. The Constitution, through Article 28H of the 1945 Constitution, even obligates the state to fulfill the right to healthcare services. However, ambiguous clauses such as "limited quantity" in Article 8 of the Narcotics Law lack operational parameters, resulting in a normative gap and the risk of criminalizing individuals who require cannabis-based medication.(Heryanto, 2024). This legal ambiguity also results in the absence of national clinical trial mechanisms, cannabinoid-based pharmaceutical research frameworks, and regulatory systems for patients requiring cannabis-based therapeutic access.

Comparative legal developments show a shifting policy pattern across Asia—Thailand has legalized medical cannabis and imposed restrictions on recreational possession; South Korea permits cannabis extract–based medicines under strict procedures; Pakistan has opened the pathway for medical cannabidiol use; while China restricts THC yet permits hemp-based industrial development. These developments indicate that medical cannabis regulation represents a science-based policy trend, rather than a purely repressive approach.

Within the framework of criminal law reform, the enactment of Law No. 1 of 2023 concerning the Criminal Code marks a strategic shift in penal philosophy. The new Criminal Code introduces a more humanistic, proportional, and restorative orientation of punishment, as emphasized in Articles 51 and 54. Sentencing now considers motives, impacts, the social context of the offender, and principles of justice embedded within societal values. Accordingly, the medical use of cannabis should not be automatically equated with criminal conduct involving illicit drug trafficking, particularly when such use is exercised as part of the right to health.(Azizah et al., 2023).

The necessary reform focuses on two core domains. First, substantive legal reform through the reclassification of cannabis from Schedule I to Schedule II or III. This reform must be supported by technical parameters, such as THC thresholds, plant parts eligible for use, formulary

ISSN print 2086-6852 and ISSN Online 2598-5892

types, authorized processors, production facility certification, distribution mechanisms, prescription protocols, and patient eligibility requirements. Second, penal policy reform is required by establishing clear differentiation between medical users, addiction victims, and illicit traffickers. Limited decriminalization for patients and researchers is necessary to prevent criminalization contrary to health rights and the principle of proportionality.

Thus, reformulating medical cannabis policy is not merely an exercise in amending statutory provisions, but a process of constructing a national legal paradigm that is responsive to scientific progress, societal needs, and constitutional mandates guaranteeing the right to health. This reorientation positions law not solely as a repressive mechanism, but as an instrument of humanity and social transformation—ensuring a balanced approach between public security and evidence-based medical interests.

## 4. CONCLUSIONS

The principle of opportunity constitutes a fundamental doctrine within the criminal justice system that grants discretionary authority to the Prosecutor as the controller of the prosecution process. This authority is codified in Article 35 paragraph (1) letter c of the Law on the Prosecution Service, which enables the Attorney General to discontinue or set aside a criminal case (seponeering) in the interest of the public. However, its implementation has often been suboptimal due to limited transparency and the influence of political interests. The concept of public interest in the context of seponeering must be interpreted as an effort to realize social justice in accordance with the objectives of law—namely, to provide the greatest possible benefit to society without discrimination. Moreover, global developments, such as the 2020 decision of the World Health Organization (WHO) to remove cannabis from the list of the most dangerous narcotics, alongside evidence of its medical, industrial, and economic potential, provide new considerations for law enforcement. By taking into account the constitutional guarantee of the right to health under the 1945 Constitution and the principle of social justice, the discontinuation of narcotics cases, particularly those involving cannabis, may be carried out by the Attorney General as a legitimate manifestation of the opportunity principle in the interest of the public.

Law Number 35 of 2009, through Articles 4 and 7, affirms that narcotics may be utilized for healthcare services and scientific development, implying that the state is obligated to ensure public access to narcotics for medical purposes in accordance with the constitutional right to health under the 1945 Constitution. However, Article 8 of the Narcotics Law and the Minister of Health Regulation Number 30 of 2023 continue to classify cannabis as a Schedule I Narcotic, prohibiting

ISSN print 2086-6852 and ISSN Online 2598-5892

its use for healthcare services and restricting its application solely to limited research purposes. This provision is inconsistent with international scientific findings, including those of the Expert Committee on Drug Dependence, which demonstrate the therapeutic benefits of cannabis for various conditions such as HIV/AIDS, chronic pain, multiple sclerosis, neuropathy, migraine, Parkinson's disease, and its potential anticancer properties. Based on such evidence, policy reform is required by reevaluating and restructuring the classification of cannabis using scientific analysis. This reformulation must include the determination of specific parts of the plant or compounds permitted for use, designation of authorized entities for cultivation and production, establishment of quality and safety standards, regulation of medical-use protocols, and a comprehensive oversight system spanning production to patient-level distribution. The reform must also consider criminal sanctions under the Narcotics Law and the Indonesian Penal Code (KUHP) to prevent misuse of medical cannabis.

## REFERENCES

Azizah, A., Suarda, I. G. W., & Mardiyono, M. (2023). Prinsip Keadilan Restoratif Dalam Penghentian Penuntutan Perkara Pidana Berdasarkan Peraturan Jaksa Agung Nomor 15 Tahun 2020. *Jurnal Hukum, Politik Dan Ilmu Sosial*, *2*(2), 154–166.

Eleanora, F. N. (2011). Bahaya Penyalahgunaan Narkoba Serta Usaha Pencegahan Dan Penanggulangannya. *Jurnal Hukum*, *25*(1), 439–452.

Fanani, A. Z. (2011). Berpikir Falsafati Dalam Putusan Hakim. *Varia Peradilan*, *304*.

Fernando, G., & Yunaldi, W. (2024). Kajian Hukum Atas Penerapan Restorative Justice Terhadap Tindak Pidana Pencurian (Studi Kasus Kejaksaan Negeri Payakumbuh). *Innovative: Journal Of Social Science Research*, *4*(3), 15140–15151.

Gumilang, S. T., Waluyo, B., Harefa, B., Hartono, T., & Novyana, H. (2023). Prospektif Ganja Indonesia Prospektif Ganja Indonesia Untuk Kepentingan Pelayanan Kesehatan. *Jurnal Esensi Hukum*, *5*(1), 18–38.

Hamdani, F., Putra, E. A. M., Akbar, D. A., Pangastuti, D. P., & Anam, F. K. (2023). Fiksi Hukum: Idealita, Realita, Dan Problematikanya Di Masyarakat. *Primagraha Law Review*, *1*(2), 71–83.

Heryanto, E. (2024). Legalitas Pemusnahan Barang Bukti Narkotika Berdasarkan Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia. *Lex Lata*, *6*(3).

Jonaedi Efendi, J. I. (2018). *Metode Penelitian Hukum: Normatif Dan Empiris*. Prenada Media.

Latumaerissa, D. (2019). Penerapan Sanksi Pidana Minimum Khusus Pada Tindak Pidana

ISSN print 2086-6852 and ISSN Online 2598-5892

Narkotika. *Jurnal Belo*, *5*(1), 67–85.

Marune, A., & Hartanto, B. (2023). Keadilan Restoratif Dalam Penyelesaian Perkara Penyalahgunaan Narkotika Pasca Pedoman Jaksa Agung Nomor 18 Tahun 2021: Perspektif Teori Keadilan Bermartabat. *The Prosecutor Law Review*, *1*(3).

Marzuki, P. M. (2005). *Penelitian Hukum*.

Nazriyah, R. (2010). Pemberhentian Jaksa Agung Dan Hak Prerogatif Presiden. *Jurnal Konstitusi*, *7*(5), 13–40.

Ratnasari, D., Lasmadi, S., & Sudarti, E. (2021). Kedudukan Hukum Deponeering Dalam Sistem Peradilan Pidana. *Pampas: Journal Of Criminal Law*, *2*(1), 17–29.

Rizkia, N. D., & Fardiansyah, H. (2023). *Metode Penelitian Hukum (Normatif Dan Empiris)*. Penerbit Widina.

Sudanto, A. (2017). Penerapan Hukum Pidana Narkotika Di Indonesia. *Adil: Jurnal Hukum*, *8*(1), 137–161.

Sudirdja, R. P. (2019). Penguatan Kewenangan Penuntut Umum Melalui Pengesampingan Perkara Pidana Dengan Alasan Tertentu. *Litigasi*, *20*(2).

Thomas, J. (2014). Analisis Putusan Mahkamah Agung Mengenai Putusan Yang Dijatuhkan Di Luar Pasal Yang Didakwakan Dalam Perkara Tindak Pidana Narkotika. *Usu Law Journal*, *3*(1), 1–30.

Tomuka, A. A. (2017). Tugas Dan Wewenang Jaksa Agung Mengesampingkan Perkara Demi Kepentingan Umum Setelah Putusan Mahkamah Konstitusi Nomor 40/Puu-Xiv/2016, Tanggal 11 Januari 2017. *Lex Privatum*, *5*(6).

Triwati, A. (2021). Pengesampingan Perkara Demi Kepentingan Umum Pascaputusan Mahkamah Konstitusi. *Jurnal Ius Constituendum*, *6*(1), 32–54.

Ubwarin, E. (2015). Kebijakan Formulasi Hukum Pidana Dalam Melanggulagi Kejahatan Skimming Atm. *Sasi*, *21*(2), 17–20.

Yusmar, W., Somawijaya, S., & Putri, N. S. (2021). Urgensi Pengesahan Rancangan Undang-Undang Perampasan Aset Tindak Pidana Sebagai Upaya Pemberantasan Tindak Pidana Pencucian Uang Dengan Predicate Crime Tindak Pidana Narkotika. *Jurnal Ilmiah Galuh Justisi*, *9*(2), 219–240.