

THE USE OF CANNABIS FOR MEDICAL TREATMENT IN MALAYSIA: AN ANALYTICAL STUDY FROM THE FIQH AL-MUWAZANAT PERSPECTIVE

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Abstract	<p><i>The ongoing debate surrounding the acceptability of utilising cannabis for medical treatment remains a prominent issue. The case of Muhammad Yasin Sulaiman in 2022 became the top discussion of the whole country because he was reported of planting 17 cannabis plants to treat his bipolar disorder. Many studies show the benefits of the chemical compositions of cannabis which are Tetrahydrocannabinol (THC) and Cannabidiol (CBD) in medical treatment. More than 70 countries have recognized the use of cannabis for medical purposes. However, the law in Malaysia is still maintaining its status quo by imposing legal action on individuals who possess and distribute cannabis. This issue has caused the government to be urged to immediately allow the use of cannabis in Malaysia. This research is a qualitative study by using the data collection method and analysis of the previous written sources. Hence, this study aims to analyze the use of cannabis in medical treatment from the perspective of Fiqh al-Muwazanat. The consideration between two contradictory matters should be done to achieve the principle of maqasid sharia. The data collected was obtained from books, journal articles, official websites of the authorities, and case studies. The results of the study have shown that the use of cannabis for medical treatment in Malaysia is considered to be allowed due to the maslahah is greater than the mafsadah. This is because there is an exceptional situation where the other medicine may not be available to preserve the life of a patient, thus the necessity for the cannabis to treat the patient shall be prevailed and this is in accordance with maqasid sharia.</i></p> <p>Keywords: <i>Cannabis, Fiqh al-Muwazanat, Maqasid Sharia, Maslahah, Mafsadah.</i></p>
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INTRODUCTION

Nowadays, the use of cannabis in medical treatment has become a top issue in the country although this matter has been debated for a long time. However, it still arises due to the presence of some parties who agree to make cannabis as a medical treatment in Malaysia, considering many countries have decriminalized the use of cannabis for medical treatment (Rahmat Dapari et al., 2022). This is because there are benefits of cannabis in treating several diseases that have been tested to be effective and safe. However, there are also some parties who do not agree with that opinion due to the remaining stigma among them (Astro Awani, 2023).

Cannabis is a herbal plant. There are three types of cannabis plants, namely Cannabis Sativa, Cannabis Indica, and Cannabis Ruderalis (Mohamad Haniki et al., 2022). Cannabis is also called marijuana or hemp (Johnson, 2019). It has a variety of chemical

compounds known as cannabinoids. Research results found that the two main types of cannabinoids in cannabis are Tetrahydrocannabinol (THC) and Cannabidiol (CBD) and these two types of cannabinoids have different effects on the human body. Consuming THC will cause the user to become delusional, while CBD, in contrary, will not cause the user to become intoxicated and delusional (Silva et al., 2020). These two active substances are the main focus of discussion in the medical aspect.

According to the US National Institute of Drug Abuse (NIDA), consuming medical cannabis with a chemical composition derived from the cannabis plant where it has been prescribed known to be safer than taking a single plant to treat a disease. This is because, if one consumes the plant physically, he does not know how many doses he has taken. It may be excessive and end up giving him a psychoactive effect. If it is within the prescription, he will not get the psychoactive effect. In fact, even if a cannabis-based medicine has been prescribed, the risk of abusing the medicine can still be occurred (Mohamad Haniki et al., 2022). It is even more dangerous if the medicine contains addictive substances like THC. That is why it is necessary to have guidelines for this kind of medicine.

Therefore, it is crucial for the government to have the capability in controlling the use of the plant only for the purpose of medical treatment. Not only that, the government also must consider whether the decriminalization of the use of cannabis for medical treatment is appropriate if it does not have a severe effect on the patient. Hence, the Malaysian government needs to think of what is best for the well-being of the community by doing a more in-depth study.

PROBLEM STATEMENT

The use of cannabis in medical treatment has become a top issue in the country although this matter has been debated for a long time. However, it still arises due to the presence of some parties who agree to make cannabis as a medical treatment in Malaysia, considering more than 70 countries such as Germany, Switzerland, Italy, and other countries have decriminalized the use of cannabis in medical treatment. This is because there are benefits of cannabis in treating several diseases that have been tested to be effective and safe. However, there are also some parties who do not agree with that opinion which the stigma towards cannabis remain same as a recreational activity.

Among the diseases that have been tested for effectiveness is Dravet Syndrome, which is an epilepsy where active substances from cannabinoids, namely CBD, is used. There was a case that grabbed the attention of the world showing the potential of CBD in treating epilepsy. A child with Dravet Syndrome since the age of 3 months showed a reduction of seizures due to consuming cannabis that is high in CBD and low in THC. Food and Drug Administration (FDA) approved Epidiolex, which is a cannabis-derived drug product. It is specifically to treat epilepsy in children over 2 years old because it is rich in CBD.

Although the benefits of using cannabis for medical treatment are proven, there are significant challenges in Malaysia related to the laws that prohibit its use as stipulated in the Dangerous Drugs Act 1952. Moreover, the use of cannabis as a medicinal product for human treatment is also regulated under the Sale of Drugs Act 1952. This means that any involvement with cannabis for medical purposes must adhere to the strict procedures outlined in the Act. While cannabis has not been decriminalized for medical use in Malaysia, researches wishing to study it must comply with the regulations of the Act to obtain the substance. This is why cannabis remains prohibited and tightly controlled in the country under these legal frameworks.

On the other hand, if cannabis is to be permitted, it is also significant to consider the long-term use of cannabis for medical treatment in Malaysia. Although a cannabis-based medicine has been prescribed, the risk of abusing the medicine can still be occurred. It is even more dangerous if the medicine contains addictive substances like THC. That is why it is necessary to have guidelines for this kind of medicine. High consumption of THC will cause a psychoactive effect on the user if he overdoses. While CBD, it does not give a

psychoactive effect but adverse effect if he overdoses. Both THC and CBD have their own benefits. Nevertheless, its use must be regulated to avoid people from misusing it.

Therefore, this study aims to assess the potential use of cannabis for medical treatment in Malaysia, focusing on the legislation, habits and behaviour of Malaysians in interacting with cannabis, and studies on diseases treated by cannabis. In parallel, the *Fiqh al-Muwazanat* perspective will be employed which emphasizes the weighing of *maslahah* and *mafsadah* between the potential medical benefits of cannabis and the risks that may arise for society. In addition, the researcher intends to propose several recommendations that are believed to be applicable once cannabis is legalized in the country.

RESEARCH OBJECTIVE

The objective of this study is to analyze the use of cannabis for medical treatment in Malaysia from the *Fiqh al-Muwazanat* perspective and to come up with recommendations for the decriminalization of cannabis merely for the purpose of medical treatment in Malaysia.

METHODOLOGY

This research involves a qualitative study by using the data collection method and analysis the previous written sources regarding the issue of the use of cannabis for medical treatment in Malaysia from the *Fiqh al-Muwazanat* perspective. Therefore, the researcher accesses and analyzes the data from books, journal articles, official websites of the authorities, and case studies based on the issue discussed.

LITERATURE REVIEW

Research conducted by Mohamad Haniki et al. (2022) discussed about the types of cannabis, the substances of cannabis, the disadvantages of consuming cannabis, and also about medical cannabis in treating several diseases. They came up with some foreign studies that have been done on the diseases. Some studies have been completed for that disease, and some studies are still not comprehensive like schizophrenia. However, in this research, the authors did not mention about childhood epilepsy of Dravet Syndrome but Lennox-Gastaut Syndrome only.

Silva et al. (2020) discussed about the effectiveness of Cannabidiol (CBD) on Dravet and Lennox-Gastaut Syndrome, its long-term effect, and stated the level of the adverse effect that probably will be felt by the patients. Not only that, they stated the function of Tetrahydrocannabinol (THC) and Cannabidiol (CBD). However, the authors did not explain in-depth the way both THC and CBD will stipulate the receptors in a human body that eventually respond to stimuli.

Besides, research conducted by Pitts (2020) discussed about the Cannabidiol (CBD) specifically in terms of the history of Charlotte Figi's parents in treating her Dravet Syndrome that has become the spotlight of the world, the stimulation of CBD in the receptors of human body system and also, he stated the potential of CBD in treating several diseases but still requires more research and clinical testing. So far, the success of CBD is mostly effective for Dravet and Lennox-Gastaut Syndrome. However, the author did not state any further about the long-term use of CBD if it is used by the patient for a long time.

On top of that, research conducted by Pratt et al. (2019) discussed about the evolution of cannabis used in some countries, and studies conducted mostly showed the inconclusive and mixed evidence for cannabis in treating several diseases such as HIV and AIDS based on the reviews they made. However, the authors did not state the reason and purpose of some countries allowing the use of cannabis for recreation and to think logically, it obviously will give them a psychoactive effect.

Next, research conducted by Zanariah Dimon et al. (2023) discussed about the cannabis in general, the advantages of cannabis in treating mental disorders. They came up with the studies regarding this matter but then were found mixed and inconclusive. On top of that, they also analyzed the law governing the drug and stated their opinion as if to

decriminalize the cannabis for medical treatment specifically for mental illness. However, the authors did not explain further to what extent is the government's capability to control the use of the plant only for the purpose of medical treatment and they did not analyze their study based on *Fiqh al-Muwazanat* perspective.

Furthermore, research conducted by Lewandowska et al. (2021) discussed about the therapeutic potential of dronabinol in treating diseases such as anorexia in AIDS patients, nausea caused by cancer chemotherapy, and other diseases. Based on the diseases stated in the journal, not all the diseases can be treated by dronabinol effectively and, the side effects of the use of dronabinol at average between mild to moderate. However, the authors did not elaborate further on whether the use of dronabinol has the potential to be abused or not considering that it also contains an addictive substance which is Tetrahydrocannabinol (THC).

Ekmil Krisnawati et al. (2023) discussed about the use of cannabis since over 6000 years ago in medical treatment and cannabis has been widely used by Muslim scientists for many purposes, such as surgical anaesthetic, painkillers to alleviate pain, treatment for epilepsy, and many more. They also tried to compare the latest research that involves current scientific knowledge with the previous knowledge of Muslim scientists about medicine at that time and in result, it has a little similarity. The research they have conducted seems to raise awareness of the community to accept the use of cannabis for medical treatment since there is still a stigma in society over cannabis. However, the authors did not state about the recommendations for decriminalizing cannabis to help the government generate ideas to consider the use of cannabis in medical treatment by looking at various aspects.

On the other hand, research conducted by Rahmat Dapari et al. (2022) discussed about the drugs in general and stated that there was an increase in abusing the drugs in Malaysia based on the statistic shown. They also stated about few countries that decriminalized cannabis with specific diseases allowed to be treated by it. They made a questionnaire regarding the "Acceptance Towards Decriminalization of Medical Marijuana Among Adults in Selangor, Malaysia" and it showed that Selangor residents mostly accepted to decriminalize cannabis. However, in this research, the authors did not state about the recommendations in depth but only in general yet vague.

In addition, research conducted by Abdul Hakim Baharudin et al. (2023) discussed about the evidences of drugs based on the *syarak* perspective, that is *qiyas* to the prohibition of drinking wine. They stated about the introduction of cannabis generally, including about *fatwa* and guidelines for the use of cannabis, as there are benefits in cannabis for medical treatment. However, the authors did not explain further about the specific procedure of discussion in producing the *hukum* by *mufti*, in which there must be various methods used that eventually resulted to the gazetted *fatwa*.

Last but not least, research conducted by Indriyani and Anggi (2022) discussed about the effectiveness of Cannabidiol (CBD) on various of epilepsies such as temporal lobe epilepsy, focal epilepsy, Dravet Syndrome, and Lennox-Gastaut Syndrome. Based on the research, the treatment for focal epilepsy cannot be determined as there is still no evidence of its effectiveness for all types of patients with this disease. Upon this, it cannot be consumed yet. While Dravet Syndrome and Lennox-Gastaut Syndrome can be reduced the frequency of seizures. However, the authors did not explain the long-term use of CBD whether it will give any side effects on the human body or not.

FINDINGS AND DISCUSSION

Fiqh al-Muwazanat is a method used as a mechanism to produce a *hukum* by making perfect judgements between several *masalah*, or *mafsadah*, or both of them. This happens when there is a contradiction between them.

The use of *Fiqh al-Muwazanat* is crucial in issuing a *hukum* whenever there is an issue that requires a consideration between two contradictory matters. This is to achieve

the purpose of *maqasid sharia* by taking into account *maslahah* and *mafsadah* of individuals, society, and country (Jabatan Kemajuan Islam Malaysia [JAKIM], 2014).

Malaysian Legal and Sharia Provision for Cannabis

First and foremost, it is vital to discuss about provision in Malaysia, as its function is to govern the country and society. There are several provisions governing cannabis in Malaysia. According to the Dangerous Drugs Act 1952, cannabis, cannabis resin, cannabis extract, and cannabis tincture are dangerous drugs (Program Perkhidmatan Farmasi, 2023). Section 39B(2) of the Act expressed that if there is any person breaches the Section 39B(1) of the Act which is the offence of drug trafficking, he will be sanctioned to mandatory death. Not only that, it is also categorized as a poison that falls under the Poisons Act 1952. In addition, it also falls under the Sale of Drugs Act 1952 if it is used as a cannabis-based product for human medical treatment (Program Perkhidmatan Farmasi, 2023). Meaning that, anything involves with the use of cannabis for medical purposes, they need to follow the strict procedures set out in this Act. In fact, cannabis is still not being decriminalized in Malaysia for medical purposes, but in order to do research regarding cannabis, they must refer to the Act to get the drug. That is why cannabis is prohibited in this country and strictly controlled by the Acts in terms of manufacture, sale, supply, importation, exportation, cultivation, possession, and administration.

However, there is a gazetted *fatwa* regarding “The Use of Cannabis for Medical Treatment in Malaysia” on November 9th 2022. It was gazetted under P.U. (B) 526/2022 as a result of a meeting on April 1st 2019 conducted by the Jawatankuasa Perundangan Hukum Syarak Wilayah-Wilayah Persekutuan, ruling that cannabis is permissible for medical treatment if the following conditions are met:

- a) obtained permission from the relevant authorities.
- b) obtained validation from two medical experts.
- c) not used for the purpose to breach the law.

In the first place, cannabis was prohibited because it could harm the human body. This is in accordance with verse 195 in *al-Baqarah* of *al-Quran*. This also coincides with *al-Qawaid al-Fiqhiyyah* which is “*al-Darar Yuzal*”. The meaning is “*harm must be eliminated*”. Nevertheless, it becomes permissible to use cannabis for medical purposes based on the conditions set out by the authorities. This is in accordance with *al-Qawaid al-Fiqhiyyah* “*al-Darurat Tubih al-Mahzurat*” which the meaning is “*necessities permit the prohibited*” (Pejabat Mufti Wilayah Persekutuan, 2023).

In *Sharia* law, there is no mention about the *hukum* of cannabis. The word ‘cannabis’ is not mentioned both in the *al-Quran* or *Hadith*. Nonetheless, cannabis is a drug after all due to its intoxication effect. The *hukum* of a drug is determined based on two forms of evidence in the *al-Quran*. First, several general evidences forbid using a substance or engaging in activities that could harm the body and result in death. Second, several specific evidences are regarding the prohibition of drinking wine, whereby the drug is *qiyas* to wine (Abdul Hakim Baharudin et al., 2023). In determining the *hukum* of a drug, there is a verse in the *al-Quran* that can be used as general evidence,

﴿وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ﴾

Meaning: “*And spend of your substance in the cause of Allah, and make not your own hands contribute to (your) destruction; but do good; for Allah loveth those who do good.*” (Al-Quran. Al-Baqarah: 195)

On the other hand, the specific evidences mentioned about the prohibition of drinking wine,

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ

تُفْلِحُونَ﴾

Meaning: "O believers! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, - of Satan's hardwork: eschew such (abomination), that ye may prosper." (Al-Quran. Al-Maidah: 90)

﴿يَسْتَأْذِنُكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعَةٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا﴾

Meaning: "They ask the concerning wine and gambling. Say: "In them is great sin, and some profit, for men; but the sin is greater than the profit." (Al-Quran. Al-Baqarah: 219)

The meaning of 'khamr' in the verse is intoxicating drinks from grape juice and others. Az-Zajaj defines *khamr* in terms of language as something that covers the mind (Al-Sabuni, 2015).

According to Yusuf al-Qaradhawi in his book *al-Halal wa al-Haram fi al-Islam*, he issued a *fatwa* about the prohibition of drugs such as *hashish*, *kukayin*, *afyun*, and so on. He said, "It is clear that *hashish* is in the same position as drinking *khamr*". Meaning that, he classified the drugs in line with wine (Al-Qaradhawi, 1980).

As stated in *al-Buyu' al-Muharromah Wa al-Manhi Anha*, Abd al-Nasir bin Khadir Milad (2005) summarized in his book that the *hukum* of drugs and the punishments are *qiyas* to the *hukum* of *khamr*. Based on the statement, he said that the *hukum* of selling drugs probably can be issued to the *hukum* of selling *khamr*. According to Mazhab al-Syafie, selling *khamr* is forbidden because of its impurity, and it is not permitted to drink it. Same goes with the drugs. It is forbidden and cannot be sold due to the *illah* are same in the aspects of use and abuse. In *Kitab al-Majmu'*, the *banj* is a *hashish* that can cause insanity, whereby the *hukum* is subject to the *hukum* of *khamr* which is forbidden. For that reason, it is obligatory to replace the prayers and impose the *ta'zir* punishments (Milad, 2005). The similarity between *khamr* and drugs are both of them produce intoxication, which causes a person of not being in his right mind. *Fiqh al-Muyassar Fi Daw'il-Kitaab wa-Sunnah* written by Majmu'atun Min al-Muallifin stated that the *hukum* of drugs are the same as *khamr*. Drugs cause insanity. Drugs are substances that can make the user feels lazy and lethargic. For instance, *banj*, *afyun*, *hashish*, and whatnot. Drugs are forbidden no matter who the user is. In a *hadith* narrated by Aisyah RA, the Prophet SAW said,

{كُلُّ شَرَابٍ أَسْكَرَ فَهُوَ حَرَامٌ}

Meaning: "All drinks that produce intoxication are Haram (forbidden to drink)." (Hadith. al-Bukhari. *Sahih al-Bukhari*. No. 242).

In a *hadith* narrated by Ibn 'Umar, the Prophet SAW said,

{كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ}

Meaning: "Every intoxicant is Khamr and every intoxicant is forbidden." (Hadith. Muslim. *Sahih Muslim*. No. 2003).

This shows that the drug is dangerous and destroys the youth. Not only that, it prevents them from obeying Allah (Majmu'atun Min al-Muallifin, 2003). Therefore, the *hukum* of drugs are *qiyas* to the *hukum* of drinking wine due to the *illah* are same whereby intoxication leads to insanity.

Sharia Discussion on the Using of Cannabis

There are many discussions among *mazhab* jurists about the use of drugs or cannabis for medical treatment according to the changing times. Cannabis is known as *banj* or hemp, *hashish*, *nabat*, and else (Shahrul Mizan Ismail et al., 2023). Nevertheless, there is no discussion regarding the usage of cannabis in the era of Imam Hanafi, Imam Maliki, Imam Syafie, and Imam Hanbali due to the fact that the issue did not occur in their era (Shahrul Mizan Ismail et al., 2023). This is because drugs did not exist in the time of the Prophet SAW

but it was known among Muslims in the sixth century (General Presidency of the Departments of Scholarly Research, Ifta', Da'wah, and Guidance, n.d.).

According to Ibn Taymiyyah, he said, "*Hashish* is prohibited and its consumption is not permitted as drinking *khamr*. It is more abominable than *khamr* because it affects the mind and character. It prevents a person from remembering Allah for prayer and it is what Allah and His Messenger have forbidden regarding *khamr* and drunkenness both *lafzi* and *maknawi*" (Al-Tayyar, 2011). Some Hanafi jurists such as Najmuddin al-Zahidi issued that the harmful effects of *hashish* are greater than the harmful effects of *khamr* (General Presidency of the Departments of Scholarly Research, Ifta', Da'wah, and Guidance, n.d.).

There is a book written by Abu Bakr bin Ibrahim al-Muqri al-Harazi al-Syafie about banning *qat*. He said, "*I see that if I eat it, it will have a harmful effect on my body and my religion so that, I left it". The scholars have mentioned, "Harmful things are forbidden. Then, who harms them? The person who eats it whereby he feels calm, happy, and his sadness is gone. After two hours, his anxiety returned and his behavior changed". As well as the jurist Hamza al-Nashiri, he also thinks the hukum of qat is haram and argues with the hadith from Umm Salama RA that Prophet SAW forbade every intoxicant and slanderer. Ibn Hajar said, "This hadith contains arguments about the prohibition of hashish in this matter. Indeed, it is intoxicating" (Kuwait Ministry of Awqaf and Islamic Affairs, 1982).*

However, there are some jurists who allow the use of drugs or *hashish* for medical purposes. Sheikh Zakaria said, "Any substance other than intoxicating substances such as *banj* and *hashish*, are not subject to *hadd* but *ta'zir* due to it does not give a high effect to a person". Then, he said again, "*If it is an emergency to cut off a damaged hand by using a banj, is it allowed?*" For that reason, al-Rafi'i related this discussion to difference on opinion about the medical treatment of wine and, al-Nawawi made it permissible to implement it. Nowadays, that is how it works among the doctors due to necessity (General Presidency of the Departments of Scholarly Research, Ifta', Da'wah, and Guidance, n.d.).

Besides, Ibn Hajar al-Makki al-Syafie was asked about someone suffering from an illness due to the consumption of *afyun*, *hashish*, and else but, if he does not eat it, he can die. Therefore, he answered, "*If he already knows that he will die, then it is permissible and compulsory to do so. This is to preserve his life. Then, he must slowly reduce the amount of drugs he is taking step by step until he no longer wants to consume them*" (Kuwait Ministry of Awqaf and Islamic Affairs, 1982). On top of that, if the sale of drugs is not in accordance with the *syarak* for medical purpose, Malikiyyah and Shafi'iyah prohibit the sale and purchase of drugs whereby the seller knows that the person will going to use them in an illegal way (Kuwait Ministry of Awqaf and Islamic Affairs, 1982).

The researcher finds some jurists opined that, it is illegal to use drugs, *hashish*, *afyun*, and *banj* due to their harmful effects on the human body and endanger society. Ibn Taymiyyah stated *hashish* is worse than *khamr*. This is due to the reason that there are many dangerous drugs and substances contained in the drug compared to *khamr* such as heroin, cocaine, cannabis, and whatnot regardless of whether it is in plant or synthetic form. If someone overdoses, sometimes it can lead to death. This is also in accordance with the point of view of Najmuddin al-Zahidi.

Next, the prohibition of *qat* written by Abu Bakr bin Ibrahim al-Muqri al-Harazi al-Syafie. This is also forbidden by Hamza al-Nashiri. *Qat* is an Arabian tea that originally from Arabian Peninsula and Horn of Africa. It is a narcotic plant (Malasevskaia et al., 2020). Therefore, it can make someone intoxicated. This is because a person's personality often changes over a period of time. At first, he is in a calm state. Then, he suddenly turns violent. This is an abnormal situation. That is why any drug that is misused can bring danger to the community and country. Not only that, it can be harmful to the drug abuser too. Therefore, the *hukum* is forbidden. In addition, Ibn Hajar pointed out that *qat* is intoxicating. The researcher also thinks that *qat* is equal to drugs and *hashish*. All of them can make one delusional if they abuse it for recreational purposes.

Nevertheless, drugs or *hashish* can be used for medical purposes if there is a necessity according to some jurists. The *hukum* of cutting off a damaged hand by using a

banj has been issued by al-Nawawi which it is permissible. Therefore, this shows that *hashish* or *banj* can be used in the right way whereby it has benefits to treat patients even though the author did not explain further about the advantages of *banj* in medical treatment and how to treat patients by using it. The researcher assures that drugs have their own benefits and harms. However, it is better to use it if there is no other alternative medicine available at that time. This is the same situation with Ibn Hajar al-Makki al-Syafie. The solution to prevent someone from dying due to not taking drugs is, by consuming them and reducing the amount of intake slowly. In this case, there is no other alternative medicine that can treat the patient but to consume the drugs until he no longer desires them. Hence, the researcher opines that it is good to use drugs in medical treatment only for a necessity. This is to preserve the principle of *maqasid sharia* which is to save life.

According to Yusuf al-Qaradhawi in his book *al-Halal wa al-Haram fi al-Islam*, taking drugs will cause body lethargy, nerve numbness, and health deterioration that eventually the body becomes weak. They will also feel addicted to the drug (Al-Qaradhawi, 1980).

Besides, Mufti Menk, a Zimbabwean Islamic scholar said, "There is an extract of weed that happens to be non-intoxicating, it is a clear liquid known as CBD. Sometimes, it is added into various multivitamins or supplements and sometimes food stuff. That is permissible because it is not intoxicating at all. So that, it is CBD. In fact, it has a lot of benefits. It is actually boosting your immune system and can fight certain diseases." However, he also said, "*The CBD being okay because it is non-intoxicating, very beneficial, extremely good for your health, immune booster. But, when it comes to the THC, you remember, it is only administered to those who needed as a medication for some serious sickness.*" (Mufti Menk, 2023).

The Fiqh Council of North America ruled that the benefits of Cannabidiol (CBD) have proven to be effective. Hence, they permit the consumption of CBD in Islam. On top of that, Tetrahydrocannabinol (THC) is also permissible to be used for Muslims with a necessity rule to preserve life based on the principle of *maqasid sharia* (Shahrul Mizan Ismail et al., 2023).

The researcher observes the opinion of Yusuf al-Qaradhawi stated that drugs bring various harm to the body. This is because one uses it for recreational purposes. However, there are constituents in cannabis that are allowed, namely CBD, as mentioned by Mufti Menk because it does not contain psychoactive substances and it is permissible to use in medical treatment. However, the use of THC is when it is necessary for some serious illnesses due to its effect of intoxicating and this is in line with the ruling of the Fiqh Council of North America.

The Use of Cannabis for Medical Treatment in Malaysia from the *Fiqh al-Muwazanat* Perspective

There are many aspects that should be considered before decriminalizing the use of cannabis for medical treatment in Malaysia. The concept of *Fiqh al-Muwazanat* must be applied to see whether there is good or bad if the cannabis for medical purposes is allowed or not. Therefore, the consideration of it is by looking at several aspects such as legislation, habits and behaviours of Malaysians in interacting with cannabis, and studies on diseases treated by cannabis.

Firstly, the impact of the decriminalization of cannabis for medical treatment is related to Malaysian legislation. The provisions of the law that has been set out are relevant to prevent the misuse of drugs or cannabis based on *al-Qawaid al-Fiqhiyyah "al-Darar Yuzal"* which means "*harm must be eliminated*". If the legislation of Malaysia allowed medical cannabis by decriminalizing Sections of the Acts, it brings into the meaning that the society are free to use cannabis. For instance, if Section 6B(1) of Dangerous Drugs Act 1952 permits everyone to cultivate the plant for medical treatment, there are benefits and also harms. It is undeniable that cannabis has many benefits for medical treatment, such as in the case of Muhammad Yasin Sulaiman and *Muhammad Lukman bin Mohamad v Public Prosecutor* [2021] 4 MLJ 494. Among them used and sold the cannabis for medical purposes. In

addition, it is important to note that cannabis has an active substance that can make one intoxicated. Furthermore, it is difficult to define someone's action whether they want to use it for medical or recreational purposes due to uncertainty about their intentions.

Therefore, the researcher opines that the possibility for people to abuse the permission to cultivate the plant is high. This is in accordance to the *fatwa* issued by Jawatankuasa Perundangan Hukum Syarak Wilayah-Wilayah Persekutuan regarding the proposed planting of ketum trees by deciding the *mafsadah* is greater than the *maslahah*. Moreover, it is so challenging to control or avoid ketum from getting misused even though their intention is for medical use. This will be more difficult when there are still many other drug cases that have yet to be solved and suddenly there emerge irresponsible parties misuse the permission to cultivate the ketum trees (Pejabat Mufti Wilayah Persekutuan, 2023). Meaning that, it will add burden to the authority to solve the issues. For that reason, the researcher equates this medical cannabis issue with the *fatwa*. Hence, the application of *Sadd al-Zarai'e* is necessary to close the doors which may lead to harm. If the doors are opened, the use of cannabis will be widespread because there are no laws or guidelines to control it. This is because, from cultivating, to selling, and end up ruining society.

If the cultivation of cannabis for medical treatment is not allowed, the health and safety of society will be protected. Not only that, the possession and sale of cannabis will also not happen because there is a law governing this issue. This is in line with the concept of *Fiqh al-Muwazanat* which is,

{المصلحة العامة مقدمة على المصلحة الخاصة}

Meaning: "Public interest is prioritized over private interest." (Al-Khademi, 2001)

It is true that the interests of individuals should be protected too but there is a possibility for the drug to be abused. If one misuses medical cannabis to get high, then he sells it to the public, and certainly there will be users using it for medical purposes and otherwise. Thus, this activity will be repeated until it produces a drug society. This is worse. Furthermore, it will affect the growth of the country.

Besides, it is crucial to consider the decriminalization of cannabis for medical treatment by analyzing the habits and behaviours of Malaysians in interacting with cannabis. This is data shared by Agensi Antidadah Kebangsaan (AADK) shows the study of drug and substance abusers and addicts of cannabis for the year 2019 until 2023 (Agensi Antidadah Kebangsaan, 2022).

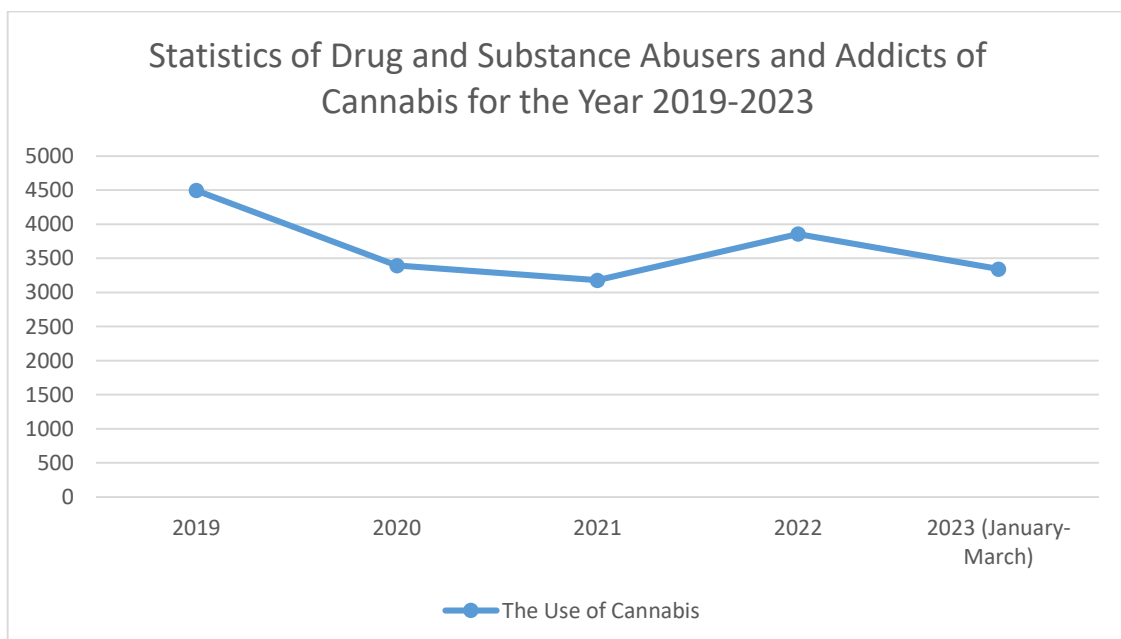


Diagram 1: Statistics of Drug and Substance Abusers and Addicts of Cannabis for the Year 2019-2023.

Based on Diagram 1, a study conducted in 2019 recorded the highest number at 4,497 drug and substance abusers and addicts. Nevertheless, there was a decrease in 2020 amounting to 3,396 and dropping to 3,179 in 2021. Then, it increased in 2022 with a total of 3,858. Thus, in the first three months of 2023, there was recorded a decrease to 3,343.

However, is the trend shown by the statistics in 2023 truly declining? Therefore, in the researcher's point of view is not. The first three months of 2023 are 3,343 but the number is almost the same as the total number of statistics for the year 2020 which is 3,396. This means that, statistics for the year 2023 will increase and most likely the number will be the same as in 2022.

Based on the analysis above, if the use of cannabis for medical treatment is allowed, the potential for it to be abused is high. This is because the increase in the number of drug and substance abusers and addicts of cannabis are worrying. This is in accordance to the first aspect of consideration in the use of cannabis for medical treatment which can affect the society. If the legislation allows the use of medical cannabis, the statistics will likely increase due to the misuse of the benefits of cannabis. Drug abusers and drug addicts can influence them. This happened because of many factors that can cause a person to get involved with drugs such as peer influence, lack of love and affection from family, curiosity, and else (Suppiah Nachiappan et al., 2014).

If medical cannabis is not permitted, drug cases will decrease. This is because there is a law that strictly governs drugs. Cannabis is actually good for health but it depends on how society interacts with the drug. However, the total number of cannabis abusers and addicts as shown by the statistics is proof to not allow medical cannabis. The risk of abusing the cannabis plant for self-medication can occur. That is why the drug prescription is important. It is to avoid overdosing, inaccurate labelling, and whatnot (Huestis et al., 2019). Therefore, society will be free from drugs if it is illegalized. Not only that, their lives will be healthier and safer from the misuse of drugs. This is in compliance with the concept of *Fiqh al-Muwazanat*,

{درء المفاسد أولى من جلب المصالح}

Meaning: "Preventing harm is preferred over securing benefits." (Al-Burnu, 1996)

Last but not least, if cannabis is allowed for medical treatment and not for recreational purposes, then it will give *maslahah* and benefits to society. For instance, the use of cannabis in the treatment of epilepsy. The Food and Drug Administration (FDA, 2023) has recognized one cannabis-derived drug product, Epidiolex that is pure in Cannabidiol (CBD). It is specifically for the treatment of seizures associated with Lennox-Gastaut Syndrome and Dravet Syndrome in patients 2 years of age and older. Many studies on the benefits of CBD eventually led to the recognition of Epidiolex by the FDA. This study was conducted because Dravet Syndrome patients are oftenly resistant to antiepileptic medications. Meaning that, the patient's body cannot accept the medicine and that is why the disease does not show any change. The patient will die if he is not immediately treated which status epilepticus as the main contributor to mortality (Devinsky et al., 2018). Antiseizure medications do not completely eliminate seizures in one-third of epilepsy patients (Zaheer et al., 2018).

Many trials have been done by foreign researchers to help patients free from seizures because getting rid of or drastically lowering the frequency of convulsive seizures is the top goal for Lennox-Gastaut and Dravet Syndrome. Research has shown that patients with treatment-resistant Dravet Syndrome have an acceptable safety profile for long-term add-on CBD treatment. The effect of CBD use has reduced the convulsive rate and frequency of total seizures in the original placebo-controlled trial. Then, it continues with CBD treatment within 48 weeks which shows the improvement of patients' conditions as

reported by 80% of them and caregivers. This shows that the long-term use of CBD can be treated for patients with Dravet Syndrome (Devinsky et al., 2018).

Besides, research conducted by Pitts (2020) discussed Cannabidiol (CBD) specifically in terms of the history of Charlotte Figi's parents in treating her Dravet Syndrome that has become the spotlight of the world. Her mother tried many ways to cure her daughter. At that time, Colorado had legalized marijuana for eight medical purposes in 2000, one of them was seizures. For that reason, her mother used cannabis to treat her daughter. Charlotte began to have seizures just twice or three times a month, typically while she was asleep. Unlike before, she started to develop normally after regaining her immune system and bone density. She still takes two dosages every day along with her meals which eventually lessens her seizure frequency and intensity.

On the other hand, the researcher also stated that CBD has potential in treating several diseases but still requires more research and clinical testing. So far, CBD has been mostly effective for Dravet and Lennox-Gastaut Syndrome (Pitts, 2020). This shows that there are benefits in the cannabis plant. However, the adverse events are mild for the first month. The most common adverse events include fatigue, fever, diarrhea, vomiting, drowsiness, and reduced appetite, and there is little CBD discontinuity (Silva et al., 2020). Nevertheless, it records a reduction in seizures and seizure frequency as a result of the benefits of CBD when other antiepileptic medications fail to work.

The FDA (2023) has also approved medications containing Tetrahydrocannabinol (THC) such as Marinol, Syndros, and Cesamet but in the form of synthetic cannabis-related drug products. It is specifically for the treatment of nausea associated with cancer and anorexia associated with weight loss in AIDS patients. The research conducted by Martin R Tramer et al., (2001) concluded that the trials carried out on patients of nausea associated with cancer chemotherapy by using cannabinoids were more effective than placebo and active comparators. In addition, the evidence they collected shows the use of cannabinoids is slightly better than conventional antiemetics for treating the disease. This shows that, there are certain diseases can be treated by THC of cannabis. However, epidemiological study evidence confirms the risk of psychosis and psychotic disorder may increase due to the use of cannabis (Mohamad Haniki et al., 2022). That means, the application of THC probably does not work for bipolar disorder.

Therefore, it is important to consider these matters in the aspects of legislation, habits and behaviours of Malaysians in interacting with cannabis, and studies on diseases treated by cannabis before decriminalizing the use of cannabis for medical treatment. Islam is a religion that takes care of human interests and *maslahah*. In spite of that, some scholars like Ibn Taymiyyah and Najmuddin al-Zahidi state that it is illegal to use cannabis or *hashish* in order to protect those interests. Nevertheless, the prohibition is seen as not compatible with *syarak* which safeguards the public interest. This is because the patient's body may not be able to accept the medicine given by the doctor. Consequently, this will cause the pain to worsen and eventually endanger the patient's life to death. For that reason, the patient needed cannabis since that was the only option available at that time. This is in accordance with *al-Qawaid al-Fiqhiyyah "al-Darurat Tubih al-Mahzurat"* which the meaning is "necessities permit the prohibited".

Cannabis has various benefits in treating diseases. Among of them is epilepsy associated with Lennox-Gastaut Syndrome and Dravet Syndrome which are usually resistant to antiepileptic drugs. There are also studies saying the chemical composition of cannabis which is THC has potential efficacy in reducing pain, fibromyalgia, chemotherapy-induced nausea and vomiting, and else (Mohamad Haniki et al., 2022). Not only that, the FDA approval of synthetic cannabis-related drug products shows there are benefits of cannabis if used in the right way.

Using cannabis in the wrong way and for recreational purposes is *mafsadah* because it brings harm to the human body due to the disease suffered as a result of the abuse of cannabis. At the same time, if the patient is not taking cannabis, it can lead to death. It is also *mafsadah*. It is even greater than the *mafsadah* misused by humans because it will cause

maslahah of not being obtained. *Fatwa* issued by the Jawatankuasa Perundangan Hukum Syarak Wilayah-Wilayah Persekutuan ruled that cannabis is permissible for medical treatment (Pejabat Mufti Wilayah Persekutuan, 2022), is in accordance with the concepts of *Fiqh al-Muwazanat*. Among them are:

{إذا تعارض مفسدتان روعي أعظمهما ضررا بارتكاب أخفهما}

Meaning: "If two harms coincide, then avoid the greater harm and choose a lesser harm." (Al-Shanqeeti, 1994)

{الضرر الأشد يزال بالضرر الأخف}

Meaning: "Great harm must be removed with lesser harm." (Al-Burnu, 2003)

Despite of that, the use of cannabis must be ethical as outlined by the committee. Giving medical cannabis according to the appropriate dose to the patient also needs to be emphasized to prevent the patient from overdosing which eventually leads to intoxication or any side effects. This is in accordance with *al-Qawaid al-Fiqhiyyah "al-Darurah Tuqaddaru bi Qadariha"*. The meaning is "emergency eliminated in line with the rate".

Therefore, the researcher decided that cannabis should be decriminalized only for medical purposes. It is more harmful if the patient's body cannot accept any medicines given by the doctor. This will cause the pain to worsen and eventually endanger the patient's life such as leading to death. Furthermore, no other medicine can treat such patients except cannabis at that time. If it is used correctly, then there will be no recreational use of cannabis. Ultimately, this *mafsadah* is more severe compared to the *mafsadah* that abuses the benefits of cannabis for recreational purposes such as just to get delusional that eventually affects their health.

Recommendations for the Use of Cannabis for Medical Treatment in Malaysia

Based on the findings in this study, the researcher wants to suggest the beginning of decriminalizing cannabis for medical treatment is to use one of the constituents of cannabis tree which is Cannabidiol (CBD). This is because CBD does not have psychoactive effects like Tetrahydrocannabinol (THC). Many studies have shown that the use of CBD is effective in treating epilepsy. The FDA (2023) has also approved a cannabis-derived drug product, Epidiolex. It contains pure CBD and according to the FDA, this specific medication is safe and effective for the purpose for which it is intended. According to Khairy Jamaluddin, if CBD products have been approved in Malaysia, then the use of it is only for medical purposes (Omar Zin, 2023). In the researcher's point of view, it is better if the patient obtains a CBD product through a doctor's prescription. This is to prevent of being overdosed.

Next, the law needs to be amended when the use of cannabis for medical purposes is allowed. Sections related to cannabis in the Dangerous Drugs Act 1962, Poisons Act 1952, Sale of Drugs Act 1952, and its regulations need to be amended to treat patients who need medical cannabis treatment. At the same time, it is also important to strengthen the laws related to the abuse of cannabis. However, it would be better if there is a specific provision only for medical cannabis. It will be easier to refer to because there is a legal separation between medical cannabis law and cannabis abuse law. According to Zaini Yusnita et al. (2024), they suggest to amend the Dangerous Drugs Act 1952 which stating that the cannabis is a dangerous drug. This suggestion is specifically for medical purpose in mental health issue. However, the research made must be in-depth in every aspects. Therefore, the researcher thinks that the decriminalization of cannabis in medical treatment should start with the use of CBD. THC has its benefits too, but the researcher suggests that the beginning of decriminalization of cannabis for medical treatment should be started step by step. This is to prevent an increase in the widespread use of cannabis in this country.

According to Khairy Jamaluddin, the cultivation of cannabis cannot be allowed yet, but the use of CBD should be the focus first. This matter needs to be implemented step by step (Omar Zin, 2023) and the researcher agrees with his statement. The use of CBD should be strictly controlled to avoid overdosing. That is why it is necessary to have a prescription from a doctor. Moreover, if one day the use of cannabis is fully allowed in Malaysia, then the government needs to be very precise in controlling cannabis, especially in the aspects of legislation and periodic surveillance should be done to combat drug abuse. Not only that, the government can also refer to how Thailand or any country can allow the use of cannabis in a more effective way.

Last but not least, it is very important to educate the community by holding an awareness campaign about cannabis. This is because the use of cannabis has been allowed. Government agencies involved such as Agensi Antidadah Kebangsaan (AADK) need to work together in providing in-depth disclosure about cannabis to Malaysians so that, they would understand and aware that cannabis has its own benefits and harms. The researcher suggests that the agency to organize an awareness campaign regarding cannabis every year. Reminders must always be given to prevent them from abusing the benefits of cannabis, which is intended only for medical treatment in Malaysia.

CONCLUSION

To conclude, cannabis is a drug that has many benefits and harms. Every drug can be a medicine but every drug can also be a poison. Therefore, one must decide whether to make cannabis as a medicine or a poison for himself. If the use of cannabis is for recreational purposes which is to get high, then it will harm the body and further exposed to various diseases that will be suffered by the user. However, if cannabis is used for medical purposes, it will not harm the user's body because it has been prescribed by a doctor. Then, there will be no intoxication or overdose.

It is important to note that not all cannabis has psychoactive effects. For instance, the hemp tree. Hemp has a high percentage of CBD and low THC. There are many benefits found in the hemp plant. For that reason, the CBD in the tree can be used for medical treatment such as the treatment of epilepsy or any diseases that have been studied that can be effectively treated by CBD.

Nowadays, the issue of the use of cannabis as a medical treatment in Malaysia began to raise when there were prosecution cases involving the cultivation of cannabis for the purpose of medical treatment. Therefore, there are many parties urging the government to allow the use of cannabis as a medical method. Therefore, it is important for the government to consider various aspects before allowing the use of the drug by looking at the aspects of legislation, habits and behaviours of Malaysians in interacting with cannabis, and studies on diseases treated by cannabis.

Therefore, the government and Malaysians need to work together and be ready to deal with the use of cannabis for medical purposes. The decriminalization of cannabis for medicine will definitely take a long time because cannabis is a drug that can be abused at any time. The government needs to look carefully from various aspects about the use of cannabis that will be allowed and Malaysians need to be honest with what the government has decided. If everyone plays their role, the use of cannabis in medicine can be implemented successfully.

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