

THE URGENCY OF CATEGORISING KRATOM PLANTS INTO CLASS I NARCOTICS ACCORDING TO LAW NUMBER 35 OF 2009 CONCERNING NARCOTICS

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Abstract

The research entitled 'The Urgency of Categorising Kratom Plants into Class I Narcotics According to Law Number 35 of 2009 concerning Narcotics' with the formulation of the problem, namely the urgency of kratom plants for the Indonesian government so that they must be immediately categorised into class I and the efforts that must be taken for the Indonesian government in filling the legal vacuum due to kratom plants according to Law Number 35 of 2009 concerning Narcotics. The method used in this research is an empirical normative research method that refers to identifying the implementation of laws or rules in society, as well as in business entities with a benchmark from the law. This research uses the theoretical framework of Law Enforcement by Sudarto. The results of this thesis research are to analyse the urgency of the kratom plant for the Indonesian government based on its side effects and potential for abuse as a narcotic and to identify the prevention of the spread and abuse of the kratom plant as a narcotic by the Indonesian Government based on Law Number 35 of 2009 concerning Narcotics.

Keywords: Kratom, Narcotics, Abuse, Legal Lacunae, Law Enforcement

1. Introduction

Indonesia, as a modern legal state, has the primary objective of advancing public welfare, as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia. In this context, the role of the government is not limited to maintaining public order and security, but also extends to actively ensuring the welfare of its citizens. Article 1 Paragraph (3) of the 1945 Constitution affirms Indonesia as a state based on law, which requires the government to operate within the framework of the rule of law and adhere to the principles of good governance.

One of the most pressing national issues in Indonesia today is the abuse of narcotics, which has become a global concern. Drug abuse not only harms individuals but also poses a serious threat to public health and societal stability. While narcotics can be beneficial for medical and scientific purposes, their misuse can lead to severe dependency and even death (Gayo, 2014).

To combat this issue, the Indonesian government established the National Narcotics Agency (BNN) under Presidential Regulation No. 23 of 2010. BNN plays a pivotal role in coordinating efforts to prevent and eradicate drug abuse through legal, preventive, and rehabilitative measures.

Indonesia is also rich in natural resources, including medicinal plants with therapeutic properties. One such plant is kratom (*Mitragyna speciosa*), a tropical plant indigenous to Southeast Asia and predominantly found in Kalimantan. Kratom has traditionally been used in herbal medicine, but its psychoactive properties have sparked global controversy.

The plant contains active compounds such as mitragynine and 7-hydroxymitragynine, which exhibit both stimulant and narcotic effects depending on dosage (Suganda, 2019).

The ambiguity surrounding kratom's legal status has created a regulatory vacuum in Indonesia. Despite its classification by the United Nations Office on Drugs and Crime (UNODC) as a New Psychoactive Substance (NPS) (UNODC, 2013), kratom remains legal and widely traded in Indonesia. The National Narcotics Agency (BNN) recommended its inclusion as a Class I narcotic in 2017, yet it is still not listed in Law No. 35 of 2009 on Narcotics or in the latest Ministry of Health Regulation No. 36 of 2022.

Given the increasingly widespread use of kratom and its potential for abuse, the following research questions arise: (1) What is the urgency of regulating kratom given its potential for future abuse? and (2) What measures should the Indonesian government take to address the legal vacuum surrounding kratom under Law No. 35 of 2009?

2. Theoretical Background

2.1 The Rule of Law and the Welfare State

The principle of a rule of law state as outlined in the 1945 Constitution underlines that every action taken by the government must be grounded in law. As Asshiddiqie (2009) argues, Indonesia's legal framework is not only rooted in legal certainty but is also aimed at ensuring justice and societal welfare. This legal foundation underpins the government's obligation to regulate harmful substances, including narcotics and psychoactive substances, to protect public health.

2.2 Definition and Classification of Narcotics

According to Law No. 35 of 2009, narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease in or alteration of consciousness, reduce or eliminate pain, and may result in dependency. The law categorizes narcotics into three classes, with Class I consisting of substances with the highest potential for abuse and no recognized medical use.

2.3 New Psychoactive Substances (NPS)

The UNODC (2013) defines New Psychoactive Substances as drugs that are not controlled under international drug conventions but may pose similar health threats as established narcotics. Kratom is classified under this category due to its active compounds that can act as stimulants at low doses and produce narcotic effects at high doses. The Drug Enforcement Administration (DEA) in the United States reports that kratom has addiction potential and has listed it as a Schedule I substance (DEA, 2020).

2.4 Kratom Regulation in Indonesia and International Context

Globally, many Southeast Asian countries have criminalized the use, sale, and distribution of kratom. In 2013, ASEAN issued a statement banning kratom, although enforcement varies across countries (The ASEAN Post, 2018). Indonesia remains the world's largest exporter of kratom, and its domestic regulation remains unclear. Although BNN initiated a five-year transition period (2017–2022) for kratom to be banned as a narcotic, it has not yet been legally classified as such (BNN, 2017).

Furthermore, the Indonesian Food and Drug Authority (BPOM) has banned kratom from being used in traditional medicines or health supplements (BPOM, 2019). Despite these regulatory efforts, kratom continues to be cultivated, sold, and exported due to the absence of binding national legislation that explicitly prohibits its use.

3. Methods

According to Soerjono Soekanto, legal research is a scientific activity based on certain methods, systematics and thinking, which aims to study one or several general phenomena of certain laws by analyzing them. Apart from that, an in-depth examination of the legal facts is also carried out and then attempts to find a solution to the problems (Zaenudin Ali, 2010). Peter Mahmud said that legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2019).

The type of research used in this writing is normative legal research (library research), namely legal research carried out by examining library materials or secondary data as a basis for research by conducting searches of regulations and literature relating to the problem at hand. researched (Soerjono Soekanto and Sri Mamudji, 2015).

4. Results and Discussion

4.1 Data on the Use of Kratom Plants in Indonesia

Kratom plants or *Mitragynine Speciosa* have long been used in Southeast Asia, kratom consists of 3 (three) varieties with 20 (twenty) types of kratom spread across Southeast Asia, including Indonesia, Malaysia, Thailand, the Philippines, and Myanmar, but currently kratom has been cultivated in other countries. The largest population of kratom plants is in Indonesia, precisely on the islands of Kalimantan, Sumatra, and Papua, (Firmansyah, 2021). Kratom leaves contain more than 40 types of alkaloid compounds that are beneficial to the body, including Mitragynine, 7-hydroxymitragynine, Speciociliatine, Corynantheidine, Speciogynine, Paynantheine, and Mitraphylline. Mitragynine in kratom has potential as a replacement option for Methadone in therapeutic programmes for narcotic, psychotropic and other addictive substance (NAPZA) abuse. The extract and fractionation of *Mitragynine speciosa*, which acts as an opioid analgesic, is similar to the function of Methadone. Mitragynine has advantages over Methadone in therapy because its attachment to Mu-Opioid receptors is more stable, provides longer lasting effects, and has a lower level of toxicity than Methadone, (Meireles, 2019).

Indonesians have used the kratom plant for various medicinal purposes. Based on Research Data on Medicinal Plants and Herbs, in Kapuas Hulu, West Kalimantan, kratom is used to treat a number of health problems such as pain, rheumatism, hypertension, diabetes, and other problems. In addition, the plant is also part of a traditional herb to increase stamina and treat disorders such as diarrhoea and cough. However, over time, there has been abuse by some people who sell kratom plants in the form of powders, capsules, and extracts of various compositions and sizes.

Even though kratom leaves have various beneficial uses, improper use can result in health risks and harmful side effects. The Centers for Disease Control and Prevention (CDC) suggests there are 263 complaints related to kratom's negative health effects, including anxiety, hallucinations, insomnia, constipation, liver disorders, decreased appetite, drastic weight loss, hyperpigmentation, and even death, (<https://www.klikdokter.com/gaya-hidup/diet-nutrisi/bahaya-konsumsi-daun-kratom-bagi-kesehatan-tubuh/>). Kratom has been the cause of death for 91 people in the United States between July 2016 and December 2017 due to kratom tea overdose, according to the CDC. In toxicological tests, kratom was the only substance detected, although the CDC does not rule out the possibility of other substances being involved. For example, a mother gave birth to a baby who showed withdrawal symptoms after birth, resulting in the baby being restless, crying loudly, and requiring morphine injections for survival, (.

<https://sanggaukab.bnn.go.id/daun-kratom-ternyata-lebih-berbahaya-dari-kokain-dan-ganja-bnn-usulkan-masuk-daftar-narkotika/>).

Based on data from the Public Relations of the National Narcotics Agency of the Republic of Indonesia, there are 133 clients who are rehabilitated at BNNP and BNNK related to the use of kratom plants throughout Indonesia, (humasnewsbnn). Despite its long use as a traditional medicine, the prohibition on the use of kratom plants has been regulated by the Circular Letter of the Food and Drug Administration Number HK 04.4.42.421.09.16.1740 of 2016 concerning the Prohibition of the Use of Mitragynine Speciosa (Kratom) in Traditional Medicines and Health Supplements. This is because the use of kratom is inseparable from health risks, on the one hand the use of kratom plants risks causing side effects such as gastrointestinal disorders.

4.2 Regulation of Kratom Plants in Indonesia

The legal status of kratom plants in Indonesia has not yet reached the principle of legal certainty. Legislation is indispensable in the law enforcement process, legislation becomes the basis for the state as a reflection of legal certainty in law enforcement. Kratom regulations in several countries including Denmark, Latvia, Lithuania, Poland, Romania, Sweden prohibits the use of kratom and or mitragynine or 7-OH mitragynine. Australia, Malaysia, Myanmar prohibit plants and or substances contained in kratom under the Narcotics Act.

The kratom plant is still a pro and con in Indonesia, the Ministry of Health of the Republic of Indonesia has not listed kratom as a narcotic in the latest Minister of Health Regulation Number 36 of 2022 concerning Narcotics Classification. However, in 2017 through the Minister of Health's Letter No. HK.01/07/MENKES/272/2017 on the National Committee for Changes in the Classification of Narcotics and Psychotropic Substances, the National Narcotics Agency recommended the kratom plant as a Class I Narcotic and was supported by the National Narcotics Agency through the Circular Letter of the Head of BNN No. B/3985/X/KA/PL02/2019/BNN regarding the Circulation and Abuse of Kratom Plants in Indonesia. In the Circular Letter, the National Narcotics Agency issued a statement of support for the decision of the National Committee for Narcotic and Psychotropic Classification Changes and issued a policy that kratom leaves are totally prohibited from being used in food supplements or traditional medicines starting in 2022 or a five-year transition period after the determination of the kratom plant as a class I narcotic by the National Committee for Narcotic and Psychotropic Changes.

The existence of kratom plants in Indonesia also has regulations prohibiting its use in the form of traditional medicine (jamu, herbal medicine, tea) and health supplement products. The rationale for this ban refers to information from foreign research (Annex I ASEAN Guiding Principles for Inclusion Into or Exclusion From The Negatives List of Substances for Health Supplements in 2015, that kratom contains the alkaloid mitraginin which in low doses has a stimulant effect and high doses have a sedative-narcotic effect.

Regulations related to the prohibition of the use of kratom plants are only issued by the Food and Drug Administration, as stated in Appendix 14 of the Head of the Food and Drug Administration Regulation Number HK.00.05.41.1384 dated 2 March 2005 concerning Criteria and Procedures for Registration of Traditional Medicines, Standardized Herbal Medicines and Phytopharmaceuticals jo. Annex 3 of Decree of the Head of the Food and Drug Administration Number HK.00.05.23.3644 dated 9 August 2004 on Basic Provisions for the Supervision of Food Supplements jo. Circular Letter of the Food and Drug Administration Number HK 04.4.42.421.09.16.1740 of 2016 on the

Prohibition of the Use of *Mitragyna Speciosa* (Kratom) in Traditional Medicines and Health Supplements, which informs that:

- 1) *Mitragyna Speciosa* (kratom or ketum) is included in the List of Ingredients Prohibited for Use in Food Supplements and Traditional Medicines.
- 2) *Mitragyna Speciosa* contains the alkaloid mitragynine which at low doses has stimulant effects and at high doses can have sedative-narcotic effects.
- 3) The National Agency of Drug and Food Control has never approved any Traditional Medicine or Food Supplement products containing *Mitragyna Speciosa*.

Based on the circular letter, the kratom plant is considered to have many side effects that can affect the body of someone who consumes it, even UNODC (United Nations Office on Drugs and Crime) has included kratom plants into New Psychoactive Substances since 2013. Regulations on the prohibition of using kratom plants as food supplements and natural medicines in Indonesia are also contained in :

- 1) Decree of the Head of BPOM Number HK.00.05.23.3644 of 2004 concerning Basic Provisions for the Supervision of Food Supplements in Appendix 3 Kratom Plants or *Mitragyna Speciosa* are included in the category of Ingredients Prohibited for Use in Food Supplements.
- 2) POM Regulation Number 25 of 2023 concerning Criteria and Procedures for Registration of Natural Medicines in Appendix VIII, Kratom Plants or *Mitragyna Speciosa* are included in the category of Prohibited and Restricted Ingredients Used in Natural Medicines.

4.3 The Urgency of the Kratom Plant as a Potential Narcotic Abuse in the Future

In the legal context, urgency refers to circumstances or interests that are pressing and require swift action or immediate resolution. Urgency in law often relates to the need to protect the public interest, prevent unforeseen harm, or respond to emergency situations that require immediate intervention. Urgency in the legal context is thus concerned with the importance of rapid response and appropriate action to address situations that require immediate attention in the interests of the public and the security of the Community. The object of urgency that the author refers to in this case is the kratom plant.

Kratom with another name *Mitragyna Speciosa* also known as Biek or Ketum is found in Southeast Asia, including Indonesia. In Indonesia, this plant is used by some people for medicinal purposes. This plant is believed by the Indonesian people to overcome problems such as pain, rheumatism, hypertension, diabetes, and others. The active ingredients contained in this plant are mitragynine alkaloids and 7-hydroxymitragynine. UNODC or United Nations Office on Drugs and Crime has included kratom into NPS (New Psychoactive Substances) in 2013. NPS have side effects ranging from seizures to agitation, acute psychosis, and addiction. NPS available on the market have effects that are even stronger than those of substances under international control such as cannabis, cocaine, heroin, LSD, MDMA (ecstasy) or metaphimine, (BNN, 2019).

Based on identification from the National Narcotics Agency Laboratory Centre, kratom leaves, whose Latin name is *Mitragyna Speciosa*, contain the compounds mitragyna and 7-hydroxymitraginin. From the identification results, it is stated that kratom leaves contain alkaloids that have a stimulant effect and at high doses have a sedative-narcotic effect. These effects are similar to cocaine and morphine. If not used in the right dosage, it can cause harmful side effects such as anxiety, hallucinations, insomnia, constipation, liver problems, decreased appetite, drastic weight loss, hyperpigmentation and even death.

From the effects caused after the use of kratom, it has the same characteristics as narcotics. This refers to Article 1 paragraph (1) of Law Number 35 of 2009 concerning Narcotics, 'Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, which can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain, and can cause dependence which is divided into groups as attached to the law'. The division of narcotics groups is divided into three groups with reference to Article 6 paragraph (1) of Law Number 35 of 2009 concerning Narcotics:

- 1) Class I narcotics, are narcotics that can only be used for development purposes and are not used for therapy, and have a very high potential to cause dependence.
- 2) Class II narcotics, are narcotics with medicinal properties used as a last resort and can be used in therapy and/or for the purpose of scientific development and have a high potential to cause dependence; and
- 3) Class III narcotics, are narcotics with medicinal properties and are widely used in therapy and / or for the purpose of developing science and have a mild potential to cause dependence.

Narcotic drugs are also divided into 3 parts based on their type, which include:

- 1) Natural narcotics, which are narcotics that come from plants so that they have a very strong substance content and have a high level of danger if misused.
- 2) Semi-synthetic narcotics, which are natural narcotics that have been processed by extraction or in other ways with the aim of being used in the field of health.
- 3) Synthetic narcotics, which are narcotics derived from chemicals that go through a complicated processing process.

Based on the description above, the problem that is used as the basis by the author in this chapter is the urgency of the kratom plant so that it must be immediately classified into class I narcotics. When looking at Law Number 35 of 2009 concerning Narcotics, the kratom plant has met the requirements to be included in the category of narcotics class I because the side effects caused are harmful to the body that consumes it and the potential for abuse is high.

Indonesia still considers this kratom plant legal because there have been no cases of abuse or death from the use of kratom plants, so it cannot be considered an urgency. By paying attention to the impact caused by the plant when used in improper doses, according to the author, the Indonesian government needs to move quickly to classify the kratom plant into class I narcotics. Based on the side effects of the use of kratom plants that are harmful to the body of those who consume them in high doses, this is clearly an urgency for the Indonesian Government due to concerns about improper abuse and the negative impacts that will result from the use of this plant. Although it is a coffee plant, in certain doses the use of this plant causes different effects and tends to be dangerous when in the human body.

4.4 The Indonesian Government's Efforts to Fill the Legal Vacuum Due to Kratom Plants in Indonesia According to Law Number 35 of 2009 concerning Narcotics

Legislation or applicable law becomes the basis for the state, government and law enforcement in the process of law enforcement, the government here is responsible for managing an area and society to achieve goals in the life of the state in maintaining the human rights of its citizens. The problem here arises due to the uncertainty of the legal status of the kratom plant which is still a legal vacuum so that it is feared that it will become a gap in law enforcement in the future.

Legal vacuum refers to a situation where there is no regulation or legal provision that clearly regulates a certain matter. In the context of a legal vacuum related to the legality of kratom plants in Indonesia, this can have an impact on the potential for abuse and other negative impacts that will arise later. The legal vacuum related to kratom plants can reduce the effectiveness of law enforcement due to the absence of clear rules regarding the use, production, and distribution of these plants.

In an effort to fill the legal vacuum caused by the kratom plant, the author has collected data and theories related to the Indonesian government's efforts to fill the legal vacuum caused by the kratom plant. One of the steps taken by the government is contained in the Circular Letter of the Head of the POM Agency Number HK.04.4.42.421.09.16.1740 of 2016 concerning the Prohibition of the Use of *Mitragyna Speciosa* (Kratom) in Traditional Medicines and Health Supplements. Judging from the content contained in the kratom plant, it is considered to have many side effects that can affect the body of someone who consumes it. kratom plants have been categorised as one of the NPS (New Psychactive Substances) in 2013 based on UNODC research.

With the issuance of a Circular Letter from the Head of the POM related to the prohibition of the use of Kratom Plants, the National Narcotics Agency has also tried to anticipate the abuse and circulation of kratom plants in Indonesia by issuing a Circular Letter of the Head of BNN No. B/3985/X/KA/PL02/2019/BNN related to a statement of support for the Decision of the National Committee for Narcotic and Psychotropic Classification Changes which recommends kratom plants as Class I Narcotics based on the Minister of Health Letter Number HK.01/07/MENKES/272/2017 concerning the National Committee for Narcotic and Psychotropic Classification Changes in 2017.

The National Narcotics Agency also issued a policy that kratom leaves are totally prohibited from being used in food supplements or traditional medicines starting in 2022 or a five-year transition period after the designation of the kratom plant as a class I narcotic by the National Committee on Narcotic and Psychotropic Change. This step was taken with the aim of regulating the control of kratom plants in Indonesia.

Law enforcement is part of the behaviour carried out by law enforcement officials. Law enforcement is intended to improve order and legal certainty in society. In law enforcement efforts can be carried out using preventive and repressive actions. In this case, according to the author, the government's efforts to fill the legal vacuum related to kratom plants in Indonesia have been in line with the preventive theory, but have not yet reached the repressive theory where in an effort to tackle crime there are two ways, namely preventive (preventing before the crime occurs) and repressive actions (efforts after the crime). In preventive efforts, the instruments used are rules, while in repressive efforts the instruments used are sanctions and punishments.

Based on several regulations related to kratom that the author has compiled, the government has not been able to realise the repressive theory because there is no clear law that binds kratom plants into the law. The government has yet to regulate the production and distribution of this plant. Therefore, it is very easy to obtain this plant because it is widely distributed in online shops. This can increase the potential for illegal trade and illicit circulation of this plant.

In realising the preventive theory, the government, in this case represented by the Banten Provincial BNN, has attempted to prevent the abuse and circulation of kratom plants in the Banten area by conducting counselling and prevention based on Law Number 35 of 2009 concerning Narcotics, this also aims to prevent the abuse of kratom plants in Indonesia starting from the Banten area. Nevertheless, according to the author, the legal

vacuum related to kratom plants is still a concern, especially in terms of more detailed arrangements related to the production, distribution and use of this plant. The government must continue to make efforts to develop comprehensive and effective regulations to overcome the problems that arise along with the development of the use of kratom plants.

In analysing the legal vacuum related to kratom plants, based on the theory of law enforcement that the author describes above aims to understand the impact of the legal vacuum on the enforcement of rules related to kratom plants, without clear penalties related to kratom plants law enforcement is hampered. The legal vacuum can cause injustice in law enforcement against violators of rules related to this plant.

The impacts of the legal vacuum on the law enforcement of kratom plants in Indonesia, based on the author's analysis, can increase the potential for abuse of this plant. Since kratom plants are not clearly regulated in legislation, this can lead to increased abuse and illegal trade of kratom plants. The legal vacuum related to kratom plants also creates uncertainty among the public and law enforcement in handling cases related to kratom plants. Furthermore, the legal vacuum related to kratom plants also has an impact on community protection, kratom plants that are not properly regulated can also result in a lack of protection for the community from the negative impacts of using this plant.

5. Conclusion

The kratom plant (*Mitragyna speciosa*), also known as biek or ketum, is widely found in Southeast Asia, including Indonesia. Although used by some Indonesians for medicinal purposes, this plant has a pressing legal urgency. The urgency is related to the need for swift action in classifying kratom as a class I narcotic. The main reason underlying this urgency is the potential danger posed by the use of kratom in inappropriate doses. Kratom contains the alkaloids mitragynine and 7-hydroxmitragynine, which have stimulant and sedative-narcotic effects similar to cocaine and morphine. Possible side effects of kratom use include restlessness, hallucinations, insomnia, constipation, liver disorders, decreased appetite, drastic weight loss, hyperpigmentation, and even death. In addition, kratom has been included in the NPS category by the United Nations Office on Drugs and Crime, indicating a high potential for abuse. Based on Law Number 35 of 2009 concerning Narcotics, class I narcotics are substances that can only be used for the purpose of scientific development and are not used for therapy, and have a very high potential to cause dependence. Based on identification from the National Narcotics Agency Laboratory Centre, kratom qualifies for inclusion in this category due to its dangerous side effects and high potential for abuse.

Indonesia is facing a significant legal vacuum regarding the legality and regulation of the kratom plant. This lack of clarity leads to uncertainty in determining appropriate actions and legal responsibilities related to the use, production, and distribution of kratom. The Government of Indonesia has taken preventive steps to fill the legal vacuum through various circulars, such as the Circular Letter of the Head of the Food and Drug Agency No. HK.04.4.42.421.09.16.1740 of 2016 on the prohibition of the use of kratom in traditional medicines and health supplements, and the Circular Letter of the Head of BNN No. B/3985/X/KA/PL02/2019/BNN on the statement of support for the classification of kratom as a class I narcotic. The government has yet to fully integrate kratom-related regulations into a more comprehensive law, covering all aspects of the production, distribution and use of this plant.

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