

## Islamic Legal Perspective on Hemp Cultivation in Malaysia: Wonder or Evil?

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### Abstract

Hemp is considered a cannabis species with significant health benefits. There is growing evidence that hemp (*Cannabis Sativa L.*) can be used as a therapy for neurological disorders, autism, depression, Parkinson's disease, and cancer. The Dangerous Drugs Act 1952, however, prohibits cannabis cultivation, production, distribution, import, export, possession, and abuse in Malaysia. The purpose of this study is to examine the Islamic legal perspective surrounding cannabis cultivation, which has been extensively discussed in recent years, particularly in terms of benefits to health and medical conditions. It will then examine the basics of the need for planting the tree in the context of the *Maqasid Shari'ah* perspective with special concentration on the principle of *maslahah* (benefits) and *mafsadah* (harmful). Based on qualitative research, content analysis is adopted to obtain the views of fuqaha regarding the law of cultivation of *hasyish* (marijuana), *khasykhasy* (poppy), *tabgh* (tobacco), as well as relevant current fatwas from several legal institutions. This study recommends that it is extremely pertinent to consider the provisions of National Law when determining the law at present along with the reflection derived from the *maslahah* and *mafsadah* divine principles. These findings indicate that hemp species are pure and clean, and are not considered impurities. To make cultivation permissible, however, specific and comprehensive guidelines are needed to ensure the consumption and use of hemp is not abusive and to prevent the consumption of harmful effects for society at large. Researchers believe this is the first academic study on the hemp position since it has never been discussed before. Further research could be conducted in the future regarding the specific requirements to be included in the proposed guideline for hemp cultivation and consumption. Taking into account Islamic rulings while simultaneously taking into consideration of technical and legal aspects is crucial to achieving a holistic approach to dealing with the legality of hemp.

**Keywords:** Hemp Cultivation, Cannabis, Islamic Perspective, *Maqasid Shari'ah*, Medical Needs.

**Introduction**

With a history dating back over 6000 years, cannabis is one of the oldest crops in human history. Because of cannabis's early origins and restrictions on research against it due to drug control policies, its evolutionary history and research remain poorly understood (Jason et al., 2015). As a result of historical evidence, Underhill (1997) suggests that cannabis was used as food and fiber in ancient China four thousand years ago, as well as for medicinal and ritual purposes, which later spread to Asia, Europe, and the Middle East.

According to Mikuriya (1969), cannabis was not officially legalized five decades ago based on authoritative publications. Medical research on the chemical content of about twenty chemicals found in hemp plants has been relatively limited during the twentieth century compared to the 1800s. It is increasingly apparent that cannabis has medical benefits for a variety of conditions and has an acceptable risk profile (Walsh et. al., 2013). There are many different ways in which cannabis-derived products are used for medical and recreational purposes. These include smoking or inhaling from cigarettes, pipes, water pipes, and consuming food, drink, or steaming. There are a number of cannabis products that can be used to adapt to these different modes, including cannabis "buds" (dried cannabis flowers), cannabis resin, and cannabis oil (butane oil, wax) (Raber et al., 2015). A wide range of cannabis-based products are available, including foods and snacks, beverages, clothing, health and beauty aids.

Various positive components of cannabis can be harnessed, including leaves, twigs, and roots. According to Enik Isnaini, cannabis has the potential to treat HIV/AIDS, insomnia, cancer, and asthma (Isnaini, 2017). It can also be used as a raw material for paper manufacture. According to archaeological history, the oldest and most intact relic of the cannabis fiber is a piece of paper from China dating more than 2000 years.

This plant contains more than 100 known cannabinoids, in which the main functions have to do with medical applications that are tetrahydrocannabinol (THC) and cannabidiol (CBD) (Misty Pratt et.al (2019). Researchers have confirmed that  $\Delta^9$ - tetrahydrocannabinol (THC) exerts the most significant effect through its action on two types of cannabinoid receptors, namely CB1 receptors and CB2 receptors (Baker et al. 2003). CB1 receptors are found mainly in the brain and also in some peripheral tissues, while CB2 receptors are found mainly in peripheral tissues and also in neuroglial cells.  $\Delta^9$ - tetrahydrocannabinol (THC) has received the most widespread attention due to its psychotropic (intoxicating) effects often sought by recreational marijuana users due to its ability to act as a partial agonist for the cannabinoid receptor (CB1) type-1 (Grotenherman, 2003). Thus, through the activation of CB1 receptors,  $\Delta^9$ - tetrahydrocannabinol (THC) will increase the release of dopamine and produce psychotropic effects to its users. In contrast to  $\Delta^9$ - tetrahydrocannabinol (THC), CBD has no intoxicating properties, and, for this reason, it has traditionally been considered a non-psychoactive substance. It has also been reported to show very low activation effects for the cannabinoid receptors CB1 and CB2 (Thomas et al., 2007). Most western countries banned the cultivation of Cannabis sativa in the early 20th century because of its high biotype content in  $\Delta^9$ -tetrahydrocannabinol (THC), the cannabinoid element that is the main intoxicating ingredient is the source of marijuana. However, since 1990, dozens of countries have allowed the cultivation and processing of hemp containing relatively low levels of THC as an industry (Cherney, 2016).

The potential of hemp as a food is enormous, as a report by Zion Market Research found that by 2020 the hemp-based food market will be worth USD388.46 million, and that this

market is expected to reach USD544.93 million by 2027. Hemp seed oil is used to make health foods, but the ingredients are also diversified. In the United States, hemp oil has been used as biodiesel since 1983. The study was led by Grayson Singler who used 100 percent hemp seed oil for a Mercedes-Benz 300TD car. Researchers found that hemp seed oil could be used in place of fossil-based diesel, if it were to be expanded. The result would be the development of biodiesel from fossil-based economic resources. A small percentage of the country's land area is required to meet the needs of the entire United States. In addition to meeting the needs of all types of transportation available in this country, biodiesel oil can also serve as a substitute fuel for hemp seed oil, but the National Biodiesel Board does not recommend using hemp seed oil in place of petroleum (Wee et al., 2022).

Sources from hemp stems as well as Cannabidiol (CBD) can be produced, but it is not as much as it is available from the hemp flower. CBD is a non-psychoactive substance from hemp stems. This means it does not bring euphoria to anyone who consumes it. Currently, CBD is gaining worldwide attention due to its use in medicine. Since CBD is associated with medicine and health nutrition, the government imposes strict guidelines on such items. Among them is the ban on mixing CBD with banned substances such as THC which are psychoactive. It must also be taken from the stems because the leaves and flowers are included in the drug category (Wee et al., 2022).

In 2020, a CBD study was conducted to treat COVID-19 patients. Scientists at the Medical College of Georgia found that CBD can treat COVID-19 patients. Immunologist Babak Baban pointed out that COVID-19 disease is very similar to the SARS virus that once invaded the world and the best treatment method is to use CBD. He also found that CBD was able to help the lungs recover from inflammation due to viral attacks and this statement was supported by Jack Yu, a pediatric plastic surgeon at the same college.

The full legalization of hemp crops has the potential to have an impact on the country and one of them is in term of economy. Like other products, hemp can also contribute to high tax revenues as practiced in California, USA. According to the California Department of Tax Administration, hemp crops have given a tax return of USD304.8 million which includes excise tax (imported or manufactured goods), USD157.8 million for cultivation tax, and USD39.2 million for sales tax in the first quarter 2021. Meanwhile, in the second quarter of 2021, a total of USD333.2 million is recorded and the tax breakdown consists of excise tax worth USD172.3 million, crop tax amounting to USD40.4 million and sales tax worth USD120.5 million.

Among the countries that allow cannabis cultivation are Uruguay, Canada, the Netherlands, South Africa and Spain (Aijaz, 2021). Meanwhile, in the United States in 2020, 33 states and territories have approved the provision of marijuana for medical purposes. However, at the federal level, marijuana remains classified in Schedule 1 of the Control Act which limits its effectiveness and safety research (Jugl et al., 2021). In the Middle East, Lebanon became the first Arab country to legalize marijuana for medical and industrial use as recently as 2020. While other Middle Eastern and Arab countries continue to completely ban the use of cannabis and products derived from marijuana (Shirah & Ahmed, 2021).

Malaysia is not exempted from being mentioned on this issue. In 2019, Datuk Seri Dr Dzulkefly Ahmad (former Minister of Health) stressed that the government was in the process of allowing the cultivation of 'hemp' (a cannabis species) only for non-medical industry research purposes. The permission will be subject to Section 6B (2) of the Dangerous Drugs

Act 1952. Under that section, the Minister of Health has the power to grant permission to public officers for the purpose of cultivation for such research (Berita Harian Online, 2019). Shortly after that, there was a statement by the Minister of Health, Khairy Jamaluddin during the winding up session of the Supply Bill 2022 at the policy level in November 2021, which mentioned that interested parties can submit applications for the use of cannabis for medicine to the Drug Control Authority (DCA) for evaluation and registration if there was any sufficient scientific evidence.

Although the statement was made with caution, the minister's response to the pressure from some quarters, especially local researchers and medical practitioners, showed a positive development, especially the hemp industry, on the country's economic development. According to Universiti Sains Malaysia Drug and Medicine Research Center Director Prof Dr B Vicknasingam, the cultivation and sale of cannabis and kratom (*ketum leaves*) in the international market can be the country's economic potential, but Malaysia should lead kratom (*ketum leaves*) research based on its long history of use as a traditional medicine in this country (My Metro, 2021)

Some of the above recommendations have been positively welcomed by many researchers at local institutions of higher learning. In 2019, a researcher from the field of neuroscience Universiti Putra Malaysia (UPM) Associate Prof Dr Mohamad Aris Mohd Moklas has concluded the results of his study on mice where the use of cannabis was able to stimulate the growth of new neurons in brain cells. This is because the active ingredients in the cannabis plant have the potential to treat diseases related to the deterioration of brain function, such as Alzheimer's. Therefore, after that, a memorandum of understanding (MOU) was made between Sirnadia Sdn. Bhd. with UPM in August 2020 where Sinardia intended to support a group of researchers led by Dr Mohamad Aris by investing RM 10 million to conduct further research on the potential of cannabis which is considered a high value crop (Malaysia Kini, 2021). In Berita Harian dated 10 September 2021, it was reported that Universiti Malaysia Perlis (UniMAP) became the first public university to conduct research on 'hemp' as an agricultural product that has the potential to be developed for the economy in the future (Berita Harian Online, 2021).

However, looking at the use of drugs and marijuana which are the main domains of the hemp species without denying the benefits that can be derived from it, the harm of these two substances to human life because of its abuse is indisputable. As a shariah built on the basis of *jalb al-masalih* (attracting good) and *daf' al-mafasid* (rejecting evil), Islam emphasizes great importance to the preservation of the well-being of human *daruriyyat al-khams*. Every element that has the potential to damage the human mind is prohibited by Islamic law from being used such as the prohibition of alcohol and various harmful drinks, foods, liquids and plants. In line with this situation, there are many texts of the Qur'an and sunnah related to the prohibition of alcohol that causes *iskar* (intoxication) are used as the main support by scholars in discussing the law of the use of harmful substances that affect the sustainability of the human mind.

## Literature Reviews

### Hemp – Its Benefits and Disadvantages

There are three types of cannabis plants, namely *cannabis sativa* (*C. sativa*), *cannabis indica* (*C. indica*) and *cannabis ruderalis* (*C. ruderalis*) (Wee et al., 2022; Hillig, 2005). Cannabis sativa is a plant commonly found in hot and dry climates with prolonged sunny weather such as in

Africa, Central America, Southeast Asia and West Asia. The height can reach more than twelve feet. The leaves are tapered with a light green color while the branches are sparse. Cannabis indica comes from the Indian subcontinent (Afghanistan, India, Pakistan) and Turkey. The tree of this plant is mostly shady and its leaf radius is wider with dark green color. Its growth rate is faster than the sativa type. While the latter, ruderal cannabis originates from cold climates such as Eastern Europe, the Himalayas in India, Siberia and Russia. Its growth is very fast and suitable in cold environments and lack of sunlight. This plant is a shrub and rarely exceeds twelve inches in height (Abdul Majid, 2020; Cherney, 2016).

Each type of cannabis contains certain amounts of *tetrahydrocannabinol* (THC) and *cannabidiol* (CBD) (Datwyler & Weiblen, 2006). Hemp and marijuana are cannabis derived from the type *C. sativa*, yet hemp refers to the cannabis plant that contains 20 percent CBD and 0.3 percent THC, a chemical that makes a person hallucinate (Johnson, 2009).

Therefore, although they are from the same family, these two species of cannabis have differences in terms of uses. Hemp is widely used in various sectors including in the medical industry, especially the production of Cannabidiol (CBD) to small and medium industries such as washi paper, which is a paper made traditionally, cosmetics; food for humans such as hemp flour and hemp milk, animal food, building materials such as house walls and roofs; the shipping industry such as the manufacture of sails; the automobile industry such as making car cases, furniture, biodiesel, plastics and many more until it is known as 'Green Gold' 12. Meanwhile marijuana is used to produce THC and CBD for medical and recreational purposes (Wee et al., 2022).

Hemp has many benefits. Hemp fiber is one of the important ingredients in Japanese society since thousands of years ago until now. In the Jomon period (7,000-10,000 BC), clothing was created from various plant sources and animal skins including from hemp fiber. Hemp seeds can also be used in a variety of ways such as for cooking and other products such as paints, inks, biodiesel oil, cosmetics and plastics.

Hemp is now gaining popularity because of its effectiveness in treating various health conditions (Aizpurua-olaizola et al., 2016). The two main cannabinoids of hemp namely tetrahydrocannabinol (THC) and cannabidiol (CBD) are components known for their therapeutic potential (Grotenhermen & Müller-Vahl, 2012). THC has the highest psychotropic effect of cannabinoids, thus being the main component responsible for exerting pharmacological and therapeutic effects in medical hemp (Grotenhermen & Müller-Vahl, 2012). It has various benefits by acting as an analgesic, anti-inflammatory, anti-emetic and anti-proliferative agent in terms of tumor cells (Aizpurua-olaizola et al., 2016; Grotenhermen & Müller-Vahl, 2012; Izzo et al., 2009). Besides THC, the second most important compound in hemp is CBD, which is also used for pharmacological effects, while the rest are non-psychoactive cannabinoids (Potter et al., 2008). In contrast to THC, CBD can cause the opposite effect by controlling THC-induced euphoria. In addition, among other known benefits, CBD also acts as an anti-psychotic, anti-nausea, neuroprotective, anti-cancer and anti-diabetic agent, all without causing overly strong side effects (Aizpurua-olaizola et al., 2016; Rock et al., 2011). There is evidence that CBD has the potential to be exploited in the treatment and relief of various symptoms associated with neurological disorders such as epilepsy and seizures (Hofmann dan Frazier, 2013; Jones et al., 2010), psychosis (Leweke et al., 2016), anxiety (Bergamaschi et al., 2011) and movement disorders (for example, Huntington's disease and amyotrophic lateral sclerosis) (De Lago and Fernandez-Ruiz, 2007; Luvone et al., 2009). Meanwhile migraine, gastritis, allergies, back pain and asthma are

common diseases/symptoms that are commonly treated with hemp (Ware et al., 2005). In addition, hemp is also known to have effective properties in treating to stimulate the appetite, for example, anorexia. Furthermore, it has also been reported to reduce nausea and therefore can be beneficial to chemotherapy patients. Thus, hemp can serve as a chronic pain reliever for patients with cancer, HIV, rheumatism and other types of chronic pain. Other than that, hemp is also used to treat several other diseases such as epilepsy, Alzheimer's disease, Huntington's disease, diabetes and Tourette's syndrome (Aizpurua-olaizola et al., 2016).

In addition to the benefits of hemp in medicine, a review of the literature also reported there were side effects or negative effects of hemp. Among them is the acute intoxication of cannabis, which is the friendliness and sensitivity of the user to certain stimuli (for example, color, music) may be enhanced, the perception of time is altered and the appetite for sweet and fatty foods increases. Some users report experiencing a pleasurable feeling of relaxation after smoking marijuana (Agrawal et al., 2014). These subjective effects are also often associated with decreased short-term memory, dry mouth, and impaired perception and motor skills. To make matters worse, when very high levels of  $\Delta^9$ -tetrahydrocannabinol (THC) are reached in an individual's body, they may experience panic attacks, paranoid thoughts, and hallucinations (Li et al., 2014). In addition, side effects of other short-term cannabinoid use such as asthenia, balance problems, confusion, dizziness, diarrhea, euphoria, drowsiness, nausea, and vomiting have also been reported (Agrawal et al., 2014).

In addition, the use of cannabis-based products is also a concern when there is potential for natural contamination or harmful artificial contaminants found in raw cannabis or during the cannabis preparation process itself. The most common natural pollutants consist of degradation products, microbial contamination (for example, fungi, bacteria), and heavy metals. These contaminants are usually found during the cultivation and storage process (McLaren et al., 2008). Other than that, the use of crop promoters and pest control chemicals is the most common pollution risk reported to occur to producers and consumers. Cannabis can also be contaminated for marketing purposes where it involves the addition of other substances (for example, small glass beads, lead) to increase the weight of cannabis products (Busse et al., 2008) or the addition of psychotropic substances (e.g., tobacco) to increase the effectiveness of low-quality cannabis (McPartland et al., 2008). Moreover, some extraction and inhalation methods used in certain dose formulations (butane hash oil) can also be susceptible to pesticide and solvent contamination (Thomas and Pollard, 2016).

### **Cannabis And Hemp According to The Perspective of Syariah Law**

Hemp is originated from the category of plant-based drugs namely cannabis and more specifically is a subspecies of cannabis. Drugs and marijuana are translated in Arabic as *mukhaddarat*. Some words related to drugs and marijuana are used in Arabic such as *hasyish* (cannabis), *khasykhasy* (poppy), *afyun* (opium) and *tabg* (tobacco) (Al-Natur & al-Qudhah, 2014). Given the existence of a link between hemp and marijuana, the views of jurists (*fuqaha'*) on the law of interacting with the substance need to be expressed in order to obtain legal insight into hemp.

The law of interaction with drugs and marijuana is not found clearly in the view of the *mutaqaddimin fuqaha*. Among the reasons as stated by Ibn Taymiyyah (2004) is that the processing of the plant was not very widespread in ancient times and began to be debated at the end of the sixth century AH. Therefore, the discussion about it is only found in the writings of modern scholars where some of them rule the use of drugs such as the law of alcohol

(*khamr*) based on the similarity of its cause (*'illah*) that is drunkenness (*iskar*) which destroys sanity. Since it is equated with alcohol, cannabis users are subject to *had* punishment for drinking alcohol. Some other Islamic scholars consider marijuana unlike alcohol because it comes from a non-liquid species (*jamidat*) with a different sense of pleasure than alcohol. According to this view, the offense of taking marijuana is only punishable by *takzir* (Al-Natur & al-Qudhah, 2014). Based on various statements by the Islamic scholars of each sect, it can be emphasized that all of them agreed to ban the use of drugs and marijuana because of the terrible harm to human mental and physical health despite differing views in categorizing it in the law of *had* for alcohol drinking or vice versa.

A Hanafi scholar, Ibn Abidin (2000) stated that the act of consuming marijuana and cannabis is illegal because it damages the mind, but the ban is not like alcohol. People who eat it become intoxicated and they are only subject to the punishment of *takzir* due to the prohibition of alcohol that is *qat'iy* in nature which means anyone who rejects the law becomes a disbeliever (*kufir*). There is another view that anyone who decrees halal cannabis is a *zindiq* and *mubtadi*'. Similarly, there are views that *had* punishment is imposed on anyone who is drunk because of drugs.

According to the Maliki school (Al-Hattab, 1995), cannabis, opium and saycaran (intoxicating species) are illegal to use because they destroy sanity and not illegal to use for the purpose of external physical treatment. Maliki scholars (Al-Disuqi, t.t) also distinguish between *muskir* and *mukhaddir*. A drink that deprives (sanity) of the mind is called *muskir* for which the drinker will be subject to *had* punishment either a little or a lot of consumption. As for plants that damage the mind such as *hasyisyh*, *afyun*, *saykaran*, *dayturah* or formulated substances such as traditional herbal concoction (*majun*), they are called *mufsid* or *mukhaddir*. The law of such things is pure. People who eat it are not subject to *had* punishment but only receive *takzir* punishment. Similarly, it is acceptable to use drugs and marijuana in minimal quantities that are not harmful.

Although drugs and marijuana are considered illegal in the Syafie sect, they are different from alcohol because they are both solid objects that are not liquid. Intoxication resulting from marijuana does not have *syiddah mutribah* as in alcohol (Al-Ramli, 2003). All types of cannabis such as *hasyisy*, *afyun*, *saykaran* and the like are included in the category of *muskirat* (intoxication) in the sense that it destroys the mind of the eater even though there is no element of *syiddah mutribah* such as alcohol and its law is a major sin and haram like alcohol because it has the same *'illah*. According to al-Asqalani (t.t), the hadith which forbids every intoxicating drink applies to every type of intoxicating substance whether in the form of a drink or otherwise. Therefore, this includes all kinds of drugs and marijuana. Every *mukhaddir* is a *muskir* and every *muskir* is not necessarily a *mukhaddir*. Although it is haram to use, but the punishment imposed is only *takzir*, not the *had* punishment of drinking alcohol (Al-Syirbini, 1994).

The view of the Hanbali school based on Ibn Taymiyyah states that *hasyisyh* produced from cannabis leaves is haram and its law is the same as drinking alcohol. In fact, marijuana is more dangerous than alcohol in that it damages the mind and feelings so that it makes a man a woman, risk-averse to the point of inaction and other damages. Marijuana also prevents a person from remembering Allah and performing solat. Thus, it is included in the law of alcohol and intoxicating liquor which is forbidden by Allah and His messenger in word and meaning. bu Musa Al-Asy'ari RA said, "O Messenger of Allah, give us a fatwa for two drinks we make in Yemen: *ba'ta* ', which is scattered honey, until it becomes hard." According to Ibn

Taymiyyah again, the view of scholars who only punish the offense of eating marijuana with takzir as inaccurate because they consider the effect as the use of *banj* (henbane flowers) only. But anyone who eats it will become addicted like alcohol.

From all the above views, this study found that as one of the plant species, marijuana is not ruled as impurities and dirt in the form of *hissi*. However, due to its *mafsadah* to humans, it is considered illegal due to various factors such as proven effects of use will cause addiction, hallucinations, delusions and affect the mental and physical health of the addict.

In the context of *mafsadah* of losing one's mind due to marijuana, the ban on the use of the substance also uses the arguments of the prohibition of alcohol and various *muskirat* as arguments for its prohibition as follows:

“Every intoxicant is Khamr and every intoxicant is forbidden” (Sahih Muslim, vol.3, hadith no 73 (2003)

“Every intoxicant is Khamr and each and every Khamr is forbidden” (Sahih Muslim, vol.3, hadith no 74 (2003)

“Whatever a lot of it intoxicates, a little of it is unlawful” (Sunan al-Tirmizi, Vol. 3, Hadith no. 1865 from Jabir Ibn Abdillah ; Sunan Abu Dawud, jil. 3, Hadith no. 3681)

Jabir reported that a person asked Allah’s Apostle (may peace be upon him) about the wine which was drunk in their land and which was prepared from millet and was called *al-mizr*. Allah’s Messenger asked whether that was intoxicating. He said: Yes. Thereupon Allah’s Messenger (may peace be upon him) said: Every intoxicant is forbidden. Verily Allah the Exalted and Majestic, made a covenant to those who drank intoxicants (*muskir*) to make their drink *Tinat al-Khabal*. They said: Allah’s Messenger, what is *Tinat al-Khabal*? He said: It is the sweat of the denizens of Hell or the discharge of the denizens of Hell” (Sahih Muslim, (Sahih Muslim, vol.3, hadith no 72 (2003)

“Every *mukhammar* (drink that shuts down the function of the mind) is intoxicant and every intoxicant is forbidden”. (Sunan Abu Dawud, Vol. 3, Hadith no. 3680)

In his commentary on the above hadiths, Ibn al-Qayyim (1994) asserts that the term *khamr* encompasses all intoxicants whether in liquid, frozen, squeezed or cooked form. So included in this category is also eating marijuana because all those things are *khamr* based on the hadith of the Prophet SAW which is authentic and clear without any dispute about the *sanad* and *matan*. The companions of the Prophet also understood the meaning of *khamr* as everything that covers (the function) of the mind. If (assuming) marijuana is not included in the conviction of the hadith of the Prophet, the law can still be convicted with a valid *qiyas* due to the similarity of intoxicating *illah* between alcohol and marijuana.

The same statement is also supported by al-San’ani (t.t) who quotes the statement of Ibn Hajar al-Asqalani, anyone who states that marijuana is not intoxicating but only delusional is an arrogant person. This is because marijuana causes pleasure and arousal (intoxication). According to Ibn al-Baytar, the doctors (of that time) stated that the cannabis in Egypt was very intoxicating if used for only one or two dirhams. There are so many harms that some

scholars note there are one hundred and twenty harms of marijuana on religion and the world. The disadvantages of marijuana are also found in opium types.

In addition to the above arguments, the prohibition of marijuana is supported by the following legal principles

- a. Islamic prohibition from performing *darar*.
- b. The production of harmful things is sinful and every cause that leads to it is also sinful.
- c. The law is equated with the prohibition of drinking alcohol due to the *iskar* factor (intoxication) which damages the well-being of the mind and even the harm of drugs is greater than alcohol.
- d. Contrary to the order of *waliyul amr* which forbids the cultivation of cannabis.

The study also found several fatwa results on interactions with drugs and marijuana. Among them is Dar al-Ifta 'al-Misriyyah who ruled that there is no doubt or suspicion that the use of these substances is prohibited because it leads to great harm and contains many evils such as damaging the mind, destroying the body and various other harms (Jamal, 2020). Moreover, Dar al-Ifta' Jordan also made the same ruling (Salman, 2012).

### The Law of Cannabis Cultivation

In continuation of previous discussions on drug and marijuana laws, the cultivation of the plant was also debated. In order to control the same harm so as not to expand, the scholars agreed to ban the cultivation of *hasyisyh* and *khashkhash* to cover the *zari'ah* (cause) to the production of the cause of harm. Even further than that, they also discussed the law prohibiting the renting of land (including houses) for the purpose of disobedience, other illegal acts and also those that are dangerous in terms of *shari'ah*. Therefore, it is illegal to rent a house (*hanut*) to be used as a premise to sell alcohol. Al-Nawawi states in *Al-Majmuk*, whoever rents land to grow wheat, then it is not obligatory for him (haram) to plant a dangerous crop that can harm the land itself which will eventually reduce the quality of its fertility.

In its reply on narcotics law, Dar al-Ifta 'Jordan brought a resolution at the Sixth Regional Conference on Narcotics held in Riyadh in 1974 that all Islamic jurists of various sects agreed to ban any production, cultivation or distribution of narcotics (including marijuana) either in the form of natural or synthetic as well as involvement in all such matters is a criminal act (<https://www.aliftaa.jo/Article.aspx?ArticleId=161#.YnnfxOhBw2w>). In line with this position, al-Qaradawi (2020) also banned any act related to the production of cannabis and tobacco.

The Fatwa Committee of al-Azhar al-Sharif also stressed that among the urgent needs that Islam takes care of is the preservation of the soul and mind. Human happiness depends on the preservation of his mind. The mind is like a spirit in the body with which people know how to distinguish good from evil and harm from benefit. With the superiority and glory of the intellect as well, Allah SWT raises the rank of human beings from all His creatures. Hence this high position of the mind, Allah SWT has forbidden all elements that damage or fail its function whether it is in the form of food or drink. Among the prohibited are alcohol and drugs. Therefore, various ways that can grow alcohol and drugs are also prohibited such as cultivation, production, smuggling or distribution. Any form of interaction related to alcohol and drugs is definitely illegal because it is also a form of cooperation in committing a forbidden sin (*al-ta'awun al-al-ithm al-muharram*) (<https://www.dostor.org/2345891>).

The author presents the following arguments for banning the cultivation of cannabis as stated below:

**Firstly;** Guide in *dalalat al-nas* based on hadith from Ibn Abbas narrated by al-Tabarani that Rasulullah SAW said:

“Whoever keeps (broils) grapes in the harvest season in order to sell them to the person who processes them into wine, has reserved a position in hell” (Al-Mu’jam al-Awsat al-Tabarani, Vol. 3, hadith no. 5356)

This hadith shows the prohibition of growing cannabis, opium and the like for the same purpose as the prohibition of growing grapes that are sold to make alcohol.

**Secondly;** Cultivation of cannabis is the same as promoting immorality, which is drug addiction and cannabis, in which the use is prohibited. Every forbidden thing is a sin and any action that contributes to a forbidden thing is haram.

**Thirdly;** The purpose of growing cannabis is nothing but producing drugs that harm the public. With its cultivation, entrepreneurs involved indirectly seem to allow the distribution of cannabis among the community and addiction to addicts who are a liability to society and the country. As a Muslim, they need to curb immorality through various means including disobedience of the heart (*al-inkar bi al-qalb*). Included in the most practical way of disobedience is not engaging in any form of activity such as marijuana cultivation. There is a legal method saying "*al-rida bi al-ma'siyyah ma'siyyah*" (Accepting immorality is something sinful).

**Fourthly;** Cultivation of cannabis is also considered a vice or a mandatory crime set by the government through laws and related acts. In this context, every Muslim is obliged to obey the instructions of *wali al-amr* in matters of goodness based on the consensus of scholars as mentioned by al-Nawawi in his Sahih Muslim lecture.

## Methodology

This study is qualitative in nature with a process of collecting data and information from authoritative sources on the history of hemp cultivation, its benefits and disadvantages as well as legal discourse on the use of cannabis (*hasyish*), poppy (*khasykhasy*) and tobacco (*tabg*). The main source of this study in which the content is analyzed is based on documents consisting of books of fiqh and hadith from classical or contemporary works. Meanwhile, secondary sources consist of other written and printed documents obtained from journal articles, newspaper clippings, academic books and materials related to the study.

## Results and Discussions

### Analysis And Discussion on The Legitimization of Hemp

From the above discussion, it is considered by the majority of fuqaha' that cannabis, along with all its subspecies, including hemp, is physically clean and does not qualify as an impurity. It follows that a person who holds or touches marijuana and all its subspecies is not considered to hold impurities, which invalidates prayers. Because cannabis comes from a frozen source (*jamid*), unlike alcohol, which comes from a liquid source (*ma'i*), it is physically

distinct from alcohol. In terms of its use, all fuqaha' agree that cannabis should be prohibited due to its intoxicating, trance-inducing, and pleasure-causing effects.

In this regard, the arguments used to prohibit alcohol are also relevant to cannabis law. It is not possible to use cannabis (*hasyish*) absolutely, according to the Hanbali school, especially Ibn Taymiyyah, even in small quantities that are not intoxicating. This is the same as the law of alcohol. The majority of fuqaha', however, views marijuana as permissible as long as it does not deprive the mind of its functions for medical purposes.

The effects of drugs, marijuana, and many of their subspecies on humans are undeniable. In light of the fact that each item has its own law, it is evident that based on the facts presented about hemp and cannabis sativa (*C. sativa*), its benefits outweigh those of cannabis indica and cannabis ruderalis, which are also known for their *mafsadah*. Due to the following reasons, hemp is permitted under the law of origin of marijuana and cannabis despite being in the cannabis group:

- a. Very minimal adverse effects
- b. Greater health benefits
- c. A variety of benefits like other halal sources

As stated in the previous discussion of scholars, hemp is clean and the *maslahah* of its use is also stronger than the *mafsadah*, so the law of origin of its cultivation must be based on the law of origin of the species. However, from a legal point of view, the necessity of hemp cultivation is subject to its long-term effects and risks (*ma'alat*) as well as the extent to which it contributes (*zari'ah*) to good or bad. The actual decision regarding this issue falls under the wisdom of the government (*siasah syar'iyah*) to safeguard the public welfare factor based on the method of "*tasarruf al-imam ala al-ra'iyah manut bi al-maslahah*" (the government's actions against the people are subject to *maslahah*). In term of each policy that will be taken in the issue of hemp cultivation, the government needs to consider some other legal principles such as *yukhtar ahwan al-syarrayn* (Selecting the least disadvantages), *darr 'al-mafasid awla min jalb al-masalih* (rejecting the harm is more important than attracting good) and *al-asl fi al-manafi 'al-ibahah* (the original law of beneficial things is permissible) as well as *al-asl fi al-madharr al-tahrim* (the original law of harmful things is forbidden).

It is therefore necessary to clarify more clearly the benefits and harms of hemp. Although hemp has medical benefits that have been proven, there are also harmful effects that are unavoidable. Scientific studies, supported by clinical studies, are needed to evaluate the effects of hemp in a medical context in order to outline the positive and negative characteristics. It is important to collaborate with agricultural institutes such as MARDI to produce high quality cannabis cultivation free from natural contamination and chemicals in order to support intensive hemp research for these medicinal benefits. This will allow for the production of quality, safe hemp compounds. Following the study's results, they can be presented to all parties involved so that they can carefully consider them before deciding whether to plant and use hemp. In order to avoid the abuse of hemp, the proposed regulations are similar to those for kratom (*ketum* leaves), which require the Malaysian Ministry of Health to formulate an appropriate policy for its use. A cooperation between the fatwa institution and the Islamic Development Department of Malaysia (JAKIM) will be established in order to ensure that information about hemp is channeled in a precise manner so that accurate decisions can be made (Abdullah et al., 2021).

Also, this study supports the proposal of local academics to allow hemp cultivation. In order to achieve the real *maslahah* in a safe way, the government must strictly regulate the cultivation of the plant, and it must be allowed only for medical and research purposes, with approval from the Ministry of Health, Ministry of the Home Affairs, and relevant government agencies.

### **Contribution of Study**

To the best of the authors' knowledge, this study is unique as it presents and evaluates academically the benefits and disadvantages of hemp. Additionally, it stresses the need for a legal policy that guides its application for medical usage by highlighting some elements of legal control to be developed to ensure that hemp and *ketum* are not abused for illegal purposes. This study further demonstrates the necessity of taking Islamic principles into account when establishing and formulating a comprehensive legislative framework for hemp. This includes those derived from the *maslahah* and *mafsadah*. Further, the reflection should consider its uses, consumption, and purposes from the standpoint of *Maqasid Shari'ah*. Even though Malaysia has enormous potential if it were to enter the hemp cultivation market, such a greenlight that *ketum* and hemp can be legally cultivated and used for medicinal purposes requires strict and stringent standard operating procedures and legal controls that must be enacted following the approval.

### **Conclusion**

In this study, some data and studies have been presented regarding the use of hemp in general and its use from an Islamic perspective. In light of its potential and beneficial value for medical purposes, hemp has the potential and beneficial value to be used in the treatment of many types of symptoms and diseases, since it contains the active components THC and CBD. A medical evaluation of hemp-based products implies that they can be used in the treatment of various types of diseases, as well as being widely used in consumer products today. Hemp cultivation is permitted from a legal perspective because it is an authoritative party that protects the public's long-term interests. However, it is subject to government policy and control to avoid any greater adverse effects resulting from leniency in hemp cultivation control. In assessing the legitimization of hemp cultivation, Shari'ah law emphasizes the consideration of the effects of *maslahah* (benefit) and *mafsadah* (harmful) regardless of their short- or long-term consequences. When it is determined that something is beneficial for only a short period of time, it can be restricted from its use if it causes larger *mafsadah* to the country over the long run.

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