

LEGAL ANALYSIS OF KRATOM PLANT USE IN CENTRAL KALIMANTAN UNDER LAW NUMBER 35 OF 2009 ON NARCOTICS

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ABSTRACT

This study aims to analyze the legal status of kratom use in Central Kalimantan based on Law Number 35 of 2009 concerning Narcotics and to examine the construction of criminal liability against its users. This study uses a normative juridical method with a statutory approach and a comparative approach. The statutory approach is used to examine applicable legal provisions, particularly the Narcotics Law and related administrative policies, while the comparative approach is used to compare law enforcement practices between institutions, such as the National Narcotics Agency and regional police apparatus. The results of the study indicate that kratom has not been explicitly classified as a narcotic in Indonesian positive law, thus giving rise to a lack of synchronization between criminal regulations and administrative policies. The existing administrative policies have not provided an adequate legal basis for the imposition of criminal sanctions, thereby implying legal uncertainty in law enforcement practices. Differences in interpretation among law enforcement officials also have the potential to create inconsistencies in the application of the law. This study concludes that the existing conditions do not merely indicate a legal vacuum, but rather reflect the lack of integrated regulation within a comprehensive legal framework. Therefore, the formulation of clear and comprehensive legal policies is needed to ensure legal certainty, consistency of enforcement, and alignment between public health aspects and criminal law policy.

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INTRODUCTION

Kratom (*Mitragyna speciosa*) is a tropical plant from the Rubiaceae family that widely grows in Southeast Asia, including Indonesia, particularly in Kalimantan and Sumatra (Syarma et al., 2023). Taxonomically, based on the Global Biodiversity Information Facility (GBIF), this plant is classified as follows: Kingdom *Plantae*; Division *Tracheophyta*; Class *Magnoliopsida*; Order *Gentianales*; Family *Rubiaceae*; Genus *Mitragyna* Korth; Species *Mitragyna speciosa*. This plant generally grows in lowland areas near river streams with alluvial soil rich in organic matter, and is capable of adapting to humid environmental conditions.

In a social context, kratom has long been utilized by communities, particularly in the Kapuas Hulu region, West Kalimantan, such as in the Districts of Embaloh Hilir and Putussibau Utara. Kratom leaves are used as a traditional medicinal ingredient to increase stamina and address various health complaints. The main alkaloid contents, such as mitragynine and 7-hydroxymitragynine, are known to have pharmacological effects that can provide mild stimulant as well as analgesic effects (Wahyono et al., 2019). In addition, a number of studies and empirical reports indicate that kratom is also used to help reduce withdrawal symptoms in opioid users.

Despite its traditional benefits, government attention toward kratom has increased alongside the discovery of the potential psychoactive effects of its active compounds. Since 2013, kratom has begun to be categorized as a New Psychoactive Substance (NPS). The government's initial response was manifested through Circular Letter of the Head of the Food and Drug Supervisory Agency Number HK.04.4.42.421.09.16.1740 of 2016 concerning the Prohibition of the Use of *Mitragyna speciosa* in traditional medicines and health supplements (Juwita et al., 2018). In addition, the National Narcotics Agency (BNN) also established a five-year transition policy since 2017, with a recommendation to include kratom as a Class I narcotic, which was planned to culminate in a total prohibition in 2022 (Juwita et al., 2018).

Nevertheless, to date the legal status of kratom in Indonesia remains in a gray area. This plant has not been explicitly included in the narcotic classification as regulated under the Regulation of the Minister of Health Number 2 of 2017 concerning Amendments to the Classification of Narcotics, unlike other plants such as khat which have been categorized as narcotics. On the other hand, law enforcement practices continue to be carried out, as reflected in the case of the seizure of 12 tons of kratom leaves in Palangka Raya in 2019 which were allegedly to be traded abroad. This condition indicates a lack of synchronization between the applicable legal norms and law enforcement practices in the field.

Normatively, kratom has characteristics resembling narcotics, yet has not been explicitly regulated under Law Number 35 of 2009 concerning Narcotics (Chairani, 2020). This gives rise to disharmony between administrative policies and criminal law, resulting in legal uncertainty (Maharani & Prasetyo, 2022). Furthermore, there is a legal vacuum in the regulation of kratom (Adhari, 2022), inconsistency in determining its status as a narcotic (Christiana et al., 2020), as well as a discrepancy between the social practices of communities that use kratom as a traditional medicine and the as-yet unclear regulations (Kurniadi et al., 2025).

Previous studies have largely remained focused on normative approaches and have not extensively examined empirical aspects, particularly in the Central Kalimantan region. Yet in this region there exist significant law enforcement dynamics, including seizure actions and supervision of kratom distribution that do not yet fully have a clear legal basis (Situmorang et al., 2025). In addition, international comparative studies regarding the status of kratom as a New Psychoactive Substance have also not been specifically linked to the local Indonesian context, particularly its implications for law enforcement in the regions (Fadholi et al., 2023; Isnaeni et al., 2024).

Based on the foregoing, there is a fairly clear research gap, namely the absence of a study that comprehensively integrates normative and empirical approaches regarding the legal status of kratom use in Indonesia, particularly in the context of law enforcement in Central Kalimantan based on Law Number 35 of 2009 concerning Narcotics. Furthermore, previous studies have not specifically examined the construction of criminal liability against kratom users within the framework of narcotics criminal law, especially in situations where kratom has not been explicitly

classified as a narcotic in national regulations. Therefore, this research is important to provide legal clarity as well as an academic contribution in addressing two main issues, namely: (1) how is the legal analysis of the use of kratom plants in Central Kalimantan from the perspective of Law Number 35 of 2009 concerning Narcotics, and (2) how is the application of criminal liability against kratom users as a plant that has characteristics resembling narcotics.

METHODS

This study uses a normative juridical method with a qualitative approach. The normative juridical method is understood as a legal research method that examines law from an internal point of view, with positive law as the object of study, to produce juridical arguments in answering legal problems in the form of legal gaps, vague norms, and conflicting norms (antinomy) (Diantha, 2016). This method was chosen because the focus of the research lies in the analysis of applicable legal norms as well as the regulatory vacuum concerning the kratom plant (*Mitragyna speciosa*) in the criminal law system in Indonesia. The data used in this study are entirely secondary data, encompassing legislation, legal literature, scientific journals, and official documents from relevant agencies. The research approaches used consist of the statutory approach and the comparative approach.

The statutory approach is carried out by examining and analyzing various relevant regulations to determine the position, consistency, and binding force of legal norms governing the kratom issue. In this regard, the analysis is focused on Law Number 35 of 2009 concerning Narcotics as well as the Circular Letter of the Head of the Food and Drug Supervisory 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. Meanwhile, the comparative approach is used to compare kratom control policies as well as law enforcement practices carried out by two institutions, namely the National Narcotics Agency of Central Kalimantan Province and the Regional Police of Central Kalimantan. This comparison is focused on aspects of supervisory policy, forms of enforcement action, and the legal basis used in field practices. Through this comparison, this study aims to identify differences in policy implementation and their implications for legal certainty, given that to date there are no specific regulations that explicitly govern the legal status of kratom in the national legal system.

This comparative approach is important because it helps clarify the gap between abstract legal norms and legal implementation at the institutional level, so as to provide a more complete picture in answering the research problem formulation. In addition, this study also uses legal interpretation techniques, namely grammatical interpretation to understand the textual meaning of legislation, systematic interpretation to examine the interrelationship between norms within a unified legal system, and teleological interpretation to examine the objectives of the formation of legal norms, particularly concerning the regulation of kratom from the perspective of health protection and narcotics law enforcement.

RESULTS AND DISCUSSION

Legal Analysis of the Use of Kratom Plants in Central Kalimantan Under Law Number 35 of 2009 on Narcotics

Kratom (*Mitragyna speciosa* Korth) is a plant from the *Rubiaceae* family that has long been empirically used by communities in various regions of Indonesia, particularly Kalimantan. Botanically, this plant has characteristic dark green to reddish leaves with a distinctive structure (Raini, 2017; Wahyono et al. 2019). This plant grows in Southeast Asia, including Indonesia, particularly Kalimantan, and develops optimally in river basin areas with alluvial soil rich in organic matter (National Narcotics Laboratory Center (BNN), 2020). Traditionally, kratom has long been used by communities as a herbal plant to address various health complaints such as pain, fatigue, digestive disorders, and stamina enhancement (Wahyono et al., 2019). In addition, the practice of kratom use in Kalimantan has also been carried on from generation to generation, both by chewing and by brewing it as a drink.

In the pharmacological literature, kratom is known to contain *mitragynine* which has the potential to produce stimulant as well as sedative effects depending on the dose, and is used in certain contexts to reduce opioid dependence (Grundmann, 2017). Nevertheless, kratom use has also been reported to cause various side effects such as nausea, sleep disturbances, hallucinations, and the potential for dependence (Chatham-Stephens et al., 2016). Therefore, despite having traditional value, kratom is also viewed as a substance requiring strict oversight from a public health standpoint.

In the context of Indonesian positive law, Law Number 35 of 2009 concerning Narcotics regulates the classification of narcotics into Class I, II, and III as listed in the appendix of the law, which covers substances such as Cannabis, Coca, Papaver somniferum, and THC. However, kratom is not explicitly mentioned in that list. This condition gives rise to a normative situation in the form of an explicit regulatory vacuum (legal vacuum) regarding the status of kratom in the national narcotics regime. Nevertheless, the term legal vacuum in this context needs to be understood carefully. The absence of explicit regulation in the Narcotics Law does not necessarily mean the absence of all forms of regulation, but rather indicates the existence of regulatory fragmentation between the criminal law regime and the administrative law regime.

The absence of such regulation implies the absence of a criminal law basis that can directly qualify kratom as a Class I narcotic. Nevertheless, kratom does not exist in a completely legally free space, because its regulation appears in the form of administrative policy. The Food and Drug Supervisory Agency (BPOM) through Circular Letter Number HK.04.4.42.421.09.16.1740 of 2016 established a prohibition on the use of kratom in traditional medicines and health supplements on safety grounds (Juwita et al., 2018). In addition, since 2013 kratom has also been categorized as a New Psychoactive Substance (NPS) as a form of vigilance against potential misuse.

The National Narcotics Agency (BNN) considers kratom to have the potential to produce psychoactive effects and dependence, thereby recommending that kratom be included in Class I Narcotics, and classifying it as a New Psychoactive Substance (NPS) as an anticipatory measure against its misuse in Indonesia (BNN, 2020). In the context of this policy, the government has also carried out sectoral regulation, including the designation of kratom as an export commodity through more recent trade regulations (Ismail et al., 2026).

The currently applicable regulations indicate that kratom is within an administrative oversight regime, not a criminalization regime. This means that the restrictions imposed by BPOM and the policy of classification as a New Psychoactive Substance (NPS) do not automatically provide a basis for criminal punishment under criminal law, particularly within the framework of Law Number 35 of 2009 concerning Narcotics. Thus, control over kratom is more preventive-administrative in nature rather than repressive-criminal.

When compared to cannabis, there is a very clear difference in the normative aspect. Cannabis has been explicitly classified as a Class I Narcotic in the Narcotics Law so that all acts related to its possession, use, and distribution are subject to criminal sanctions (Situmorang et al., 2025). Meanwhile, kratom does not yet have explicit regulation in the law, so it cannot yet be placed directly within the narcotics criminal regime.

In the context of criminal law theory, the absence of explicit regulation of kratom in the Narcotics Law not only reflects the existence of a legal vacuum, but also indicates the absence of a special norm that can function as *lex specialis* in the criminal law system. As a result, law enforcement officials do not have a normative preference that can be used to directly carry out legal qualification of kratom as an object of a narcotics criminal offense. This condition demonstrates that administrative regulations cannot simply be elevated into a basis for criminalization without normative delegation in the law. This condition gives rise to legal uncertainty because administrative restrictions exist without a clear basis for criminalization. This is related to the principle of legality in Article 1 paragraph (1) of the Criminal Code which affirms that no act can be punished without a legal basis that has previously existed, as well as the guarantee of legal certainty in Article 28D paragraph (1) of the 1945 Constitution (Chairani, 2020) Thus, kratom occupies a normative space that has not yet been clearly defined in Indonesian criminal law.

The condition of kratom regulation in Indonesian law cannot be fully categorized as a legal vacuum in the sense of the absence of legal norms. Instead, this condition is more appropriately understood as regulatory fragmentation, namely a condition in which regulation of a legal object is spread across various sectoral administrative legal instruments without integration into one comprehensive criminal law regime. Thus, although there are restrictions through BPOM policies and BNN recommendations, the absence of regulation in the law still gives rise to ambiguity in its hierarchy and normative binding force in the context of criminal law.

The main problem in the regulation of kratom in the Indonesian legal system does not only lie in the absence of explicit regulation in the Narcotics Law, but also in the emergence of a more fundamental normative question, namely whether kratom can be qualified as a narcotic without any amendment or revision to the list of narcotics established in the law. In addition, there is the question of the extent to which circular letters or administrative policies from BPOM and BNN can influence the qualification of a substance in criminal law. Furthermore, there also arises the question of whether law enforcement officials have a juridical basis to carry out extended interpretation or analogy of narcotics provisions in order to include kratom within the criminal regime.

The principle of legality in criminal law also requires that every form of criminalization must derive explicitly from legislation, not from administrative policy. Therefore, the classification of kratom by non-legislative institutions cannot serve as the basis for extending criminal offenses without normative changes in the Narcotics Law. From the perspective of legal principles, the application of the principle of *lex specialis derogat legi generali* can only be carried out if there is a special norm that explicitly regulates a legal object. To date, there is no law or regulation of equivalent status to a law that specifically regulates kratom. Existing regulations such as the BPOM circular letter and BNN policies are administrative in nature and therefore cannot be qualified as *lex specialis* in the criminal law system (Irfani, 2020). Therefore, kratom does not yet have a special legal regime that provides certainty of its position in the Indonesian narcotics legal system (Utama & Griadhi, 2021).

From the perspective of legal theory, the kratom issue can be analyzed through the theory of legal certainty (*rechtszekerheid*) which emphasizes the importance of normative clarity in providing guidance for both communities and law enforcement officials. The ambiguity of kratom's status in the narcotics regime indicates the potential for a violation of the principle of legal certainty, particularly in the context of criminal law which demands the principle of strict legality. In addition, this issue can also be viewed through the perspective of criminal policy, where the state is required to proportionally determine whether a substance needs to be criminalized or whether it is sufficient to be regulated through an administrative approach based on public health.

The ambiguity of the normative status of kratom also has practical implications in criminal law, particularly in the law enforcement process. In certain situations, there is the potential for debate as to whether the provisions in Articles 111 through 116 of the Narcotics Law can be applied analogically to kratom, even though it is not explicitly listed in the narcotics appendix. If law enforcement officials continue to qualify kratom as an object of a narcotics criminal offense without a clear normative basis, this has the potential to give rise to practices of overcriminalization. In addition, this condition can also cause disparities in law enforcement, particularly at the investigation and prosecution stages, which ultimately has implications for the principle of legal certainty for the community.

Thus, the position of kratom in the Indonesian legal system is in an ambivalent condition. On one hand there is administrative oversight and restriction through BPOM and BNN, including prohibition in health products and categorization as NPS. However, on the other hand, there is as yet no explicit regulation in the Narcotics Law that can serve as a basis for criminalization. This indicates that the main problem does not lie in the absence of oversight, but in the absence of certainty of a criminal law regime that specifically regulates kratom, thereby giving rise to legal uncertainty in law enforcement practices.

The ambivalent condition in the regulation of kratom has direct implications for law enforcement practices in the field. The absence of explicit criminal norms in the Narcotics Law has the potential to give rise to non-uniformity

in the interpretation of law enforcement officials, both at the investigation and prosecution levels. On the other hand, the existence of sectoral administrative policies can create broad discretionary space, which under certain conditions has the potential to give rise to disparities in legal treatment. Therefore, the main problem in the regulation of kratom does not only lie in the normative aspect, but also in the consistency of cross-institutional policy implementation. Thus, the kratom problem in Indonesian law cannot be understood merely as the absence of regulation, but as a matter of synchronization between the public health approach, administrative policy, and criminal law.

In academic discourse, there are differences of opinion regarding the legal status of kratom. On one hand, some state institutions such as the National Narcotics Agency view kratom as a substance that has the potential for psychoactive effects and risk of dependence, so it is recommended to be included in Class I Narcotics as a control measure. On the other hand, there are critical views from pharmacology and law academics who consider that the scientific evidence regarding the dependence impact of kratom is not yet strong enough to justify criminalization, so a more appropriate approach is administrative oversight based on public health, rather than a criminal approach. This difference of opinion indicates the existence of academic tension in determining the direction of legal policy toward kratom in Indonesia.

Criminal Liability for Users of Kratom as a Narcotic Plant

Criminal liability against users of the kratom plant in the Indonesian legal system still faces a fundamental problem in the form of the absence of a legal norm that explicitly regulates the status of kratom as a narcotic. Law Number 35 of 2009 concerning Narcotics does not include kratom in the Appendix of Class I, Class II, or Class III narcotics (Pratiwi et al., 2022; Rahman, 2021). This condition indicates the existence of a legal vacuum that causes kratom to lack juridical status certainty in the national legal system. In criminal law, the principle of legality is the primary foundation that determines whether or not an act can be punished. This principle affirms that no act can be subject to criminal sanctions without a legal provision that has regulated it beforehand (Juwita et al., 2018). This principle is reflected in the adage *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*. Based on this principle, the act of using kratom cannot be qualified as a criminal offense because there is no rule that explicitly prohibits it in legislation.

From a doctrinal perspective, this principle functions as an instrument of protection for human rights against the potential abuse of state authority in the imposition of punishment. One of its implications is the prohibition on the use of analogy in extending offenses (analogy prohibition), so that criminal law enforcement must adhere strictly to written norm formulations. This is closely related to the principle of legal certainty which demands clarity regarding prohibited acts and their legal consequences. In the context of kratom use, this principle indicates that there is as yet no criminal law basis that explicitly includes kratom as an object of narcotics in Law Number 35 of 2009. Therefore, the formal legality element has not been fulfilled so that kratom use cannot yet be qualified as a criminal offense in Indonesian positive criminal law.

The position of kratom in current Indonesian legal practice remains at the level of administrative policy, such as circular letters or recommendations from certain institutions. However, such instruments do not have a position equivalent to legislation in the hierarchy of laws and regulations. In a criminal law system that adheres to the principle of *lex stricta*, every criminal provision must be formulated clearly and cannot be extended through analogical interpretation (Wirawan et al., 2025). Thus, administrative policies cannot serve as the basis for forming or extending criminal offenses. This condition also affirms that the application of criminal law to kratom must strictly comply with the principle of strict legality. Criminalization cannot be carried out solely on the basis of administrative policy or interpretation by law enforcement officials, as this does not meet the standard of the principle of legality in criminal law. Thus, without explicit regulation in legislation, there is no valid juridical basis to qualify kratom use as a criminal offense or to impose criminal liability on its users.

The absence of explicit regulation concerning kratom gives rise to legal uncertainty for the community, particularly farmers, business actors, and kratom users. There is no clarity as to whether the use, possession, and distribution of kratom constitutes a prohibited act or is still permitted. This condition has the potential to give rise to differences in law enforcement practices across regions, depending on the policies of each law enforcement official. This situation indicates an inconsistency in the application of the law that can disrupt legal certainty and justice. In the context of criminal policy, criminalization of an act should be based on clear normative and social considerations, including the existence of clear legal regulation. However, in the case of kratom, there is as yet no legal provision that explicitly designates kratom as a prohibited object. Therefore, the application of criminal sanctions against kratom users does not have a strong legal basis and has the potential to conflict with the principle of due process of law. Criminalization can only be carried out if there is already a *lex specialis* that clearly regulates such an act in positive law (Juwita et al., 2018).

From the perspective of criminal liability, the element of unlawfulness is an important element that must be fulfilled in a criminal offense. In the case of kratom, the non-fulfillment of the element of formal unlawfulness is caused by the absence of an explicit prohibition in legislation. This causes the structure of the criminal offense to be incomplete so that there is no juridical basis to impose criminal liability on users (Tanaya & Apriyani, 2023). In addition, the element of fault (*schuld*) also cannot be attached to users because the act has not been established as a prohibited act by law (Ajis, 2023). In practice, law enforcement against kratom can differ between one region and another, depending on the interpretation of law enforcement officials. This condition creates disparities in legal treatment that conflict with the principle of equality in the criminal law system (Ainita & Badawi, 2023). Such inconsistency also has the potential to reduce public trust in the legal system.

From a social standpoint, kratom use is still ongoing in several regions because there is as yet no clear legal prohibition. This indicates that public legal awareness regarding the status of kratom as a potential criminal object has not yet been fully formed (Muttaqien, 2024). Under these conditions, the application of criminal sanctions without a clear legal basis has the potential to give rise to disproportionate criminalization that conflicts with the principle of human rights protection. Administrative instruments such as the policies of food and drug regulatory agencies cannot serve as the basis for criminal punishment because they do not fulfill the principle of *lex stricta* in criminal law (Asmoro & Samputra, 2021). Therefore, any criminal law enforcement effort against kratom without a clear legislative basis has the potential to violate the principles of legality, legal certainty, and justice in the Indonesian criminal law system.

Based on these conditions, it can be concluded that as long as kratom has not been explicitly included in the narcotics list through legislative amendments or equivalent regulations, criminal liability against users has no valid juridical basis. This situation demonstrates the urgency of establishing clear and comprehensive regulations to provide legal certainty as well as to create a balance between controlling the potential for misuse and protecting the rights of the community within the framework of a law-based state.

CONCLUSION

Based on the research findings, first, the legal analysis of the use of kratom plants in Central Kalimantan from the perspective of Law Number 35 of 2009 concerning Narcotics indicates that kratom does not yet have legal status as a narcotic because it is not listed in the narcotics classification. Its current regulation only exists in the administrative domain through BPOM policies and BNN recommendations, thereby reflecting the existence of regulatory fragmentation and a lack of integration into the criminal law regime. Second, the application of criminal liability against kratom users cannot be carried out due to the non-fulfillment of the principle of legality, particularly the absence of a norm that explicitly regulates kratom as an object of a criminal offense. As a result, kratom use cannot

be subjected to criminal sanctions and does not fulfill the elements of criminal liability in Indonesian positive criminal law. The legal implication of this condition is the occurrence of legal uncertainty as well as the potential for disparities in law enforcement practices in the field. Therefore, legislators need to promptly provide legal certainty by firmly establishing the legal status of kratom through a revision of Law Number 35 of 2009 or the formation of special regulations that comprehensively govern its control and utilization.

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