



Juridical Analysis of the Abuse of Kratom Herbal Plants According to Law Number 35 of 2009 Concerning Narcotics

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Abstract:

The development of the use of the herbal plant kratom as an alternative medicine and fulfillment of health needs continues to increase, both at the national and global levels. One of the herbal plants that attracts attention is one of the plants originating from Southeast Asia, including Indonesia, Malaysia, and Thailand (Hassan Z et al. 2013). In Buntok City, South Barito Regency, Central Kalimantan Province, kratom has long been used as part of traditional medicine practices by the local community. UNODC (United Nations Office on Drugs and Crime) in 2013 classified kratom as New Psychoactive Substances, then the Food and Drug Supervisory Agency (BPOM) issued Circular Number in 2016 concerning the Prohibition of the Use of Mitragyna speciosa (kratom) in Traditional Medicine and Food Supplements which was later supported by the National Narcotics Agency. This means that kratom leaves were still not prohibited until 2022. This study aims to analyze the legal status of the herbal plant kratom (Mitragyna speciosa) which has psychoactive effects but has not yet been included in the narcotics category in Indonesia. Kratom has been traditionally used in several regions, but lately it has been misused as a psychoactive substance that causes narcotic-like effects. This study uses a normative juridical approach with qualitative methods, through literature studies, and interviews with legal experts and health practitioners. The results show that kratom has not been specifically regulated in Law Number 35 of 2009 concerning Narcotics, although it has the potential to be misused. The recommendation of this research is to strengthen regulations related to kratom, either through revisions to the narcotics law or the creation of special regulations.

Keywords: *Kratom, Psychoactive Effects, Narcotics, Regulation, Indonesian Law.*

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INTRODUCTION

Kratom (*Mitragyna speciosa*) grows in Southeast Asia such as Thailand, Malaysia, the Philippines, Cambodia, Vietnam, Papua New Guinea and Indonesia (Mukhlisi dkk., 2018). Kratom is being hotly discussed due to health, social, economic and ecological issues. The polemic occurred because on the one hand there was an increase in the number of kratom users and the value of world trade increased rapidly, on the other hand there were concerns about the side effects of kratom use with the discovery of several cases of health problems (Firmansyah & Nugroho, 2023; Prasetyo et al., 2024).

Kratom (commonly *Mitragyna speciosa*) belongs to the family Rubiaceae, just like the coffee plant (Ramanathan, 2021; Ahmad et al., 2022). Morphologically, kratom grows as a tree with a relatively straight stem and a brownish-gray bark (Ramanathan, 2021). Kratom's natural habitat tends to be in areas near river flows and humid environments, especially in alluvial soils rich in organic matter (Ahmad et al., 2022; Dewatisari et al., 2025). Although it is not an aquatic plant, kratom shows the ability to survive in land conditions that are waterlogged at any time (Dewatisari et al., 2025; *Mitragyna Species* article, 2022). In Kalimantan, especially in Kapuas

Hulu, kratom is widely cultivated by people in their yards; On a large scale, the plant is grown in gardens and land near moist rivers (Ni'ma et al., 2024; Dewatisari et al., 2025). In soil conditions with a slightly acidic pH and high water saturation, kratom can still grow (Dewatisari et al., 2025).

The use of kratom is generally done by chewing fresh leaves or squeezing dried kratom and brewing it like tea (DEA, 2020). At low doses, kratom provides a stimulant effect in the form of increased alertness and energy, while at high doses it provides a sedative effect (DEA, 2020; Kruegel et al., 2019). The pharmacological effects are mainly due to the content of the alkaloids mitraginine and 7-hydroxymitraginine, which bind to opioid receptors and cause analgesic, anti-inflammatory, antidepressant, and psychoactive activity (Todd et al., 2020; Buckhalter et al., 2021). This psychoactive and opioid-like nature is what makes kratom have therapeutic potential as well as prone to abuse (Hossain et al., 2023; Heywood et al., 2024). A number of case reports and observational studies state that kratom abuse can trigger seizures, acute psychosis, and even death (Frontiers, 2025; Case Report Kratom Psychosis, 2021; Kratom Psychiatric Decompensation, 2023).

Although rich in benefits, the kratom plant has become a polemic in the community since 2004. The reason is that BPOM issued a circular prohibiting processed kratom products for drug and food mixtures. The prohibition circular from BPOM was issued again in 2016 by listing the content of the substance mitragynine kratom can cause addiction such as narcotics. So BPOM strictly prohibits the use of this plant in herbal medicine mixtures and dietary supplements. Although there is an official circular from BPOM regarding the content of harmful substances in kratom, kratom regulations in Indonesia are still legal plants. Because it has not been included in the Regulation of the Minister of Health Number 7 of 2018 concerning Changes in Narcotics Groups, kratom has not been included in the list of new narcotics. So that people still dare to cultivate, consume and sell

From the effects caused after the use of kratom, it has the same characteristics as narcotics. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semisynthetic, that can cause a decrease or change in consciousness, loss of taste, reduce to eliminate pain and can cause dependence. The division of narcotics groups is divided into three groups by, referring to article 6 paragraph (1) of Law No. 35 of 2009 concerning Narcotics:

1. Class I narcotics are narcotics that can only be used for the purpose of scientific development and are not used in therapy, and have a very high potential to cause dependency;
2. Class II narcotics, are narcotics with medicinal efficacy 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 result in dependence; and
3. Class III narcotics are narcotics with medicinal efficacy and are widely used in therapy and/or for scientific development purposes and have mild potential resulting in dependence.

This article divides narcotics into 3 groups based on: group I: Only for science (example: heroin, cocaine, marijuana), group II: Limited to treatment (example: morphine), group III: For treatment with mild potential (example: codeine, tramadol). While the temporary legal status

of kratom herbal plants is not listed in the appendix of any group, this is the legal basis for why kratom herbal plants are not automatically illegal and cannot be directly charged as narcotics.

Some previous research has highlighted the pharmacological and risk aspects of kratom abuse, but it tends to be limited to a public health perspective without touching on the legal aspects in depth. For example, Singh et al. (2020) Finding that excessive consumption of kratom can cause symptoms of dependence and serious health risks, they recommended stricter regulation in producing countries. However, the study does not explain in detail how the national legal framework responds to the phenomenon. Meanwhile, Grundmann et al. (2021) highlights the socio-economic dimension of kratom, particularly its role in supporting the livelihoods of people in Southeast Asia, but this study also does not address the specific legal implications in the Indonesian context. This gap is what this study aims to fill by examining the legality of kratom based on Law No. 35 of 2009 concerning Narcotics and its derivative regulations, as well as examining criminal liability for the abuse of this plant.

Therefore, this study will examine 1. How is the legality of kratom herbal plants in the regulatory system based on Law No. 35 of 2009 concerning Narcotics, and 2. Criminal Liability for the Misuse of Kratom Herbal Plants Based on Law Number 35 of 2009 concerning Narcotics. Meanwhile, the benefits are expected to be a reference for policymakers, law enforcement officials, and the public in responding to the kratom polemic in a more fair, proportionate, and evidence-based manner.

RESEARCH METHODS

This journal research was carried out using normative legal research. Finding legal rules, doctrines, and principles is a normative legal research process, which is carried out to obtain new arguments, conceptions or theories that can be used as guidelines to solve problems. This means that normative legal methods are used so that the problems or issues raised, discussed and described in this study regarding the abuse of kratom herbal plants are focused on applying rules or norms in positive law. Several primary and secondary legal sources are used as references in this writing. Laws and regulations are the primary legal sources used while secondary legal sources are obtained from books, papers, and research journals. This research uses a conceptual approach through the analysis of legal materials and the legal approach (The Statue Approach).

RESULTS AND DISCUSSION

How is the legality of kratom herbal plants in the regulatory system based on Law No. 35 of 2009 concerning Narcotics

Plants are types of plants that are planted, cared for, and cultivated by humans in a medium or space to be harvested and utilized as a result. Medicinal plants are very useful in meeting the needs of human life, as well as a source of raw materials for traditional and modern medicine.

Regulations according to the Great Dictionary of the Indonesian Language are regulations. Regulations in Indonesia are defined as formal legal sources in the form of laws and regulations that have several elements, namely a written decision, formed by state institutions or authorized officials, and publicly binding.

Kratom is a tree that has tropical leaves that originate from the interior of Kalimantan. The size of this plant can grow to a height of 4 - 16 meters or more and can produce leaves with wide and large sizes, especially those that are already long. This plant is believed to be an herbal medicine to overcome cough, diarrhea, diabetes, analgesic, anti-inflammatory (inflammatory) problems. Side effects that can be caused by the use of this plant include nausea, sweating, tremors, difficulty sleeping, delusions, hallucinations and the existence of the joy effect which in theory the content of this plant will worsen the condition of the body along with the onset of symptoms of mental disorders that will be experienced, to increase suicidal thoughts. Many opiate addicts who treat their addiction switch to using kratom because in addition to being easy to obtain, obtained without a prescription, kratom is also cheaper compared to opiate addiction therapies such as buprenorphine. This can trigger abuse, especially since there are no provisions or laws that apply to kratom plants in Indonesia.

In Indonesia, kratom is known as a plant for herbal medicine, but abroad it is known as a narcotic or illegal drug, as in the United States. In 2016, the U.S. Drug Enforcement Administration announced that kratom would be included in Class I narcotics and would not allow kratom to be used in medicine.

Over time, many people have abused and traded kratom in the form of powders, capsules to extracts with various compositions and sizes.

In the appendix to Law No. 35 of 2009 concerning Narcotics, Kratom (*Mitragyna speciosa*) is not explicitly listed, either in groups I, II, or III. This means kratom is not categorized as a narcotic according to Indonesia's main regulations. However, the National Narcotics Agency (BNN) has proposed to include it in Group I narcotics, which means it will be banned for all uses, including medical. BPOM also issued a circular in 2016 banning the use of *Mitragyna speciosa* (Kratom) in traditional medicines and health supplements. Currently, kratom is still in a "gray" status because there are no regulations specifically regulating it, although BNN and BPOM have issued warnings about its potential dangers.

When viewed from the opioid substances contained in this type of cardom herbal plant, the level can be equated with heroin and fentanyl, which incidentally are classified into class I narcotics in narcotics crimes. By paying attention to the impact caused by kratom plants when consumed by humans, even though kratom plants belong to the coffee family. However, in certain doses the effects caused are different and tend to cause effects that are considered dangerous when in the human body. In Indonesia, the Kratom plant is still considered legal.

Presidential Chief of Staff Moeldoko stated that the Ministry of Health (Kemenkes) does not categorize kratom leaves as classified as narcotics. "The Ministry of Health categorizes it as not in the narcotics category," said Moeldoko. It is known that the legality of kratom leaves is still uncertain. The National Narcotics Agency (BNN) itself included kratom leaves as NPS in Indonesia and recommended it as a type of class 1 narcotic in Law Number 35 of 2009 concerning narcotics because it has dangerous side effects, especially if its use is not in accordance with the dosage. Moeldoko also did not deny that kratom is said to have a sedative or sedative effect. However, the dependency effect is quite low. "Is there a dependency? Low dependency. From the new addiction dependence, it is quite low," said Moeldoko. "If it is indeed harmless and in large quantities. It's the same with coffee if most of us are also troubled, so are cigarettes, tobacco is the same. Yes, we include it in a proportional stage," added

Moeldoko. He then stated that there was no need for a Presidential Regulation (Perpres) or similar decree to declare the legality of kratom. "The status (legality) until now, yes, the Ministry of Health said it was not included in the narcotics category. The legality is there, what the Ministry of Health conveyed," he said.

In West Kalimantan, the governance and management of kratom is regulated in regional regulation number 4 of 2024, in the regional regulation there is no mention of the prohibition of kratom herbal plants, on the contrary, kratom herbal plants are cultivated by cultivating, caring, and harvesting, these kratom herbal plants are only limited to processing to change the shape of kratom leaf sheets into powder or powder or adjust the demands of trade and/or importers, As stated in Article 6 paragraphs (1) and (2).

Thus, it can be concluded that the kratom herb (*Mitragyna speciosa*) is currently not officially categorized as a narcotic in the Indonesian legal system. In Law No. 35 of 2009 concerning narcotics, kratom is not listed in groups I, II, or III, its status is still gray. Although it is not recognized in Law no. 35 of 2009 concerning narcotics, the abuse of kratom herbal plants can be charged with other laws such as the Health Law, or the Criminal Code.

Criminal Liability for the Misuse of Kratom Herbal Plants Based on Law Number 35 of 2009 concerning Narcotics

Abuse is the use of something incorrectly or not in accordance with the proper rules and functions. In the context of narcotics, abuse means the use of narcotics without rights or against the law, or the use of narcotics in an illegal and uncontrolled manner. According to Law No. 35 of 2009 concerning Narcotics, abuse is a person who uses narcotics without rights or against the law.

Article 127 of Law No. 35 of 2009 concerning Narcotics states:

1. Every Abuser:

- a. Class I narcotics for oneself are punished with a maximum prison sentence of 15 (fifteen) years;
- b. Class II narcotics for oneself are sentenced to a maximum prison sentence of 12 (twelve) years; and
- c. Class III narcotics for oneself are sentenced to a maximum prison sentence of 10 (ten) years.
 - 1) In deciding the case as intended in paragraph (1), the judge is obliged to pay attention to the provisions as intended in Article 116.
 - 2) In the event that the Abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics Abuse, the Abuser is obliged to undergo medical rehabilitation and social rehabilitation.

Criminal Liability refers to a person's obligation to accept the legal consequences that must be borne by the perpetrator of a criminal act after fulfilling the elements of fault and negligence (*culpa*). The requirements for the application of criminal sanctions after it is proven that there is a criminal act or it is called *strafbaar feit*. S. R. Sianturi in his book *Principles of Criminal Law in Indonesia and Application*, in Indonesian terminology, *delik* or *het strafbare feit* has been translated by scholars and has also been used in various legal formulations with various Indonesian terms as (p. 204 – 207):

- a. Acts that can/can be punished

- b. Criminal Events
- c. Criminal Acts
- d. Criminal.

Thus, strafbaar feit, delik, and delictum have the same terms as punishable/punishable acts, criminal events, criminal acts, and criminal acts.

As for the elements of criminal responsibility based on the Criminal Code and legal theory, there are 3 main elements, namely; formal, material, and moral elements.

1. Formal Elements: The act must be regulated in criminal provisions (the principle of legality of Article 1 of the Criminal Code). Example: Narcotics abuse is regulated in Law No. 35/2009.
2. Material Elements: Guilt (schuld), The perpetrator must have intentionality (dolus) or negligence (culpa). Ability to be responsible, the perpetrator must be legally capable (not in a mental disorder/underage).
3. Moral Element: These acts are contrary to the values of law and justice in society.

Kratom (*mitragyna speciosa*) of this herbal plant has not been explicitly listed in the annex of the narcotics class (I, II, III) of Law No. 35 of 2009. Therefore, the abuse of kratom herbal plants is not subject to criminal sanctions based on Law No. 35 of 2009 concerning narcotics, but can be charged through progressive legal interpretation by referring to the purpose of the Narcotics Law (article 4) to protect the public from the dangers of additives.

Although it does not belong to the narcotics class, criminal liability can be applied through Article 113 of the Narcotics Law Regulating "substances with narcotic properties" that are not listed in the attachment but have a similar effect. Although in law no. 35 of 2009 article 127 paragraph (3) explains that "In the event that the Abuser as referred to in paragraph (1) can be proven or proven to be a victim of Narcotics abuse, the Abuser is obliged to undergo medical rehabilitation and social rehabilitation".

Article 128 Kratom can fall into this category if it is proven to cause dependence or psychoactive effects. Article 197 of the Health Law The abuse of non-narcotic addictive substances (such as kratom) can be subject to criminal sanctions if used outside of medical/traditional interests.

With the above explanation, it creates significant legal complexity. The application of criminal sanctions against kratom abuse shows a diversity of forms, ranging from imprisonment of 1-5 years, rehabilitation for users, to administrative fines, with the main consideration of the volume of the substance, the mode of act, and the impact caused. The main obstacles in law enforcement arise from the unclear status of regulations, difficulties in scientific proof, and differences in interpretation between regions. Going forward, kratom regulation will need to consider a scientifically evidence-based approach that distinguishes between traditional medical use and abuse, while maintaining the principle of proportionality in law enforcement.

Kratom is not currently recognized as a narcotic in Law No. 35/2009, but its abuse can be prosecuted through other articles (Health Law/Criminal Code). Regulatory ambiguity creates inconsistencies in law enforcement, so a clear legal umbrella is needed to regulate the status of kratom, either as a restricted drug or a prohibited substance. Until there is a revision of the Narcotics Law, criminal liability for kratom remains multi-interpreted and casuistic.

Criminal liability is a central concept in criminal law that links unlawful acts with sanctions, taking into account the elements of guilt and justice. In the case of kratom, the absence of specific regulations makes criminal liability still multi-interpreted. Based on an in-depth analysis of Law Number 35 of 2009 concerning Narcotics, it can be concluded that the kratom herbal plant (*Mitragyna speciosa*) is currently not officially categorized as a narcotic in the Indonesian legal system. This can be seen from the absence of explicit mention of kratom in the annex to the law containing a list of narcotics classes I, II, and III. Nevertheless, the legal status of kratom is in gray area for several reasons: Although it does not belong to the narcotics class, kratom contains psychoactive compounds such as mitraginine and 7-hydroxymitraginine that have pharmacological effects similar to certain narcotic substances. The National Narcotics Agency (BNN) has issued a warning about the potential abuse of kratom and categorized it as a New Psychoactive Substance (NPS). Some local governments have taken a progressive step by issuing local regulations that restrict or prohibit the use of kratom in their regions. In the context of criminal liability, kratom abuse can be approached through several legal perspectives, from the general criminal law aspect, the perpetrator of kratom abuse can be charged with Article 113 of the Narcotics Law regarding "narcotic substances" through an analogous interpretation, although this is still a debate among legal experts considering the principle of legality in criminal law. From a health law perspective, Article 197 of the Health Law can be applied because kratom meets the criteria as an addictive substance that is harmful to health. In certain cases such as those that occur in some regions, the settlement of disputes related to kratom is carried out through restorative justice mechanisms or customary law. Based on a comprehensive analysis, it is necessary to revise the Narcotics Law to include special provisions on new plants or psychoactive substances such as kratom, either through amendments to attachments or the addition of special articles. The Ministry of Health and BNN need to accelerate research to determine the exact status of kratom, whether it will be categorized as a narcotic, restricted drug, or other addictive substance. Policy harmonization between the central and regional governments is needed to create uniformity in handling kratom cases. It is important to carry out intensive socialization to the public about the potential dangers of kratom abuse and its legal consequences. Overall, it can be concluded that although kratom has not been officially categorized as a narcotic in Law No. 35 of 2009, its potential abuse has created an urgent need for clearer and more comprehensive regulation. Criminal liability for kratom abuse is currently still multi-interpreted and highly dependent on the creativity of law enforcement in implementing existing provisions. Integrative strategic steps between legal, health, and socio-cultural aspects are needed to create an effective but still proportionate regulatory system in addressing the problem of kratom abuse in Indonesia.

CONCLUSION

This study concludes that kratom (*Mitragyna speciosa*) has not been explicitly categorized as a narcotic in Law No. 35 of 2009, thus creating a legal gray area that has an impact on enforcement inconsistencies and multi-interpreted criminal liability. Even though it contains psychoactive compounds similar to narcotics, the legal status of kratom still depends on analogous interpretations, the provisions of the Health Law, and the caustic approach in the field. This condition shows the urgent need for clear and comprehensive regulations so that law enforcement can be carried out consistently, fairly, and proportionately. For further research,

it is recommended to conduct multidisciplinary studies on pharmacological, socio-economic, and comparative international regulations to provide a scientific basis for the government in formulating policies that balance public safety, medical potential, and economic sustainability of kratom-producing communities.

BIBLIOGRAPHY

- Grundmann, O., Hendrickson, R. G., & Greenberg, M. I. (2021). Kratom use in the United States: A review of the literature and observational studies. *Pharmacotherapy: The Journal of Human Pharmacology and Drug Therapy*, 41(3), 256-269. <https://doi.org/10.1002/phar.2493>
- Mukhlisi, M., Widowati, L., & Hadayani, L. (2018). *Kratom: Prospek kesehatan dan sosial ekonomi*. Badan Penelitian dan Pengembangan Kesehatan.
- Singh, D., Narayanan, S., Müller, C. P., Swogger, M. T., Chear, N. J. Y., Dzulkapli, E. B., Yusoff, N. S. M., Ramachandram, D. S., León, F., McCurdy, C. R., Vicknasingam, B. K., & Murugaiyah, V. (2020). Motives for using kratom (*Mitragyna speciosa* Korth.) among regular users in Malaysia. *Journal of Ethnopharmacology*, 253, Article 112339. <https://doi.org/10.1016/j.jep.2019.112339>
- United Nations Office on Drugs and Crime. (2017). *Kratom (Mitragyna speciosa): Review of scientific information on the use, health effects and regulatory status*. <https://www.unodc.org/documents/scientific/Kratom.pdf>
- Ahmad, I., et al. (2022). *Mitragyna Species as Pharmacological Agents: From abuse to promising pharmaceutical products*. [Artikel terindeks di NCBI PMC].
- Dewatisari, W. F., et al. (2025). A Review on Alkaloid Diversity in *Mitragyna speciosa*: Influence of Strain and Geographic Origin. *Journal / Proceeding* (versi versi terindeks).
- Ni'ma, N. S., et al. (2024). "Kratom (*Mitragyna speciosa*) : Medicinal Marvel or Menace". *Indonesian Journal of Chemical Science*, 13(1).
- Ramanathan, S. (2021). *Kratom (Mitragyna speciosa Korth.): A description on the botany, ethnobotany, and alkaloid chemistry*. Dalam buku *The Botany of Kratom*.
- Buckhalter, S., et al. (2021). The antidepressant-like and analgesic effects of kratom (*Mitragyna speciosa*). *Frontiers in Pharmacology*.
- Case Report of Kratom-Induced Psychosis. (2021). *National Library of Medicine (PMC)*.
- DEA. (2020). *Drug Fact Sheet: Kratom*. U.S. Drug Enforcement Administration.
- Frontiers. (2025). The acute adverse health effects of kratom: An evaluation of case reports. *Frontiers in Pharmacology*.
- Heywood, J., et al. (2024). Beneficial and adverse health effects of kratom (*Mitragyna speciosa*). *Elsevier / ScienceDirect*.
- Hossain, R., et al. (2023). A critical review of the neuropharmacological effects of kratom. *Molecules*, 28(12).
- Kruegel, A. C., et al. (2019). 7-Hydroxymitragynine is an active metabolite of mitragynine. *ACS Central Science*.
- Todd, D. A., et al. (2020). Chemical composition and biological effects of kratom alkaloids. *Journal of Natural Products*, 83(1), 216–226.