



Problematics of the Use of Kratom (*Mitragyna speciosa*) from the Perspective of Criminal Law

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Abstract: The problematic nature of the use and regulation of kratom in Indonesia, from the perspective of criminal law, remains in a state of legal uncertainty due to the absence of explicit regulation within the positive legal system. This study aims to analyze the juridical implications of this normative vacuum and to formulate an ideal and equitable regulatory framework. The research employs a normative legal research method using statutory and conceptual approaches, through an examination of legislation, legal doctrines, and relevant secondary legal materials. The findings indicate that the unclear legal status of kratom gives rise to policy disharmony among state institutions, undermines legal certainty, potentially violates the principle of legality, and creates risks of injustice for society, particularly for farmers and consumers. Furthermore, a purely criminalization-based approach is considered ineffective and may exacerbate the burden on the criminal justice system. This study concludes that the regulation of kratom in Indonesia must be designed in a comprehensive, proportional, and evidence-based manner by positioning criminal law as *ultimum remedium*, while balancing the interests of public health protection, legal certainty, and socio-economic justice.

Keywords: Criminal Law Policy; Kratom; Legal Certainty.

1. Introduction

Kratom (*Mitragyna speciosa*) is a tropical tree native to Southeast Asia whose leaves have long been used in traditional medicine. Kratom exerts its effects through active compounds such as mitragynine and 7-hydroxymitragynine, which interact with opioid receptors in the brain, producing stimulant, analgesic, and relaxant effects (Aqsa, Apriani, Amanda, Suhiba, & Anestrada, 2025). Although traditionally used to enhance energy and relieve pain, kratom also carries risks such as gastrointestinal disorders, kidney damage, and liver injury when consumed in excessive doses (Aqsa, Apriani, Amanda, Suhiba, & Anestrada, 2025).

The legal status of kratom varies across jurisdictions worldwide and is characterized by considerable complexity (Smith, et al., 2024). Thailand has legalized kratom for medical purposes, whereas countries such as Malaysia, Latvia, Denmark, Sweden, and Lithuania have imposed strict prohibitions (Smith & A, 2023). In the United States, the regulation of kratom differs between the federal and state levels, with several states, such as Alabama, Arkansas, and Tennessee, having classified it as a Schedule I substance (Rabbani, Arta, Rofiq, & Mukhsin, 2024). This policy variation reflects an ongoing debate between proponents who emphasize the potential therapeutic benefits of kratom and opponents who stress its associated health risks (L, 2024).

In Indonesia, the legal status of kratom exists in a legal grey area, since it is not explicitly regulated or designated as a narcotic under Law No. 35 of 2009 on Narcotics (Kesehatan D. J., 2024). This ambiguous status poses fundamental challenges to the principles of legality in criminal law, particularly concerning the *nullum crimen sine lege* principle, which requires that criminal conduct must be explicitly defined in law before any act can be subject to punishment. The absence of kratom in the Annex to Law No. 35 of 2009 creates a normative vacuum that violates the *lex certa* (legal certainty) require-

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ment, as neither citizens nor law enforcement authorities possess clear legal parameters to distinguish between lawful traditional use and criminal abuse of kratom. Furthermore, this grey area status conflicts with the *lex stricta* (strict interpretation) principle, which prohibits analogical interpretation in criminal law; without explicit statutory provisions, any attempt to prosecute kratom-related conduct by analogizing it to existing narcotic substances would constitute an impermissible extension of criminal liability beyond the written law. This juridical predicament is exacerbated by the fact that circular letters and recommendations issued by the National Narcotics Agency (BNN) and the National Agency of Drug and Food Control (BPOM) do not constitute formal sources of criminal law under Indonesia's hierarchical legal system as stipulated in Law No. 12 of 2011, thereby lacking the binding force necessary to serve as a basis for criminalization. The National Narcotics Agency has the authority to propose the inclusion of substances in the list of prohibited narcotics, while the National Agency of Drug and Food Control (BPOM) is authorized to regulate kratom products marketed as medicines or dietary supplements. The main kratom-producing regions in Indonesia are concentrated in Kalimantan, particularly in West Kalimantan (Indonesia S. K., 2023).

Indonesia's kratom export data indicate a significant increase. In 2023, export volume reached 7,695 tons with a value of USD 16.60 million, rising from 5,330 tons valued at USD 9.95 million in 2019 (Indonesia C. , 2024). The phenomenon of kratom use demonstrates a high degree of complexity, as reflected in increasing public awareness, regulatory uncertainty, the dynamics of the export market, health and social concerns, and the intensification of governmental efforts in conducting scientific assessments (Indonesia C. , 2024).

The ambiguity of kratom's legal status and ongoing public debate continue to influence policies concerning kratom. The controversy surrounding its criminalization creates a complex dilemma, with pro arguments emphasizing individual rights and the economic impact on farmers, while counterarguments highlight the need to protect public health (Kusuma & Wijaya, 2024). The persistence of this legal grey area not only undermines the predictability and foreseeability essential to the rule of law but also creates a chilling effect on legitimate economic activities, as farmers and exporters operate under the constant threat of retroactive criminalization—a scenario fundamentally incompatible with the principle of *non-retroactivity* (*lex temporis delicti*) enshrined in Article 1(1) of the Indonesian Criminal Code. Such complexity necessitates a more nuanced approach in order to strike a balance between the protection of public health, respect for individual liberties, and the socio-economic interests of the community (Smith & A, 2023).

2. Materials and Methods

This study adopts a normative legal research method using a doctrinal approach, which focuses on the analysis of legal literature and other forms of secondary data (Rifa'i, 2023). The approaches employed in this study include the statutory approach to examine the hierarchy and harmonization of legislation related to kratom, as well as the conceptual (theoretical) approach by applying theories of criminal law policy, sentencing theory, and the concept of New Psychoactive Substances (NPS) (Ramadani, 2023). The legal materials used in this study consist of primary, secondary, and tertiary legal materials. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 35 of 2009 on Narcotics, Law Number 36 of 2009 on Health, Minister of Health Regulation Number HK.01/07/MENKES/272/2017, BPOM Circular Letter Number HK.04.4.42.421.09.16.1740 of 2016, BNN Letter Number B/2985/X/KA/PL.02/2019/BNN, as well as other relevant regulations. The secondary legal materials comprise textbooks on criminal law, national and international law journals, previous research findings, monographs on the pharmacology of kratom, and official reports issued by the National Narcotics Agency, the National Agency of Drug and Food Control, and the Ministry of Health. The tertiary legal materials consist of legal dictionaries (Djulaeka & Rahayu, 2020). The collection of legal materials was conducted through library research, involving the stages of identification, inventory, classification, collec-

tion, and verification of the validity and applicability of regulations through official government websites (Sunggono, 2021).

The analysis of legal materials employs a descriptive-qualitative method using content analysis techniques, legal interpretation (including grammatical, systematic, historical, teleological, and sociological interpretation), comparative analysis of kratom regulation in other countries, as well as deductive and inductive methods to draw conclusions (Sunggono, 2021). The analytical framework is conducted through the following stages: problem identification; description of the prevailing legal framework (*ius constitutum*); analysis of the issues using criminal law policy theory; evaluation of effectiveness and proportionality; formulation of an ideal regulatory framework (*ius constituendum*); and the drawing of conclusions (Arief, 2021). The validity and reliability of the data are assured through source triangulation, verification of the legal force and applicability of regulations, consultations with academic supervisors and criminal law experts (peer debriefing), and systematic documentation of the research process (audit trail) (Ramadani, 2023). All legal materials used in this study are derived from publicly accessible documents obtained through official government legal databases and academic journal portals such as Google Scholar and Garuda, thereby ensuring that the research can be replicated by other scholars (HS & Nurbani, 2021). This research does not involve human or animal subjects and thus does not require ethical clearance. However, it strictly adheres to the principles of academic integrity, objectivity, transparency, and proper attribution of sources through a consistent and systematic citation practice (Kesehatan K. N., 2021).

3. Results and Discussion

3.1. Problematics of Kratom Use in Indonesia from a Criminal Law Perspective

The use of kratom in Indonesia gives rise to complex issues in criminal law due to the unclear legal status of this plant within the national positive legal system. Kratom is not explicitly listed in the Annex to Law Number 35 of 2009 on Narcotics, even though it is scientifically known to contain the alkaloids mitragynine and 7-hydroxymitragynine, which have psychoactive effects. This condition creates a legal vacuum that results in legal uncertainty for the public, law enforcement authorities, and business actors, thereby contravening the principle of legal certainty and the principle of legality in criminal law (Aqsa, Apriani, Amanda, Suhiba, & Anestrada, 2025).

From a criminal law perspective, the unclear legal status of kratom is inconsistent with the principle of *nullum crimen sine lege*, which stipulates that an act may only be subject to criminal punishment if it has been clearly regulated by law. The absence of explicit regulation concerning kratom results in law enforcement authorities lacking a solid legal basis to undertake criminal prosecution, while the public likewise does not obtain clear guidance regarding the legality of its use and distribution. This situation is not in accordance with the principles of *lex certa* and *lex stricta* as emphasized in the decisions of the Constitutional Court (Kurniadi, Martono, & Dewi, 2025).

The kratom issue has become increasingly complex due to policy disharmony among state institutions. The National Narcotics Agency has recommended that kratom be classified as a Schedule I narcotic with a transitional period, while the National Agency of Drug and Food Control prohibits its use in traditional medicines and dietary supplements. On the other hand, the Ministry of Trade has facilitated the export of kratom as a leading commodity. This lack of policy synchronization reflects weak inter-agency coordination and gives rise to persistent legal uncertainty (Ismail, Setyawan, & Rizaldi, 2026).

The absence of a clear legal basis renders the enforcement of criminal law against kratom potentially in violation of the principle of legality. Circular letters or recommendations issued by state institutions do not form part of the hierarchy of laws and regulations as stipulated in Law Number 12 of 2011, and therefore cannot serve as a basis for criminal punishment. This condition creates the risk of arbitrary law enforcement and fails to guarantee the protection of human rights (Burmawi, 2024).

The lack of clarity regarding the legal status of kratom also affects consumer protection. Kratom products available on the market frequently lack sufficient information concerning their composition, safe dosage, and possible adverse effects, thus infringing upon consumers' right to correct and honest information. Variability in the alkaloid content of kratom has the potential to generate serious health risks in the absence of proper regulatory standardization and oversight mechanisms (Rabbani, Arta, Rofiq, & Mukhsin, 2024).

From the perspective of criminal law policy, the criminalization of kratom creates a dilemma between the protection of public health and the economic sustainability of farmers. Thousands of farmers in the West Kalimantan region depend for their livelihoods on kratom cultivation, which has been carried out for generations and has even been facilitated for export purposes. Criminalization without an economic transition approach has the potential to generate social injustice and to exacerbate the economic conditions of rural communities (Sudarto, 2021).

The enforcement of criminal law against kratom faces serious obstacles in terms of evidentiary issues. The limited capacity of forensic laboratories to detect kratom alkaloids, along with the absence of established threshold standards for levels classified as abuse, creates uncertainty in the evidentiary process. This condition has the potential to violate the principle of *due process of law* and to open the door to arbitrariness in law enforcement (Pratama, 2023).

The lack of clarity regarding the effective date of any kratom prohibition raises serious issues concerning the principle of *lex temporis delicti* and the principle of non-retroactivity. Circular letters or recommendations issued by state institutions cannot be applied retroactively as a basis for criminal punishment. The criminal prosecution of farmers or kratom business actors under conditions of legal uncertainty has the potential to violate the principles of justice and human rights as guaranteed by the 1945 Constitution of the Republic of Indonesia (Maharani & Prasetyo, 2022).

The application of criminal sanctions to conduct related to kratom must also consider the doctrine of culpability. In a situation of legal uncertainty, individuals may find themselves in a condition of unavoidable *error juris*. The imposition of punishment under such circumstances risks producing criminal punishment without moral guilt and runs counter to the principle of substantive justice in criminal law (Arianti, Maryono, & Rattanapun, 2025).

The categorization of kratom as a New Psychoactive Substance generates a conceptual debate, given that kratom is a natural plant that has long been utilized in traditional medicine. The assimilation of kratom to synthetic narcotics potentially neglects the historical and cultural context of its use, thus necessitating a more contextualized and risk-based regulatory approach (Crime, 2023).

The criminalization of kratom risks exacerbating the burden on the criminal justice system and correctional facilities, which are already suffering from overcapacity, especially as a result of the predominance of narcotics cases. The inclusion of kratom-related cases may diminish the effectiveness of law enforcement efforts in tackling offenses that present a greater degree of social danger (Pemasyarakatan, 2024).

Overall, the problematics surrounding the use of kratom demonstrate that a purely criminal law approach is inadequate. A comprehensive policy is required that prioritizes regulatory harmonization, legal certainty, the protection of human rights, and a balance between public health protection and socio-economic justice (Fadholi, Puspitasari, & Barus, 2023).

3.2. The Regulatory Framework (Ius Constituendum) for the Use and Distribution of Kratom in Indonesia

The regulation of kratom in Indonesia should be developed within the framework of *ius constituendum* to address the existing legal vacuum and to resolve policy disharmony among state institutions. The regulatory approach should avoid extremes, whether in the form of absolute prohibition or uncontrolled liberalization. Instead, it should adopt a proportional and just middle-path regulatory model that places criminal law as *ultimum remedium*. This approach is in line with criminal law policy theory, which views criminal law as a measure of last resort, to be employed only when administrative and social mechanisms are no longer sufficient (Arief, 2021).

The most fundamental step in constructing a regulatory framework for kratom is the establishment of a clear and definitive legal status through legislative mechanisms. The legal uncertainty that has persisted to date must be resolved either through a revision of the Annex to Law Number 35 of 2009 on Narcotics by explicitly including kratom, or by creating a new category such as controlled psychoactive plants. This determination must be based on comprehensive scientific studies involving the National Research and Innovation Agency, the Ministry of Health, the National Agency of Drug and Food Control, and the National Narcotics Agency, in order to ensure that the resulting policy is genuinely grounded in evidence-based policy rather than merely political considerations (Chairani, 2021).

In regulating kratom, it is necessary to draw a clear distinction among several categories of conduct, namely cultivation, processing, distribution, medical or traditional use, and abuse for recreational purposes. This differentiation is essential for applying the principles of proportionality and gradation of punishment, so as to avoid excessive criminalization of farmers or members of the public who use kratom for traditional purposes. In modern sentencing theory, the differentiation of sanctions is a necessity in order to ensure substantive justice (Arief, 2021).

With respect to cultivation activities, the regulatory framework should ideally employ a strict licensing system while still providing protective safeguards for farmers. This model may adopt the regulatory system applied to *Papaver somniferum*, under which farmers are required to obtain permits, report their harvests, and may only sell their produce to licensed distributors. Violations of these provisions should primarily be subject to administrative sanctions, and criminal sanctions should be imposed only where

there is intent to engage in large-scale illegal distribution, in accordance with the principle of *ultimum remedium* (Kesehatan K. N., 2021).

The processing and extraction of kratom should also be strictly regulated under the supervision of the National Agency of Drug and Food Control (BPOM), with an obligation to comply with Good Manufacturing Practice standards. Kratom products placed on the market must meet safety standards, be free from harmful contaminants, and provide complete and accurate information regarding their composition, dosage, and potential side effects. Violations of these standards may be subject to administrative and criminal sanctions if they result in serious health impairment or death, as stipulated in Law Number 36 of 2009 on Health (Burmawi, 2024).

In terms of distribution, the regulation of kratom should employ a closed distribution system, whereby circulation is permitted only through official channels and licensed facilities. Sales to consumers should ideally be restricted to licensed pharmacies or authorized drugstores, accompanied by strict controls on illegal online sales. Such a system is necessary to prevent leakage into the black market and to protect vulnerable groups from misuse (Marpaung, 2021).

In addition, it is necessary to establish Indonesian National Standards for kratom products that regulate alkaloid content, contamination limits, as well as packaging and labeling standards. Such standardization is not only essential for consumer protection, but also for enhancing the competitiveness of Indonesian kratom in the international market, which is increasingly stringent in enforcing safety standards for herbal products (Nasional B. S., 2021).

The use of kratom for medical purposes or traditional medicine based on a prescription or recommendation from a healthcare professional should be exempted from criminal provisions. This policy is consistent with citizens' constitutional right to health services as guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Nevertheless, such use must remain subject to mandatory recording and reporting requirements for the purposes of state supervision (Aqsa, Apriani, Amanda, Suhiba, & Anestrada, 2025).

Conversely, the use of kratom for recreational purposes without medical indication should be classified as a minor criminal offense and addressed through a rehabilitative approach rather than imprisonment. This approach is consistent with the new paradigm in narcotics policy, which views users as subjects in need of recovery rather than mere punishment, as reflected in Government Regulation Number 25 of 2011 on Mandatory Reporting for Narcotics Addicts (Arief, 2021).

The sentencing system in the regulation of kratom should be tiered, whereby users are directed toward rehabilitation, small-scale distributors are subject to minor sanctions, and large syndicates are imposed proportionate severe penalties. For minor violations, space should be provided for resolution through diversion mechanisms and restorative justice in order to prevent overcriminalization and reduce the burden on correctional institutions (Chairani, 2021).

To ensure effective implementation, a Special Task Force involving multiple ministries and agencies should be established to carry out integrated coordination, supervision, and law enforcement. This measure is crucial to end the long-standing policy dis-

harmony among the National Narcotics Agency, the Food and Drug Supervisory Agency, the Ministry of Health, and the Ministry of Trade. Such an inter-agency kratom policy framework is essential for coherent governance.

In addition, the regulation of kratom must also take into account aspects of consumer protection as stipulated in Law Number 8 of 1999 on Consumer Protection, including the right to accurate information and compensation mechanisms. The implementation of this policy will also require state budget support as well as a periodic monitoring and evaluation system conducted every three to five years to assess its effectiveness and socio-economic impact (Kusuma & Wijaya, 2024).

Thus, the ideal regulation of kratom is one that is comprehensive, proportionate, evidence-based, and non-repressive, and that is capable of balancing the interests of public health protection, the right to traditional medicine, and the sustainable livelihoods of farmers in an equitable manner.

4. Conclusions

The problems surrounding the use of kratom in Indonesia from a criminal law perspective essentially stem from the lack of clarity in its legal status, which has resulted in normative gaps and policy disharmony among state institutions. The absence of explicit regulation in Law Number 35 of 2009 on Narcotics places kratom in an ambiguous legal position, thereby conflicting with the principle of legality, particularly the principles of *lex certa* and *nullum crimen sine lege*. This condition not only undermines legal certainty and complicates law enforcement, but also creates risks of human rights violations, injustice for farmers and consumers, and disproportionate law enforcement practices. Moreover, a criminalization approach that is not supported by a clear and evidence-based regulatory framework has the potential to further burden the criminal justice system without effectively addressing the health and social issues associated with kratom use.

Therefore, future regulation of kratom in Indonesia should be designed within a comprehensive, proportionate, and just *ius constituendum* framework, positioning criminal law as an *ultimum remedium*. Such regulation must be grounded in scientific research, clearly distinguishing between cultivation, processing, distribution, medical or traditional use, and misuse for non-medical purposes, and supported by a coordinated cross-sectoral system of licensing, standardization, and supervision. To effectively end the persistent policy disharmony among state institutions, this study recommends the establishment of a National Kratom Coordination Task Force (*Satuan Tugas Koordinasi Kratom Nasional*) operating under a Presidential Regulation, comprising representatives from the National Narcotics Agency (BNN), the National Agency of Drug and Food Control (BPOM), the Ministry of Health, the Ministry of Trade, the Ministry of Agriculture, and the Ministry of Law and Human Rights, with a clear mandate to formulate unified policy and develop Integrated Standard Operating Procedures (SOPs) that harmonize licensing, supervision, and enforcement mechanisms across all agencies. The success of this inter-agency coordination model should be measured through quantifiable indicators, including: (1) regulatory harmonization, evidenced by the enactment of a Presidential Regulation or Government Regulation on kratom within 12 months and the

elimination of conflicting institutional circulars within 6 months; (2) operational effectiveness of integrated SOPs, measured by 90% of kratom-related cases processed through unified procedures within 18 months and an 80% reduction in jurisdictional conflicts within 24 months; (3) consistency and proportionality of law enforcement, indicated by a minimum 70:30 ratio of rehabilitation to incarceration for kratom users; (4) farmer welfare protection, measured by 80% of existing cultivators successfully registered under the licensing system within 24 months with no more than 15% income reduction; (5) consumer safety enhancement, reflected in 85% of kratom products meeting established quality standards within 36 months and a 40% reduction in kratom-related adverse health events; and (6) institutional accountability, demonstrated through biannual progress reports and impact assessments every three years. Furthermore, a robust periodic monitoring and evaluation mechanism should be implemented biannually for the first three years and annually thereafter, incorporating participatory elements through regular consultation forums with farmer representatives, consumer protection organizations, medical professionals, and legal experts, as well as establishing a transparent complaint and redress mechanism with documented response times (initial response within 14 days, resolution within 90 days). Through this approach, it is expected that a balance can be achieved between the protection of public health, legal certainty, respect for human rights, and the fair and sustainable socio-economic welfare of communities, particularly kratom farmers.

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