

## Legality of the Legal Status of Kratom Plants in Indonesia

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<https://doi.org/10.25134/unifikasi.v9i1.5502>

### ARTICLE INFO

### ABSTRACT

#### Article History

Received: January 14, 2022

Revised: February 5, 2022

Accepted: March 31, 2022

#### Keywords

Herbal Plant;

Kratom Legality;

Narcotics.



This research aims to address the following research questions: Why is kratom plant considered illegal in Indonesia? Is there any legal protection for Indonesian farmers who cultivate kratom plants? This study employed normative legal method combining with a qualitative approach. This method relied on secondary data gathered from books, journals, laws, court decisions, and the internet. The information gathered was about kratom plants in Indonesia. In addition, a legal approach was also involved to review selected kratom plant regulation in Indonesia. The study revealed that the legality use of kratom is governed by the circular letter of the Head of the POM No: HK.04.4.42.421.09.16.1740 of 2016, the prohibition on the use of *Mitragyna Speciosa* (Kratom) in traditional medicines and health supplements. There are numerous side effects for those who consume the kratom plant, according to its content. Since 2013, it has been classified as an NPS (New Psychoactive Substance) and the National Narcotics Agency in an effort to prevent the spread of Kratom plants in Indonesia. Starting with the issuance of a policy, a total ban effective as of 2022. Farmers who cultivate Kratom Plants must switch crops because kratom is classified as Narcotics—it cannot be cultivated or traded freely.

### Introduction

The rapid development in health industry, the medicines and herbal plants, used to treat or prevent various diseases in the human body. It has broadened its development in terms of processing and form. Over time, the substances in these drugs and plants may contain narcotics, the use and distribution of which must comply with the applicable law, Narcotics Law Number 35 of 2009 (the provisions on the use of narcotics as a drug). It is One of the herbal plants that is used as an alternative treatment, such a raw material for making medicines. The scientific name for kratom is *Mitragynia speciosa korth*, but it is also known as Biek or Ketum. It is most common in the northern and central parts of Peninsular Malaysia and in southern Thailand. In Thailand, this plant is also known as Kakuam, Ithang or Thom. This plant is native to Southeast Asia (Muang Thai, Indonesia, Malaysia, Myanmar, Philippines and Papua New Guinea)<sup>1</sup>.

Kratom is a tree with tropical leaves native to Kalimantan's inland. It spreads and thrives in Nanga Sambus Village, North Putussibau District, Kapuas Hulu Regency, West Kalimantan. This plant can grow to a height of 4-16 meters or more and produce wide and large leaves, particularly long ones. Furthermore, this plant is a member of the Rubiaceae family (the same family as coffee).

Because of the public's interest in Kratom Plants, farmers in Kalimantan make a living from it because the selling price and income obtained are considered profitable. Especially since the price of rubber plants, which were previously their main source of income, has

<sup>1</sup> European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Kratom (*Mitragyna speciosa*) drug profile [Internet] [cited 2017 May 1]. January 8, 2015.

dropped. Furthermore, rubber prices have fallen since 2014, ranging from Rp. 13,000 to Rp. 6,000/Kg. In West Kalimantan, the farmers have no choice but to cultivate Kratom Plants. In addition, they consider the plant to be a herbal medicine for cough, diarrhea, diabetes, pain relief (analgesic), and anti-inflammatory properties (inflammation). The main active compounds in kratom are the alkaloids mitragynine and 7-hydroxymitragynine. Since 2013, UNODC (United Nations Office On Drugs And Crime) has classified kratom as a type of NPS (New Psychoactive Substances)<sup>2</sup>.

Low doses produce a stimulant effect or increase energy and alertness that lasts for 10 minutes to 1.5 hours. High doses, on the other hand, will produce a euphoric or sedative-narcotic effect that can last up to 5 hours. According to internet surveys conducted by EMCDDA (European Monitoring Center for Drugs and Drug Addiction) in 2008 and 2011, kratom is the most trafficked NPS (New Psychoactive Substances).<sup>3</sup> Sedatives are used in the medical field to treat stress, anxiety symptoms, and sleep disorders (insomnia). This group, however, is classified as group IV psychotropics and is not included in the narcotics category. If this drug is used in excess, it can lead to addiction and dependence, affecting both mentally and behaviorally.<sup>4</sup>

The side effects include nausea, sweating, tremors, difficulty sleeping, delusions, hallucinations and excitement. In theory, this plant will worsen the body's condition as well as the onset of symptoms of mental disorders, leading to suicidal ideation. Kratom therapy is thought to be less expensive than opiate therapy with buprenorphine. Furthermore, it is common to find that many opiate addicts turn to kratom<sup>5</sup>. The aftereffects of consuming kratom have been found to be similar to the effects of drug use. Narcotics are made from either synthetic or semi-synthetic substances or plants. The use reduces awareness, eliminates feelings, pain, and can even lead to dependence in the wearer, according to Article 1 paragraph (1) of Narcotic Law Number 35 of 2009.

Article 6 paragraph (1) of Law Number 35 of 2009 Concerning Narcotics divides narcotics groups into three categories, as follows:

1. Group 1, which can only be used for scientific purposes and is not intended for therapeutic use because the potential for dependence is quite high
2. Group 2, which can be used for science and can be used as a last resort in therapy because the potential for dependence is quite high
3. Group 3, which can be used for science and can be used for therapy. Due to the potential for mild dependence.

In addition to class, narcotics are divided by type into three, as follows:

1. Natural narcotics. It is derived from nature or plants that contain extremely potent substances and pose a high risk if misused. Cannabis/marijuana plants, Coca, and other narcotics fall into this category.

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<sup>2</sup> Asep Gana Suganda "Kajian kratom", Sekolah Farmasi ITB, 2019

<sup>3</sup> Mariana Raini, "Kratom (*Mitragyna speciosa* Korth): Manfaat, Efek Samping dan Legalitas", "Pusat Penelitian dan Pengembangan Biomedis dan Teknologi Dasar Kesehatan, Badan Penelitian dan Pengembangan Kesehatan, Kementerian Kesehatan Republik Indonesia, accessed October 21, 2020

<sup>4</sup> Dadang Hawari, "Penyalahgunaan & Ketergantungan NAZA (Narkotika, Alkohol & Zat Adiktif)," Jakarta: Balai Penerbit Fakultas Kedokteran Universitas Indonesia, 2009, p. 59-60

<sup>5</sup> Chien GCC, Odonkor C, Amorapanth P. Is kratom the new "legal high": the case of an emerging opioid receptor agonist with substance abuse potential, pain physician. 2017;20:195-98.

2. Semi-synthetic narcotics. Natural narcotics that have been extracted or processed in some other way with the intention of being used in the medical field. Morphine, codeine, and other narcotics fall into this category.
3. Synthetic narcotics. It is made from chemicals that have undergone a lengthy processing process. It includes amphetamine, methamphetamine (meth), dexamphetamine, and so on.

Accordingly, the problem in this study is related to the legality of kratom plants in Indonesia and knowing whether or not farmers cultivating this plant have legal protection. This study aims to better understand the issues surrounding the regulations or provisions that apply to kratom plants in Indonesia. Furthermore, this study analyses if legal protection exist in Indonesia for farmers who cultivate or grow kratom plants. The legal status of the kratom plant in Indonesia, which is still used as a herbal medicine, is unclear, despite the fact that it has been cultivated and exported to America, Europe, and several Asian countries. The active ingredients contained in the kratom plant, the alkaloids mitragynine and 7-hydroxymitragynine have a stimulant effect. Since it is still used as herbal medicine until it is traded outside Indonesia, Indonesians, especially in Kalimantan, continue to cultivate this illegal plant. This questioned the legal protection for farmers cultivating kratom plants after switching from rubber, which experienced a decline in market prices. Accordingly, the authors formulate a following research questions: Why is kratom plant considered illegal in Indonesia? Is there any legal protection for Indonesian farmers who cultivate kratom plants?

### Research Methods

This study employed normative legal method combining with a qualitative approach. This method relied on secondary data gathered from books, journals, laws, court decisions, and the internet. The information gathered was about kratom plants in Indonesia. In addition, a legal approach was also involved to review kratom plant regulation in Indonesia.

### Results and Discussion

#### 1. Indonesian Regulations on the Legal Status of Kratom Plants

Kratom (*Mitragyna speciosa* Korth.) grows sporadically throughout Southeast Asia, including Thailand, Malaysia, the Philippines, Cambodia, Vietnam, Papua New Guinea, and Indonesia<sup>6</sup>. This plant is also included in the Rubiaceae tribe such as coffee plants. Morphologically, kratom is a tree plant with straight stems and brownish gray bark. The color of margin and veins in leaves becomes the distinguishing parameters, because there are two types of colors, green and reddish brown<sup>7</sup>. Kratom thrives in alluvial soils rich in organic matter near streams. Kratom is not an aquatic plant, but it can survive if the land becomes flooded at any time. Kratom is a plant that originated in the tropics, specifically Southeast Asia.

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<sup>6</sup> T. Atmoko Mukhlisi, dan Priyono, *Flora di Habitat Bekantan Lahan Basah Suwi. [s.l.]* : Forda Press, 2018.

<sup>7</sup> E. Shellard dan M.D Lees, "Part 5 - The Anatomy of leaves of *Mitragyna speciosa* Korth., The *Mitragyna* Species of Asia", "School of Pharmacy, Chelsea College of Science and Technology, London, 1965"; 280-290

**Table 1.** Taxonomic classification for *Mitragyna speciosa* according to the Global Biodiversity Information Facility (GBIF)

Kingdom	Plantea
Phylum	Tracheophyta
Class	Magnoliopsida
Order	Gentianales
Family	Rubiaceae
Genus	<i>Mitragyna</i> Korth.
Species	<i>Mitragyna speciosa</i> (Korth.) Havil
Synonym	<i>Nauclea korthalsii</i> Steud. <i>Nauclea korthalsii</i> infrasubsp. Publ <i>Nauclea luzoniensis</i> Blanco <i>Nauclea speciosa</i> (Korth.) Miq <i>Stephegyne speciosa</i> Korth.

**Source:** Kratom Book: Health and Socio-Economic Prospects, 2019

Kraatom is widely planted in the Kapuas Hulu area by the community, but large-scale cultivation is done in gardens and on land near rivers. Kraatom is traditionally thought to boost energy, treat pain, rheumatism, gout, hypertension, stroke symptoms, diabetes, insomnia, wounds, diarrhea, cough, cholesterol, typhoid, and even increase appetite in Indonesia.<sup>8</sup> Kratom has analgesic, antipyretic, antidiarrheal, antidepressant, antibacterial, antidiabetic, antinociceptive, anti-inflammatory, and antioxidant properties.<sup>9</sup> Kratom contains 66% mitragine compounds and 2% 7-hydroxymitraginine, with the latter being the main compound in the leaves. Kratom leaves are elliptical to ovate, measuring 10-20 x 7-12 cm, have clearly visible secondary leaf bones numbering 12-17 pairs. The leaves are green and tend to be lighter and more contrasting than the green of the surrounding plants. The leaf texture is similar to that of paper, with a pointed leaf tip and a round or heart-shaped leaf base (sub cordate).

**Image 1.** Morphology of kratom leaves A. Green veined kratom plant, B. Red veined kratom plant, C. Front view of red veined leaf (left) and green (right), D. Back view of red veined leaf (left) and green (right).

<sup>8</sup> Wahyono, S. dkk. *Laporan Nasional* : "Eksplorasi Pengetahuan Lokal Etnomedisin dan Tumbuhan Obat di Indonesia Berbasis Komunitas". Jakarta, 2015.

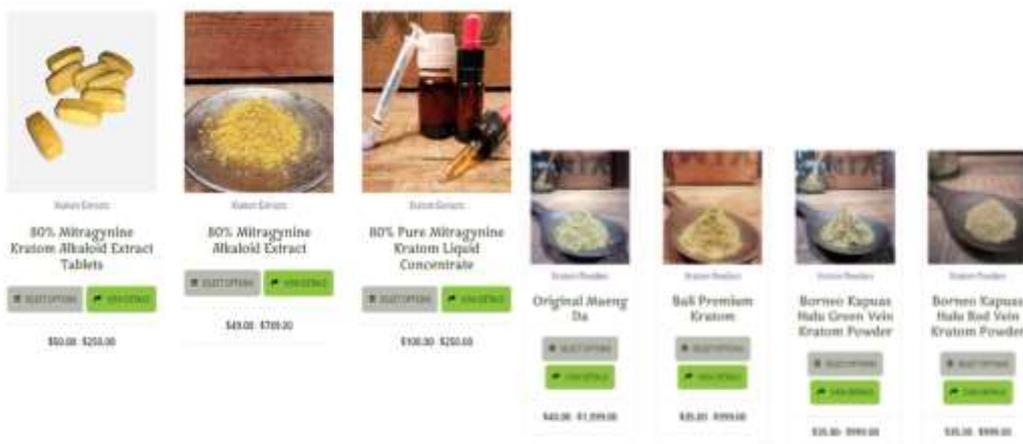
<sup>9</sup> Matsumoto, K., Horie, S., Takayama, H., Ishikawa, H., Aimi, N., Ponglux, D., Murayama, T., dan Watanabe, K. "Antinociception, tolerance and withdrawal symptoms induced by 7-hydroxymitraginine, an alkaloid from the Thai medicinal herb *Mitragyna speciosa*". *Life Sciences*. 2005;78(1):2-7, diperoleh melalui situs internet: <https://doi.org/10.1016/j.lfs.2004.10.086>



Source: Kratom Book: Health and Socio-Economic Prospects, 2019

Several cases of seizures, coma, and even death are presumed to be caused by the use of kratom in combination with drugs or other natural ingredients. Abusing polydrugs and polyherbals is one of the most serious threats to kratom users today. Mitraginine 10, 30, and 90 mg/kg bw have low abuse potential and reduce symptoms of morphine induction and addiction. Over the years, many people have abused and traded kratom into various forms, such as powders, capsules, and extracts, containing various compositions and sizes. According to kratom.com, a website that trades this plant, it costs between \$25.00 and \$999.00, or IDR of 367.130,00 and IDR of 14.670.514,80.<sup>10</sup>

Image 2. Kratom plant products that are traded online



Source: <https://kratom.com/>

<sup>10</sup> Profile kratom.com, "kratom.com", <https://shop.kratom.com/> accessed on 23 October 2020. 01.09 WIB

In Indonesia, there are regulatory violations in the Kratom plant, particularly in traditional medicinal products (herbs, herbal medicines, tea) and health supplement products. The prohibition is due to international research findings that kratom contains mitraginine alkaloids, which cause a stimulant effect in low doses but a sedative-narcotic effect in high doses. It is stated in the circular letter of the Head of the POM No: 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. Looking from its content, there are numerous side effects that can affect its consumers. In fact, the kratom plant has been classified as an NPS (New Psychoactive Substance) since 2013<sup>11</sup>.

NPS has a variety of side effects, including seizures, agitation, acute psychosis, and addiction. Commercially available NPS have a stronger effect than international controlled substances such as cannabis, cocaine, heroin, LSD, MDMA (ecstasy), or methamphetamine<sup>12</sup>. There are currently 739 species discovered around the world, with Indonesia accounting for 78 of them (National Narcotics Agency, 2019). 74 of them have been identified, but four of them, including kratom, are non-regulated NPS in the Permenkes (Minister of Health Regulations).

Table 3. Grouping classified as NPS

74	Mitragyna speciosa mengandung mitraginine dan 7-OH mitraginine	KRATOM	Plant-based Substances	Stimulan (pada dosis rendah) dan efek seperti opioid (pada dosis lebih tinggi)	
75	1-Fenil-2-(propilamino) 1-pentanon	ALPHA-PROPILAMINOPENTIOFENON	Synthetic cathinones	Stimulan, halusinogen, insomnia dan Sympathomimetic	
76	2-(2-Alorofenil)-2-(metilamino) sikloheksan-1-on	KETAMIN	Ketamine and PCP-type Substances	Efek disosiatif (halusinogen)	
77	2-(2-Fluorofenil)-2-(metilamino) sikloheksan-1-on	2-FLUORO-DESKLOROKETAMIN	Ketamine and PCP-type Substances	Efek disosiatif (halusinogen)	
78	1-(4-fluorofenil)-2-(metilamino) pentan-1-on	4F-Pentadron	Turunan cathinone	Stimulan, Halusinogen, insomnia dan Sympathomimetic	

Source: <https://laboratorium.bnn.go.id/nps/?nps>

There are many countries that still allow or legalize kratom plants, including the United States, which has nearly 43 states in addition to Canada, Saudi Arabia, India, the European Union, the Balkans, India, Hong Kong, Taiwan, and Singapore. Export sales of powdered kratom plants are priced at 22-25 USD/kg<sup>13</sup>. Therefore, Indonesia is the largest kratom exporter to the United States<sup>14</sup>. With the issuance of a circular from the head of the POM agency prohibiting the use of Kratom Plants, BNN (National Narcotics Agency) has anticipate its abuse and spread in Indonesia. In 2022, they totally banned Kratom leaves,

<sup>11</sup>, *Ibid*

<sup>12</sup> Pusat Laboratorium BNN, "Materi Penyalahgunaan dan Peredaran Kratom", BNN, 2019

<sup>13</sup> Diskusi Publik Badan Litbang Kesehatan, Balai Besar Penelitian dan Pengembangan Tanaman Obat dan Obat Tradisional, Kementerian Kesehatan : Kajian Kratom (*Mitragyn Speciosa Korth*), Tuesday 27 October 2020

<sup>14</sup> Profile NPS di Indonesia, " NPS di Indonesia ", [https://laboratorium.bnn.go.id/nps/?art.php&detail\\_art&id=19](https://laboratorium.bnn.go.id/nps/?art.php&detail_art&id=19) accessed 7 November 2020 at 23.38 WIB

providing a transition period since the plant was designated as a class 1 narcotic by the National Committee on Narcotics and Psychotropic Changes in 2017.

Despite the fact that the Kratom Plant is a member of the coffee family, a certain dose has a very dangerous effect on the human body. In Indonesia, this plant is still legal. As a result, the Indonesian Police have increased security following the discovery of 12 tons of kratom plants to be traded outside of Indonesia in 2019, specifically in Palangkaraya, Central Kalimantan. The state must ensure legal certainty, as required by Article 28I paragraph (1) of the 1945 Constitution, hereinafter referred to as the "UUD 1945," that the right not to be prosecuted on the basis of retroactive law is a human right that cannot be limited under any circumstances.<sup>15</sup> This is also stated in Article 28D paragraph (1) of the 1945 Constitution, which states that the state is required to provide legal certainty to its citizens<sup>16</sup>.

Every human being has the right to freedom, but restrictions must be put in place so that the applicable rules and regulations are not violated. Furthermore, the current kratom plant in Indonesia lacks a permanent legal position. However, farmers' strong interest in and reliance on kratom plants as a primary commodity does not violate the rules. But what if the plants that are grown have more harmful side effects when used in large quantities? In the midst of the current debate, legal protection is urgently needed as a foundation for ensuring individual freedom, particularly farmers cultivating kratom plants. The legality principle contains the benchmarks for the protection and freedom in cultivating kratom plants. It is stated in Article 1 paragraph (1) of the Criminal Code, or in Dutch *Nullum Delictum Nula Poena Sine Praevia Lege Poenali*, that no person can be convicted unless the act is formulated in a pre-existing statutory rule.<sup>17</sup>

In other words, as long as it has not been determined and stipulated in writing regarding the legal regulations contained, then a person is proven to have committed an act or act that is deemed detrimental to both himself and others cannot be sentenced to criminal because there is no permanent legal position. However, if the kratom plant is determined permanently and in writing to be a class 1 narcotic in the future, this is an act and a criminal act. The National Narcotics Agency's efforts at the moment are socializing about the content in the kratom plant, which is considered dangerous to health. Another effort is being made to legally identify the illegal kratom plant, which will remain in 2022 after a 5-year transition period. As a result, criminalization is required to monitor the development of the kratom plant, which will later be designated as a class 1 narcotic. According to Prof. Sudarto, the criminalization policy, criminal law politics includes:

- a. Attempts to implement good rules in accordance with the state of the world and the situation.<sup>18</sup>;
- b. Policies are implemented by an authorized agency. It is to establish desired and expected regulations, expressing society's value and achieving what is desired.<sup>19</sup>.

The primary goal of enacting criminalization through penal means (criminal law), are:<sup>20</sup>:

- a. Actions that should be prosecuted as criminal offenses;
- b. Sanctions that should be imposed or used against violators.

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<sup>15</sup> Article 28I Paragraph (1) of the 1945 Constitution

<sup>16</sup> Article 28D Paragraph (1) of the 1945 Constitution

<sup>17</sup> Article 1 Paragraph (1) of the Criminal Code

<sup>18</sup> Sudarto, "Hukum dan Hukum Pidana", Bandung, Alumni, 1981 p. 159

<sup>19</sup> Sudarto, "Hukum Pidana dan Perkembangan Masyarakat", Bandung: Sinar Baru, 1983, hal. 20

<sup>20</sup> Barda Nawawi, "Bunga Rampai Kebijakan Hukum Pidana", Semarang: Prenadamedia Group, 2016, p. 30

Differences were discovered in the political decisions made at the time. It is not the function of a law prior to and following independence. While people's prosperity must be prioritized as much as possible, other options must also be provided<sup>21</sup>. On the other hand, Sudarto's policy views on dealing with kratom plant problems in Indonesia include the following considerations:<sup>22</sup>

- a. The use of criminal law is consistent with the goals of national development, such as realizing a just and prosperous society based on Pancasila, as well as combating crime and implementing mitigation measures against the countermeasures, for the welfare and protection of the community.
- b. A criminal law prevention or mitigation act is an unwanted act that results in material and/or spiritual losses.
- c. Applying the cost-benefit principle in the application of criminal law
- d. Pay attention to the capacity or working power of law enforcement agencies and avoid overburdening them with criminal law duties.

Alluding the existing issues related to the legality of the kratom plant in Indonesia, The police confiscated an 11.5 kilogram kratom plant during the 2020 antique menumbing operation in the Bangka Belitung Islands. Brigadier General Anang Yarif Hidayat, the Kapolda (head of the provincial police) of Bangka Belitung, revealed the confiscation was for safekeeping. Furthermore, the kratom plant lacks a permit from the Ministry of Health or the Food and Drug Administration (BPOM). Besides, the use of kratom leaves can result in salmonella (poisoning), liver damage, and addiction, similar to marijuana.<sup>23</sup>

## 2. Legal Protection for Kratom Plant Farmers in Indonesia

Kalimantan people, West Kalimantan especially, are known as the center of Kratom Plants in Indonesia. By having an agrarian area, the people of West Kalimantan do farming, plantations and forests, such as palm oil, cocoa, pepper, coffee, candlenut, areca nut and rubber<sup>24</sup>. People in West Kalimantan rely on rubber for a living. It is a superior commodity because not only latex and seeds are produced, but tree trunks or wood can be valuable and traded. However, the decline in rubber plantation prices has impacted farmers, particularly those who rely on it. Rubber can be significantly reduced for as little as US\$1.8/Kg. It is no surprise that farmers are shifting away from rubber, oil palm, sweet potatoes, to kratom.<sup>25</sup>

The transition from rubber plant farmers to Kratom Plant farmers provides them with a breath of fresh air. Kratom Plants have a reasonable selling price of Rp. 25,000 or even Rp. 30,000/Kg. The rising demand for local and international markets has resulted in monthly earnings ranging from Rp. 1,500,000 to Rp. 8,000,000<sup>26</sup>. Kratom Plants were chosen because they grow quickly (in one year, they can reach 2-3 meters), especially when submerged in water, and they thrive in wet soil such as riverbanks.

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<sup>21</sup> Masalah-Masalah Hukum, Nomor 5-6, Tahun XII-1982, FH UNDIP p. 2 and so on

<sup>22</sup> Sudarto, "Hukum dan Hukum Pidana", 1977, p. 44-48

<sup>23</sup> Kasus penyitaan tanaman kratom, <https://regional.kompas.com/read/2020/03/12/14513601/berdampak-mirip-ganja-115-kg-daun-kratom-disita-polisi-di-belitung>

<sup>24</sup> Angka Statistik Tahun 2018, "Angka Statistik Tahun 2018". Pontianak : Badan Pusat Statistik Provinsi Kalimantan Barat, 2019.

<sup>25</sup> Rahmat, M., dan Hamdi. "Pendapatan Masyarakat dari Hutan dan Faktor- Kasus Desa Penyanga TNKS di Kabupaten Pesisir Selatan (Community Income from The Forest and Socio Economic Factors Influencing Community Income : Case of Buffer Zone Area of KSNP in Pesisir Selatan District)". *Jurnal Penelitian Sosial dan Ekonomi Kehutanan.*; 4(2):193-204, 2007.

<sup>26</sup> Anita, Aminuyati, dan Ulfah, M. "Analisis Pendapatan Petani Kratom dalam Membantu Pembiayaan Pendidikan Anak Desa Sungai Uluk Palin". *Jurnal Pendidikan dan Pembelajaran Khatulistiwa.*;8(4): 1-8, 2019.

On the other hand, it is widely accepted that high doses of the Kratom Plant have a sedative-narcotic effect. As a result, the government, including the National Narcotics Agency (BNN), has taken precautionary measures, prohibiting the distribution of Kratom plants in Indonesia. They impose a total ban beginning in 2022. Farmers who grow Kratom Plants must work extremely hard to make a living. Their current job was jeopardized because the plant was classified as a narcotic, which means it could not be cultivated or traded freely. Farmers who cultivate kratom plants, logically, do not yet have fixed rules, the spread to the cultivation prohibition. We believe it can be cultivated because of its NPS status and the unregistered Narcotics Law Number 35 of 2009. (Minister of Health Regulation). However, if it is determined through the issuance of a Law or Decision that the Kratom Plants are prohibited from being distributed or included in Narcotics, then the farmer who intentionally violates the rules and regulations can be sentenced in accordance with applicable rules and regulations.

So far, farmers who cultivate kratom plants are not subject to criminal penalties. According to Article 28I paragraph (1), which discusses the protection of human rights, a person cannot be prosecuted retroactively. However, only non-retroactive (non-retroactive) law is permitted. In another sense, farmers who cultivate and trade kratom plants as herbal medicines should not be punished if there is no article regulates this matter in Indonesia<sup>27</sup>.

The Kratom plant is commonly found in Kalimantan and is used as a source of income, particularly because it has long been trusted as a herbal medicine. Furthermore, it is used as a substitute for rubber plants, which are thought to be profitable, so many people in Kalimantan have switched to and cultivated the Kratom plant. When used in high doses, the content in the kratom plant can produce effects similar to narcotics. This can trigger abuse, especially in Indonesia, where there are no provisions or laws governing kratom plants. However, the government has taken preventative measures by planning a total ban by 2022; for the time being, the POM has issued a circular prohibiting on the use of kratom plants as herbal medicines and food supplements.

In March 2009, WHO held a regional meeting on the Use of Herbal Medicine in Primary Health Care in Rangoon. They agree and talk about implementing herbal treatment programs. However, to classify this plant as herbal medicine, an invention must follow the steps outlined to ensure safety and maximize the efficacy contained. According to Natural Standard / Harvard Medical School, clinical tests are divided into several groups, focusing on the dangers, side effects, safety, and dosage, and the evidence includes<sup>28</sup>:

- a. Grade A: Strong Scientific Evidence
- b. Grade B: Good Scientific Evidence
- c. Grade C: Unclear or Conflicting Scientific Evidence
- d. Grade D: Fair Negative Scientific Evidence
- e. Grade E: Strong Negative Scientific Evidence
- f. Lack of Evidence

The binding law on kratom plants is not yet clear. Thus, farmers who cultivate them cannot be punished. his situation allows Kalimantanans and people from other regions to freely cultivate kratom plants, which are thought to have a promising selling value. As a result, the government must act quickly to classify Kratom plants as narcotics, as the effects of high

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<sup>27</sup> Elucidation of Article 28I Paragraph (1) of the 1945 Constitution

<sup>28</sup> *Ibid.*

doses are quite dangerous to the body. So that people can look for other alternatives to kratom plants as a source of income rather than breeding, cultivating, or trading kratom plants freely. In these circumstances, the kratom plant, in our opinion, is valued as a promising and high-value plantation product, and the use of kratom plants freely for the human body will cause alarming health symptoms. In Indonesia, the criminalization of kratom plants is deemed necessary, as is the conversion of a non-crime to a crime. In addition to obtaining a permanent legal position for the kratom plant, which until now is still in a legal vacuum. It aims to guarantee protection and remedies based on the regulated provisions. Thus, no one are harmed. Another factor to consider is that cultivating kratom plants for trade can result in losses or fatalities.

### **Conclusion**

The legality of kratom use is governed by the circular letter of the Head of the POM No: HK.04.4.42.421.09.16.1740 of 2016, Prohibition of the Use of *Mitragyna Speciosa* (Kratom) in Traditional Medicines and Health Supplements. There are numerous side effects associated with Kratom consumption. Since 2013, this plant has been classified as an NPS (New Psychoactive Substance). Furthermore, the National Narcotics Agency is working to prevent the spread of Kratom Plants in Indonesia. As of 2022, they will implement a total ban policy. Farmers who grow Kratom Plants must switch crops because kratom is classified as a narcotic, which means it cannot be cultivated or traded freely.

### **Suggestion**

To see if the regulations-making, the illegalization of kratom plants are in accordance with the policies put in place. It should be seen in terms of the costs of making laws, supervision, law enforcement, sanctions imposed on perpetrators, and a state of law and order that is proportionate to its achievements. Furthermore, in Indonesia, regulations governing the legality of kratom plants are based on the side effects contained in it rather than the benefits. Especially if used excessively, it poses a greater risk, particularly to the kratom consumers.

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