

Analysis of the Implementation of Criminal Sanctions for Narcotics Crimes in Indonesia

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Abstract

This research aims to analyze the legal foundations and sanctions for drug abuse according to fiqh jinayah. This research is a normative juridical legal study with a qualitative approach that analyzes the sanctions for narcotics offenses in national law and Islamic law. Data were collected through literature study and analyzed descriptively, comparatively, and normatively. The collected data were then analyzed using qualitative descriptive methods. Fiqh jinayah in Islamic law provides room for the imposition of sanctions against drug abuse through the ta'zir approach using the qiyas method by equating narcotics with khamr because both have the same illah, which is intoxicating and damaging to the mind. The form of this sanction is adjusted according to the level of damage (mafsadat) caused, which can include flogging, rehabilitation, imprisonment, or even the death penalty for major traffickers. Thus, Islamic law through fiqh jinayah remains relevant and adaptive in responding to contemporary issues such as drug abuse, while adhering to sharia principles and the welfare of the community.

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1. INTRODUCTION

Drug crime in Indonesia has reached alarming levels and poses a serious threat to the future of the nation's future generations. According to data from the National Narcotics Agency (BNN), the *prevalence of Drug abuse* shows an increasing trend every year, even reaching various levels of society, including schoolchildren, university students, and even government officials and law enforcement [1]. Drug crimes not only damage the health and future of individuals but can also weaken national resilience. Therefore, more effective efforts are needed in handling and imposing sanctions on perpetrators of drug crimes. [2]

Law Number 35 of 2009 concerning Narcotics has strictly regulated various types of criminal sanctions for perpetrators of narcotics crimes, ranging from imprisonment, fines, to the death penalty [3]. However, the effectiveness of implementing these criminal sanctions still draws criticism. Many cases demonstrate that the sanctions imposed have not achieved a maximum deterrent effect. Disparity in sentences, overcapacity of correctional institutions, and weak implementation of rehabilitation are serious problems in the narcotics law enforcement system in Indonesia [4][5].

In this context, the idea arose to consider alternative legal approaches, one of which is through the perspective of Islamic criminal law, or jinayah. Jinayah is a part of Islamic law that regulates sanctions for criminal acts. *includes hudud, qishash, diyat, and ta'zir* In practice, criminal sanctions against drug offenders can be implemented in the form of

social punishment, fines, community service, and even religious-based rehabilitation. This aligns with Islamic principles that prioritize the rehabilitation of offenders (*reform*) and damage prevention (*corruption*) in society. This concept is considered relevant and can complement the national legal approach, which has so far focused too much on deterrence through criminal punishment alone.[6]

However, the application of sanctions *crime* in the national legal system is not easy. Indonesia as a country of law that adheres to a mixed legal system (*civil law and customs*), faces challenges in accommodating Islamic law in the realm of positive law, especially in the criminal field. Therefore, the most possible approach is through the integration of Islamic values into national criminal policy, for example, through rehabilitation programs based on Islamic spirituality and morals. This has already been implemented by several Islamic boarding school-based rehabilitation institutions in collaboration with the National Narcotics Agency (BNN) and local governments.

Thus, the analysis of the application of sanctions *crime* in Indonesia, it is important to examine the extent to which Islamic legal values can be accommodated in the national criminal justice system. This approach is expected to provide a more holistic solution, not only punishing perpetrators but also rehabilitating and nurturing them into better individuals. This research will examine two aspects: 1) What is the legal basis for sanctions against drug abuse according to Islamic law? *fiqh crime* 2). What are the sanctions for drug abuse according to *fiqh crime*?

2. RESEARCH METHODS

The research method used in this study is normative juridical legal research. with the qualitative approach. Normative research aims to examine written legal documents and relevant legal principles, both in the Indonesian national legal system and in Islamic law, particularly in terms of the application of sanctions to narcotics crimes. This research is not empirical in nature, but rather focuses more on the analysis of statutory regulations, legal doctrine, and the thoughts of legal scholars and Islamic jurisprudence scholars [7], [8]. This approach was chosen to understand how Islamic legal norms (*crime*) can be studied and analyzed in relation to the national legal system.

Data collection in this study was carried out through literature studies (*library research*), This method involves collecting secondary data from various legal sources and scientific literature. The data sources consist of primary legal materials, such as Law Number 35 of 2009 concerning Narcotics and court decisions related to narcotics crimes. In addition, secondary data is also used. secondary law, namely Islamic legal literature on jinayah, scientific books, national and international journal articles, and publications from official institutions such as the BNN and the Supreme Court. To enrich the analysis, the author also uses tertiary legal materials, such as legal dictionaries, Islamic legal encyclopedias, and other supporting documents [9], [10].

The data that has been collected is then analyzed using qualitative descriptive methods, namely by describing legal phenomena systematically and objectively, and analyzing them in depth. This approach allows researchers to explain how the application of criminal sanctions against drug offenders is regulated in national law, as well as how Islamic law, through its approach, is applied. *Crime can* provide alternatives or complements to the system. In addition, comparative analysis is also used to see the similarities and differences between the national legal approach and Islamic law, as well as normative analysis to examine the possibility of harmonizing the two legal systems in the Indonesian context [11], [12].

3. RESEARCH RESULTS AND DISCUSSION

3.1. Research result

a. The Basis for Laying Down Legal Sanctions for Drug Abuse According to Fiqh Crime

In the Qur'an, legal terms are stated through several terms such as sharia, *fiqh*, and the law of Allah. Islamic law, or what is known in literature as Islamic Law, is understood as a set of rules originating from Allah and aimed at regulating all aspects of the lives of all Muslims. This understanding shows that the meaning of Islamic law is closer to the concept of sharia. On the other hand, Islamic law can also be interpreted as the result of *ijtihad* for jurists applying sharia principles in accordance with the social context of society. This understanding shows that Islamic law, in certain aspects, is also closely related to the meaning of *fiqh* [13].

In Islamic law, there is a branch of law that discusses criminal acts or crimes called crime. The term *crime* refers to criminal acts in Islam, namely acts that are prohibited by sharia and are subject to certain sanctions by Allah, either in the form of punishment *limit* and *ta'zir*. Crime divided into several categories, namely *qishas*, *limit*, and *ta'zir*. *Qishas* something *qishas*. Terminologically, it means punishing the perpetrator of a crime commensurate with what they did to the victim. For example, a life for a life, or property for property. This demonstrates the principle of proportional justice in Islamic criminal law. *Hudud crimes come* from the, which means prohibition or restriction *limit* is a fixed sanction determined by sharia and cannot be changed, reduced, or added to. This punishment is a right of Allah that must be carried out according to its provisions. This is different from *jarimah ta'zir*, which linguistically means giving a lesson. In Islamic law, *ta'zir* is a type of punishment that is not directly stipulated by the text, but rather left to the discretion of the judge or ruler. The main purpose of *ta'zir* is to maintain the public interest and prevent damage or danger (*evil*) [14]. Narcotics abuse in Islamic law is seen as a forbidden act because it causes great harm to individuals and society. Therefore, narcotics abuse is classified as *jarimah ta'zir* because there are no specific punishment provisions in Sharia regarding this matter. Therefore, determining the punishment is the authority of the judge to protect the welfare of the community [15].

b. Sanctions for Drug Abuse According to Fiqh Crime

In contrast to the Narcotics Law No. 35 of 2009 in Article 127, which very clearly regulates legal sanctions, in the Al-Qur'an, the term narcotics does not exist, so in *criminal jurisprudence*, sanctions for drug crimes are not clearly stated. In the study of *fiqh*, if something has not yet been determined as to its legal status, then it can be resolved through the method of analogy or other methods. The Qur'an and the Sunnah of the Prophet Muhammad (peace be upon him) set out basic principles that can be used as a reference in finding supporting evidence related to narcotics issues. In establishing laws through the method of analogy (analogy), the most basic requirement there are similarities between the original laws (*asl*) and new analogous cases (*far'u*) on legal reasons (*scant*) the same. *Fragrance* is the main element that forms the basis of the similarities between the two cases. This is how Islamic law can be developed. The Qur'an and Hadith answer new questions that have not been explicitly mentioned. Terminologically, *scant* is a logical or rational reason behind

the establishment of a law. In Arabic, *illat* means something that causes a change in a condition. In a legal context, *scant functions* as a rational bridge that connects one case that already has a legal determination with another case that is similar in cause, even though the form is different. Thus, the practice analogynot only focused on the similarity of external form, but more on similarity of reasons or profound legal causes. If the original law is also found in a new case, then the original law can be applied to the new case. This is where the importance of accuracy in identifying and weighing in practice, *ijtihad*. [16]

Thus, in the context of Islamic law, narcotics are analogous to alcohol, namely any type of substance that has an intoxicating effect or makes one lose consciousness, whether derived from grapes, dates, or other substances such as marijuana and narcotics. As previously explained, in Islamic criminal law, narcotics are etymologically known in Arabic by the term *al-mukhaddirāt*, which comes from the root word *khaddara–yukhaddiru–takhdīr* or *muhaddirāt*. This word refers to meanings such as loss of sensation, confusion, anesthesia, unconsciousness, blackout, darkness, and drunkenness. [17]

Terminologically, narcotics refer to any substance that, when consumed, can negatively impact a person's physical and mental condition, and in some cases, can even lead to mental disorders or intoxication. These substances fall into the category of substances prohibited by applicable laws and regulations, including types such as marijuana, opium, morphine, heroin, cocaine, and...*at*. This is stated in the Al-Quran, Surah Al-Maidah, verse 90, which means: "O you who believe, indeed (drink) *alcohol*, gambling, (sacrificing to) idols, and divination by arrows are among the works of Satan. So avoid them so that you may be successful." [18]

The verse explains that the natural alcohol intoxicating is the same as narcotics and illegal drugs so narcotics are also considered haram, meaning alcohol. According to Ibn Taimiyah's explanation, all forms of intoxicating substances, including narcotics, are categorized as bad things, and their users are classified as people who earn the wrath of Allah SWT, His Messenger, and Muslims. These substances have negative impacts not only from a religious perspective, but also on morals, character, and human reasoning abilities. Consuming intoxicating substances can damage sanity, lower morals, and cause various forms of behavioral deviations and other heart diseases.[19][20]

Islamic jurisprudence scholars generally agree that punishing drug users is obligatory, and the punishment should be lashing or flogging. Scholars differ on the number of lashes, but in Islamic law, the punishment for drug users is analogous to the punishment for alcoholics *alcohol*. Imam Abu Hanifah and Imam Malik think that the number of lashes for the perpetrator is 40 times, while Imam al-Shafi'i and Imam Ahmad Ibn Hanbal set 80 lashes, with 40 being the main punishment (*let*) and the remaining 40 as a form of punishment *ta'zīr*. This opinion refers to the practice carried out during the time of Caliph Umar bin al-Khattab r.a., when he asked for an opinion regarding sanctions for drinkers. *alcohol* Ali bin Abi Talib r.a. explained that a drunk person will lose consciousness, and this condition can lead him to lie. Therefore, he is equated with a perpetrator, *qazf* (accusers of adultery without evidence), who were given 80 lashes. Based on that, Umar also determined that the punishment for drinking alcohol is 80 lashes. [21]

In a story narrated by Imam Muslim from Ali r.a., it is stated that the Prophet Muhammad *Shallallahu 'alaihi wa Sallam* once sentenced a drunkard to forty lashes. A similar practice was carried out by Abu Bakr r.a. (on others), who also whipped

those who drank alcohol forty times, while Umar bin Khattab r.a. determined the punishment to be eighty lashes. Ali r.a. later stated that all of these practices were sunnah, but he preferred the number determined by Umar, namely eighty lashes. In another hadith, it is said that there was a witness who stated that he saw Walid bin Uqbah vomiting because of alcohol. Uthman bin Affan r.a. later emphasized that a person would not vomit because of alcohol unless he had drunk it beforehand. [22]

These provisions are intended to prevent Muslims from using or consuming intoxicants. These penalties can serve as a deterrent to perpetrators, preventing them from repeating the practice. Consuming intoxicants can disrupt the mind and the body. Maintaining the mind should be a recommended goal and a goal of the law. In Indonesia, while the law, as implemented by Umar, may create fear among those using prohibited substances, the current trend is that the introduction of prison sentences actually increases the use of narcotics and illicit drugs. Given the current situation, a penalty is needed that will discourage drug users from repeating the habit and will make those who have not used these substances fearful and less likely to try them.

For those who do not consider this to be normal and even consider it to be halal, they will be sentenced to death. From Muawiyah r.a, that the Prophet Muhammad Shallallaahu 'alaihi wa Sallam said about the drinker of alcohol: "If he drinks, whip him, if he drinks again, whip him, if he drinks for the third time, whip him, if he drinks for the fourth time, hit his neck." Narrated by Ahmad and the Four Imams. The wording is according to Ahmad. Tirmidhi expressed an opinion that shows that the hadith is Mansukh. Abu Dawud narrated it clearly from Zuh. [22]. So if narcotics can be compared with the death penalty can be imposed on drug users who have committed such acts repeatedly.

According to Yusuf al-Qaradawi, marijuana, heroin, and various other forms of narcotics, both solid and liquid, which are known in Arabic *asal-mukhaddirāt*, including things that are absolutely forbidden by Islamic law. He emphasized that this prohibition longer disputed among scholars, because the nature of narcotics is to close the mind (*The wise man*), just as khamr is also intoxicating. This makes narcotics fall into the category of substances that damage the human self and morals, as well as endanger the wider community. In this case, legal sanctions, Yusuf al-Qaradawi explained that drug users must be punished, whereas Drug dealers or smugglers can be subject to sanctions up to the death penalty, depending on the level of damage (*evil*) which is caused. Punishment, warning themselves, according to the jurists, *the true ones* (competent legal experts), has flexibility and can reach the most severe level if the crime threatens public security, public health, and damages the younger generation. Yusuf al-Qaradawi bases this opinion on the sharia principle that *dar' al-mafasid mosque 'only attractive al-masalih* (preventing harm must be prioritized over achieving benefits). Therefore, severe punishment for drug traffickers, including the death penalty, is permissible in Sharia law as a form of protection for the people and future generations. [23]

3.2. Discussion

a. The Basis for Laying Down Legal Sanctions for Drug Abuse According to Fiqh Crime

In Islamic law, legal terms are known in various forms, such as sharia, *fiqh*, and the law of Allah, all of which indicate rules derived from revelation to regulate the lives of mankind. In general, Islamic law includes Sharia as a divine source, as

well as fiqh as the result of the *ijtihad* of scholars in applying Sharia in accordance with the social context of society. In the branch of Islamic law, there is *fiqh jinayah*, which discusses criminal acts or crimes (*crime*). *Jarimah* is a criminal act according to Islam, which is subject to certain sanctions, and is divided into three categories, namely *jarimah qishas*, *limit*, and *ta'zir*. *Crime qishas* impose a punishment commensurate with the crime, such as a life for a life *limit* is a punishment that is determined directly by the text and is permanent. While *ta'zir* is a punishment that is not directly mentioned in the Qur'an and Hadith, so that its form and degree are left to the judge's discretion to maintain public interest and prevent harm (*evil*) in society.

Narcotics abuse in the context of criminal jurisprudence is not explicitly mentioned in *Nash*, but because of its nature, which is detrimental to reason and morals, the likens drugs to alcohol or intoxicating substances that have been clearly prohibited. Therefore, drug abuse is classified as *jarimah ta'zir*, as confirmed in several studies, as explained by Deden Najmudin et al. that drugs have the same effect as alcohol, namely eliminating reason, so that users and dealers must be subject to sanctions *ta'zir* [24]. Further research also confirmed that the death penalty for drug dealers is a form of *ta'zir*, which is valid in Islamic law, if the act causes great harm to the community. [25] [26] Meanwhile, the approach to criminal jurisprudence for drug users can also take the form of rehabilitation, because it takes into account the elements of individual rescue and recovery [27]. Furthermore, drug users are still considered criminals in Islam and can be subject to sanctions. According to the level of damage caused. Thus, the basis for laying down the law against drug abuse in criminal fiqh is *ta'zir*, namely a type of sanction that is flexible and determined based on considerations of the public interest, level of danger, and social context. [28]

b. Sanctions for Drug Abuse According to Fiqh Crime

In contrast to the Narcotics Law No. 35 of 2009, which explicitly regulates sanctions for drug abuse, *criminal jurisprudence*, there is no specific mention of this in the Qur'an and Sunnah because the term "narcotics" is not mentioned. However, sharia still provides a basis through the method of analogy, namely the analogy between *khamr* and narcotics based on scent, which is equally intoxicating and mind-numbing. Therefore, drug abuse is categorized as punishment, not a limit, so that the punishment is handed over to the judge/ruler by taking into account the public interest and prevention of damage (*evil*).

Narcotics, even though not limited to banning through analogy with *alcohol*, must be subject to *ta'zir* sanctions, including flogging or severe punishment if *evil* the big one [29]. *criminal jurisprudence* prioritizing rehabilitation sanctions for addicts as a form of warning, which is more appropriate, but still allows physical punishment (flailing) as a deterrent effect [30]. Serious drug dealers even deserve the death penalty as a form of punishment, the most difficult, according to the principle *dar' al-mafasid muqaddam 'ala jalb al-masalih* namely preventing harm is more important than seeking benefit [27]. A study by Deka Aryanti (2018) also supports this position by stating that court decisions often place drug users in the realm of warning, referring to Law 35/2009, which is in line with *qiyas khamr* both in substance and sanctions. In other words, the basis for laying down legal sanctions against drug abuse according to *criminal jurisprudence* is *warning*, based on general information about the prohibition of alcohol, *scent analogy* (intoxication), and

analysis of social *evil* supported by cutting-edge research and Islamic legal practices that are adaptive to contemporary issues.[31]

4. CONCLUSION

Based on the description above, it can be concluded that, in criminal *jurisprudence*, Islamic law, there is room for determining sanctions for drug abuse through a warning approach. Although there is no explicit text regarding drugs in the Qur'an and Hadith, scholars use the method of analogy by equating narcotics with alcohol because both of them have the same thing, namely, intoxicating and damaging the mind. Therefore, narcotics are seen as something that is forbidden, and perpetrators are subject to sanctions. *Flexible warning*. The form of this sanction is adjusted to the level of damage (*evil*) that arises, which can be in the form of caning, rehabilitation, imprisonment, or even the death penalty for serious dealers. The main objective of the implementation warning is to maintain the public interest and prevent greater damage, in accordance with the rules of Islamic jurisprudence *cedar' al-mafasid muqaddam 'ala jalb al-maṣaliḥ*. Thus, Islamic law through criminal jurisprudence remains relevant and adaptive in responding to contemporary issues such as drug abuse, while adhering to the principles of Islamic *law and* the welfare of the people.

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