

## REHABILITATION SANCTIONS AGAINST ADDICTS AND DRUG ABUSE VICTIMS: OVERVIEW OF ISLAMIC CRIMINAL LAW

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### Abstract

This article was written because rehabilitation sanctions for victims of drug abusers and addicts are not specified in Islamic criminal law in Indonesia. Because drugs are similarly intoxicating and mind-altering under Islamic criminal law, they are referred to (*qiyased*) as alcohol (*kehamr*) and are punishable by flogging and *ta'zir*. Neither of the two sanctions addresses treatment or rehabilitation; instead, they emphasise physical penalties and the deterrent effect they have on alcohol-related offenses. The data for this library research was gathered from reference books, encyclopedias, papers, notes, and a variety of publications. This study can be concluded as follows: first, if the defendant is caught red-handed, evidence is found with the use of one day, a positive laboratory certificate for the use of drugs according to the investigator's request, a certificate from a government psychiatrist or psychiatrist appointed by the judge, there is no evidence that the person concerned is involved in the distribution of drugs for addicts. Second, in Islamic law, drugs are *qiyased* to *kehamr* because the *illat* (reason) is both intoxicating and depriving the mind. If *kehamr* is the punishment for drinking in Islamic criminal law, *ta'zir* is the punishment for drug addicts in positive Indonesian law (rehabilitation).

**Keywords:** Islamic Criminal Law, Rehabilitation Sanctions, Drug Addicts, Drugs Law

### Abstrak

*Artikel ini ditulis karena sanksi rehabilitasi yang dijatuhkan terhadap korban penyalahgunaan narkoba dan pecandu narkoba di Indonesia tidak ada dalam hukum pidana Islam. Dalam hukum pidana Islam narkoba diqiyaskan kepada kehamar karena illatnya sama-sama memabukkan dan menghilangkan akal seseorang, sehingga sanksi yang diberikan ialah berupa sanksi had seperti dera dan sanksi ta'zir. Dari kedua sanksi tersebut lebih kepada sanksi fisik dan efek jera yang diberikan kepada pelaku kehamar tidak ada yang menyinggung mengenai pengobatan atau rehabilitasi. Penelitian kepustakaan merujuk data dari buku referensi, artikel, catatan, serta berbagai jurnal. Penelitian ini disimpulkan sebagai berikut: pertama, jika terdakwa dalam keadaan tertangkap tangan, pada waktu tertangkap tangan ditemukan barang bukti dengan pemakaian satu hari, surat laboratorium positif penggunaan narkoba sesuai permintaan penyidik, surat keterangan psikiater atau dokter jiwa pemerintah yang ditunjuk hakim, tidak ada bukti bahwa yang bersangkutan terlibat peredaran narkoba bagi pecandu. Kedua, dalam hukum Islam narkoba diqiyaskan kepada kehamr dikarenakan illatnya sama-sama memabukkan atau menghilangkan akal. Jika dalam hukum pidana Islam hukuman bagi peminum kehamr adalah had maka dalam hukum positif Indonesia hukuman pecandu narkoba adalah hukuman ta'zir (rehabilitasi).*

**Kata kunci:** Hukum Pidana Islam, Sanksi Rehabilitasi, Pecandu Narkoba, Undang-Undang Narkoba

## INTRODUCTION

In Indonesia, the drug is one of the criminal acts that is specifically addressed by a separate law. The drug is a large case that attracts special attention from all over the world because of the enormous impact of this use and action; from drug addiction to death. Drug use has affected every element of human life, as demonstrated by a variety of groups, including those with low to high socioeconomic positions, children and adults, regular individuals, and special groups of people.

A distinct law, Law Number 35 of 2009, is passed to address drug crimes because they are considered to be crimes. According to article 1 number 1, drugs are chemicals or medications generated from either plants or non-plants, both synthetic and semi-synthetic, that alter and lower consciousness, relieve taste, lessen or completely erase the pain, and create dependence in individuals who use them.<sup>1</sup>

According to this law, the sanctions applied are under the actions and effects of the crime itself on the soul of the perpetrator as well as on the people, and sanctions against these perpetrators are determined according to the drug's crime. The sanctions range from the most lenient, such as rehabilitation for victims of abuse and drug addicts, to the death penalty for drug dealers.<sup>2</sup>

Drug rehabilitation comes in two types: social rehabilitation and medical

rehabilitation. Medical rehabilitation is defined as a process of treatment activities to free addicts from drug addiction dependence disorders in Article 1 Point 16 of Law No. 35 of 2009 Concerning Drugs, while social rehabilitation is defined as a process of recovery activities for drugs users carried out in an integrated manner, physically, intellectually, and socially, so that former drug users can return to normal community life in Article 1 Point 17 of Law No. 35 of 2009 Concerning Drugs.<sup>3</sup>

The Drugs Law regulates this rehabilitation sanction in Articles 54 to 58 regarding the rehabilitation of victims of drug abusers and drug addicts. Additionally, in Article 103 of the Drugs Law, judges who handle drug addict cases are given the authority to carry out treatment through rehabilitation, which is equivalent to serving time for drug addicts.<sup>4</sup>

Meanwhile, there is no specific argument in Islamic criminal law that discusses the punishment of narcotics, both in the Qur'an and hadith. According to Al-Quran Surah Al-Maidah verse 90, the impact of Narcotics can be attributed to alcohol because both objects have the same *illat*, which is to intoxicate and eliminate one's mind.

However, neither the Qur'an nor the Hadith have a specific reasoning that addresses the punishment of these drugs in Islamic criminal law. Based on Al-Quran

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<sup>1</sup>Chairul Huda, "Pola Pemberatan Pidana Dalam Hukum Pidana Khusus," *Jurnal Hukum IUS QUILA IUSTUM* 18, no. 4 (2011): 508–24, <https://doi.org/10.20885/iustum.vol18.iss4.art3>.

<sup>2</sup>Komisi Pemberantasan Korupsi, "Tindak Pidana Biasa Penanganannya Luar Biasa Abstrak . Pendahuluan Tindak Pidana Korupsi Sebagai Salah Satu Tindak Pidana Yang Menyedot Perhatian Masyarakat Dan Bahkan Menjadi Icon Gerakan Reformasi Dengan KKN ( Korupsi , Kolusi , Dan Nepotisme ). Gerak," 2011, 297–320.

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<sup>3</sup>Soetji Andari, "Efektivitas Pelaksanaan Rehabilitasi Terhadap Korban Penyalahgunaan Narkotika," *Jurnal Penelitian Kesejahteraan Sosial* 18, no. 3 (2020): 245–56.

<sup>4</sup>Muhamad Nur Ardhy, Muhyi Mohas, and Reine Rofiana, "Sanksi Rehabilitasi Bagi Prajurit TNI Yang Menjadi Terpidana Penyalahgunaan Narkotika (Studi Kasus Di Pengadilan Militer II – 08 Jakarta)," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum* 1, no. 2 (2021): 69–78, <https://doi.org/10.51825/sjp.v1i2.12678>.

surah Al-Maidah verse 90, both substances have the same intent, which is to intoxicate and destroy one's mind, they can be transformed into alcohol due to the impact that drugs have on the body.<sup>5</sup>

Under Islamic criminal law (*fiqh jinayah*), those who use drugs face *ta'zir* and had sanctions, while those who consume alcohol are subject to sanctions, also known as forty or eight or ten lashes. Because alcohol is only consumed by drinking and not by injection or even inhalation, there are no specific laws for those who commit crimes under Islamic criminal law other than the caning. Meanwhile, if a *ta'zir* sanction is issued, *ulilamri* (ulama) or the current administration will decide on the sort of punishment and the length of the sentence. Islamic law exclusively governs individuals who consume *kehamr*. Islamic law solely governs people who consume *kehamr*. While Law No. 35 of 2009 Concerning Drugs has established a penalty for every drug-related conduct depending on the class of narcotic and the severity of the impact of the perpetrator's activities.

## DISCUSSION

### Method

The authors conducted library research in this study by citing both direct and indirect quotations from various materials such as reference books, articles, notes, encyclopedias, and various journals to obtain data in this study.

### Positive law on drugs

Drugs are illegal elements or hazardous materials that have been popular among Indonesians. In addition to drugs, the Ministry of Health of the Republic of

Indonesia has proposed another term to classify substances that have an addictive effect on those who use them, namely (Narkoba, Psikotropika dan Zat Adiktif) NAPZA, which stands for Drugs, Psychotropics, and other Addictive Substances.<sup>6</sup>

Etymology, drugs are derived from the English words *narcose* or *narcosis*, which mean to put to sleep or anesthetize. In addition, it is also derived from the word *narcotic*, which means something that can relieve pain and cause a stupor effect, as well as anesthetics.<sup>7</sup> Drugs can relieve pain in the chest and abdominal cavities, cause a long pause and even consciousness, and can lead to addiction. This is related to medical terminology.<sup>8</sup>

According to Mardani, the drug is a substance that calms the nerves, causing them to become unconscious or anesthetized, relieves aches and pains, causes feelings of stimulation and drowsiness, causes stupor effects, can cause addiction and is designated as a drug by the government in the health sector.<sup>9</sup> Meanwhile, World Health

<sup>6</sup>Ahmad Syafi'i, "Penyalahgunaan Narkoba Dalam Perspektif Hukum Positif Dan Hukum Islam," *HUNAFIA: Jurnal Studia Islamika* 6, no. 2 (2009): 219, <https://doi.org/10.24239/jsi.v6i2.135.219-232>.

<sup>7</sup>Hendri Jayadi Pandiangan and Poltak Siringoringo, "Bahaya Narkoba Dalam Perspektif Hukum Pidana Indonesia Sebagai Pengembangan Terhadap Penanggulangan Penyalahgunaan Narkoba Bagi Generasi Muda Indonesia," *JURNAL Komunitas Servizio: Jurnal Terkait Kegiatan Pengabdian Kepada Masyarakat, Terkhusus Bidang Teknologi, Kewirausahaan Dan Sosial Kemasyarakatan* 1, no. 2 (2019): 154–78, <https://doi.org/10.33541/cs.v1i2.1286>.

<sup>8</sup>Kurniasih Bahagiati, "Filsafat Pidana Terhadap Penyalahgunaan Narkotika Bagi Diri Sendiri dalam Perspektif Hukum Positif dan Hukum Pidana Islam," *Ilmiah Ilmu Hukum* 18, no. 1 (2020): 114–40, <https://journal.untar.ac.id/index.php/hukum/article/view/9810>.

<sup>9</sup>Roni Gunawan Raja Gukguk and Nyoman Serikat Putra Jaya, "Tindak Pidana Narkotika Sebagai Transnasional Organized Crime," *Jurnal Pembangunan*

<sup>5</sup>Syarifuddin, "Napza Dalam Perspektif Hukum Islam (Studi Analogis Terhadap Transaksi, Penyalahgunaan, Penanggulangan, Serta Sanksi Bagi Penyalahgunaan Narkotika, Psikotropika Dan Zat Adiktif Lainnya)" 4, no. 1 (2016): 1–23.

Organization defines a drug or narcotic as any substance that has a high potential to cause dependence in those who use it.

Drugs, on the other hand, are chemical or non-chemical substance that is necessary for health; when the substance enters the human body, it causes one or more changes in the function of the human body's cells. As a result, the individual will become physically or psychologically dependent. When the substance is stopped or used, it causes physical and psychological disturbances in the human body.<sup>10</sup>

Meanwhile, according to Bambang Gunawan, drugs consist of two components: the presence of drugs and their users. Drug abuse can cause serious illnesses that can lead to death for the user, as well as huge financial losses.<sup>11</sup> Those definitions have four components, including the presence of a criminal act, the presence of a criminal subject, the use of drugs, and the results. Any activity that violates the law is considered a criminal crime. Any person who is in the categories of user, dealer, manufacturer, importer, or exporter is a criminal subject in this case.<sup>12</sup>

The results of the perpetrator's actions include a reduction in a person's level of consciousness or a change in that person's consciousness, the elimination of feelings,

even to the point where the person no longer feels pain in themselves, and the possibility of dependence, either on the perpetrator or others.<sup>13</sup>

Thus, a drug, in the authors' understanding, is either a synthetic or semi-synthetic substance, derived from a plant or not, can induce unconsciousness, relieve pain, reduce pain, or even eliminate pain. It is originally used for health benefits but is later misused, leading to enormous losses, and is one of the most deadly things for anyone who uses it.

### Drug abuse victims and drug addicts in Indonesia

According to Law No. 35 of 2009 on drugs, someone who abuses and takes drugs because they are physically or psychologically dependent on them is referred to as a drug addict.<sup>14</sup> Criminals who abuse drugs and utilize their possessions for personal use are classified as addicts because, according to experts, they have a mental or physical dependence on the drugs.<sup>15</sup>

Drug addiction is a condition of illness characterized by a strong sense of taking drugs continuously; using it restrictedly will suddenly cause distinctive psychological and physical indicators that most people refer to as addiction. A procedure called assessment, or *visum et repertum*, is used to determine the

*Hukum Indonesia* 1, no. 3 (2019): 337–51, <https://doi.org/10.14710/jphi.v1i3.337-351>.

<sup>10</sup>Irwansyah Muhammad Jamal, "14. Upaya Pencegahan Dini Penyalahgunaan Narkotika," *Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 282–312.

<sup>11</sup>Raja Gukguk and Jaya, "Tindak Pidana Narkotika Sebagai Transnasional Organized Crime."

<sup>12</sup>Matheos Bastian Wattimena et al., "Penerapan Ajaran Turut Serta Dalam Pertanggungjawaban Pelaku Tindak Pidana Narkotika (Opium Convention) Di Den Haag Pada Tahun 1912. Dibawah Naungan Perserikatan Bangsa-Bangsa Convention on Narcotic Drug) Di New York, Amerika Serikat Tanggal 30 Maret 1961 D" 2, no. 3 (2022): 262–71.

<sup>13</sup>Farhan Permaqi, "Hukuman Mati Pelaku Tindak Pidana Narkotika Dalam Perspektif Hukum Dan Hak Asasi Manusia (Dalam Tinjauan Yuridis Normatif)," *Legislasi Indonesia* 53, no. 9 (2015): 1689–99.

<sup>14</sup>Anggrayni L, "Efektivitas Rehabilitasi Pecandu Narkotika (Studi Di Loka Rehabilitasi Badan Narkotika Nasional Batam)," *Jurnal Hukum Respublica* 18, no. 1 (2018): 78–96.

<sup>15</sup>Ikhsan Fuady, Ditha Prasanti, and Nurhayati, "Pengaruh Sikap, Norma Sosial, Persepsi Perilaku Terhadap Intensi," *Al Ma'Arief: Jurnal Pendidikan Sosial Dan Budaya* 1, no. 2 (2019): 73–80, <https://ejournal.iainpare.ac.id/index.php/ALMAARIEF/article/download/1088/616>.

degree of addiction to misuse so that a history of narcotic use, the impact of usage that manifests, the degree of addiction, and strategies for recovery may all be discovered.<sup>16</sup>

Meanwhile, a situation characterized by a very strong desire to use drugs regularly with increasing doses in order to produce the same effect if the dose is lowered will lead to psychological and physical symptoms that are specifically referred to as drug dependence. In law, an abuser is someone who uses drugs without any rights and violates the law. It means that there are a few people who do not break the law when they use drugs; someone who is under the supervision of a doctor is not considered a lawbreaker.<sup>17</sup>

Meanwhile, people who use drugs by accident as a result of persuasion, coercion, deception, or even threats to use drugs are referred to as victims of drug abusers. To receive rehabilitation, drug abusers in the Drugs Law can be described as follows:<sup>18</sup>

- a) Drugs abusers for the first time  
They are identified as victims of drug abuse as a result of persuasion, seduction, deception, being deceived, and even coerced to use drugs.
- b) The abuser for himself  
This abuse is motivated by a personal desire to use drugs as a result of a

mental illness caused by drug dependence.

#### c) Addicts

Abusers for themselves who are already physically and psychologically addicted to drugs.

From a medical perspective, every drug user is a victim of an "illegal trafficking and trafficking syndicate" from which it is extremely difficult to escape from dependence. Countless addicts, victims, and abusers wish to be freed from the grip of these illegal substances, but because their neurological systems have been harmed by the use or abuse of drugs, special treatment is required for them.<sup>19</sup>

### Drugs Abuse

Based on the SIN (Sistem Informasi Narkoba - Drug Information System), 76.53 percent of drug cases have been reported in the last five years, between 2012 and 2016. From 2013 to 2014, there was a substantial growth of 161.22%. Meanwhile, in 2016, 868 drug cases were successfully revealed; this is an increase of 36.05 percent compared to 2015.<sup>20</sup>

In addition, SIN revealed that 71.62 percent of drug suspects were successfully arrested each year from 2012 to 2016. The greatest increase was 146.03 percent from 2013 to 2014. In 2016, 1,330 drug suspects were successfully revealed. This figure represents a 16.67 percent increase over

<sup>16</sup>I Gusti Bagus and Sakah Sumaragatha, "Legal Politics in Countermeasures Narcotics Addicts" 6, no. 2 (2021).

<sup>17</sup>Wenda Hartanto, "Penegakan Hukum Terhadap Kejahatan Narkotika Dan Obat -Obat Terlarang Dalam Era Perdagangan Bebas Internasional Yang Berdampak Pada Keamanan Dan Kedaulatan Negara," *Jurnal Legislasi Indonesia* 14 (2017): 2.

<sup>18</sup>Andi Ashadi Amrullah, Muhammad Syarif Nuh, and Abdul Agis, "Penyalahgunaan Narkotika Oleh Remaja Ditinjau Dari Aspek Kriminologis," *Journal of Lex Theory* 2, no. 2 (2020): 886–98, <http://pasca-umi.ac.id/index.php/jlg/article/view/380>.

<sup>19</sup>Wattimena et al., "Penerapan Ajaran Turut Serta Dalam Pertanggungjawaban Pelaku Tindak Pidana Narkotika Opium Convention ) Di Den Haag Pada Tahun 1912 . Dibawah Naungan Perserikatan Bangsa Convention on Narcotic Drug ) Di New York , Amerika Serikat Tanggal 30 Maret 1961 D."

<sup>20</sup>Soekanto, "Penyalahgunaan Narkotika Di Indonesia," *Populasi* 12, no. 1 (1992): 37–54, <http://download.portalgaruda.org/article.php?article=41385&val=3594&title=PENYALAHGUNAAN NARKOBA>.

2015. Many cases are vulnerable for 5 (five) years the last 2012-2016 of the most 1.867 cases of methamphetamine, then marijuana as many as 128 cases, and 98 cases of ecstasy.<sup>21</sup>

Yasonna H. Laoly in her book entitled "Jerat Mematikan Perspektif Kesejahteraan Ekonomi dalam Penyalahgunaan Narkoba," the total is 2.18 percent. Based on a survey in 2016 the number of drugs abuse, in general, was 2.21 percent or around 4,173,633 people who were included in the addiction category, meanwhile, those who tried to use drugs were equal to 1,632,636 people (0.87 percent), while those who routine use of drugs as many as 1,539,360 people (0.82 percent). In addition to those who use drugs by injection as many as 70,001 people (0.04 percent), and people who use drugs without injection as many as 931,636 people (0.49 percent). This is based on the results of a survey conducted by the National Drugs Agency (BNN-Badan Narkotika Nasional) in collaboration with the Health Research Center of the University of Indonesia in 2014.<sup>22</sup>

### **Jarimah ta'zir**

Etymology, the Arabic term *jarimah*, which signifies doing and cutting, is derived from the word *jarama-yajrimu-jaraman*. However, it is particularly employed in the context of sinful and vile actions. The term "*jarimah*" is also derived from the verb "*ajrama-yajrimu*," which means "to act in a way that is contrary to the truth."<sup>23</sup>

<sup>21</sup>Pandiangan and Siringoringo, "Bahaya Narkoba Dalam Prespektif Hukum Pidana Indonesia Sebagai Pengembangan Terhadap Penanggulangan Penyalahgunaan Narkoba Bagi Generasi Muda Indonesia."

<sup>22</sup>Fuady, Prasanti, and Nurhayati, "Pengaruh Sikap, Norma Sosial, Persepsi Perilaku Terhadap Intensi."

<sup>23</sup>Darsi Darsi and Halil Husairi, "Ta'zir Dalam Perspektif Fiqh Jinayah," *Al-Qisthu: Jurnal Kajian Ilmu-*

Based on the terminology, *jarimah* is defined as an action that is prohibited by *syara'* which is threatened by Allah SWT with *budud* and *ta'zir* punishment. Meanwhile, in positive law *jarimah* means a crime or criminal act.<sup>24</sup> A *shari'a* restriction that is subject to a hadith or *ta'zir* punishment is what Abu Qadir Audah defined as a *jarimah*.<sup>25</sup> Etymologically, *ta'zir* means to refuse and prevent.<sup>26</sup> The term "*ta'zir*" refers to humbling offenders for their shameful criminal activities.<sup>27</sup> From the explanation above, it can be concluded that *jarima ta'zir* is a criminal act committed by a *mukallaf* by violating human rights so that the perpetrator is threatened with *ta'zir* sanctions, the punishment of which is given by *ulil amri* or the government.

In *ta'zir*, the sort of punishment is not decided by Allah or His Messenger, i.e., it is not stated in the Qur'an or hadith. Instead, Qadhi is given the ability to decide on the type and manner of punishment meted out as well as the length of the punishment. All inappropriate or disruptive behaviours of a *mukallaf*, as well as actions that disturb the peace and serenity of society and damage other people's property, are examples of criminal offenses that can be punished with this form of punishment.

Every offender in the community can continue to commit crimes if they are not punished or deterred. This will disrupt the continuity of life in society, such as criminals taking other people's property, adultery,

*Ilmu Hukum* 16, no. 2 (2018): 60, <https://doi.org/10.32694/010500>.

<sup>24</sup>Zulhamdi Email, "Konsep Pertanggungjawaban Pidana dalam Fiqh Jinayah Zulhamdi," 2019, 91-114.

<sup>25</sup>Nuraisyah, *Hukum Pidana Islam*, (Bukittinggi: STAIN Djamil Djambek, 2004), 3

<sup>26</sup>Mardani, *Hukum Pidana Islam*, (Jakarta: Prenada Media Group, 2019), 1

<sup>27</sup>Marsaid, *Al-Fiqh Al-Jinayah* (Hukum Pidana Islam), (Palembang: Rafah Press, 2020), 193

fraud, not paying zakat, not paying fines, and so on.<sup>28</sup>

*Ta'zir* sanctions are only applied to those who commit immoral acts, which are prohibited due to the nature of the act itself. However, *ta'zir* punishment may be applied to perpetrators of non-immoral crimes if the type of punishment is not specified in the Qur'an and Prophet Muhammad's hadith. This is inspired by the Prophet Muhammad who arrested a camel thief. The Messenger of Allah immediately released him after he was declared innocent. Essentially, the punishment seeks to uphold justice while also fostering security and peace in society.<sup>29</sup>

Therefore, based on the summary above, the author concludes that *jarimah ta'zir* refers to all forms of activities or actions of a *mukallaf*, the types of which are established by *Ulil amri*, and for which the perpetrators are threatened with *ta'zir* in the form of humiliating punishment. Imam Syafi'i and Abu Hanifah imposed *ta'zir* sanctions on criminals who were not judges or *ulil amri*. They must be aware of the safety issue because the initial goal of warning or educating criminals is not justified by imitating what the judge and *ulil amri* who were assigned in this sector did. The Prophet of Allah stated, according to a hadith reported by Abu Hurairah ra:<sup>30</sup>

عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِنَّمَا  
الإمامُ جُنَّةٌ يُقَاتَلُ مِنْ وَرَائِهِ وَيَتَّقَى بِهِ فَإِنْ أَمَرَ بِتَقْوَى اللَّهِ  
عَزَّوَجَلَّ وَعَدَلَ كَانَ لَهُ بِذَلِكَ أَحْرٌ وَإِنْ يَأْمُرُ بِغَيْرِهِ كَانَ عَلَيْهِ  
منه

From Abu Hurairah, the Prophet SAW said: "Indeed the Imam (ruler of government) is a shield (for his people).

<sup>28</sup>Hasbiyallah, *Fiqh dan Ushul Fiqh*, (Bandung: PT Remaja Rosdakarya, 2013), 40

<sup>29</sup>Zainuddin Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2012), 11

<sup>30</sup>Nur Irfan, *Hukum Pidana....*, 95

From behind him, the enemies were fought. If the priest rules with piety to Allah and acts justly, he will be rewarded, and if he rules with other than piety, it will be a sin for him for his orders." (Narrated by Muslim in *Jitab Al-Imarah*).

The goal of implementing *ta'zir* is to get the perpetrator to stop his actions while still enforcing Shari'a law. The Prophet SAW's hadith, which reads:<sup>31</sup>

عَنْ بَهْزِينَ حَكِيمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ حَبَسَ رَجُلًا فِي تَهْمَةٍ

From his father and grandfather, Bahz bin Hakim, "that the Prophet SAW detained someone because he was suspected of committing a crime." (Abu Daud, *Al-Tirmidhi*, *Al-Nisa'i*, and *Baihaqi* narrate. Approved by Hakim).

The hadith above explains the Prophet Muhammad SAW's behavior in not releasing a criminal to facilitate the investigation; if he is not detained, it is feared that the perpetrator will flee with the evidence and commit the same crime again.

*Ta'zir* punishment should not be more severe than *budud* punishment. This is based on the Prophet Muhammad's hadith, which states:

عَنْ أَبِي بُرْدَةَ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ يَقُولُ لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرَةِ أَسْوَاطٍ إِلَّا فِي حَدٍّ مِنْ  
حُدُودِ اللَّهِ

It was narrated from Abi Burdah Al-Ansari that he heard the Messenger of Allah (SAW) say: "It is not permissible to be lashed more than ten times, except in the punishment prescribed by Allah SWT." (HR. *Muttafaq 'Alaih*).

This hadith explains the procedure for carrying out the *ta'zir* punishment, which varies depending on the status of the

<sup>31</sup>Nurul Irfan, Masyrofah, *Fiqh Jinayah*, (Jakarta: Amzah, 2013), 140

perpetrator and the type of action he has committed.

The elements of *jarimabta'zir* include the presence of a proposition that prohibits the actions of a *mukallaf*, known as the Rukun Syara' or the formal element in positive law, the presence of behaviour or actions that cause or create a criminal act, known as the Rukun Maddi or the material element in positive law, and the presence of an actor or individual who can be held accountable for the crime he has committed, known as the Rukun *adabi*.

When determining whether an action is a crime or not, all three of the above elements must be met. Apart from the above elements, there are special elements that must be fulfilled, such as all actions that are not subject to *hudud* and *qishash* sanctions, so they are classified as *ta'zir* sanctions, *jarimab* who are sentenced to *ta'zir* punishment, as well as many types, and the length of time he is serving his sentence is determined not by *syara'* but by the judge or government in power at the time.<sup>32</sup>

If it is based on the rights violated by the perpetrators of the crime, *jarimabis* divided into two in the form of all actions related to the public interest, which are defined as acts that violate Allah SWT's rights. For example, damaging the environment or hoarding staple foods are both examples of acts that violate individual rights such as beatings, fraud, defamation, and so on.<sup>33</sup>

### **Ta'zir Punishment Sanctions and Implementation**

The types of punishments handed down to *jarimab* perpetrators are various, because they cover all immoral acts which sanctions are not yet contained in the *nash*, so

the authority to the government to find out is the definition of punishment *ta'zir*.

It is also known that the main punishment for *jarimab* is determined if all of the evidences are fixed and there is no doubt on the acts. This is inversely proportional if an act has minimal evidence, or a judge has doubts of the given punishment. If the conditions and evidence for the sin are not present, the punishment is *ta'zir* rather than *hudud* or *qishash*. *Ta'zir* sanctions are quite varied, ranging from mild to severe, so the judge is given the authority to choose which punishment is imposed on the offender.<sup>34</sup>

The sanctions imposed by *Ta'zir's* finger are as follows:

1. *Ta'zir* sanctions concerning the body.

The sanctions imposed by this body are described in terms of the death penalty and other punishments. If a crime is committed repeatedly and harms the community, this *ta'zir* sanction in the form of the death penalty may be imposed on the perpetrator.

The Maliki school of thought and some Hanabilah scholars agree that the death penalty is the most severe *ta'zir* sanction. For example, in the case of spies, as well as people who cause mischief on this planet. Meanwhile, the majority of large Shafi'iyah scholars believe that this punishment should be imposed on homosexuals and people who spread beliefs or deviant sects that contradict the Qur'an and Hadith.

Other than this *hudud*, the following arguments are used as guidelines for the imposition of the death penalty: The death penalty is the harshest punishment permitted under *ta'zir*, according to the Maliki ulama and some Hanabilah thinkers. For instance, in the case of spies who commit crimes and those who cause trouble on this planet.

<sup>32</sup>Marsaid, *Al-Figh Al-Jinayah...*, 197

<sup>33</sup>Nurul Irfan, *Hukum Pidana Islam*, (Jakarta: Hamzah, 2016), 94

<sup>34</sup> Marsaid, *Al-Figh Al-Jinayah...*, 209



Additionally, according to the majority of Syafi'iyah ulama, those who promote ideologies that are against the Qur'an and Hadith, such as homosexuals and members of deviant sects, can also face this punishment.

Other than this *budud*, the following justifications are offered as standards for the execution of criminals:

مَنْ خَرَجَ وَأَمَرَ النَّاسَ جَمْعَ يَرِيدُ تَفْرِقُهُمْ فَاقْتُلُوهُ

*Give the death penalty to anyone who goes out to break the unity of someone's power. (Narrated by Muslim and Buraidah)*

The caning punishment is quite efficient in providing a deterrent effect for *jarimah ta'zir* perpetrators. This punishment is considered appropriate. It has several characteristics, including the ability to provide a deterrent effect because it can be felt directly by the human body, the law is flexible, that is, it is not rigid, and each finger has a different number of lashes. The implementation of this punishment does not have a high cost, so it can save money, and it is an individual punishment. After serving his sentence, the offender can resume his normal life.

Caning punishment in *jarimah ta'zir* is intended to give lessons and must not cause permanent defects or abnormalities. If the condemned is a man, his clothes must be opened, whereas if the condemned is a woman, the clothes must be worn because opening the clothes exposes the nakedness. This punishment is usually applied to the back of the perpetrator of *Jarimah ta'zir*; it should not be applied to the face, toes, or genitals.<sup>35</sup>

2. *Ta'zir* sanctions concerning one's independence

This type of punishment relates to a person's independence and is classified as follows:<sup>36</sup>

a) Imprisonment

A *syar'i* prison restricts a person's movement or freedom, whether it is in the form of a building or another location designated by the government as a place for punishment or imprisonment. This was done during the time of the Prophet SAW and Abu Bakr, but there was no area or building specifically designated as a location for criminal detention. In contrast to Umar bin Khatab's caliphate, he purchased a house for four thousand (4,000) dirhams that were later used as a prison for criminals. Shafwan ibn Umayyah had previously owned the property.

Based on the behavior of these companions, the ulama allowed the leader permission to construct the prisons. In Islam, punishment, and jail is divided into imprisonment with a time limit and imprisonment without a time limit. A sentence with a time limit is one that has been clearly defined by the government. This penalty is typically imposed for crimes involving individual rights, such as selling wine, insults, usury, false testimony, and making noise in court.

The length of time the sentence was handed over to *ulil amri* was due to the *fuyubah*'s failure to reach an agreement on the maximum limit. However, if it is based on Shafi'iyah's opinion, the duration is one year. This is equivalent to the punishment of exile for the adulterer, as well as the *ta'zir* punishment, which cannot exceed the *had* punishment. Similarly, according to Imam al-Mawardi, the minimum limit for carrying out this punishment as a *ta'zir* sanction is one day.

<sup>35</sup>M. Nur Irfan, *Hukum Pidana...*, 95-100

<sup>36</sup>Ahmad Wardi Muslich, *Pengantar dan Asas Hukum...*, 262

As a result, no maximum limit has been discovered that can be used as a guide for the application of imprisonment for *jarimah ta'zir*. The judge or *ulil amri* is entirely responsible for this, taking into account all factors such as the perpetrator, the circumstances, the location, and the type of finger that was used. Meanwhile, according to Ibn Qadamah, if the perpetrator's prison sentence has a minimum and maximum limit, it is the same as a *Jarimah hudud* of a prison sentence.

In Indonesia, non-time-limited imprisonment, known as the correctional facility, is carried out well so that prisoners repent of their previous actions. Meanwhile, the state bears the cost of continuing the execution of the sentence, which covers inmates' needs such as eating, drinking, clothing, and even medical treatment. According to Imam Abu Hanifah, this punishment was imposed for crimes such as theft, murder, witchcraft practice, and theft committed for the third time.<sup>37</sup> According to Imam Abu Hanifah, this punishment was imposed for crimes such as theft, murder, witchcraft practice, and theft committed for the third time.

Meanwhile, exile is a type of punishment that is imposed if his actions are likely to harm others. It is not permitted to lengthen the sentence in this sentence because there is no text regulating the maximum and minimum limits. This sanction can also be carried out by expelling the offender. The article is intended to inflict pain on the perpetrator, and the punishment serves as a deterrent.<sup>38</sup>

Boycott punishment is carried out by refusing to speak to the perpetrator until the time set by the authorities. This is what the Prophet Muhammad SAW did to three

friends who were hesitant to fight. Then Umar bin Khatab did it to the Shabiqh, who was punished with volumes, expulsion, and an order not to invite him to speak in public.<sup>39</sup>

### **Ta'zir's wealth-related punishment**

According to Imam Taimiyyah, there are various viewpoints on this punishment, which include fines and other punishments. Fines are also referred to as Al-Taqhyir. This penalty in the form of a fine, like other *ta'zir* punishments, does not have a maximum and minimum limit and is left to the judge and the government to determine the maximum and minimum amount based on the level of the *jarimah* committed by a person.<sup>40</sup> There is no prohibition on a judge imposing this sentence when trying *Jarimah ta'zir* because a judge is given discretion in solving this problem.

This is the main punishment, which can be either a stand-alone punishment or a punishment combined with other punishments. If a *qadhi* makes a law, he must enforce it and cannot change his mind. In another case, if an offender is unable to pay compensation or *ghuramah*, the fine will be deducted from any property he owns. If he does not have the property, he must wait until he does, at which point the compensation or *ghuramah* penalty will be imposed, the results of which will be fully handed over to the state.<sup>41</sup>

#### **a. Dispose of it**

In Islam, this is known as *al-Itlaf*. This destruction only applies if the property is prohibited by *Sharia*, such as if a Muslim owns a statue, which must be destroyed, as well as immoral musical instruments and

<sup>37</sup>M. Nurul Irfan, *Hukum Pidana...*,102-104

<sup>38</sup>Abdulrahman al-Maliki, *Sistem Sanksi dalam Islam*, terj. Syamsuddin Ramadhan, (Bogor: Pustaka Thariqul Izzah, 2002), 267

<sup>39</sup>Marsaid, *Al-Fiqh Al-Jinayah...*, 215-216

<sup>40</sup> Ahmad Wardi Muslich, *Hukum Pidana...*, 267

<sup>41</sup> Abdulrahman al-Maliki, *Sistem Sanksi dalam...*,270

games, wine shops and equipment, if any, and milk that has been mixed with water.

b. Modify it

In Islam, changing objects is known as *al-Taghyir*, and it is intended to provide a deterrent effect as well as punishment for the perpetrators of the crime. For example, by cutting several parts of a statue, you can transform it into a flower vase or a tree shape.<sup>42</sup>

c. Other sanctions

In addition to the punishments described above, there are other types of punishments meted out to *Jarimabta'zir* perpetrators, but the punishment is lighter with a lower level of error, of course. However, this punishment must produce results that are more than just meaningless punishments. For example, threatening the perpetrator with volumes, imprisonment, and even more torturous punishment if he continues to commit his crimes. Other punishments available to the judge, in addition to warnings, warnings, and threats, including being warned harshly, being presented before a court, telling the public about his faults, being advised, reproached, excommunicated, and even if he works, being fired from his job.<sup>43</sup>

### Review of Islamic Criminal Law on Rehabilitation Sanctions for Drugs Addicts and Victims

Drugs are *qiyased* to *khamr* in Islamic law because the *illat* (reason) are both intoxicating, depriving the mind, and can cause damage. At the time of the Prophet Muhammad SAW, *khamr* was still used exclusively for drinking. However, drugs of various types are now not only drunk, but also injected, smoked, or sprinkled on injured parts of the body.<sup>44</sup> The prohibition of *khamr*

and drugs is stated in Surah al-Baqarah verse 219 and Al-Maidah verse 90. It is clear from the two verses above that Allah SWT has prohibited alcohol and other harmful acts. Gambling and alcohol have benefits, but the harm outweighs the benefits.

Drug users can face two types of sanctions under Islamic criminal law: *hudud* sanctions and *ta'zir* sanctions. The *hudud* sanctions for drug abusers are the same as those for drinking alcohol, namely forty lashes during the Prophet SAW's time. The Syafi'iyah scholars stated this, but Umar bin Khatab's caliphate added forty more lashes. Because Umar bin Khatab was the caliph at the time, this is *ta'zir* rather than *hudud*. Regarding the punishment for drug abusers being equated with the punishment for drinking alcohol, Ibn Taimiyah stated that "indeed marijuana is *haram* and *hudud* sanctions are imposed on the abuser, as imposed on the drinker of alcohol."<sup>45</sup>

Meanwhile, victims of drug abusers face *ta'zir* sanctions because the drugs did not exist during the Prophet Muhammad's time and are more dangerous than liquor; while alcohol is drunk, drugs are not drunk.<sup>46</sup> The use of drugs or *khamr* creates an unhappy feeling in the user's daily life; it is frequently discovered that a person is unable to resist his desire to satisfy his own needs. In this condition, there will be a mental conflict, resulting in an imbalance in spiritual life or mental health.

### CONCLUSION

Based on the findings, the conclusions are as follows: first, if the defendant is caught red-handed, evidence is found with the use of one day, a positive laboratory certificate for the use of drugs according to the investigator's request, a certificate from a government psychiatrist or psychiatrist

<sup>42</sup> M. Nurul Irfan, *Hukum Pidana*..., 107-108

<sup>43</sup> Ahmad Wardi Muslich, *Hukum Pidana* ..., 268

<sup>44</sup> M. Nur Irfan, *Hukum Pidana*.....,59

<sup>45</sup> M. Nurul Irfan, *Hukum Pidana*...,h. 228

<sup>46</sup> Ibid., 229

appointed by the judge, there is no evidence that the person concerned is involved in the distribution of drugs for addicts. If a victim of narcotics abuse surrenders to the police, a rehabilitation sentence is imposed.

Second, in Islamic law, drugs are *qiyased* to *kbammr* because the *illat* is both intoxicating and depriving the mind. If the punishment for drinking *kbammr* is *had* in Islamic criminal law, the punishment for drug addicts in positive Indonesian law is ta'zir punishment (rehabilitation); *had* punishment cannot be carried out due to *subhat*, which means that the Indonesian state does not carry out sanctions in Islamic criminal law in imposing sanctions for criminal offenders, except for laws made by authorized state bodies.

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