



## ISLAMIC LEGAL REVIEW OF THE DEATH PENALTY IN CASES OF NARCOTICS CRIMES

Inspiration <sup>1</sup>, Halimatul Maryani <sup>2</sup>

<sup>1,2</sup> Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan

Email : [ailham.flip@yahoo.co.id](mailto:ailham.flip@yahoo.co.id) <sup>1</sup>, [halimatul.maryani@umnaw.ac.id](mailto:halimatul.maryani@umnaw.ac.id) <sup>2</sup>

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### ABSTRACT

Narcotics are classified as intoxicating substances (muskir) and cause great harm (danger) to people's minds, souls and morals, so that they are haram for production, distribution or consumption. Its haraam is equated with khamr (liquor) based on the arguments of the Qur'an and Hadith, such as Surah Al-Maidah verse 90 and the Muslim hadith which states that anything intoxicating is haram.. The imposition of the death penalty contained in Law Number 35 of 2009 is intended to provide a deterrent effect. The application of the death penalty from an Islamic legal perspective to perpetrators of narcotics crimes, especially producers, dealers, and distributors, can be justified as a form of ta'zir (discretionary punishment) aimed at protecting the welfare of the people (mashlahah mursalah), especially in preserving human reason and soul. Scholars agree that narcotics are forbidden because they are included in the category of muskir (intoxicants) or substances that eliminate reason and cause extraordinary harm (damage), damaging individuals and the social order. This prohibition is based on general principles in the Qur'an and Hadith that prohibit everything that is bad and destructive. The majority of fuqaha (jurists) view that narcotics crimes, especially those committed by dealers and distributors, can be subject to severe punishment, including the death penalty, through the ta'zir mechanism

### 1. Introduction

Drug abuse in Indonesia is a highly concerning issue, as Indonesia is no longer merely a transit and marketing area for narcotics, but has also become a major drug producer. This is evidenced by the discovery of large-scale narcotics factories imported from abroad to Indonesia. Indonesia's strategic location, close to the Golden Triangle (Laos, Thailand, and Myanmar) and the Crescent (Iran, Afghanistan, and Pakistan), the world's largest opium-producing regions, makes Indonesia a hub for illicit drug trafficking.

Recognizing the various dangers posed by drug abuse, all forms of abuse of these illicit substances are regulated in Law Number 35 of 2009 concerning Narcotics. The creation of this law reflects Indonesia's relentless efforts to maintain the criminalization of drug crimes. Furthermore, the law demonstrates Indonesia's consistent, proactive support for the international movement to combat all forms of drug crime.





In Indonesia today, the imposition of criminal sanctions in the form of imprisonment by judges for perpetrators of narcotics crimes is one of the criminal policies adopted by Law Number 35 of 2009 concerning Narcotics and cannot be separated from the criminal law norms adopted by criminal law so far, for example in Article 10 of the Criminal Code.

One of the criminal sanctions in Law Number 35 of 2009 concerning Narcotics is the death penalty, namely in Article 114 paragraph (2) which states: "In the case of acts of offering for sale, selling, buying, acting as an intermediary in buying and selling, exchanging, handing over or receiving Class 1 Narcotics as referred to in paragraph 1 which in the form of plants weighs more than 1 kg or more than 5 tree trunks or in non-plant form weighs 5 grams, the perpetrator shall be punished with the death penalty."

The death penalty is the most severe punishment of all types of punishment, therefore the threat of the death penalty is only aimed at perpetrators of serious crimes such as crimes directed against the head of state and deputy head of state as regulated in Article 104 of the Criminal Code, crimes against the soul of a person, namely premeditated murder (Article 340 of the Criminal Code) and narcotics crimes. One example of a death penalty case that was once handed down by the Medan District Court is the case of convict Ayodhya Prasad Chaubey, in a narcotics case

## 2. Research Method

This research is descriptive in nature. Descriptive research aims to provide the most accurate data possible. In this case, it will describe the way public aspirations are expressed, which leads to anarchy. This descriptive research begins with collecting data related to the discussion above, then organizing, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon being studied. This research uses a normative juridical method by analyzing laws and regulations regarding the death penalty for perpetrators of narcotics crimes

## 3. Results And Discussion

Death penalty as a sanction *ta'zir* The highest penalty is only given to perpetrators of extremely dangerous crimes, related to life, security, and public order. Therefore, it is very appropriate to impose the death penalty for drug producers or dealers, both of which are extremely dangerous to humanity. This can provide a sense of justice for all, maintain human security on earth, and prevent terror in society and terror that endangers the state.



The death penalty in Islam is called qisas. Qisas is the primary punishment for crimes involving intentional harm to a person or body part. Islamic law also holds the same position, namely, that education does not deter the perpetrator and instead harms society. Ta'zir punishment can be given in the form of the death penalty or imprisonment unlimited.

In Islam, there are several objectives for imposing sanctions. *ta'zir* namely as Preventive (prevention), aimed at other people who have not committed qishash, Repressive (making the perpetrator afraid), intended so that the perpetrator does not repeat the act of qishash in the future, Curative (reconciliation), *ta'zir* must be able to bring about improvements in the behavior of convicts in the future, Education, is expected to change their lifestyle towards the better.

According to the fatwa of the Indonesian Ulema Council (MUI) it says that the sanction for perpetrators of narcotics abuse is ta'zir, which The consideration in this fatwa is that in order to prevent the misuse of narcotics which causes loss of life and property which is very disruptive to the mind, security and success of development, the following efforts and actions are necessary:

1. Imposing heavy or harsh penalties on sellers, distributors or smugglers of narcotics, up to the death penalty.
2. Imposing heavy penalties on security officers and civil and military government officers who facilitate, allow, allow, and even protect sources, sellers, retailers and illicit drug dealers for misuse.
3. Issue stricter regulations and more severe sanctions against those who have the legal authority to sell narcotics to prevent misuse.
4. Carrying out preventive efforts by making laws regarding the use and abuse of narcotics.

Regarding the criminal provisions for narcotics dealers included into the ta'zir crimes of the ruler (*Ulil Amri*) which is a crime *ta'zir* handed down by the judge through consideration-consideration judge. The ta'zir penalty is imposed if per The crime committed will harm public interest and order. The principle the imposition of ta'zir, especially in relation to ta'zir which becomes full authority of ulil amri, meaning that both the form and type of punishment are the right of the ruler, aimed at eliminating characteristics that disrupt public order or interests that lead to public welfare.

Public order and the public interest, as we know, are unstable and change according to needs and developments. The death penalty for drug dealers is a heavier punishment imposed for extraordinary crimes, where the crime is a transnational, well-organized crime with extraordinary impact. Therefore, even severe punishments can be imposed if deemed appropriate to current needs,





even the death penalty for drug offenders. Why is the death penalty deemed necessary for drug dealers? Because narcotics have a very broad impact and can be detrimental to public interests and order. Several factors can influence this.

Abdul Qadir Audah, an expert in Islamic criminal law from Egypt, said that the principles of law in Islam can be summarized in two (2) main principles, namely:

1. Complete all criminal acts by ignoring the convict's personality and improving the convict's attitude while eradicating all forms of criminal acts.
2. Eradicating all forms of crime aims to maintain social stability, while for convicted individuals it aims to improve their attitudes and behavior.

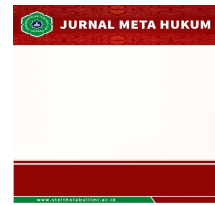
Drugs in Islamic law are part of khamar, although the legal status of drugs in the context of fiqh is not directly mentioned in the Qur'an or hadith, because the problem of drugs was not known during the time of the Prophet Muhammad SAW, however, scholars have agreed that drugs are haram, because they can damage the human body and soul more than khamar. According to Ahmad As-Syarbashi, even without being likened to khamr, marijuana and narcotics can be categorized as khamar, which is haram, because they can damage the mind.

The aim of Islamic criminal law is to create justice, peace for individuals and society and to prevent acts that could cause harm to individuals and society, whether related to life, property or honor.

The death penalty in Islamic law falls into three categories: hudud, qisas, and ta'zir. Hudud punishment includes stoning and death, qisas punishment involves retaliation for murder, and ta'zir punishment involves al-qatlu al-siyasi, a death penalty whose form is tailored to the legal policy of the ruling authority. Ta'zir punishment, the death penalty, may be imposed if it is deemed sufficient or the only way to provide public benefit. Ta'zir punishment is regulated by the Quran and Hadith, but authority rests entirely with the authorities, and its severity is not limited. Examples include the death penalty for espionage, repeat offenders, drug dealers, or corruptors.

Most Hanafi jurists permit the death penalty for alcohol, including narcotics, due to their destructive nature and consider it politically motivated murder. Some Hanafi scholars, particularly Ibn Taymiyyah and Ibn Qayyim, and some of their students, also support this opinion. This opinion is also supported by several Hanafi Maliki scholars.

The opinions of Islamic scholars regarding narcotics punishment are: Regarding the imposition of punishment on narcotics dealers, Yusuf Al Qardawi issued a fatwa that the government (state) must fight narcotics and impose very severe punishments on those who cultivate and distribute them. With the argument that in essence narcotics dealers have killed nations in order to gain wealth. They deserve qisash punishment. The MUI (Indonesian Ulema Council) has issued



Fatwa Number 53 of 2014 regarding punishments for producers, dealers, distributors and abusers of narcotics. In the fatwa, it contains the prohibition of narcotics so that punishment for drug dealers is one of the steps to prevent these illicit goods from circulating and destroying the future of the nation. Severe punishment is a deterrent and for the common good.

Then al-Qardhawi further stated that the Al-Quran and Hadith mention the prohibition of khamr, but do not mention the prohibition of various intoxicating solid substances, such as marijuana and heroin. So what is the Sharia law regarding the use of these objects, while some Muslims continue to use them on the grounds that religion does not forbid them, marijuana, heroin, and other forms, both solid and liquid, which are known as mukhaddirat (narcotics) are among the items that are prohibited by Sharia without dispute among the ulama.

The explanation that has been presented above, there are several things that the death penalty for those sentenced to death for narcotics crimes does not conflict with Islamic law, including:

1. Legal argument considerations The existence of narcotics is not in the Qur'an or hadith that regulate it, although there is no regulation based on the following arguments: Narcotics can be harmful to health the impact of consuming narcotics is very dangerous for human health can cause various diseases. While in Islamic teachings in essence is aimed at the good or benefit of humanity in this world.
2. The purpose of Islamic law is for the benefit "In essence, Islamic law is a guideline for Muslims in their attitudes and actions in this world. Islamic law as a guide to life contains prohibitions and commands for its followers, in fact the prohibitions regulated in Islamic law are preventive efforts so that Muslims avoid actions that harm themselves and others". Based on the information that has been presented above, it can be concluded that the implementation of the death penalty for perpetrators of narcotics crimes is in accordance with Islamic teachings, this is because consuming narcotics does not bring good (benefit) but will harm the person who consumes it himself. While in Islamic teachings prioritize the benefit of its people.
3. Islam does not want harm "In the teachings of Islam, it always warns its followers to avoid all kinds of actions, behaviors that are prohibited and bring harm. Like consuming narcotics, this is a form of harm, where the impact of these narcotics is very dangerous for human health, it can even cause death if consumed continuously"

Islamic analysis positions the law as an effort to eradicate it to its roots, so that by eradicating the crime of drug distribution, society, especially the younger



generation, will be protected from actions that endanger health and even death. Various parties are mobilized to be able to implement this narcotics law consistently, because if a law that has been established, is not implemented according to the provisions that have been set, then various violations will emerge, and violators will ignore the laws that have been established, and are enforced throughout the country, even the perpetrators will not be deterred. Today they are arrested and tried, tomorrow another new one appears, and so on without any fear of breaking it.

Considerations regarding the prevention of both specific violations and other potential violations and the correction of violations through punishment are based on certain assumptions regarding the patterns and motivations of human behavior. However, the decision to apply a particular punishment to an existing violation, even if justified as a deterrent or correction, is based on considerations of the excessive value, or inappropriateness of the violation. In other words, excessive inappropriateness of an existing punishment can eliminate its preventive value, or the potential to correct, and therefore lead to its correction.

The ineffectiveness of law enforcement has kept the circulation of narcotics abuse going, even though the circulation of narcotics abuse has decreased slightly, and law enforcement efforts will continue to be carried out to eliminate the circulation of narcotics abuse. Islamic teachings clearly prohibit someone from seeking a living in a way that is not approved by Allah SWT, namely selling goods that are harmful to health, so something obtained from businesses obtained from selling goods that are harmful to human health, if used for worship to Allah will not be rewarded.

The issue of law enforcement regarding drug trafficking and abuse has become a national commitment and a global issue, requiring careful attention because it involves various parties and many people. Therefore, the issue of drug trafficking is a crucial one, not only because it is an economic issue but also because it can become a political issue if the perpetrators are foreign nationals, such as the Bali Nine drug trafficking group.

Regarding the application of the death penalty to those convicted of drug abuse, particularly those sentenced to death for drug cases, the author will present several views from the Bengkulu community, including religious leaders, community leaders, students, and youth. Based on interviews with religious and community leaders, it was found that they strongly support the government's policy of implementing the death penalty for drug dealers and drug lords.

The reasons for supporting the implementation of the death penalty are due to the fact that the impact of consuming narcotics is very dangerous for human health, such as disorders and damage to body organs (heart, liver, kidneys),





nerves and brain, and even many victims have died. In addition, they also highlight it from the perspective of Islamic law, especially by religious leaders, that in general Islamic teachings teach about goodness and avoiding anything that contains harm, in other words, Islamic teachings aim to prevent its followers from harming or oppressing themselves and others.

Many of the victims of drug users have died, so indirectly drug dealers and dealers have killed other people, so they are also subject to the same action, namely if they kill someone they must also be killed, this is known as qisas

#### 4. Conclusion

The death penalty for drug offenders is stipulated in Articles 113, 114, 118, 119, 121, and 144 of Law No. 35 of 2009 concerning Narcotics. These regulations stem from the legal use of narcotics for research and medical purposes. However, they become illegal outside of these purposes. Drug producers and dealers are prosecuted for drug abuse and illicit trafficking.

The urgency of the death penalty for perpetrators of narcotics crimes, especially narcotics dealers, is very appropriate because one of the big problems currently facing the Indonesian nation is the circulation of narcotics which is very worrying and Indonesia can be categorized as an emergency regarding the circulation of narcotics, the imposition of the death penalty contained in Law Number 35 of 2009 is intended to provide a deterrent effect aimed at all people so that those who are still perpetrators of narcotics dealers will immediately stop because the sanction given to perpetrators of narcotics dealers is the death penalty.

The application of the death penalty from an Islamic legal perspective to perpetrators of narcotics crimes, especially producers, dealers, and distributors, can be justified as a form of ta'zir (discretionary punishment) aimed at protecting the welfare of the people (mashlahah mursalah), especially in preserving human reason and soul. Scholars agree that narcotics are forbidden because they are included in the category of muskir (intoxicants) or substances that eliminate reason and cause extraordinary harm (damage), damaging individuals and the social order. This prohibition is based on general principles in the Qur'an and Hadith that prohibit everything that is bad and destructive. The majority of fuqaha (jurists) view that narcotics crimes, especially those committed by dealers and distributors, can be subject to severe punishment, including the death penalty, through the ta'zir mechanism



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