

Death Penalty For Drugs Dealers and Traffickers From The Perspective of Islamic Law

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Abstract: *Death Penalty For Drugs Dealers and Traffickers From The Perspective of Islamic Law.* This article examines the Islamic legal perspective on the application of capital punishment against drug dealers/traffickers. The aim is to find out whether these provisions are in accordance with the rules of Islamic law or not. This study uses a normative juridical approach which is carried out by examining legal norms or norms related to the object of discussion. This study finds out that Islamic law does not explicitly regulate drug crime, including determining sanctions for the dealers/traffickers. Islamic law only regulates the crime of liquor (*khamer*). Therefore, this criminal act can be included in the category of *jarimah ta'zir* which its legal sanctions are left to the authorities policy. Although this crime can be classified as a common crime, it is reasonable that the dealers/traffickers of the illicit goods are given severe punishment, even until sentenced to death, as this crime has a tremendously adverse effect not only for individuals but also for society and the nation as a whole. The sanction is in accordance with the principles of *ushul fiqh*.

Keyword: death penalty, drugs dealers, Islamic law

Abstrak: *Pidana Mati Terhadap Pengedar Narkotika dalam Perspektif Hukum Islam.* Artikel ini menelaah perspektif hukum Islam terhadap pemberlakuan hukuman mati terhadap para pengedar/bandar narkoba. Tujuannya adalah untuk mengetahui apakah ketentuan tersebut sesuai dengan kaidah hukum Islam atau tidak. Penelitian ini menggunakan pendekatan yuridis normatif yang dilakukan dengan cara menelaah kaidah-kaidah atau norma-norma hukum yang berhubungan dengan objek pembahasan. Studi ini menemukan fakta bahwa hukum Islam tidak mengatur secara eksplisit tentang kejahatan narkoba termasuk menentukan sanksi bagi pengguna/pengedar/bandar narkoba. Hukum Islam hanya mengatur tentang kejahatan minuman keras (*khamer*). Oleh karena itu tindak pidana ini dapat dimasukkan ke dalam kategori *jarimah ta'zir* yang sanksi hukumnya diserahkan kepada kebijakan penguasa. Meski kejahatan ini bisa digolongkan sebagai kejahatan *khamer*, namun oleh karena kejahatan ini memberikan dampak buruk yang luar biasa tidak hanya bagi individu, tetapi juga bagi masyarakat maupun bangsa secara keseluruhan, maka sudah sewajarnya para pengedar/bandar barang haram itu diberi hukuman yang berat, bahkan hingga dihukum mati. Hal ini sesuai kaidah *ushul fiqh*.

Kata Kunci: pidana mati, pengedar narkotika, hukum Islam

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Introduction

Indonesia has become a state of emergency drugs. Based on data published in several media, recently there are around 5 million narcotics users in Indonesia. Of this figure, 2 million people are in a state of severe dependence and can no longer be rehabilitated, while the death toll is estimated to range between 40-50 per day.

The above facts show that the spread of various types of narcotics in Indonesia continues to increase. Initially, Indonesia's position was made by the dealers only as a transit area. But then that position developed into a target area, and even, lately, it increased again to become a production area. The dealers and market segments are now almost touching various strata in people's lives, no longer limited to adults but have reached out to children.¹ The more rampant narcotics circulation makes Indonesia a state of drug emergencies and this kind of condition is certainly not allowed to be abandoned because the impact is not only detrimental to the community but also threatens the sustainability of the nation's generation.

To overcome the rampant use of narcotics, the government has made various policies ranging from issuing a number of regulations that threaten with severe legal sanctions to the supervision of law enforcement officials who handle narcotics cases. Unfortunately, the more intensive efforts made by law enforcement agencies against narcotics the more increasing are the circulation and narcotics abuse in the midst of society.² Therefore the war on narcotics becomes something absolutely necessary,

¹ Satrio Putra Kolopita, "Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika," *Lex Crimen* 2, No. 4 (2013). See also Zainab Ompu Jainah. "Analisis Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Kurir Narkotika (Studi Putusan Perkara Nomor: 414/PID-Sus/2014/PN. Kla)." *Keadilan Progresif* 7.1 (2016). Amru Eryandi Siregar, et al. "Penjatuhan Sanksi Pidana di Bawah Batas Minimum Ancaman Hukuman Bagi Anak Pelaku Tindak Pidana Narkotika." *USU Law Journal* 5, no .2, (2017). Said Muhammad Faisal, and Ledy Diana. "Peranan Badan Narkotika Kabupaten Kampar (BNK) Kampar dalam Mencegah Peredaran Narkotika di Kecamatan Tapung Kabupaten Kampar." *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum* 4, no. 2, (2018): p. 1-15. Hannani. "Eksekusi Mati di Indonesia (Perspektif Teori Hudud Muhammad Syahrur)." *DIKTUM: Jurnal Syariah dan Hukum* 15.1 (2017): p. 94-108.

² O.C. Kaligis & Associates, *Narkoba dan Peradilannya di Indonesia, Reformasi Hukum Pidana Melalui Perundangan dan Peradilan* (Bandung: Alumni, 2002), p. 260.

and for this reason, the Government then has decided to apply the death penalty for narcotics criminals.

Generally, the death penalty, is the execution of a person by the state as punishment for a crime. Since ancient times it has been used for a wide variety of offences. Crimes that can result in the death penalty are known as capital crimes or capital offences.³

Although the death penalty for drug traffickers/dealers has been applied in a number of permanent court decisions, the government's stance on carrying out the decision has not been optimal. Evidently, during the administration of President SBY, the President issued clemency against two drug offenders, Corby and Ola, who were legally sentenced to death based on a fixed judge's ruling.

This decision was criticized by several circles⁴, but the government argued that clemency was given to prevent the bad bilateral relations between Indonesia and the government from where the convicted person came from.⁵ During the Jokowi administration, the court sentenced a number of perpetrators. Although several heads of state from the countries of origin, the death row inmates have asked President Jokowi to provide forgiveness, the president remains firm in his stance to continue to carry out the death penalty for drug lords. As a State of Law (Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia), it is appropriate for Indonesia to uphold the law.

³ Gerrardette Philips, "Death Penalty: the Present Day Threat to Human Life", *Melintas, an International Journal of Philosophy and Religion* 30. No. 1, (2014): p. 2.

⁴ Husin Wattimena "Pemberian dan Pencabutan Grasi Perspektif Hukum Islam" *Tabkım* 11, No. 2, (Desember 2015): p. 48-63. Wattimena, Husin. "Pemberian dan Pencabutan Grasi Perspektif Hukum Islam." *Tabkım* 11, no. 2 (2017). Febri Handayani. "Pidana Mati Ditinjau dari Perspektif Teori Hukum dan Kaitannya dengan Hukum Islam (Studi Kasus di Kejaksaan Negeri Pekanbaru dan Pengadilan Negeri Pekanbaru)." *Hukum Islam* 16, no.1. (2016): p. 47-70.

⁵ Moh. Rosyid "Imbas Konsistensi Hukuman Mati pada Hubungan Bilateral dalam Kasus Narkoba" *Yudisia* 8, No. 2, (Desember 2017). See also Romli Atmasseti. "Ekstradisi dalam Meningkatkan Kerja Sama Penegakan Hukum." *Indonesian J. Int'l L.* 5, (2007): p. 1. Reynaldi Mandala Putra, Wicaksono, Mirza Agung, Hermeni Susiatiningsih, and Marten Hanura. "Kerjasama Indonesia Belanda dalam Pencegahan Penyelundupan Narkotika." *Journal of International Relations* 3, no. 4, (2017): p. 158-166. Astrid Kalalo. "Eksistensi Pelaksanaan Ekstradisi Pelaku Kejahatan Narkotika Yang Berdampak Internasional." *Lex Et Societatis* 1, no. 2. (2013).

In the wider community, the Indonesian Government's policy to impose the death penalty for drug traffickers received mixed responses. Some groups agreed and some refused. The variety of attitudes and opinions on the death penalty is caused by differences in reasons and perspectives in seeing the death penalty.

The group that supports the execution of the death penalty argues: first, permanently punishments or capital punishment can eliminate criminals from the public's destruction which requires tranquility and tranquility; secondly, capital punishment has a retributive effect that can provide a sense of justice, especially to the victim and his family who experience suffering; third, capital punishment has a preventive impact on other members of society who want to carry out crimes; fourth, capital punishment is not an act that is prohibited by religion even though it still has strict requirements.

While for groups that oppose the death penalty, among the arguments put forward are: first, capital punishment has negated the possibility that humans can change, repent and realize their mistakes to do better; second, capital punishment cannot be corrected if there is an error in its application. Therefore, capital punishment is very possible to be imposed on people who are actually innocent, if it turns out that in the judicial process there is an inappropriate procedure; third, the death penalty will give a strong suffering to the family of the convicted person because psychologically the family will be burdened with the feeling of waiting for the execution of the death penalty. Apart from the pro and the contra attitudes It must be admitted that the problem of narcotics abuse in Indonesia is very complex because the handling should not only be left to the government but must be the responsibility of all elements of society ranging from the government, the private sector to the figures and the whole members of society.⁶

⁶ Beridiansyah, "Sistem Penegakan Hukum Pidana Terhadap Pencegahan dan Pemberantasan Penyalahgunaan Narkotika (Studi Komparatif antara Indonesia dan Malaysia) *"Al-Risalah Forum Kajian Hukum dan Sosial Kemasyarakatan* 16, No. 2, (Desember 2016): p. 238. Zainab Ompu Jainah. "Membangun Budaya Hukum Masyarakat Penegak Hukum dalam Pemberantasan Tindak Pidana Narkotika." *Keadilan Progresif* 2, no. 2, (2011). Silaban, Fernandes Edi Syahputra, Liza Erwina, and Mahmud Mulyadi. "Kebijakan Hukum Pidana Terhadap Pengaturan Tindak Pidana

The question now is how is the application of the Death Penalty to Narcotics Dealers if viewed from the Perspective of Islamic Law? This will be explained in the next sub-section. But before that, it needs to be presented here at a glance that this study is a legal research that uses a normative juridical approach, namely an approach that is carried out through a review of the rules or norms and rules of the law in the form of written regulations or theories relating to the problem to be discussed. Primary legal materials used include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1946 concerning the Criminal Code (KUHP), Law Number 5 of 1997 concerning Psychotropics and Law Number 35 of 2009 about Narcotics. While secondary legal materials consist of literature books, articles, and the results of previous research.

History of the Development of Legal Rules for Drug Users

Historically, narcotics and psychotropic arrangements in Indonesia began with the publication of *Verdoovende Middelen Ordonnantie*, staatsblad 1927 Number. 278 jo Number. 536 which regulates the use of illegal drugs. This rule is better known as the drug regulation and has been put into effect since January 1, 1928, and placed in additional State Gazette February 3, 1928, and July 22, 1928. Apart from the above rules, the Dutch government also issued regulations on opium packaging through the *Opium Verpakkings Bepalingin*, Staatblad 1927 Number 514. This statutory regulation, the legal material only regulates the trade and the use of narcotics, while the provision of health services for the recovery effort of the addict is not regulated at all.

During the New Order government, ordinance about *Verdoovende Middelen Ordonnantie*, Stbl. 1927 No.278 jo. No.536 was replaced by Law Number 9 of 1976 concerning Narcotics which was declared effective from July 26, 1976. Furthermore, Law No. 9/1976 was replaced

Narkotika di Indonesia.” *Jurnal Mahupiki* 1, no.1, (2013). Elrick Sanger. “Penegakan Hukum Terhadap Peredaran Narkotika di Kalangan Generasi Muda.” *Lex Crimen* 2, no. 4. (2013).

by Law No.22 / 1997 along with the issuance of Law No.5 / 1997 concerning Psychotropic. During the Reformation period, narcotics crimes were then regulated specifically in Chapter XV of Law Number 35 of 2009 concerning Narcotics. In this Act, it is stated that narcotics crime is a *lex specialis derogate lex generalis* from the Criminal Code (KUHP).⁷

In Article 114 Paragraph 1 of Chapter XV Law Number 35 of 2009 states that: Every person without rights or against the law offers to be sold, sold, bought, received, become an intermediary in buying and selling, exchanging, or handing Narcotics Class I, convicted with a life imprisonment or imprisonment of at least 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp.10,000,000,000, 00 (ten billion rupiah).

Subsequently in Article 114 Paragraph (2) states that: In the case of an act of offering to sell, sell, buy, become an intermediary in buying and selling, exchanging, handing over, or receiving Narcotics Group I as referred to in paragraph (1) which exceeds 1 (one) kilogram or exceeding 5 (five) trees or in a non-plant form weighing 5 (five) grams, the offender is sentenced to death, imprisonment for life, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and the maximum penalty fine as referred to in paragraph (1) plus 1/3 (one third).

In other provisions, namely Article 119 paragraph (1) states that: Every person without rights or against the law offers to be sold, sold, bought, received, become an intermediary in buying and selling,

⁷ Ahmad Syafii, "Penyalahgunaan Narkoba dalam Perspektif Hukum Positif dan Hukum Islam". *Jurnal Hunafa* 6, No. 2, (Agustus 2009): p. 223-224. See also Hanafi, "Analisis Terkait Sanksi Pidana Bagi Pengguna dan Pengedar Narkoba dalam Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika." *Voice Justisia* 1, No. 2, (September 2017): p. 21-22. Fransiska Novita Eleanora. "Bahaya Penyalahgunaan Narkoba Serta Usaha Pencegahan dan Penanggulangannya (Suatu Tinjauan Teoritis)." *Jurnal Hukum* 25, no. 1, (2018): p. 439-452. Lydia Harlina Martono, and Satya Joewana. "Pencegahan dan Penanggulangan Penyalahgunaan Narkoba Berbasis Sekolah." (Jakarta: Balai Pustaka 2006). Elviza Rahmadona, and Helfi Agustin. "Faktor yang Berhubungan dengan Penyalahgunaan Narkoba di RSJ Prof. HB. Sa'anin." *Jurnal Kesehatan Masyarakat Andalas* 8, no.2, (2014): p. 60-66.

exchanging, or handing Narcotics Class II, convicted with criminal minimum jail time of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiahs) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).

Whereas in paragraph (2) the same article states that: In the case of an act of offering to sell, sell, buy, accept, become an intermediary in buying and selling, exchanging, or handing Narcotics Class II as referred to in paragraph (1) the weight exceeds 5 (five) grams, the offender is sentenced to death, imprisonment for life, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and the maximum criminal penalty as referred to in paragraph (1) plus $\frac{1}{3}$ (one third).

In other provisions, namely Article 119 paragraph (1) states that: Every person without rights or against the law offers to be sold, sold, bought, received, become an intermediary in buying and selling, exchanging, or handing Narcotics Class II, convicted with criminal minimum jail time of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 800,000,000.00 (eight hundred million rupiahs) and a maximum of Rp. 8,000,000,000.00 (eight billion rupiah).

Whereas in paragraph (2) the same article states that: In the case of an act of offering to sell, sell, buy, accept, become an intermediary in buying and selling, exchanging, or handing Narcotics Class II as referred to in paragraph (1) the weight exceeds 5 (five) grams, the offender is sentenced to death, imprisonment for life, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and the maximum criminal penalty as referred to in paragraph (1) plus $\frac{1}{3}$ (one third).

If observed carefully, there are fundamental differences between the provisions contained in article 114 paragraph (2) with the provisions contained in article 119 paragraph (2). In Article 114 paragraph (2) there is the word “which in the form of plants weighing more than 1 (one) kilogram or exceeding 5 (five) trees or in the form of non-plants

weighing 5 (five) grams”. Whereas in article 119 paragraph 2 the word “plant form or not plant shape” is not mentioned at all.

Apart from these differences, based on the sounds of the articles above, a variant of narcotics crime can be constructed with the following qualifications;

- a. Element of the subject of a criminal act, namely everyone.
- b. The element of the deed is offering to sell, sell, buy, accept, become an intermediary in buying and selling, exchanging, or giving Narcotics Class I and Group II.
- c. The element of error that is deliberate.
- d. The four elements against the law, namely against the formal law and against the material law, means “actions that violate written laws or unwritten laws.

The statement about “*everyone who offers to sell, sell, buy, accept, be an intermediary in buying and selling, exchanging, or giving Narcotics Group I and class II*” as referred to in article 114 and 119 of Law Number 35 of 2009 above, specifically regulating dealers. This is as stated by Lilik Mulyadi, that implicitly and narrowly can be said that, “Narcotics dealers” are people who carry out the distribution and delivery of Narcotics. Broadly speaking, the definition of “dealer” can also be carried out and oriented to the dimensions of the seller, the buyer to circulate, transport, store, control, provide, perform the act of exporting and importing “Narcotics”.⁸

Death Penalty for Drug Traffickers/Dealers in the View of Islamic Law

The term narcotics is not explicitly found in Islamic law. However, the qualification of the substance is known in Islamic law with the term *khamr*. *Khamr* derived from the word *khamara-yakhmuru* or *yakhmiru-khamran* Etymologically it means to be closed, hidden, secret, and changed from the original.⁹

⁸ Satrio Putra Kolopita, “Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika.”

⁹ Achmad Warson Munawwir, *Kamus al-Munawwir*, p. 367.

In Islam, the prohibition of consuming *khamer* (drugs) is done gradually. First, it gives information that drugs are beneficial but the danger is greater. God Says:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ
وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ
يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ

“They ask you about khamar and gambling. Say both of them have big sins and some benefits for humans. But the sin is greater than the benefits.” (Q.s. al-Baqarah [2]: 219).

Second, the emphasis that drugs can cause a person to lose the balance of emotions and thoughts. God forbids someone to pray in a drunken state. Allah Says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَىٰ حَتَّىٰ تَعْلَمُوا مَا تَقُولُونَ
“O ye who believe, do not pray while you are drunk so you understand what you say”. (Q.s. al-Nisà’ [4]: 43);

Third, the assertion that drugs are something disgusting, as well as part of the devil’s habits is therefore prohibited to be consumed. Allah says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ
فَاجْتَنِبُوهُ لَعَلَّكُمْ تَفْلِحُونَ

“O ye who believe, verily (drink) khamar, gamble, (sacrifice for) idols, draw fate with arrows is a cruel act, including Satan’s deeds. So stay away from those acts so that you get good luck.” (Q.s. al-Mā'idah [5]: 90).

According to Q.s. Al-Maidah: 90, *khamr*, narcotics or its similar ones is a deed that will afflict humans. At first, humans will get false pleasure and for a moment, but then it can affect and correct the functions of reason. Therefore it must be avoided so as not to be exposed to greater havoc. Allah Ta’ala Says:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ
فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾ إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ
وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ ۗ فَهَلْ أَنْتُمْ مُنْتَهُونَ ﴿٩١﴾

“O ye who believe, indeed (drink) khamr, gamble, (sacrifice idols, draw fate with arrows are abominable deeds including satanic deeds. Then stay away from these actions so that you will get good luck. Surely the devil intends to cause enmity and hatred between you with khamr and gamble, and hinder you from remembering Allah and praying; then stop you (from doing the work).” (Q.s. al-Mâidah [5]: 90-91).

In a hadith from ‘Abdullah bin ‘ Amr Radhiallahu anhuma, that the Prophet sallallahu ‘alaihi wa sallam said: *“Khamr is the mother of all evil, whoever drinks it, then his prayer is not accepted for 40 days, if he dies while there is khamr in his stomach, then he dies as the Jahiliyyah die.”*¹⁰

In a hadith narrated from Ibn ‘Umar, the Messenger of Allâh said: *“Khamr is cursed on ten things; (1) the substance, (2) the blackmailer, (3) the person who extorted it for self-consumption, (4) the seller, (5) the buyer, (6) the carrier, (7) the person who asked someone else to bring it, (8) people who eat the results of the sale, (9) drinkers, and (10) people who pour it.”*¹¹

The law of consuming Khamr is *haram*. The culprit was threatened with a punishment of whipped 40 times. This is based on the atsar sahabah that: If a mukallaf is in a state of being not forced to drink *khamr*, whereas he knows that what is drunk is *khamr*, then he is whipped 40 times. If necessary, the judge may add it up to 80 times, as narrated by al-Hushain bin al-Mundzir, *“That ‘Ali flogged al-Walid bin’ Uqbah for drinking khamr with 40 lashes, then he said, ‘Prophet sallallahu ‘alaihi wa sallam had flogged with 40 lashes, Abu Bakr 40 lashes, and ‘Umar 80*

¹⁰ J. As-Syuthi, *“Al-Jami’ al-Shaghir.”* Juz I, (Ttp.: Dar al-Fikr, 2006), no. 334.

¹¹ Ibnu Majah, *“Abu Abdullah Muhammad bin Yazid bin Majah al-Rabi’iy al-Quzwaini.” Sunan Ibni Majah* (Bayrut: Dar al-Fikr, t.t.), Juz II. no. 2725.

lashes. Everything is Sunnah, and this one (40 lashes) I like more."¹²

If someone drinks *khamr* repeatedly, and he has been whipped every time he repeats it, then it is permissible for the priest to kill him. This is based on the hadith of the Prophet from Abu Hurairah r.a., that the Messenger of Allâh da had said: *'If someone is drunk, then whip him, if he repeats, then whip him.'* Then he said the fourth time, *'If he repeats it, then cut his neck.'*¹³

The scholars tend to analogize narcotics with *khamer*. This is because between the two there is a similarity in illat, something intoxicating. Something intoxicating in the Qur'an is called *khamer*, meaning something that can eliminate reason. Although the shape is different, the way the work of the *khamar* and drugs is the same is that it can eliminate human consciousness and damage the function of reason. Based on the views of any kind of drug is then either classified as narcotics, psychotropic and addictive substances such as cannabis or marijuana, heroin or heroin, cocaine, including all types of psychotropic substances; such as ecstasy, methamphetamine/shabu-shabu, sedatives; Koplo, BK, nipam and so on laws are the same as *khamr* (haram).¹⁴

The Indonesian Ulema Council (MUI) on February 10, 1976, issued a fatwa that drug abuse and distribution was illegal. The decision was based on religious arguments that come from Al-Quran and al-Hadith, and the consideration that the drug is something that is mukhoddrot (numb) and mufattiro (weaken), damage the physical health, disrupt mental and even eventually could threaten human lives.

Prohibition of abuse of drugs analogous to the prohibition to drink alcohol (Q.s. al-Baqarah [2]: 219), (Q.s. al-Nisa' [4]: 43) and (Q.s. al-Ma'idah [5]: 90). But the traditions of the Prophet Muhammad. as

¹² Muhammad Nashiruddin, Al Albani, Imron Rosadi, Abu Fahmi Huaidi, and Abu Rania. *Mukhtashar Shahih Muslim*. (Jakarta: Pustaka Azzam, 2007), hadis no. 1047.

¹³ Ibnu Majah, "Abu Abdullah Muhammad bin Yazid bin Majah al-Rabi'iy al-Quzwaini." *Sunan Ibni Majah* (Bayrut: Dar al-Fikr, t.t.), Juz II. no. 272.

¹⁴ Moh. Taufik Makarao, Suharsil, dan Moh Zakky AS, *Tindak Pidana Narkotika* (Jakarta: Ghalia Indonesia, 2003), p. 67. Woro Winandi, and Indra Rukmana Lukito. "Penjatuhan Pidana Mati dalam Tindak Pidana Narkotika." *Jurnal Hukum* 19, no. 19, (2010): p. 49-62.

mentioned above implicitly states that drug laws are identified with the law of *khamar*, which is haram. This deterrence is done because drugs can cause havoc both for users, families, communities and nations and countries. Allah Swt. says:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ
 "Do not plunge yourself into destruction and do good, indeed Allah loves those who do good" (Q.s. al-Baqarah [2]: 195).¹⁵

The question now is what about legal sanctions for drug users and their distribution? Is it the same as the *Khamr* drinker sanction? What about the threat of capital punishment for drug traffickers? This question arose because of the problem of drug abuse including the issue of *ijtihad* because drugs were not known at the time of the Prophet Muhammad and were not directly mentioned in the Qur'an and Sunnah. Therefore, the ulama tend to include this criminal law on *ta'zir* criminal in which criminal sanctions for the perpetrators are left to the government to impose penalties as a result of violations of the prohibition of Allah Swt.

Some scholars say that the most appropriate punishment for drug producers and dealers is the death penalty. They analogize the actions of drug producers or dealers as an extraordinary crime which has the same excess as *hirâbah*.

The designation of *hirâbah* for the dealers and drug dealers is because what is done by the producers and distributors causes great damage to the nation, state, and religion, especially the young generation that becomes the backbone of the nation's life in the future. The bad impact caused by narcotics crime is miserable even killing not only per person, but killing thousands and even hundreds of thousands of people. Therefore, taking into account the enormous adverse effects for individuals, society and the nation as a whole, it is only natural that the distribution of the punishment is severely punished, even sentenced to death. This is in accordance with the

¹⁵ A. Ghozali Ihsan, *Kaidah-kaidah Hukum Islam* (Semarang: Basscom, 2015), p. 44.

rules of *ushûl fiqh* that is rejecting the interpretation prioritized rather than taking benefit.

The premise that is used as the basis for the scholars who support the death penalty for drug dealers is:

First, the Word of God (Q.s. al-Maidah [5]: 33):

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

“Verily, the retaliation of those who fight Allah and His Messenger and make damage on earth, only they are killed or crucified, or their hands and feet are cut off by reciprocity, or thrown out of the country (where they live). That is (as) an insult to them in the world, and in the afterlife, they have great torment.”

The verse above shows that people who fight Allah and His Messenger and make damage on the face of the earth are one of the threats of punishment is killed. Likewise, the act of producing and distributing drugs; this act is classified as a form of action against the teachings of Allah and His Messenger and causes great damage to the generation of the nation. Therefore the most appropriate punishment imposed on the perpetrator is the death penalty

Second: Hadith ‘Urainiyin who came to the city of Medina,

عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ قَدِمَ أَنَسٌ مِنْ عُكْلٍ أَوْ عُرَيْنَةَ فَاجْتَوَا الْمَدِينَةَ فَأَمَرَهُمُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِلِقَاحٍ وَأَنْ يَشْرَبُوا مِنْ أَبْوَالِهَا وَالْبَانِيهَا فَانْطَلَقُوا فَلَمَّا صَحُّوا قَتَلُوا رَاعِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَاسْتَأْقُوا النَّعَمَ فَجَاءَ الْخَبْرُ فِي أَوَّلِ النَّهَارِ فَبَعَثَ فِي آثَارِهِمْ فَلَمَّا ارْتَفَعَ النَّهَارُ جِيءَ بِهِمْ فَأَمَرَ فَقَطَّعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمِرَتْ أَعْيُنُهُمْ وَالْقَوَا فِي الْحَرَّةِ يَسْتَسْقُونَ فَلَا يُسْقَوْنَ

From Anas bin Malik, He said, "Some people from" Ukl or Urainah came to Madinah, but they could not stand the climate of Medina until they were sick. He then ordered them to go to the camel and drink urine and milk. Then they went to the cage of the camel (zakat) when they were healed, they killed the camel herder of the Prophet sallallaahu aih alaihi wasallam and brought his camels. Then the news arrived at the Prophet sallallaahu aih alaihi wasallam towards noon. So he sent the group to follow in their footsteps when the sun was high, his messenger came with them. He then ordered them to be punished, then their hands and feet were cut off, their eyes gouged out, then they were thrown into the hot sand. They ask for a drink but are not given. (H.r. Bukhari and Muslim)

The above hadith shows that the group coming to the city of Medina had made damage on this earth by killing and robbing, their punishment was cut off by their feet and hands and gouged out by their eyes and thrown away in the desert, which in the end they would die.

Third: Hadith Dulaim al-Himyari r.a., that he said:

سَأَلْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقُلْتُ يَا رَسُولَ اللَّهِ، إِنَّا بِأَرْضٍ بَارِدَةٍ نُعَالِجُ بِهَا عَمَلًا شَدِيدًا، وَإِنَّا: قُلْتُ نَعَمْ، قَالَ: نَتَّخِذُ شَرَابًا مِنْ هَذَا الْقَمْحِ، نَتَّقَوِي بِهِ عَلَى أَعْمَالِنَا وَعَلَى بَرْدِ بِلَادِنَا، قَالَ هَلْ يُسْكِرُ؟ "فَاجْتَنِبُوهُ" قَالَ نَعَمْ، قُلْتُ يُشْرِكُ؟ هَلْ فَقَالَ ثُمَّ جِئْتُ مِنْ بَيْنِ يَدَيْهِ، فَقُلْتُ لَهُ مِثْلَ ذَلِكَ "فَاجْتَنِبُوهُ" قَالَ: إِنَّ النَّاسَ عَيْرَ تَارِكِيهِ، فَإِنْ لَمْ يَتْرِكُوهُ فَاقْتُلُوهُمْ

"One time I asked the Messenger sallallaahu 'alaihi wasallam, I said: "O Messenger of Allah, we were in a place where the weather is very cold doing a tough job, we also make a drink of wheat, to strengthen us in the work, and to resist weather cold in our area. "He asked: "Is the drink intoxicating?" "I answered: Yes. He said: "Stay away from the drink." I said: then I came again and asked like that again, so he

asked: "Is the drink intoxicating?" I replied: Yes. He said: "Stay away from the drink." I replied: "The public does not want to leave it. "He said:" If they do not want to leave, then kill them." (H.r. Ahmad.

The above hadiths show that khamr drinkers who are not deterred are allowed to be killed, so moreover the producers and their distributors.

The MUI (the Indonesian Ulema Council) and PBNU (the Nahdhatul Ulama Executive Board) support the application of the death penalty for drug lords. Anwar Abbas, chairman of the Central Committee of the National Anti-Narcotics Movement of the Indonesian Ulema Council, stated his agreement on the death penalty for drug lords. According to him, what has been decided by the Courts or the Supreme Court should be carried out. Anwar also added that the drug kingpin is a line of people who commit murder in different ways, so it is appropriate for him to be sentenced to death.

The same attitude is shown by the Nahdlatul Ulama Executive Board (PBNU) which supports the government in carrying out executions for drug lords. Like what Anwar said, Said Agil also believes that what has been done by drug lords is an act of losing lives for others. This is confirmed in the Qur'an that people who do damage on earth must be sentenced to death.¹⁶

The aim of Islamic law is to gain benefit in the world and the hereafter. Benefit brings benefits to human life, while *mafsadah* causes famine for human life. What is called the benefit of having certain

¹⁶ Nur Cholis, "Hukum Pidana Mati Gembong Narkoba dalam Perspektif Al-Qur'an," *el-Faqih: Jurnal Pemikiran & Hukum Islam* 1, No. 2, (Desember 2015): p. 63-64. Satrio Kolopita. "Penegakan Hukum Atas Pidana Mati Terhadap Pelaku Tindak Pidana Narkotika." *Lex Crimen* 2, no.4, (2013). Sulkipani, and Emil El Faisal. "Hukuman Mati dan Yurisdiksi Indonesia dalam Sistem Hukum Internasional (Analisis Eksekusi Hukuman Mati Terhadap Terpidana Kasus Narkoba di Indonesia Tahun 2015)." *Bhineka Tunggal Ika: Kajian Teori dan Praktik Pendidikan PKN* 2, no.1 (2015): p. 41-53. Istighfar, Wildan Akbar, and Pujiyono Nyoman Serikat. "Efektivitas Pidana Mati Bagi Pelaku Tindak Pidana Narkotika dalam Praktik Pemidanaan di Indonesia Ditinjau dari Sudut Hak Asasi Manusia." *Diponegoro Law Journal* 6, no. 2, (2018): p. 1-18. Mahameruaji, Jimi Narotama, Teddy Kurnia Wirakusumah, and Detta Rahmawan. "Perbincangan Mengenai Hukuman Mati Terkait Kasus Bali Nine dan Mary Jane dalam Situs Jejaring Sosial Twitter." *Jurnal Kajian Komunikasi* 4, no.1, (2016): p. 51-62.

criteria, among others, is as stated in the Indonesian Ulema Council Decree (MUI) No. 6 / MUNAS / VII / MUI / 10/2005 which is the result of the 7th MUI National Conference in 2005,¹⁷ as follows:

- a. The benefit of the Islamic law of Shariah achievement of objectives (*maqasid al-shari'ah*), which is manifested in the form of maintaining the five primary needs (*al-dharuriyat al-khams*), namely: religion, soul, mind, wealth and offspring.¹⁸
- b. The benefit justified by sharia is a benefit that does not conflict with texts.
- c. Those who have the right to determine the benefits and whether or not something according to sharia is an institution that has competence in the field of Sharia and is done through *ijtihad jama'i*

Starting from the thoughts above, a formula can be made about the criteria of benefit, namely:

- a. The benefit must be measured in accordance with *maqashid al-syari'ah*, the arguments of *Kulli* (general from the Qur'an and the Sunnah), the spirit of the teachings, and the rules of the Islamic law.
- b. That benefit must benefit most people, not a small part of the community.
- c. The benefit provides convenience, not brings difficulties in the sense that it can be implemented.

Conclusion

The term narcotics is not explicitly found in Islamic law, but the qualifications of criminal acts for narcotics dealers can be included in the *Khamr* category. Penalties for drug users can be in the form of caning or other penalties set by the government. Especially for the traffickers/dealers, the most appropriate punishment is a heavy punishment such as the death penalty. This is because drug dealers are

¹⁷ A. Ghazali Ihsan, *Kaidah-kaidah Hukum Islam*, p. 165.

¹⁸ A.Djazuli, *Kaidah-Kaidah Fikih: Kaidah-Kaidah Hukum Islam dalam Menyelesaikan Masalah-Masalah yang Praktis* (Jakarta: Kencana, 2007), p.164-165.

perpetrators of extraordinary crimes that can bring enormous adverse effects to individuals, society and the nation as a whole. This is in accordance with the rules of *usul fiqh* that is rejecting the interpretation prioritized rather than taking benefit.

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