

Comparison of Criminal Sanctions for Drugs Abusers in Indonesian Positive Law and Islamic Law

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Abstract:

Drug misuse is a crime that has far-reaching ramifications and devastates the generations of any nation. The growing prevalence of drug usage, particularly among young people, presents a serious danger to public health, social cohesiveness, and the economic well-being of Indonesia. This study combines normative legal methodology with a comparative approach to compare the positive legal system in Indonesia with Islamic law about the topic of drug usage. The results of this writing indicate that positive law in Indonesia imposes fixed penalties based on Law Number 35 of 2009 concerning Narcotics, which vary depending on the type and level of narcotics abuse, with the heaviest sanctions being imprisonment and/or life imprisonment or the death penalty, in addition to fines. Meanwhile, Islamic law allows for a flogging punishment of 40 lashes, coupled with the judge's discretion in imposing penalties commensurate to the seriousness of the offender's crimes, reflecting the moral and religious components of drugs addiction. Both legal systems attempt to fight drug use but highlight the necessity for a balanced approach between severe law enforcement and extensive prevention and rehabilitation initiatives. The success of this technique continues to be contested, underlining the necessity for collaboration between law enforcement and social and educational efforts to adequately combat drug addiction.

Keywords: Criminal sanctions; Drugs abuse; Indonesia positive law; Islamic law.

Introduction

Drug abuse is a serious problem that has a wide range of effects on a person's life. It may endanger people's physical health and result in major social and economic problems. The number of drug users in Indonesia is still rising, particularly among the youth (Harahap et al., 2024; Sen et al., 2021). This disease is becoming more and more worrisome and requires rapid attention. Drug misuse has an impact on communities, families, and society at large (Tukayo et al., 2021). Drug misuse may also generate issues for law enforcement, which makes prevention, countermeasures, and recovery from it much more challenging (El-Khatib et al., 2021).

Drugs have spread throughout society, and what is particularly concerning is that many young people misuse them for personal use or distribution (Ilham & Stayar, 2023). Additionally, since this is prohibited by law, it can harm individuals and disrupt public order. As stated in Article 1, Paragraph 3 of the 1945 Constitution of the Republic of Indonesia, Indonesia is a legal state that strives to realize justice, order, and enforcement in national life (Saharuddin & Rasyid, 2022). Overall, the prevention and eradication of drug trafficking must be accompanied by clear laws with strict penalties.

Indonesia itself is no longer just a target for illicit drug trafficking or just a target for drug transactions or transit, but Indonesia has become one of the large-scale drug producing countries in the world. This fact is of course worrying, especially regarding the future and sustainability of the nation (Rinaldi et al., 2023). Drugs have spread not only in big cities,

but also in remote areas. Drug users are no longer limited to adults, even young children have become victims, and those most vulnerable to the influence of drugs are the younger generation, namely teenagers. If many of the country's young generation fall into drug abuse and become victims, there will be a lost generation in the future.

According to a 2011 National Narcotics Agency (BNN) poll, 9.6 million to 12.9 million Indonesians, or 5.9% of the country's population aged 10-59, has attempted drug usage at least once in their lifetime (never used). Accordingly, around one in every seventeen Indonesians aged 10 to 59 had taken narcotics prior to the survey's completion. Based on that figure, between 3.7 and 4.7 million persons (2.2%) continued to use drugs in the year after the poll. Put otherwise, 1 in 45 individuals continue to use drugs. As a result, the incidence of drug addiction has increased from 1.9% to 2.2% in recent years (Pasaribu et al., 2019). HIV, hepatitis, heart and blood vessel illness, respiratory disorders, stomachaches, muscular paralysis, renal failure, neurological disorders, mental disorders, hormone disorders, cancer, and pregnancy difficulties are a few of the adverse consequences of drug misuse on human organs (Firdaus et al., 2022; Lukman et al., 2021).

Data from the BNN is one source of evidence showing a high rate of drug addiction. A total of 881 instances were reported in 2016, 990 cases in 2017, 1,039 cases in 2018, a minor reduction to 951 cases in 2019, 833 cases in 2020, 766 cases in 2021, and 831 cases in 2022 again above 2016 data with a value of 1.127 trillion Rupiah. Additionally, the Directorate General of Customs and Excise was successful in foiling multiple efforts to transport around 22 kg of cocaine worth an estimated 29.614 billion Rupiah by the end of 2022 before 2023 (Suhartanto, 2023). Citing data from the Indonesia Drugs Report 2022, it was stated that the number of drug abusers in Indonesia in 2022 had reached around 4.9 million people (Irianto et al., 2022). This shows the large number of drug addicts in Indonesia and is a crime that we all need to address.

Seeing the many negative impacts of the dangers of drugs and the rise of illegal drug trafficking, this is a tough challenge for law enforcers. Sanctions against drug abusers must be strengthened. In this case, synergy is needed between those forming clear and firm laws and regulations to reduce drug trafficking which becomes a bridge to drug abusers. Numerous regulations exist in Indonesia that address issues related to narkoba health. These include Law No. 5 of 1997 regarding psychotropika, Law No. 22 of 1997 concerning narkoba, and their comparison with Law No. 35 of 2009 regarding narkoba, Law No. 8 of 1996 regarding the Ratification of the Psychotropic Substances Convention 1971, and Law No. 7 of 1997 regarding the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Aulia et al., 2022). However, despite the many regulations, the number of drug crimes, especially drug abusers, is still quite high. This makes it a promising business field for illegal drug dealers because of the large number of consumers in Indonesia, which then makes this problem even more difficult to overcome.

If we look at the origin of the word, "Narkoba" in Indonesian language is an acronym for the words "*Narkotika, Psicotropika dan Obat Terlarang*," in English language is

Narcotics and Dangerous Drugs or referred to as NAPZA (Narkotika, Psikotropika Narkotika, Psikotropika, dan. Zat Adiktif lain) or Narcotics, Psychotropics and other Addictive Substances in English language (Natalia & Humaedi, 2020; Yunisa, 2023). According to Article 1 number 1 of the Narcotics Law, it is explained that narcotics are substances or drugs derived from plants or non-plants, whether synthetic or semi-synthetic, which can cause a decrease or change in consciousness, loss of taste, reduce or eliminate pain, and can cause dependence. In medical practice, narcotics are still useful for treatment, but if they are misused or used inappropriately according to medical indications or treatment standards, they will be very detrimental to the user. In the Narcotics Law, narcotics and dangerous drugs are classified into three groups which include class I, class II and class III narcotics (Harimusti et al., 2023), where the use of these three groups is different, and the punishment for narcotics abuse is also different.

Different from law in Islam. Islamic law is a law that regulates human life that applies universally (Musyafah, 2019). This includes regulating drug use. The most important thing is drug abuse by society. These drugs, although not explicitly mentioned in the Quran or hadith, but because of the adverse effects produced more than *khamr*, it is certain that drugs are prohibited for consumption. Ibn Taymiyyah even gave a firm fatwa on the prohibition of drugs. He said, *“Drugs are like any other intoxicating substance. It is forbidden according to the consensus of the scholars, and any substance that can deprive the mind is forbidden to consume, even if it is not intoxicating.”* (AN et al., 2021).

Previous research on drug-related issues, both in Islamic law and in positive law in Indonesia, has also been conducted. For example, in the research of Amal, (2020) which indicates a stronger inclination towards Islamic law in preventing drug use through Islamic Da'wah, involving various experts in a planned guidance without threats. This method includes friendly discussions, the integration of social-spiritual movements, community-government participation, and the broadcasting of religious teachings on television, aimed at the prevention and rehabilitation of drug users. Another study conducted by Karyono et al., (2022) in their research, they also explains, in Indonesian positive law, narcotic evidence is handled through a process of seizure and supervision. After the final court ruling, the items will be stored or destroyed in the presence of the authorities and the public. Islamic law applies *ta'zir* punishment for drug offenses, analogizing it with *khamr* due to its intoxicating effects. Although not explicitly mentioned in the Quran and hadith, Islam implicitly prohibits narcotics due to the harm they cause.

Another study comparing positive law and Islamic law regarding drugs has also been conducted by Muhibban & Munir, (2023) concluded that Law No. 35 of 2009 on narcotics, as positive law in Indonesia, is considered less effective and has created new problems such as prison overcapacity. Islamic law, particularly *ta'zir* punishment, offers a more humane and effective solution by focusing on prevention, rehabilitation, and the education of offenders. And another study, Mulyani & Hasuri, (2024) in their article concluded that states that sanctions for drug abuse in national law in Indonesia and Islamic criminal law differ

according to the level of offense. National law, regulated by Law No. 35 of 2009, encompasses rehabilitation to the death penalty, while Islamic law focuses on prevention and rehabilitation with severe penalties such as flogging and the death penalty. Islamic law excels in moral prevention, but is limited by interpretations among sects. On the other hand, national law respects human rights more, but is less effective in prevention and leads to issues such as prison overcrowding.

Actually, the previous studies have already explained the comparison between Islamic law and positive law in Indonesia regarding drugs. However, this research is somewhat different from the previous studies. The author will elaborate on the sanctions imposed by Islamic law and positive law in Indonesia, focusing specifically on drug abuse and solely on the sanctions given to drug abusers. Then, a comparison will be made between the two legal systems to determine which is more effective in combating the drug problem through the sanctions imposed on drug abusers.

Seeing the consequences of consuming narcotics and illegal drugs are very dangerous, both physically and psychologically, and their impact can disrupt public order and damage the future generation of the nation. Given the significant impact, comprehensive preventive efforts are needed; therefore, the government, law enforcement, and the entire community must work together to combat this issue. Therefore, this article will discuss the appropriate penalties for drug dealers and abusers through the lens of Islamic law and positive law in Indonesia. It will compare the two legal systems, Islamic law and positive law in Indonesia, to what extent the penalties can be effective in reducing and eradicating drug abuse in Indonesia.

Method

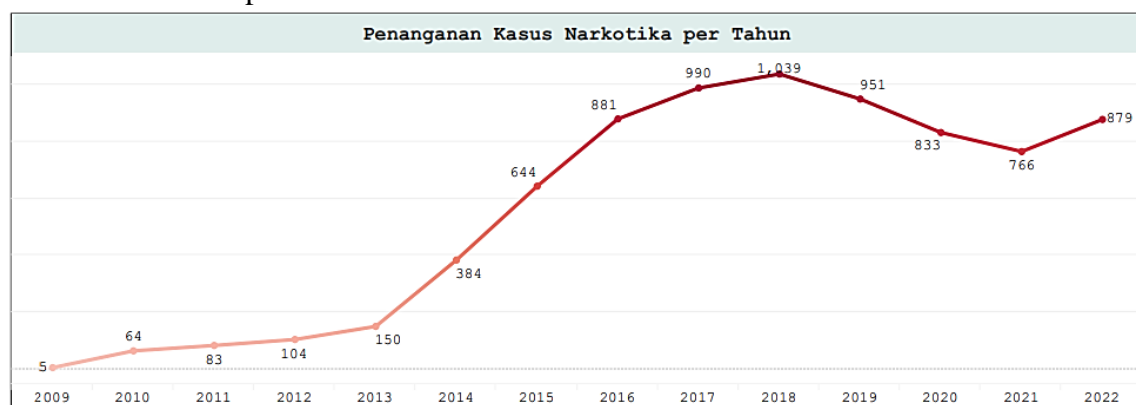
This research is a normative legal research that examines drug abusers. The normative legal research method is defined as a research method on legal rules both from the perspective of the hierarchy of legislation (vertical) and the harmonious relationship of legislation (horizontal) (Marzuki, 2021). By using a comparative approach to see how Indonesian criminal law and Islamic criminal law deal with this issue. The comparative approach is a way to understand and know something (knowledge) through comparison (Firli, 2022). The aim is to compare the two perspectives and see where the similarities and differences lie. This research also delves into the conceptual side to help understand what is meant by drug abuse and how it is handled in both legal systems. To get a complete picture, this research examines the relevant laws and looks at how they have changed over time through a legislative and historical lens. In addition, it reviews real cases to understand how each system applies its sanctions. By combining these methods, the aim is to provide a clear view of how drug abuse is punished in Indonesian criminal law and Islamic criminal law, as well as suggest ways to improve how the law is enforced.

Results and Discussion

Narcotics in terms of linguistics, is derived from the English word “narcotics.” From an etymology perspective, drugs, sometimes known as narcotics, can be understood as painkillers or sleep aids (Lukman et al., 2022). In the field of medicine, these drugs aid in the pain relief of patients. These medications work to reduce consciousness and discomfort, particularly during surgery, but they are ultimately abused (Muhibban & Munir, 2023). Narcotics are drugs derived from plants or not either synthetic or semisynthetic which can cause decreased consciousness, relieve pain and of course cause dependence in the user (Yosua et al., 2023). Both the Quran and the hadiths of the Prophet Muhammad do not contain the word “drugs.” When the use of this type of narcotics and psychotropic substances was discovered, it is believed that the name “narcotics” first appeared in 1998. As a result, Indonesians began using the term “narcotics” to describe this phenomenon. In theory, it is forbidden to eat, drink, or consume anything intoxicating. Islamic law encompasses this component of mental preservation (*maqasid al-shari'ah*). The prohibition of alcohol (*khamr*) and other intoxicating substances is one of its signs. Therefore, this idea is used to assess drug prohibition (Priyono, 2022).

Regarding the issue of narcotics, including their misuse, this problem has seen a significant increase every year from 2009 to 2017. Then from 2018 to 2021, there was a decline, which is a form of appreciation. However, after that, an increase occurred again in 2022. Quoting data from puslitdatin.bnn.go.id (puslitdatin.bnn.go.id, 2024), a survey conducted by BNN states that there were 879 cases of drug abuse and narcotics in Indonesia in 2022. This number represents an 14,75% increase compared to the previous year, which recorded only 766 cases.

Graph 1. Statistics of Narcotics Case Uncovered 2009-2022



Source: BNN Republic of Indonesia (puslitdatin.bnn.go.id, 2024).

The aforementioned statistics indicates that drug misuse is a rather common problem in Indonesia. According to the findings of the nationwide survey conducted in 2023, 3.3 million Indonesians between the ages of 15 and 64 or 1.73% of the population reported

abusing drugs. The research indicates a noteworthy surge in drug misuse among those aged 15-24 (Humas BNN, 2024). This indicates that drug abuse is mostly committed by adolescents to young adults. This requires concrete and decisive steps to reduce and prevent drug problems in Indonesia. The enforcement of law and the imposition of strict penalties against drug abusers are expected to reduce the rate of drug abuse, which has become a serious problem in this country.

Before discussing the sanctions imposed on anyone who abuses drugs, it is important for us to note and instill in ourselves that drugs not only destroy ourselves but can also cause broader damage. Drug crimes, from small to large scale, impact our own health, damage our social relationships with family, close friends, and the community, and even harm the future generations of this nation. Even many other countries are also feeling the negative impact of this drug problem (Bilal et al., 2021; Hawlader et al., 2022; Jin et al., 2024; Kwokori Christopher et al., 2023; Paul et al., 2024; Shojaeizadeh & Hossein Taghdisi, 2023; Tanweer et al., 2019). Therefore, avoid and stay away from drugs from an early age, warn and educate the people around you, children, relatives, beloved family, and anyone we care about. Fight against drugs together; with this synergy, it is hoped that the drug problem will gradually be eradicated in this country.

Sanctions for Drug Abusers in Positive Law in Indonesia according to the Narcotics Law

Drug abuse is the problem that is now pervasive and becoming more common in Indonesia. Another problem that has the potential to ruin our country's future generations is narcotics (Utami & Sebyar, 2023). In Indonesia, it is illegal and criminal to misuse drugs. Since Law Number 35 of 2009 concerning Narcotics governs the matter of narcotics. This legislation is a particular rule (*lex specialis*) that controls drug-related offenses in Indonesia and imposes penalties on violators.

The Narcotics Law in Indonesia, (2009) regulates narcotics and is divided into 17 sections, namely: 1) General provisions; 2) Principles, foundations, and objectives; 3) Scope; 4) Procurement; 5) Import and export; 6) Circulation; 7) Labeling and publication; 8) Narcotic precursors; 9) Treatment and rehabilitation; 10) Guidance and supervision; 11) Prevention and eradication; 12) Investigation, prosecution, and examination in court; 13) Community participation; 14) Awards; 15) Criminal provisions; 16) Transitional provisions; and 17) Final provisions.

The use of narcotics in Indonesian society that is not for health (medical) purposes has been constructed as a criminal behavior. The indication of the definition of drug use as a crime can at least be seen from the numerous regulations that have emerged regarding narcotics. The form of criminalization of drug use in Indonesia is reflected in Law No. 22 of 1997 concerning Narcotics, which explains that narcotics, on one hand, are substances or materials that are beneficial in the fields of medicine or healthcare and the development of

science, and on the other hand, can also lead to dependency that is very detrimental if misused (Akrom et al., 2024).

The threat of punishment for narcotics crimes is very harsh and strict where the threat of punishment is cumulative, namely corporal punishment or restraint of freedom in the form of imprisonment, life imprisonment, and death penalty plus a fine as stipulated in the provisions of articles 111 to 148 of Law Number 35 of 2009 concerning Narcotics. In Law Number 35 of 2009 concerning Narcotics, investigators are regulated in article 73 and Investigators of the National Narcotics Agency (BNN) and their authority are regulated in article 75. Meanwhile, in Law Number 5 of 1997, investigators are arranged from article 55 to article 58 and the authority of investigators is regulated in article 56 paragraph (2). The process of examining narcotics crimes refers to the criminal procedure law stipulated in the Criminal Procedure Code. In the book, examination in court is regulated in articles 203 to 232 (Ardika et al., 2020). The Narcotics Law is a *lex specialis* that deviates from the *lex generalis* of the Criminal Code (KUHP) (Siagian, 2021). The implementation of criminal sanctions in a general sense is part of the principle of legality, which states that *nullum delictum, nulla poena, sine praevia lege poenali*.

Drug offenses can be penalized based on Law Number 35 of 2009 on Narcotics, (2009) which can be divided into several categories as follows:

1. As users, they will be subject to criminal sanctions in accordance with Article 116 of Law Number 35 of 2009 concerning Narcotics, with prison sentences ranging from 5 years to a maximum of 15 years.
2. As distributors, they can be criminally punished under Articles 81 and 82 of Law Number 35 of 2009 concerning Narcotics, with a maximum sentence of 15 years in prison and/or additional fines.
3. As producers, they may face criminal penalties under Article 113 of Law Number 35 of 2009 concerning Narcotics, with a maximum prison sentence of 15 years and/or life imprisonment or the death penalty, in addition to fines.

From the provisions of Article 116 of the law, it is clearly stated that the criminal penalty imposed on drug abusers within the context of positive law in Indonesia is a prison sentence of a minimum of 5 years and a maximum of 15 years and/or life imprisonment or the death penalty, in addition to fines..

The death penalty, imprisonment, fines, and confinement are four types of penalties that can be enforced under the country's narcotics law, according to Article 10 of KUHP. The general rule is that if drug laws do not contain specific provisions, the penalties will be determined by the criminal law found in the Penal Code. However, if the drug laws include special requirements, the sentencing guidelines for those provisions will be followed. Considering that the use and abuse of drugs by teenagers clearly endangers the future of this nation's youth, concern for this issue is very much needed. As a result, a significant social awareness is needed to combat drug trafficking by utilizing all available resources, including law enforcement, the government, the community, and efficient coordination. This effort is

to secure a better future for the younger generation by eliminating the temptation for them to consume drugs (Hakim, 2023).

The law imposes criminal sanctions to address crimes, including those committed by drug abusers. The use of criminal facilities in handling crime can be explained as follows:

1. Criminal sanctions are very important and cannot be overlooked. Our lives, both now and in the future, require punishment as a tool to address crime. Without criminal sanctions, there will be no consequences to encourage people to act responsibly.
2. Criminal sanctions are the best tools or means available to us in confronting crime or other serious threats. Criminal sanctions help us address the significant dangers posed by criminal actions and protect society from greater harm.
3. Criminal sanctions can at times serve as the primary or best guarantee, but at other times they can pose a significant threat to individual freedom. The wise, careful, and humane use of criminal sanctions is essential to maintaining order and justice. However, if criminal sanctions are used indiscriminately and with violence, they can pose a threat to human rights and freedoms (Dermawan & Akmal, 2019).

Drug addicts need rehabilitation. According to the Circular Letter of the Supreme Court Number 7 of 2009 regarding the Placement of Abusers, Victims of Abuse, and Drug Addicts in Rehabilitation Institutions and Social Rehabilitation, drug addicts are those who use or abuse drugs while being in a state of physical and psychological dependence. Drug addicts are viewed as individuals in need of recovery and therapy, categorizing them as victims of drug-related crimes. Criminal acts, often referred to as criminality, are deviant behaviors that can occur in any society. Social norms that support life and social order are threatened by this deviant behavior, which also poses real or potential risks to the sustainability of social order and can lead to interpersonal and societal problems. (Analisa & Kamarusdiana, 2022; Sutarto, 2021). Therefore, granting drug users in Indonesia the right to receive rehabilitation is seen as a step towards addressing this issue.

Criminal Sanctions Against Drug Abusers in Islamic Law

Criminal acts in Islamic law are known as *Jarimah*, which refers to actions that violate prohibitions in Sharia and will be subject to penalties for the perpetrators. There are three types of crime classifications, namely *hudud* crimes, *qisas-diyaa* crimes, and *ta'zir* crimes. However, specifically in determining the punishment for drug abusers, only two types of crimes will be discussed, namely *hudud* and *ta'zir* (Misran, 2021). According to *fiqh jinayah* (Islamic criminal law), drug misuse is forbidden regardless of who uses the drug users, manufacturers, or sellers. Similar to this, drug usage is forbidden in Indonesia by explicit legislation. Drug abusers are therefore seen to be breaking the law and are banned from doing so from both an Islamic and a criminal law standpoint. The distinction is that in criminal law, prohibitions are human-made legal goods with legal consequences limited to this world and not the hereafter; in Islamic criminal law, on the other hand, prohibitions

originate from Allah and His Messenger and have legal ramifications in both this world and the hereafter (Hulaimi et al., 2021).

Most of the types of unlawful acts have been stipulated in the Quran and hadith. One of them is related to drugs. In Islamic criminal law, it is known as the crime of drinking intoxicating drinks (*Khamr*) (Sanjaya, 2023). *Khamr* has this property of *iskar*, because *al-khamr* (الخمير) linguistically means “a drink that makes the mind closed,” in the form of impairment of consciousness and reason as the property of *iskar*/intoxication in it. The term “*khamr*” has been mentioned in several verses of the Quran, some of which are in Surah Al-Baqarah verse 219 and Al-Ma'idah verses 90 to 91 (Mahmud, 2020).

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا...

Meaning: “They asked you about *khamr* and gambling. Say, In both there is a great sin and some benefit to man. (However,) their sins outweigh their benefits...” (Al-Baqarah/2: 219).

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَن ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ . يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ .

Meaning: “O you who believe, drinking *khmar*, gambling, (sacrificing to) idols, and casting lots with arrows are abominable (and) among the deeds of the devil. So, avoid them so that you may prosper. Verily, the devil intends only to stir up enmity and hatred among you by means of intoxicants and gambling and (intends) to prevent you from remembering Allah and (performing) prayer, so will you not stop?” (Al-Ma'idah/5: 90-91).

Narcotics or drugs are substances that can deprive the mind of reason, which is haraam. One of the reasons why they are forbidden is that they are intoxicating, as mentioned in the hadith about alcohol in *Sunan Abu Daud*, chapter *An-Nahyu 'Ani as-Sukr*, chapter on the prohibition of drinking alcohol, volume 3, Hadith No. 3680, page 326, which means: “Everything that intoxicates is *khamr*, and everything that intoxicates is haraam” (Alfiansyah et al., 2022).

The use of narcotics is not only forbidden (haraam), but it may also have detrimental effects on both the mind and body, as well as other negative repercussions. Thus, Islamic law strictly forbids the use of such drugs, regardless of the quantity, be it tiny or enormous. Individuals who have engaged in drug usage experience a sense of pleasure and subsequently develop a dependency (Bahagiati, 2020; Wirata, 2022). According to Ibn Taymiyyah, marijuana is more detrimental to the body and causes more mental disorientation compared to alcohol. It diminishes a person's mental strength, weakens their determination, and hinders their ability to remember Allah (AN et al., 2021). The aforementioned scriptures and hadiths about intoxicating drugs make no distinction between specific sorts of substances and are not contingent upon their method of use, whether it ingestion or drinking. Occasionally, they are dissolved in water and ingested, while in other instances, they are

consumed orally. It is important to note that all of these substances, especially those classified as narcotics, are considered forbidden (*haram*).

Looking at the analysis of the *maqashid sharia* aspect of drugs has also contradicted *hifdz al-'aql* (protection of reason) and *hifdz an-nafs* (protection of body and soul). So it is clear that consuming or abusing drug consumption has defied the purpose of Islamic law itself. *Hifdz al-'Aql* (protection of reason) is defined as protecting the mind or intellect or can also be interpreted as the protection of the mind or aka. It means a form of rule, whether it is an order or prohibition, which comes from Allah and has been determined in the Quran and hadith. which has the aim of protecting the human mind from something that can damage it, one of which is drug abuse. *Hifdz an-Nafs* (protection of body and soul) why we have to protect our bodies when it comes to drugs, because drugs or narcotics and illegal drugs contain chemical substances that are very harmful to the human body if used not in accordance with the prescription for their use, therefore it must be abandoned immediately to save the soul, because drugs are among the main causes that lead to various mild to severe and deadly diseases if misused (Sutisna et al., 2021).

Indirectly, the fatwa of the Indonesian Ulema Council (MUI) also says that the sanction for drug abusers is *ta'zir*, which is the consideration of this fatwa is that to prevent drug abuse that results in loss of life and property that greatly disturbs the mind, security and successful development, it is necessary to have the following efforts and actions: (1) Impose the severest penalties against sellers, dealers, smugglers of drug substances up to the death penalty; (2) Impose severe penalties on civilian and military security officers and officials who facilitate, allow, or protect the sources, sellers, retailers, and traffickers of illicit drugs in order to prevent their misuse; (3) Issue tougher regulations and more severe sanctions against those who have the legality to sell drugs to prevent abuse; and (4) Make preventive efforts by enacting laws on drug use and abuse (Hulaimi et al., 2021).

Regarding the necessity of law enforcement against drug abusers, one can take an example from what was demonstrated by the Prophet Muhammad, as mentioned in a hadith narrated by Imam Muslim: “From Anas ibn Malik, it is reported that the Prophet (peace be upon him) was approached by a man who had consumed alcohol. He then had him whipped with two palm fronds forty times.” According to the hadith, it is mentioned that the tool used for whipping is two palm fronds. Imam al-Nawawi stated that the term “two palm fronds” leads to diverse interpretations. Some understand that the two palm fronds are considered merely as a tool, not their quantity. Thus, the number of lashes, which is forty, is multiplied by two fronds, resulting in a total of eighty times (Mahmud, 2020).

According to Imam Malik and Imam Abu Hanifah, the punishment for a kahr drinker is eighty lashes. Meanwhile, according to Imam Shafi'i and one narration from Imam Ahmad, the punishment for a drinker of intoxicating beverages is forty lashes. However, they allow for the punishment of eighty lashes if the judge (imam) deems it necessary. Thus, according to Imam Shafi'i's opinion, the prescribed punishment is forty lashes, while the additional forty lashes serve as a *ta'zir* punishment (Herawati & Rachmawati, 2020; Rizky et al., 2024). In the hadith narrated by Daruquthni and Malik, it is mentioned: “From Ali

(*may Allah be pleased with him*), regarding a person who drinks alcohol, he said, 'Indeed, if he drinks alcohol, he becomes intoxicated. And if he is intoxicated, he speaks incoherently. And if he speaks incoherently, he lies. And a person who lies must be flogged 80 times.''' (Mahmud, 2020). According to Sayidina Ali, after consuming *khamr*, a person becomes drunk and because of that drunkenness, they slander. Because the punishment for slander is eighty lashes, the punishment for drinking alcohol should be the same as for slander, which is eighty lashes (Soleha & Rohmah, 2023).

According to scholars of Islamic jurisprudence who believe that the punishment of *hudud* for a *khamr* drinker is eighty lashes, they argue that the companions of the Prophet Muhammad have reached a consensus (*ijma'*), and that *ijma'* is also one of the sources of law (*dalil*) in Sharia. However, those who argue that the *hudud* punishment for a wine drinker is forty lashes base their reasoning on the hadith, which was also followed by Caliph Abu Bakr. They argue that the actions of the Prophet Muhammad (peace be upon him) are a proof that should not be disregarded due to the actions of others. Furthermore, *ijma'* cannot occur on decisions that contradict the actions of the Prophet and his companions. Thus, they interpret the forty lashes from Sayidina Umar as a *ta'zir* punishment that can be applied when the imam (judge) deems it necessary (Ishaq & Ridwan, 2023).

Based on the previously provided justifications, it may be concluded that scholars generally agree that the punishment of forty lashes is obviously the right of Allah because it is a severe punishment, meaning that it cannot be waived or pardoned. The scholars contest the remaining forty lashes, though. As such, it is regarded as an obligatory cap that needs to be applied in conjunction with the forty lashes already stated, although some see it as a *ta'zir*, whose implementation is left up to the authorities' judgment (judge or *imam*). When an individual consumes alcohol more than once before facing consequences for any of those instances, this is known as overlap of punishments, or *tadakhul*, which means the offender will only face one kind of penalty.

Comparison of Criminal Sanctions for Drug Abusers between Positive Law in Indonesia and Islamic Law

Based on the previous discussions, we can understand that, in Indonesian positive law, the sanctions for drug abusers are regulated by Law Number 35 of 2009 concerning Narcotics. Drug abusers can face very severe penalties, including a minimum prison sentence of 5 years and a maximum of 15 years, fines, and even life imprisonment or the death penalty, depending on the offender's role as a user, dealer, or producer of drugs. These penalties are cumulative, and in some cases, very large fines may also be imposed.

Meanwhile, in Islamic law, drug abuse is categorized as an act that is forbidden, similar to the consumption of drug (*khamr*). The sanctions imposed for this violation are *ta'zir*, where the type and level of punishment are left to the discretion of the judge. *Ta'zir* punishments can vary, ranging from flogging, imprisonment, to the death penalty, depending

on the severity of the violation and its impact on society. There are no fixed standards, and penalties can be adjusted based on specific conditions and situations.

Overall, the main difference between these two legal systems lies in the flexibility of sanctions in Islamic law through the concept of *ta'zir*, which allows judges to determine the most appropriate punishment, while Indonesian positive law establishes more specific and severe penalties based on the category of the offense committed.

The effectiveness of sanctions in preventing drug abuse in Indonesia is still a matter of debate. On one hand, the heavy sanctions imposed by positive law, such as long prison sentences, are intended to serve as a deterrent and prevent others from engaging in drug abuse. However, despite the harsh penalties that have been implemented, the drug problem remains a significant challenge in Indonesia, indicating that a punitive approach alone may not be sufficiently effective without being supported by comprehensive prevention, rehabilitation, and education efforts. In the context of Islamic law, the flexible *ta'zir* approach allows for the adjustment of penalties according to the circumstances and severity of the violation. This allows for the application of more just and relevant penalties in relation to individual circumstances. However, the effectiveness of prevention through *ta'zir* also greatly depends on the awareness of the community and the consistent application of religious values. Overall, although both legal systems offer punitive solutions to address drug abuse, their effectiveness in Indonesia still seems to require a combination of strong law enforcement and broader rehabilitation and prevention programs.

Conclusion

Based on the explanation provided, the conclusion of this article is that both Indonesian positive law and Islamic law view drug abuse as a serious crime that requires strict handling. In Indonesian positive law, sanctions against drug abusers are strictly regulated by Law Number 35 of 2009 concerning Narcotics, with penalties that include imprisonment, fines, and even the death penalty. On the other hand, in Islamic law, drug abuse is considered a sinful act that contradicts the *maqasid sharia*, especially in terms of the protection of intellect and soul. Sanctions in Islamic law are *ta'zir*, which are flexible and depend on the judge's decision, with an emphasis on moral and religious aspects. Despite the differences in their approaches to sanctions, both legal systems aim to effectively address drug abuse.

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