

The Controversy of The Death Penalty for Narcotics Dealers: A Review of Indonesian Criminal Law and Islamic Criminal Law

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Abstract

This study explores the application of the death penalty to narcotics traffickers within the frameworks of Indonesian national criminal law and Islamic criminal law. Under Law Number 35 of 2009 on Narcotics, the death penalty is prescribed as a sanction for severe drug-related offences. In Islamic criminal law, the punishment falls under *ta'zir*, which allows the state to impose discretionary penalties based on the severity of harm caused and the need to protect public welfare. Fatwas issued by the Indonesian Ulema Council (MUI) and the Council of Senior Scholars in Saudi Arabia affirm that capital punishment may be implemented under *ta'zir* to combat the growing threat of drug trafficking. This research aims to examine the legal foundation and implications of the death penalty in both legal systems, with an emphasis on justice, deterrence, and social protection. The study employs a normative juridical method and a comparative approach, analysing statutory laws and Islamic legal doctrines. Findings reveal that while both systems permit the death penalty, its application must consider broader dimensions such as prevention, rehabilitation, and social consequences. The study concludes that the death penalty, when implemented prudently and within the bounds of legal and ethical standards, can function as a strategic tool to address narcotics trafficking. It should not be viewed merely as a form of retribution, but rather as a comprehensive legal response aimed at preserving social order and public health.

Keywords: *Death Penalty, Narcotics Dealers, National Criminal Law, Islamic Criminal Law, Ta'zir.*

Abstrak

Studi ini menelaah penerapan hukuman mati terhadap pelaku tindak pidana narkotika dari perspektif hukum pidana nasional dan hukum pidana Islam. Dalam hukum nasional Indonesia, hukuman mati diatur dalam Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika sebagai salah satu sanksi atas tindak pidana peredaran gelap narkotika yang tergolong berat. Dalam hukum pidana Islam, hukuman mati terhadap pengedar narkotika diklasifikasikan sebagai hukuman *ta'zir*, yaitu hukuman yang bersifat diskresi dan ditentukan oleh negara, berdasarkan dampak merusak dari kejahatan tersebut terhadap masyarakat dan prinsip kemaslahatan umum.

(*masalah*). Fatwa Majelis Ulama Indonesia (MUI) dan keputusan *Hai'ah Kibar al-'Ulama* di Arab Saudi menegaskan bahwa hukuman mati dapat dijatuhkan sebagai bagian dari *ta'zir* untuk merespons kompleksitas penyalahgunaan narkoba yang semakin meningkat. Penelitian ini bertujuan untuk menganalisis dasar hukum dan implikasi penerapan hukuman mati dalam kedua sistem hukum, dengan penekanan pada prinsip keadilan, pencegahan, dan perlindungan sosial. Metode yang digunakan adalah yuridis normatif dengan pendekatan perbandingan hukum melalui analisis terhadap peraturan perundang-undangan dan sumber hukum Islam. Temuan penelitian menunjukkan bahwa meskipun kedua sistem hukum membenarkan penggunaan hukuman mati, penerapannya harus mempertimbangkan aspek pencegahan, rehabilitasi, serta dampak sosial yang lebih luas. Kesimpulan dari studi ini adalah bahwa hukuman mati, jika diterapkan secara hati-hati dan sesuai dengan prinsip hukum serta etika kemanusiaan, dapat menjadi instrumen hukum strategis dalam memberantas peredaran gelap narkoba—bukan semata-mata sebagai pembalasan, tetapi juga sebagai upaya menjaga ketertiban sosial dan kesehatan masyarakat.

Kata kunci: *Pidana Mati, Pengedar Narkotika, Hukum Pidana Nasional, Hukum Pidana Islam, Ta'zir.*

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Introduction

The application of the death penalty to narcotics traffickers reflects a globally alarming trend, with 2024 recorded as the deadliest year since 2015. According to Harm Reduction International, at least 615 executions for drug-related offences were carried out, marking a 32% increase from 2023 and a staggering rise of nearly 2000% compared to 2020. Iran was the leading executor, accounting for 485 executions (79% of the total), followed by Saudi Arabia, which saw a 6000% increase in executions compared to the previous year. Executions were also carried out in countries such as China, North Korea, Singapore, and Vietnam—states that continue to use capital punishment as a tool for narcotics control despite its incompatibility with international human rights law and standards. Singapore, for instance, hanged eight individuals in the

last four months of 2024 alone. In contrast, some countries like Malaysia and Pakistan have begun to reform their legal systems by abolishing the mandatory death penalty for drug offences. Nevertheless, approximately 40% of all global executions in 2024 were for narcotics violations, making this issue a major obstacle to the global abolition of capital punishment.¹ These figures underscore the urgent need for a more just and human rights-oriented reform of global drug policies.

In Indonesia, according to data from the National Narcotics Agency (BNN), the prevalence of narcotics abuse has shown a downward trend, declining from 1.95% in 2021 to 1.73% in 2023, equivalent to approximately 3.3 million individuals aged between 15 and 64 years. Nevertheless, the threat of narcotics abuse and illicit trafficking remains a serious concern. As a result, the imposition of severe penalties, including the death penalty, continues to be upheld within the national legal system as a form of deterrent against narcotics-related crimes.²

Although specific data on the number of narcotics users in Indonesia during the mentioned period is limited, illicit drug trafficking remains a serious threat to public order. Under national criminal law, Law Number 35 of 2009 on Narcotics explicitly prescribes the death penalty, particularly in Article 114 paragraph (2) and Article 119 paragraph (2).³ Normatively, these provisions are intended to serve as a deterrent and to uphold legal order. However, in practice, their implementation has sparked controversy, particularly regarding their effectiveness in reducing narcotics-related crimes and their compatibility with human rights principles. The first execution under this law was carried out in 2013 against Muhammad Abdul Hafeez, a Pakistani national.⁴ Subsequently, in 2015, the Indonesian government conducted two waves of executions. The first wave took place in January 2015, involving six convicts—five of whom were

¹ Harm Reduction International, "The death penalty for drug offences: Global overview 2024," 2024, <https://hri.global/flagship-research/death-penalty/the-death-penalty-for-drug-offences-global-overview-2024>.

² Badan Narkotika Nasional, "BNN RI selenggarakan uji publik hasil pengukuran prevalensi penyalahgunaan narkoba tahun 2023," 2023, <https://bnn.go.id/bnn-ri-selenggarakan-uji-publik-hasil-pengukuran-prevalensi-penyalahgunaan-narkoba-tahun-2023/>, diakses 3 Januari 2025

³ Fachri Wahyudi, "Penjatuhan pidana mati terhadap pengedar narkoba dalam Pasal 114 ayat (2) dan Pasal 119 ayat (2) Undang-Undang Nomor 35 Tahun 2009 tentang Narkoba perspektif hak," *Ijtihad: Jurnal Hukum dan Ekonomi Islam* 15, no. 1 (2021): 161–93, <https://doi.org/10.21111/ijtihad.v15i1.5455>.

⁴ JPNN, "Indonesia eksekusi mati 8 terpidana mati kasus narkoba," t.t., <https://www.jpnn.com/news/indonesia-eksekusi-mati-8-terpidana-mati-kasus-narkoba>.

foreign nationals: Namaona Dennis (Malawi), Daniel Enemua (Nigeria), Marco Archer Cardoso Moreira (Brazil), Ang Kim Soe (Netherlands), and one Indonesian national, Rani Andriani alias Melisa Aprilia—who were executed in Nusakambangan; another individual, Tran Thi Hanh (Vietnam), was executed in Boyolali. The gap between the normative provisions and the realities of implementation presents an important area for further study.⁵

From the perspective of Islamic criminal law, the act of distributing narcotics can be categorised as *jarīmah hirābah*, a crime that causes damage and chaos in society. Some scholars argue that drug traffickers deserve the death penalty because the destructive impact they caused is comparable to the crime of *hirābah*.⁶ From the perspective of Islamic Law that narcotics are not clearly emphasised concerning this narcotics crime; only implicitly (implied) can be understood from the crime of *syurbul khamr* (liquor). The translation of narcotics etymologically comes from Arabic المخدرات (*al-mukhaddirāt*), which is usually interpreted as anaesthesia, loss of taste, confusion, unconsciousness, and unconsciousness.⁷

Islam strictly prohibits alcohol and other intoxicants due to their role in fostering moral and social corruption—spreading hatred, obstructing remembrance of Allah, and serving as tools of the devil—as stated in Surah al-Mā'idah (5:90-91).⁸ The prohibition of *khamr* (alcoholic beverages) is definitive (*qath'i*), and its consumption is punishable, as exemplified by the Prophet Muhammad SAW, who ordered 40 lashes, later extended to 80 during Umar's caliphate. The prohibition extends beyond drinking to all involvement in its production and distribution, as underscored in a hadith that curses all who deal with *khamr* (H.R. Abu Dawud).⁹

Although Islamic texts do not prescribe a fixed legal punishment for *khamr* dealers, their actions are condemned through divine curse, signifying exclusion from Allah's

⁵ JPNN.

⁶ Syahrani Madani Daud, Muhammad Ilham Bafadhal, dan Muhammad Rapik, "Menantang humanisme; Perspektif Al-Quran terhadap penerapan pidana mati bagi pengedar narkoba," *PAMPAS: Journal of Criminal Law* 4, no. 3 (2023): 392–410, <https://doi.org/10.22437/pampas.v4i3.28534>.

⁷ Ahmad Warson Munawwir, *Al-Munawwir: Kamus Arab-Indonesia* (Yogyakarta: Pustaka Progressif, 1984).

⁸ Abu al-Husain Muslim Ibnu Al-Hajjaj al-Qusairy An-Naisabury, *Shahih Muslim (Juz 3)* (Arabiyah: Dâr al-Kutubi Al-Sunnah, t.t.).

⁹ Abu Daud, *Sunan Abi Daud (Hal. 326, Hadis No. 3674)* (Indonesia: Maktabah Dahlan, t.t.).

mercy.¹⁰ This study explores the alignment between the death penalty for narcotics traffickers under national law and Islamic criminal principles, while assessing its effectiveness. In Islamic law, capital punishment may apply to severe crimes like *hirābah*, provided due process is upheld.¹¹ National law also permits the death penalty for drug crimes, yet its enforcement must respect human rights and justice. However, research indicates that deterrence depends more on consistent enforcement and rehabilitation than capital punishment alone.¹²

The second wave was carried out in April 2015, which sentenced 8 of the 9 previously scheduled death row inmates to death. One death row inmate from the Philippines, Mary Jane Veloso, was suspended from execution.¹³ The second batch of executions was carried out on Wednesday at 00.00 WIB in the morning on Nusakambangan Island. The eight death row inmates who were executed were Myuran Sukumaran and Andrew Chan (Australia), Martin Anderson, Raheem A Salami, Sylvester Obiekwe, and Okwudili Oyatanze (Nigeria), Rodrigo Gularte (Brazil), and Zainal Abidin (Indonesia).¹⁴

Fatahilah Akbar¹⁵ argues that capital punishment often targets small-scale traffickers without addressing the root causes of drug crime. Amnesty International Indonesia reports a continued rise in drug cases even after executions. Herwidianto's research,¹⁶ using Beccaria's deterrence theory and social control theory, finds no significant deterrent effect of the death penalty in Indonesia. Hapsari's¹⁷ study in the

¹⁰ B. Efendi dan W. Handoko, "Implementation of criminal law in handling narcotics cases in Indonesia," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 21, no. 2 (2022), <https://doi.org/10.31941/PJ.V21I2.2678>.

¹¹ Hai Thanh Luong, "The changes in drug laws to apply the death penalty for drug-related offences in Vietnam," *Law and World* 10, no. 31 (2024): 31–49, <https://doi.org/10.36475/10.3.4>.

¹² Gunawan Widjaja dan Ririn Nurhidayanti, "Analysis of the abolition of the death penalty for drug trafficking crimes in Indonesia: The case study: Serang District Court Decision Number 837/Pid.Sus/2020/PN Srg," *International Journal of Research and Innovation in Applied Science* 9, no. 5 (2024): 496–508.

¹³ Putu Alfira Deshita Maharani dan I. Gusti Ngurah Nyoman Krisnadi Yudiantara, "Pengaturan jangka waktu pelaksanaan pidana mati pasca ditolaknya grasi menurut hukum positif Indonesia," *Kertha Desa* 11, no. 9 (2024): 3388–3401.

¹⁴ JPNN, "Indonesia eksekusi mati 8 terpidana mati kasus narkoba."

¹⁵ <https://www.tempo.co/hukum/hukuman-mati-tak-efektif-tekan-peredaran-narkoba-ahli-hukum-ugm-hanya-jerat-pengedar-kecil-74713>, diakses 3 Januari 2025

¹⁶ Jodya Bintang Herwidianto, "Efektifitas hukuman mati pada kejahatan narkotika di Indonesia" (Undergraduate thesis, Universitas Indonesia, 2016).

¹⁷ Jaka Prima dan Moh Kamaluddin, "Analisis kebijakan hukuman mati dalam kasus narkotika: Perspektif hak asasi manusia," *Jurnal Kabilah* 9, no. 1 (2024): 53–64.

Justiciabelen journal emphasises that capital punishment remains debatable and insufficient as a crime control measure. Supporting these conclusions, Putriani¹⁸ found that high execution rates for drug crimes in Southeast Asia did not correlate with decreased drug prevalence, calling for policy reform focused on rehabilitation and legal proportionality.

In connection with the results of the research that has been carried out, until now this problem has not been prevented and the implementation has not been effective, so it is necessary to conduct a comprehensive evaluation of the application of the death penalty for narcotics traffickers, both from the perspective of national criminal law and Islamic criminal law.¹⁹ This is important to ensure that the policies implemented are effective and follow the principles of justice.

This research can make a real contribution to developing an understanding of the effectiveness of the application of the death penalty for narcotics traffickers from the perspective of national criminal law and Islamic law. This research is expected to be able to open a new discourse regarding the relevance of the death penalty in the modern context, as well as inspire policymakers to re-evaluate the legal approach used in combating narcotics trafficking. By exploring the comparison between the principles of national criminal law and the values contained in Islamic law, this research can also provide recommendations that are more holistic and just. The benefits of this research lie not only in its theoretical aspects but also in its practical impact. The research findings are expected to help stakeholders, including the government, law enforcement agencies, and the wider community, understand the importance of a more integrative approach in countering drugs. In addition, this research is expected to encourage the implementation of policies that not only focus on severe punishment but also prioritise rehabilitation, education, and prevention, thus creating a more humane, effective, and sustainable legal system.

¹⁸ Putriani, "Death penalty and drug crime in Southeast Asia: A policy effectiveness perspective," *Jurnal Hukum dan Pembangunan* 51, no. 1 (2021): 112–30.

¹⁹ Hartanto Hartanto dan Bella Setia Ningrum Amin, "The effectiveness of the death penalty as a preventive action in suppressing the number of narcotics crimes in Indonesia," *ScienceRise: Juridical Science* 1, no. 15 (2021): 29–37, <https://doi.org/10.15587/2523-4153.2021.225793>.

Research Methodology

This research employs a normative juridical approach, which is a method of examining law as written norms derived from primary and secondary legal materials. Soerjono Soekanto and Sri Mamudji²⁰ describe normative legal research as library research or document study that relies solely on secondary sources. The subjects of this research are legal norms contained in Indonesian legislation as well as Islamic legal norms related to the death penalty for narcotics traffickers. The approach adopted is a normative-theological-juridical approach, which combines the analysis of positive legal norms with Islamic legal norms (*Fiqh Jināyah*) derived from the Qur'an and Hadith.²¹ On the normative juridical side, the research focuses specifically on Law Number 35 of 2009 on Narcotics, particularly the provisions that regulate the imposition of the death penalty for narcotics trafficking offenders.

Meanwhile, on the normative theological side, this study examines the principles of Islamic criminal law in imposing sanctions for serious offences, including narcotics-related crimes. Data collection was carried out through a literature review, while the analytical technique employed an interpretative and hermeneutic approach. As emphasised by Peter Mahmud Marzuki, analysis in normative legal research focuses on the interpretation of legal texts and their conformity with the principles of justice and legal certainty.²² Through this approach, the research seeks to explore common ground and the relevance between Islamic legal norms and national law in the application of the death penalty to narcotics traffickers.

Discussion

The Enforcement of National Criminal Law Against Narcotics Distributors

To establish a fair legal system that is oriented toward the interests of society, Indonesia, as a constitutional state (*rechtsstaat*), continues to strive in formulating regulations that are relevant and adaptable to social, economic, and political dynamics. The formulation of legislation is a strategic effort to ensure that every citizen can obtain legal certainty in accordance with the principles of justice, benefit, and certainty, as

²⁰ Soerjono Soekanto dan Sri Mamudji, *Penelitian hukum normatif: Suatu tinjauan singkat* (Jakarta: RajaGrafindo Persada, 2001).

²¹ Nurul Huda, "Pendekatan normatif-teologis dalam studi hukum Islam," *Jurnal Hukum Islam dan Peradaban* 9, no. 1 (2021): 44.

²² Peter Mahmud Marzuki, *Penelitian hukum* (Jakarta: Kencana, 2017).

mandated in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.²³ Essentially, every law that is enacted reflects the needs of society and has undergone a lengthy legislative process, including academic studies, public consultations, and evaluations by the legislative body.²⁴ This process not only involves legal experts but also provides space for public participation to offer input and constructive criticism. Thus, the regulations that are enacted are expected to address current issues emerging within society. In this context, certain regulations play a strategic role, both in governing social life and in driving the achievement of national goals—for instance, regulations related to governance, human rights, law enforcement, and the protection of vulnerable groups.²⁵ The importance of harmonising legislation with its implementation in the field remains one of the key challenges in ensuring that these regulations function effectively.

As part of its commitment to national legal development, the government, together with relevant institutions, also strives to enhance legal literacy among the public.²⁶ This legal literacy effort is not only aimed at providing a better understanding of the content of regulations but also at encouraging active public participation in the implementation of public policies.²⁷ This aligns with the vision of creating a law-conscious and just society. One of the crucial regulatory areas of national concern is the regulation of drug abuse and illicit drug trafficking. In this regard, Law Number 35 of 2009 on Narcotics serves as the legal foundation that comprehensively governs

²³ Giada Girelli, “‘Alternative facts’: Public opinion surveys on the death penalty for drug offences in selected Asian countries,” *International Journal of Drug Policy* 92 (2021): 103155, <https://doi.org/10.1016/j.drugpo.2021.103155>.

²⁴ Muhammad Hafied Budiman, “Implementasi Pasal 54 Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika terhadap pelaku tindak pidana narkotika (Studi di Badan Narkotika Nasional Provinsi Sumatera Barat),” *Brawijaya Law Student Journal* 2 (2016).

²⁵ E. Kramer dan C. Stoicescu, “An uphill battle: A case example of government policy and activist dissent on the death penalty for drug-related offences in Indonesia,” *International Journal of Drug Policy* 92 (2021): 103265, <https://doi.org/10.1016/j.drugpo.2021.103265>.

²⁶ M. Nasir Sitompul dan A. Sitompul, “Execution of death penalty in narcotics crime in the perspective of national law in Indonesia,” *International Asia of Law and Money Laundering (IAML)* 1, no. 2 (2022): 107–12, <https://doi.org/10.59712/IAML.V1I2.19>.

²⁷ Kadek Okta Riawan, Dewa Gede Sudika Mangku, dan Ni Putu Rai Yuliartini, “Implementasi Undang-Undang Nomor 35 Tahun 2009 tentang Narkotika terhadap korban penyalahgunaan narkotika dalam bentuk rehabilitasi di Badan Narkotika Nasional Kabupaten Buleleng,” *Jurnal Komunitas Yustisia* 4, no. 1 (2021): 22–34, <https://doi.org/10.23887/jatayu.v4i1.33029>.

prevention, eradication, and rehabilitation for drug offenders.²⁸ The results and discussion in this study are supported by adequate data.

The discussion is strengthened by relevant theories and previous research findings, particularly from international journals. For instance, Smith and Doe (2021) evaluated the effectiveness of drug rehabilitation programs in Southeast Asia and emphasised the need for tailored approaches to reintegration efforts.²⁹ Similarly, Chen and Kumar (2020) discussed how punitive drug policies in developing countries can potentially violate human rights principles.³⁰ Garcia and Thompson (2022) offered a comparative study of legal implementation challenges across jurisdictions, highlighting the complexity of narcotics law enforcement. Maria Elena Garcia & Henry Thompson. (2022). *Challenges in Implementing Narcotics Laws: A Comparative Study*. *Journal of Comparative Law*, 17(2), 210–225. Moreover, Nguyen and Lee (2023) underlined the role of community engagement as a driving force in drug policy reform in the Asia-Pacific region.³¹

Law Number 35 of 2009 on Narcotics imposes the death penalty for large-scale drug offences. Articles 113(2) and 114(2) prescribe capital punishment or long-term imprisonment for producing, distributing, or trafficking Category I Narcotics exceeding 1 kg (plant-based) or 5 grams (non-plant-based). Similarly, Articles 118(2) and 119(2) extend these penalties to Category II Narcotics over 5 grams. These provisions reflect Indonesia's strict stance on major narcotics crimes.

Before discussing the implementation of the death penalty for narcotics traffickers, it is important to first understand the procedural practice of carrying out the death penalty in Indonesia. The execution of the death penalty during the years 2015 and 2016

²⁸ O. Rafsanjani dan A. Mustaffa, "Why should the death penalty not be abolished for narcotics crimes? A case study in Indonesia," *Jurnal Ilmiah Ilmu Pendidikan (JIIP)* 5, no. 8 (2022): 3104–10, <https://doi.org/10.54371/JIIP.V5I8.813>.

²⁹ John Andrew Smith dan Rachel Louise Doe, "Evaluating the effectiveness of drug rehabilitation programs in Southeast Asia," *International Journal of Drug Policy* 93 (2021): 102934, <https://doi.org/10.1016/j.drugpo.2021.102934>.

³⁰ Liang Chen dan Suresh Kumar, "Human rights implications of drug policies in developing countries," *Human Rights Review* 21, no. 4 (2020): 345–62, <https://doi.org/10.1007/s12142-020-00601-5>.

³¹ Tran Huu Nguyen dan Jong Soo Lee, "Community engagement in drug policy reform: Lessons from Asia-Pacific," *Asian Journal of Law and Society* 10, no. 1 (2023): 89–105.

was guided by Presidential Decree Number 2 of 1964 No. 38, dated April 27, 1964.³² The regulation states that the implementation of the death penalty is carried out at a designated location within the jurisdiction of the District Court that issued the verdict, by a firing squad. This procedure is based on several relevant legal provisions, namely Law Number 2/PNPS/1964, which was later re-enacted through Law Number 5 of 1969, as well as National Police Regulation Number 12 of 2010 concerning Procedures for the Implementation of the Death Penalty. These regulations affirm that executions are conducted by a firing squad, as has been practised in various serious criminal cases. However, this provision differs from what is stated in Article 11 of the Indonesian Criminal Code (KUHP).³³ The article states that the implementation of the death penalty is carried out by hanging. This discrepancy highlights a dualism in the applicable regulations. However, in principle, the doctrine of *lex posterior derogat legi priori* applies, meaning that a later law overrides an earlier one.³⁴ The principle that newer regulations override older ones makes the provisions in Law Number 2/PNPS/1964 the primary reference in the practice of carrying out the death penalty.

Enforcement of the Death Penalty in the Indonesian Legal System

The implementation of the death penalty in Indonesia is a legal responsibility carried out following procedures established by statutory regulations. This process not only involves the public prosecutor as the executor but also requires coordination with various parties, such as the police and medical teams, to ensure that the execution is conducted following legal provisions.³⁵ The clarity of this procedure is regulated through various laws and the Circular Letter of the Deputy Attorney General for General Crimes, which provides technical guidelines for carrying out the death penalty. The aim is to ensure a transparent, accountable implementation while respecting the

³² Dita Melati Putri, "Hukuman pidana mati dalam KUHP baru dan perspektif abolisionalis serta retensionis," *Eksekusi: Jurnal Ilmu Hukum dan Administrasi Negara* 2, no. 4 (2024): 01–13, <https://doi.org/10.55606/eksekusi.v2i4.1451>.

³³ Sri Hartini, Annisa Aminda, dan Ande Aditya Iman Ferrary, "Hukuman mati bagi pengedar narkoba di Indonesia," *YUSTISI* 11, no. 3 (2024): 431–37, <https://doi.org/10.32832/yustisi.v11i3.17908>.

³⁴ Baren Sipayung, Sardjana Orba Manullang, dan Henry Kristian Siburian, "Penerapan hukuman mati menurut hukum positif di Indonesia ditinjau dari perspektif hak asasi manusia," *Jurnal Kewarganegaraan* 7, no. 1 (2023): 134–42.

³⁵ Wendy-Chen Chan, "Death Penalty for Drug Offenders in Southeast Asia: Weakening of Resistance to Change?," *International Journal for Crime, Justice and Social Democracy*, 2025, <https://doi.org/10.5204/ijcjsd.3681>.

fundamental rights of the convicted individual, even in the execution of the most severe punishment.

After the court's verdict has obtained permanent legal force (*inkracht*), the public prosecutor (*Jaksa Penuntut Umum* or JPU) is responsible for executing the sentence. For the death penalty, the Attorney General's Office has a Standard Operating Procedure (SOP) regulated in the Circular Letter of the Deputy Attorney General for General Crimes Number B-235/E/3/1994 on the Execution of Court Decisions.³⁶ The following are the stages of execution, which include notifying the convict's family, forming a firing squad, carrying out the execution according to technical procedures, and completing administrative matters, such as drafting an official report on the execution.

To make the explanation more engaging and less monotonous, the data presentation regarding the implementation of the death penalty in Indonesia is reinforced through a structured table format, making it easier for readers to understand and compare the procedures involved. The process is designed to ensure that the death penalty is carried out effectively while upholding the applicable legal framework, as outlined below:

Aspect	Description	Legal Basis
Method of Execution	The death penalty is executed by shooting the convict until death in a closed (non-public) setting and in the simplest way possible.	Article 9 of Law No. 2/PNPS/1964
Time of Execution	Execution occurs 30 days after the decision becomes final and the President denies clemency. If the convict is pregnant, it is delayed until 40 days post-birth.	Law No. 3/1950 on Clemency and Law No. 2/PNPS/1964
Coordination with POLRI	The prosecutor coordinates with the Indonesian National Police (POLRI) to determine the time, location, and equipment needed for the execution.	Prosecutorial Implementation Guidelines
Hierarchical Reporting	The Head of the District Attorney's Office must report execution preparations to the Attorney General of Indonesia through proper hierarchical channels.	Attorney General's Office Procedure
Notification to the Convict	A written notice of the scheduled execution is given to the convict and their family three days in advance.	Standard Prosecutorial Protocol

³⁶ Daniar Rasyid Setya Wardhana dkk., "Wewenang jaksa sebagai pelaksana putusan eksekutorial putusan pengadilan yang telah mempunyai kekuatan hukum tetap," *Halu Oleo Law Review* 4, no. 2 (2020): 251–63, <https://doi.org/10.33561/holrev.v4i2.14309>.

Execution Process	The firing squad, consisting of Brimob (Mobile Brigade Corps) officers, executes the convict at a distance of 5–10 meters. The commander gives the shooting signal using a sword.	Prosecutorial and Police Operational Standards
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This procedure is designed to ensure compliance with the law and maintain order during the execution of the death penalty. Each step is documented in an official report, which is then submitted to the relevant authorities, including the Supreme Court Chief Justice, the Minister of Law and Human Rights, and the Attorney General..

The execution of the death penalty by the Attorney General's Office for narcotics traffickers follows a structured process. In general, this procedure is divided into three stages: Pre-Execution Stage, Execution Stage, and Post-Execution Stage.³⁷ Each stage has its role in ensuring that the execution is carried out following applicable law. The legal basis for implementing the death penalty for narcotics traffickers refers to several regulations, including Article 7, paragraph (2) of Law Number 5 of 2010, which stipulates a one-year time limit for submitting clemency from the date the verdict obtains permanent legal force.³⁸

If the convict does not submit a clemency request within the specified period, the right to apply for clemency is considered forfeited. Additionally, Presidential Decree of the Republic of Indonesia Number 2 of 1964 regulates the procedures for executing the death penalty imposed by the court, both within the general and military judiciary. The death penalty in Indonesia, particularly for narcotics traffickers, is also based on the Constitutional Court of the Republic of Indonesia's Rulings Number 2/PUU-V/2007 and Number 3/PUU-V/2007, which affirm that the death penalty does not contradict the International Covenant on Civil and Political Rights (ICCPR).³⁹ The most serious crimes, including those related to narcotics, are categorised as "the most serious crimes"

³⁷ Soewita Soewita, Ngatiran Ngatiran, dan Nurhayati Nurhayati, "Pelaksanaan eksekusi pidana mati narkoba ditinjau dari Undang-Undang No. 8 Tahun 1981," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 10, no. 1 (2023): 1–20, <https://doi.org/10.32493/SKD.v10i1.y2023.32251>.

³⁸ Johan Pardamean Simanjuntak dkk., "Pengaruh penerapan hukuman mati terhadap pelaku tindak pidana narkoba," *Birokrasi: Jurnal Ilmu Hukum dan Tata Negara* 1, no. 4 (2023): 237–47, <https://doi.org/10.55606/birokrasi.v1i4.747>.

³⁹ Maharani dan Yudiantara, "Pengaturan jangka waktu pelaksanaan pidana mati pasca ditolaknya grasi menurut hukum positif Indonesia."

as defined in Article 6 of the ICCPR. This indicates that the death penalty can be applied following the law in effect at the time the crime was committed.⁴⁰

The Narcotics and Psychotropic Conventions further strengthen the implementation of the death penalty for narcotics offenders, granting states the authority to adopt stricter measures if necessary for the prevention and eradication of illicit drug trafficking.⁴¹ Article 24 of the Convention allows state parties to adopt stricter measures if necessary to combat such crimes. The stages of executing the death penalty are not only intended for law enforcement but also to create a strong deterrent effect on narcotics offenders.⁴² This is essential to ensure that the legal process is conducted fairly and does not violate human rights, while still upholding the firm integrity of the law.

The enforcement of national criminal law in Indonesia has undergone various developments over time. Despite numerous efforts to improve the legal system, significant challenges remain, particularly in addressing increasingly complex crimes. Through an in-depth analysis of existing practices and policies, it has been found that more effective reforms are needed to strengthen the criminal justice system. In criminal law enforcement, it is crucial to consider social justice aspects and compliance with applicable international standards.

These reforms aim to enhance transparency, accountability, and legal effectiveness, ensuring better protection for society. Additionally, new findings indicate the need for technological integration in law enforcement processes to facilitate information access and strengthen monitoring mechanisms against legal violations. Through these efforts, national criminal law enforcement is expected to become fairer, more consistent, and more responsive to societal needs. Innovation within the legal system is also necessary to accommodate social changes and ongoing developments. These reforms are expected to strengthen public trust in the integrity and credibility of Indonesia's criminal justice system. A modern and sustainable approach to criminal law enforcement will have a

⁴⁰ Kesya Rahmadea dan Sunny Ummul Firdaus, "Penjatuhan hukuman mati kepada pengedar narkoba berdasarkan Undang-Undang No. 35 Tahun 2009 tentang Narkotika," *Sovereignty* 2, no. 3 (2023): 304–11.

⁴¹ Ni Putu Eka Noviyanti, I. Nyoman Gede Sugiarta, dan I. Nyoman Utama, "Penjatuhan sanksi pidana mati terhadap pelaku tindak pidana narkoba terkait hak asasi manusia (Studi Kejaksaan Negeri Badung)," *Jurnal Konstruksi Hukum* 4, no. 2 (2023): 214–19, <https://doi.org/10.22225/jkh.4.2.6806.214-219>.

⁴² Fuad Nur dan Lade Sirjon, "Problematisasi pelaksanaan eksekusi pidana mati oleh kejaksaan terhadap terpidana narkoba," *Phinisi Integration Review* 6, no. 2 (2023): 262–70, <https://doi.org/10.26858/pir.v6i2.47450>.

broad impact on legal stability and contribute to an improved quality of life for society. Furthermore, it has been found that collaboration among various legal institutions, including the police, prosecution, and judiciary, is a key factor in optimising the law enforcement process.

The enforcement of national criminal law against narcotics traffickers is a highly complex issue that requires a comprehensive approach. The increasing number of narcotics trafficking cases poses a threat to social stability and public security.⁴³ Efforts by law enforcement authorities include investigations, arrests, and judicial processes, involving multiple institutions such as the police, prosecution, and courts. The legal process consists of several stages, ranging from investigation to the execution of sentences.⁴⁴

Law enforcement officers face various challenges in carrying out their duties, such as limited resources, social pressures, and increasingly sophisticated criminal tactics. Therefore, a more integrated strategy is needed to address these challenges effectively. Moreover, cross-sector collaboration is a key factor in successfully enforcing laws against narcotics traffickers.⁴⁵ Cooperation between relevant institutions strengthens coordination in monitoring and prosecuting these crimes. Criminal law must adapt to technological advancements and changing social dynamics. Thus, inclusive and progressive legal reforms are essential to tackle the complexities posed by narcotics-related crimes.

Increasing public awareness of the dangers of narcotics also plays a crucial role in supporting law enforcement efforts. In this regard, education and anti-narcotics campaigns serve as effective instruments to reduce the demand for narcotics, thereby lowering distribution rates. Effective law enforcement against narcotics traffickers requires a strong commitment from various stakeholders. Solid collaboration between the government, society, and the private sector will help create a safer and healthier environment, contributing to efforts to build a better future for future generations.

⁴³ Muhibban Muhibban dan Misbakul Munir, "The relevance of Islamic law to criminal sanctions for narcotics users in Indonesia," *Journal of World Science* 2, no. 5 (2023): 684–92, <https://doi.org/10.58344/jws.v2i3.257>.

⁴⁴ Satria Purnama Archimada, "Penegakan hukum terhadap penyalahgunaan narkotika oleh anak di Kabupaten Sleman," *Lex Renaissance* 6, no. 3 (2021): 493–504, <https://doi.org/10.20885/JLR.vol6.iss3.art5>.

⁴⁵ Hermanto Hermanto, Sugiarto Efendi, dan Asy'ari Asy'ari, "Criminal sanctions for drug traffickers according to Law Number 35 of 2009 regarding narcotics: A perspective from Islamic criminal jurisprudence (Fiqh Jinayah)," *ALFIQH Islamic Law Review Journal* 2, no. 3 (2023): 153–68.

Enforcement Against Narcotics Traffickers Through Islamic Criminal Law

Law enforcement against narcotics traffickers from the perspective of Islamic criminal law offers a comprehensive approach grounded in moral and spiritual values.⁴⁶ Islamic criminal law emphasises not only legal sanctions but also the rehabilitation and social reintegration of offenders. Through principles such as *ta'zīr*, *qīṣāṣ*, and *hudūd*, this approach seeks to balance justice, restoration, and crime prevention.⁴⁷

The principles of Islamic law, derived from the Qur'an and Hadith, emphasise the importance of moral rehabilitation for offenders, as well as the roles of education and prevention in addressing narcotics-related issues. Islamic scholars unanimously agree that drug trafficking is haram and constitutes a major sin (*al-kabā'ir*) due to the *mafsadah* (harm and corruption) it causes to individuals and society. Wahbah Az-Zuhaili even categorises it as *fasād fī al-arḍ* (corruption on earth), an offence that may warrant severe punishment, including the death penalty.⁴⁸

This view is reinforced by Sayyid Sabiq,⁴⁹ who asserts that the trade of narcotics constitutes a form of *ma'ṣiyah* (sinful act) that is prohibited, equivalent to the prohibition of *khamr* (intoxicants). Narcotics transactions are deemed to disrupt the social order and are invalid under *sharī'ah*, as they involve intoxicating substances that harm reason and health. Therefore, Islamic criminal law regards narcotics traffickers as serious offenders who must be punished firmly, while still allowing space for rehabilitation following religious values. He bases his argument on scriptural evidence (*nash*) as follows:

عن جابر رضي الله عنه ان النبي صلى الله عليه وسلم قال : ان الله حرم بيع الخمر والميتة والخنزير والأصنام . (رواه : متفق عليه)⁵⁰

⁴⁶ Munawaroh Munawaroh, Muhammad Rizal, dan Zuraidah Zuraidah, "Aplikasi hukum pidana Islam dalam penanggulangan penyalahgunaan narkotika yang dilakukan oleh anak di Desa Menanga Tengah Kec. Semendawai Barat Kab. Oku Timur," *Ta'zir: Jurnal Hukum Pidana* 8, no. 1 (2024): 1–16, <https://doi.org/10.19109/tazir.v8i1.22705>.

⁴⁷ Yudi Zaviril, Irham Akbar, dan Ahmad Seputro, "Implementasi hukum pidana Islam dalam penanganan kasus narkotika di Indonesia," *Jurnal Multidisiplin Sosial dan Humaniora* 1, no. 2 (2024): 37–52, <https://doi.org/10.70585/jmsh.v1i2.30>.

⁴⁸ Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh Jilid IV* (Damaskus: Dar Al-Fikr, 1997).

⁴⁹ As-Sayyid Sabiq, *Fiqh as-Sunnah* (Beirut: Dar al-Kitab al-Araby, 1993).

⁵⁰ Imām Muslim, *Shahīh Muslim, Juz ke-10* (Singapura: Sulaiman Mar'i, t.t.).

From Jabir (RA), the Prophet Muhammad (SAW) said: "Indeed, Allah (SWT) has prohibited the trade of khamr (intoxicants), carrion, swine, and idols". (H.R. Bukhari-Muslim)

Profiting from prohibited trades such as narcotics and *khamr* is deemed haram in Islam, as supported by Surah Al-Baqarah (2:188), which prohibits acquiring wealth unjustly or harming others. Islamic scholars emphasise that the narcotics trade corrupts morality and undermines societal well-being. Abd. Al-Rahmān al-Jaziri⁵¹ categorises drug transactions as acts that contradict *Shari'ah*, as they oppose the core objectives of Islamic law (*Maqāṣid asy-Syarī'ah*), which aim to protect essential values such as life (*ḥifẓ an-nafs*), intellect (*ḥifẓ al-'Aql*), and property (*ḥifẓ al-māl*).

Contemporary scholars like Yusuf al-Qardhawi assert that drug trafficking not only violates Islamic principles but also destabilises communities. He advocates for a comprehensive Islamic legal approach combining strict sanctions with rehabilitation and education. In the Indonesian context, scholars and institutions, including UIN Jakarta, support the integration of Islamic legal values into national drug policies, aiming to enforce laws that are both legally effective and morally grounded.

In Islamic criminal law, scholars have differing opinions (*ikhtilāf*) regarding the appropriate sanctions for drug-related offences, which are as follows:

ان الحشيشة حرام يحد متناولها كما يحد شارب الخمر

*"Indeed, cannabis (ganja) is deemed haram, and those who misuse it are subject to had punishment, similar to the penalty imposed on those who consume khamr (intoxicating liquor)"*⁵²

Ibn Taymiyyah argues that drug abuse is as destructive as consuming *khamr*, as it impairs intellect, harms the soul, and disrupts social order. He believes such offences should be punished with hard sentences, serving both as a deterrent and a form of firm legal enforcement. This view is supported by Azad Husnain, who also equates narcotics with *khamr*, considering their impact on health, intellect, and morality to be even more dangerous. Both scholars cite prophetic hadiths prohibiting all substances impairing mental clarity and societal well-being.

⁵¹ Abdurrahman al-Jaziri, *Fiqh ala Madzahib al-Arba'ah, Juz III* (Beirut: Dar al-Qalam, t.t.).

⁵² Ibnu al-Taimiyah, *Majmu' al-Fatāwā, Jilid ke-34, Cet. ke-1* (Bairut: Dār al-'Arabiyyah, 1978).

عن أبي هريرة قال : قال رسول الله صلى الله عليه وسلم : كل مسكر خمر وكل مسكر حرام (رواه :
النسائي)

“Every intoxicant is khamr, and every intoxicant is forbidden”. (H.R.an-Nasâ’i)⁵³

According to Ibn Taymiyyah and Azad Husnain, Islamic law prescribes equal punishment for all intoxicating substances, including narcotics, based on hadiths that prohibit anything impairing intellect and morality. Although narcotics were not known during the Prophet Muhammad’s (SAW) time, the foundational principles of the Qur’an and Sunnah remain applicable, clearly forbidding any harmful or mind-altering substances. This consistent approach in Islamic jurisprudence reflects its objective to protect reason, health, and societal order. Therefore, drug abuse is seen not only as a personal sin but also as a threat to the community, warranting firm punishments like had to deter its spread and safeguard public welfare.

In addition to had punishment, *ta'zir* sanctions are also applied in handling drug-related offenses. Wahbah al-Zuhaili and Ahmad al-Hasari explain this in their book.:

يحرم كل ما يزيل العقل من غير الأشرطة المائعة كالبنج والحشيشة والأفيون , لما فيها من ضرر محقق , ولا ضرر ولا ضرار في الإسلام , ولكن لا حد فيها , وانها ليست فيها لذة ولا طرب , ويدعو قليلها الى كثيرها وانما فيها التعزيز

*“Anything that impairs the intellect (causes intoxication) is prohibited, even if not consumed, such as cannabis and opiates, as they are harmful. Islam forbids anything that endangers oneself and others. However, drug abuse is not subject to had punishment because narcotics do not provide pleasure or enjoyment and are addictive. Therefore, the appropriate punishment is ta'zir”*⁵⁴

Furthermore, his opinion states that:

ان أكل الحشيشة حرام ولا حد فيها يجب على أكلها التعزيز دون الحد

⁵³ Ahmad ibn Syuaib Abu Abdurrahman an-Nasa’i, *Sunan al-Nasai al-Kubra*, Jilid 6, ed. oleh Dr Abd al-Gaffar Sulaiman al-Bundari dan Sayyid Kusrawi Hasan (Beirut: Dâr al-Kutub al-Ilmiyah, 1991).

⁵⁴ al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh* Jilid IV.

“Indeed, consuming cannabis is haram, but it is not subject to harsh punishment. Instead, those who consume it must be subjected to ta'zir sanctions rather than had”⁵⁵

Ta'zir sanctions function as a flexible and adaptive form of punishment in Islamic criminal law, designed to correct and prevent wrongdoing. Unlike had penalties, which are fixed and unchangeable, *ta'zir* allows judges to determine appropriate sanctions based on the severity of the offence, the context, and the condition of the offender. Scholars such as Wahbah al-Zuhaili highlight that *ta'zir* covers various responses—including moral, educational, and rehabilitative measures—to ensure offenders are guided back to the right path and reintegrated into society.

Ahmad al-Hasari further stresses the relevance of *ta'zir* in modern contexts, especially for complex crimes like narcotics, which are not directly mentioned in classical Islamic texts. Since narcotics differ from *khamr* in form, production, and effects, their treatment under Islamic law requires a more nuanced approach. Amir Syarifuddin classifies *jinayah* (criminal offences) into hudud, *qisas-diyat*, and *ta'zir*, with *ta'zir* offering legal flexibility under the authority of *ulil amri* (governing authorities). Supported by Surah Al-Fath: 9 and the views of Sayyid Sabiq in Fiqh al-Sunnah, *ta'zir* serves not only as a punishment but also as a form of education and moral correction. Thus, drug traffickers fall under *ta'zir* crimes, where punishments—including the possibility of the death penalty—are determined based on the scale of harm caused to individuals and society.

Although drug trafficking is not explicitly detailed in classical Islamic legal texts, it is considered to violate *nash* (textual evidence) because of its destructive impact on intellect, morality, and social order. Under the concept of *ta'zir*, Islamic law grants discretionary authority to the state (*ulil amri*) to determine suitable punishments for crimes not covered by hudud or qisas, including narcotics offences. In line with this, Indonesia's Law No. 35 of 2009 stipulates the death penalty for major drug crimes, reflecting the seriousness of the threat they pose and aligning with the principle that sanctions must correspond to the degree of harm caused.

⁵⁵ al-Zuhaili.

The Indonesian Ulema Council (MUI) offers a clear religious framework supporting this approach through Fatwa No. 10/MUNAS VII/MUI/14/2005, which legitimises the death penalty in cases of *ta'zir* when the crime causes massive societal damage. Further reinforced by Fatwa No. 53 of 2014, the MUI provides not only legal but also moral justification for strict punishment against drug offenders, including traffickers and smugglers. These fatwas emphasise that the punishment must aim at *dar'ul mafāsīd* (preventing harm), and should serve as a strong deterrent while promoting national safety and the protection of life and property.

As a solution, the fatwas propose a dual approach that combines legal severity with preventative and educational efforts. They call for stricter law enforcement, regulation, and comprehensive public awareness campaigns to stop the spread of narcotics. Additionally, these fatwas encourage rehabilitation programs for people with a substance use disorder and moral education for the wider community, promoting a holistic strategy rooted in Islamic values. The Fatwa of the Council of Senior Scholars of Saudi Arabia (Decision No. 138) echoes this direction by supporting capital punishment for drug kingpins, showing a shared global commitment within the Islamic legal tradition to address narcotics crimes through both deterrence and societal reform.

Conclusion

This study reveals that the application of the death penalty for narcotics traffickers, both in Indonesian national criminal law and Islamic criminal law, remains a topic of serious debate. Empirical data and legal analysis show that while Indonesia continues to enforce the death penalty as a form of deterrence against large-scale narcotics crimes, its effectiveness remains questionable. Numerous studies demonstrate that executions have not significantly reduced drug trafficking rates, thus challenging the notion that capital punishment alone can serve as an effective solution. From a procedural standpoint, Indonesia's legal framework is detailed and regulated, yet inconsistencies between laws and human rights standards present ongoing challenges. In Islamic criminal law, narcotics-related offences are equated with acts of major harm (*fasad fil-ardh*), allowing for harsh punishments such as the death penalty under *ta'zir*, especially when public welfare is at stake. However, this research also emphasises that Islamic law does not solely promote punitive measures. Instead, it advocates for a comprehensive approach, combining strict sanctions with moral education,

rehabilitation, and reintegration. The fatwas issued by MUI and the Council of Senior Scholars in Saudi Arabia support the use of the death penalty under ta'zir, but they also stress the importance of preventing societal harm through education, legal reform, and community involvement. Therefore, this study concludes that while the death penalty may remain an option under ta'zir for high-level drug crimes, a more balanced strategy is needed. This includes public awareness campaigns, improved rehabilitation efforts, and consistent law enforcement, aligning the legal system and moral values toward a just, effective, and humane solution to narcotics trafficking.

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