

## Problems of Criminal Sanctions for Narcotics Abuse: Comparative Study of National Crime and Islamic Crime

\*Melita Mulyani<sup>1</sup>, Hasuri<sup>2</sup>

<sup>1,2)</sup> Universitas Serang Raya (UNSERA), Indonesia

\*melita.mulyani14@gmail.com

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### Abstract

Narcotics abuse is one of the serious problems faced by the Indonesian state. Narcotics have many negative impacts. In Indonesia, the legal approach to dealing with this problem includes the application of criminal sanctions regulated in national law. However, in Indonesia as a country with the largest Muslim population in the world, the relevance and influence of Islamic law in regulating sanctions for narcotics abusers cannot be ignored. This study uses a qualitative method with a normative juridical approach. With the results of the research: criminal sanctions in Law no. 35/2009 include various forms of punishment, ranging from imprisonment to the death penalty, depending on the type and number of narcotics abused. In national law, more attention is paid to the human rights of narcotics violators. Meanwhile, heavier sanctions such as the death penalty are applied in Islamic law, aiming to provide a deterrent effect. Obstacles to handling and preventing narcotics abuse: weak coordination between agencies, limited rehabilitation facilities offered, lack of awareness, community, etc. Efforts to avoid narcotics abuse consist of pre-emptive efforts, preventive efforts, and repressive efforts. In addition, providing religious education from an early age to families, and selecting the use of media can also be done to prevent narcotics. The author's suggestion for the discussion of this research is the need for comprehensive cooperation between law enforcement officials and the community to achieve an orderly and prosperous life so that narcotics abuse in Indonesia can be resolved.

**Keywords: Islamic Crime, National Crime, Problems of Criminal Sanctions**



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### INTRODUCTION

Narcotics abuse is one of the serious problems faced by many countries, including Indonesia. The level of drug abuse in Indonesia has reached alarming levels. There are many impacts caused by narcotics such as damaging physical and mental health, as well as disrupting social and economic stability, this shows the importance of paying attention and taking more serious action to the problem of narcotics abuse in Indonesia. (Asyharudddin et al., 2020) In Indonesia, the legal approach to dealing with this problem includes the application of criminal sanctions regulated in national law. However, in Indonesia as a country with the largest Muslim population in the world, the relevance and influence of Islamic and law in regulating sanctions for narcotics abusers cannot be ignored. (Sugiarto, 2016)

In Indonesia, the handling of narcotics abuse cases is regulated through the national legal framework contained in Law Number 35 of 2009 concerning Narcotics. The law establishes a

range of criminal sanctions, ranging from imprisonment to the death penalty, depending on the type and number of narcotics abused and the individual's role in the crime. In Indonesia's positive legal system, criminal sanctions are regulated by Narcotics Law Number 35 of 2009, which is made with the following objectives: First, ensuring the availability of drugs for health services and/or the development of technology and science. Second, preventing, protecting, and saving the Indonesian people from drug abuse. Third, stop the circulation of illegal drugs and chemicals used to make drugs. Lastly, ensuring that law no. 35 of 2009 related to medical rehabilitation and social rehabilitation is applied to drug addicts and abusers.

Furthermore, in the context of Indonesian society, which is predominantly Muslim, Islamic criminal law also guides in determining sanctions for perpetrators of narcotics abuse. Islamic law views the abuse of narcotics as a prohibited act (haram) and establishes severe punishment to maintain morality and public health.(Najmudin, Azzahra, et al., 2024) In the perspective of Islamic law, narcotics abuse is considered a serious violation of sharia law, which also establishes severe sanctions for the perpetrators. Islamic law considers drug abuse as an act of self-destruction and society, so it deserves to be subjected to harsh punishment as a form of prevention and atonement.(Rahmi, 2021)

However, efforts to handle and prevent narcotics abuse in Indonesia face various obstacles. These obstacles include limited human and financial resources, inadequate legal infrastructure, and corruption that hinders the law enforcement process. (Helviza et al., 2016) In addition, social stigma against drug users often prevents them from seeking help or undergoing rehabilitation. Coordination between institutions involved in handling narcotics cases is also still not optimal, resulting in a lack of effectiveness in the implementation of prevention policies and programs.(Setiadi, 2018)

The urgency of this research lies in the urgent need to find a solution to the imposition of sanctions or punishments to narcotics abusers who are considered to provide effective sanctions and provide a deterrent effect for the perpetrators, then by comparing the approaches of national criminal law and Islamic criminal law, this research has the potential to make a significant contribution to the reform of law enforcement policies and strategies in Indonesia. Furthermore, the urgency of this research lies in the urgent need to overcome various obstacles that hinder efforts to handle and prevent narcotics abuse in Indonesia. By identifying and analyzing these barriers, this research is expected to provide concrete and effective solutions, as well as support the development of better policies in combating narcotics abuse.

The literature review/Gap research from this article includes: First, a scientific paper entitled *Analysis of Criminal Sanctions Against Perpetrators of Narcotics Crimes*, a scientific work by M. Asyharuddin, Baharuddin Badaru, et al.. (Asyharudddin et al., 2020) The similarity of this article with other scientific works is that these two scientific works both focus on the discussion of the provision of criminal sanctions for narcotics crimes. Meanwhile, the distinguishing factor between these two articles is, in the reference of the article only focuses on discussing criminal sanctions against narcotics crimes from the perspective of national law only, does not discuss the provision of criminal sanctions against perpetrators of narcotics crimes according to Islamic law, besides there is a difference in the location of the research. Second, a scientific paper entitled *A Comparative Study of Positive Law and Islamic Law on Punishment for Narcotics Abuse by Minors*, a research by Avizah Saus.(Saus, 2017)Then the

similarity of this article with the reference of the article is that both have the same discussion of the topic raised in the article, namely both raise the discussion of the comparative study between positive law or national law and Islamic law in the case of narcotics crimes. However, second, of course, this article has a distinguishing factor from other articles such as in the reference of the article the focus of the discussion on underage narcotics abusers, while in this article the author does not focus on minor narcotics offenders but discusses in general.

Third, a scientific paper entitled *Drug Abuse in an Islamic View (Efforts to Prevent and Solution Drug Abuse)*, a scientific work owned by Liky Faizal. (Faizal, 2015) The similarity between these two scientific works is that they both discuss Drug Abuse in the Islamic View. Meanwhile, the distinguishing factor between this article and other scientific works is that in the reference of this scientific work, the theory used as a reference in the discussion only looks at the form of prevention and solutions of narcotics abuse only according to the Islamic viewpoint, not based on national laws. Meanwhile, in this article, the author explains the form of prevention and solutions or handling of narcotics abuse from two perspectives, namely national law, namely law no. 35/2009 and Islamic law. Fourth, a scientific paper entitled *Analysis of Criminal Sanctions Against Perpetrators of Narcotics Crimes*, by Muhammad Asyharuddin et al. (Asyharuddin et al., 2020) The similarity in this study is that they both discuss narcotics crimes, but the renewal made by the author to this study is to discuss various problems related to narcotics abuse in Indonesia and efforts to prevent narcotics abuse.

Furthermore, the purpose of this study is to provide readers with a deep understanding of the form of sanctions for narcotics abuse following the type and level of narcotics crimes committed, both in terms of Indonesian national law, namely Law no. 35/2009 and from the point of view of Islamic law. The next purpose of writing this study is to provide insight into what things can hinder the handling of narcotics crimes and can provide insight into the form of prevention of narcotics abuse in Indonesia

Based on the background of these problems, it is necessary to impose punishments or sanctions that deter narcotics abusers. In this case, the government has regulated in Law No. 35/2009 concerning narcotics, in addition to the Islamic criminal law is also present to regulate the prohibition of narcotics abuse. In this case, Islamic criminal law tends to provide moral sanctions and spiritual aspects. Realizing the rampant abuse of narcotics to date, the Indonesian government is making efforts in terms of eradication and prevention of narcotics abuse. However, in the process of eradication, of course, there are obstacles in handling it. Therefore, comprehensive cooperation between law enforcement officials and the community is needed to achieve an orderly and prosperous life so that narcotics abuse cases in Indonesia can be resolved.

## RESEARCH METHODS

This research uses a qualitative method, with a normative juridical approach. The data sources used are secondary data sources and secondary legal materials. (Elizabeth Nuhaini Butarbutar, 2018) Collecting this secondary data is the basis of the underlying analysis in this study. In this study, the secondary data used include the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1997 concerning psychotropics, and Law Number 35 of 2009 concerning narcotics. Meanwhile, the secondary legal materials used in this study are: reading books related to the topic discussed, Arabic dictionaries and their translations, as well as

managing information from the results of research related to the problems discussed, and the last step is to conclude.

## RESULTS AND DISCUSSION

### Narcotics in Law in Indonesia

Narcotics come from the word "*narcotics*" which means substances that can reduce pain and cause confusion, belonging to the category of aesthetics and drugs. The Great Indonesian Dictionary explains that drugs or narcotics are a type of drug that can relieve nerves, reduce pain sensations, trigger drowsiness, or produce a stimulating effect.(Nasiri & Isa, 2023)

Narcotics crime is a special form of criminal act and is designed to fill gaps or shortcomings in the regulations listed in the Criminal Code and has special rules in the Narcotics Law. The law enforcement process related to narcotics crimes must follow the provisions of Law Number 35 of 2009 concerning Narcotics, which applies the principle of strict liability or absolute responsibility without any element of fault.(Farhan & Rustamaji, 2024) In Law No. 35 of 2009, it has regulated the classification of narcotics into 3, as follows:

#### a. Drugs

The definition of narcotics is contained in Article 1 paragraph (1) of the Narcotics Law No. 35 of 2009 which states: Narcotics are ingredients or drugs that can be obtained from various sources, including plants or non-plants, either naturally or through the process of synthesis or semi-synthesis. This substance has effects that can alter consciousness, eliminate sensation, reduce pain, and can lead to addiction.

In Article 6 paragraph (1) of Law No. 35 of 2009, narcotics can be classified into three different categories: 1). Class I narcotics: are drugs that can only be used for scientific research and are not used for treatment; This is the most dangerous type of drug with a very high level of addiction, and the use of drugs in this group is not allowed. Examples include opium, marijuana, heroin, cocaine, morphine, and cocaine. 2). Class II narcotics: this is a type of drug that has a high level of addiction but is useful in the field of medicine, and research on this type of drug is only carried out as an alternative treatment. Petidine, benzetidine, and betamethidol are examples of class II drugs. 3). Class III narcotics are a category of drugs.

#### b. Psikotropika

Psychotropics are explained in Article 1 paragraph (1) of Law No. 5 of 1997 which states that: Psychotropics are substances or drugs that have psychoactive properties because they affect the central nervous system, both found naturally and produced through the synthesis process and are not included in the category of narcotics. The effects of these psychotropics specifically result in changes in a person's mental activity and behavior.

Psychotropics are classified into four groups based on their characteristics and potential dependence, as follows:(Putra, 2024)

1. Class I psychotropics that have a very high potential for dependence and are not used for medicinal purposes. For example, Methylenedioxy-methamphetamine (MDMA) or Lysergic Acid Diethylamide (LSD) Ecstasy Dimethoxy methylamphetamine (DOM).
2. Glass II psychotropics have therapeutic benefits but can also cause dependence. This type of psychotropic is used as a therapy but its use is very limited. Examples: amphetamines, methamphetamines, fenicilidines, and Ritalin.

3. Class III psychotropics that have a moderate degree of dependence and are usually used in therapy. Examples: pentobarbital and flunitrazepam.
4. A class IV psychotropic that has a mild dependency effect. Examples: diazepam, clobazam, fenobarbital, barbital, clozapam, chlordiazepoxide. Thus, each class of psychotropic drugs has a different assessment of the degree of dependence.

In the past, before Law Number 35 of 2009 was promulgated, Law Number 5 of 1997 concerning Narcotics divided Psychotropics into four categories: groups I, II, II, and IV. However, over time the Narcotics Law has been added and changed following the development of the cases that occurred. Although there are changes in the enactment of the current Narcotics Law, it does not make the content of the law much different in its discussion. The two laws are similar in their discussion in terms of the classification of psychotropic classes I and II.

The two laws agree that psychotropics of groups I and II are categorized as narcotics, meaning that they are illegal to use. Meanwhile, the difference between the two laws is in the previous law in this context, namely, in Law No. 5 of 1997, limiting the discussion of psychotropics to groups III and IV only. In Law Number 35 of 2009 concerning narcotics, psychotropics of groups I and II, which were originally regulated in article 153 of Law Number 35 of 2009 concerning narcotics, have been deleted and included in the classification of narcotics. In addition, changes also occurred in the types of psychotropics of groups II and IV which were reregulated in the Regulation of the Minister of Health Number 57 of 2017.(Nasiri & Isa, 2023)

c. Other addictive substances

In addition, Government Regulation No. 19 of 2012 expresses the definition related to addictive substances, the explanation is contained in Article 1 paragraph (1) which states that: Addictive substances are substances that have the potential to cause addiction or dependence, which can ultimately threaten a person's health. It is characterized by changes in behavior, cognitive, and physiological phenomena, a strong urge to consume the substance, difficulty in controlling its use, giving priority to substance use over other activities, increased tolerance to the substance, and possibly causing withdrawal symptoms when discontinuation occurs.

Addictive substances can be found in cigarettes and alcoholic beverages that can cause poisoning, as well as certain substances found in wood glue, paint, gasoline, and acetone that can be intoxicating.(Ningrum et al., 2019) Research states that one out of every four individuals who become drug addicts initially start their addiction from smoking.(Wirogioto, 2022) From this statement, it can be said that cigarettes are one of the initial gates of a person experiencing narcotics addiction, this is because cigarettes contain addictive substances such as tar, and nicotine which is a type of narcotics.

In addition, research reveals that prolonged substance abuse, coupled with a history of overdose, can trigger suicidal thoughts in patients with substance use disorders and that the probability of suicide is a common consequence of substance abuse due to the consumption of narcotic substances.(Baalash et al., 2023)

In Law Number 35 of 2009 concerning narcotics, the terms used include addicts, abusers, and victims of drug abuse. The term "*addict*" or "*drug abuser*" refers to a person who has become dependent on drugs, while "*abuser*" is used to refer to an individual who uses drugs without dependence. The use of the term "victim of drug abuse" refers to individuals who use

drugs because they are influenced by others and without realizing that the substance is narcotic.(Sobirin & Mukhlas, 2023)

### Narcotics in Islamic Law

In living life, humans need various kinds of knowledge. This knowledge can be sourced from the Qur'an. To understand its meaning deeply and avoid mistakes in its delivery, the role of the second person is needed, namely the Prophet Muhammad SAW. He is the one who interprets the Qur'an, which is then referred to as the hadith. In addition to functioning as an interpretation, hadith also contains laws that are not contained in the Qur'an.(Saparullah, 2021)As is the case, the term Narkoba is translated into Arabic with the words *khaddara*, *yukhaddiru*, *takhdhir*, or *al-mukhaddirat*. This means loss of taste, and confusion, thus making the user unconscious, shut down, and get drunk.(Halim, 2019)

In Islam, the prohibition of narcotics is associated with the category of *khamr* or liquor. The reason why something is considered haram is that it can pose a great threat and significant damage to the safety of one's soul, mind, property, and offspring, as well as undermine the integrity of religion, although it may also have certain benefits. Thus, the principle of *dar'u al-mafasid ula min jalbi al-masalih* (rejecting harm takes precedence over bringing benefit) seems relevant in this case. (Faizal, 2015)Then the argument that says the prohibition of *khamr*, Qs. Al-Maidah: 90-91 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

It means: "O you who believe, indeed, (drinking) *khamr*, gambling, (sacrificing for) idols, drawing fortune with arrows is a satanic act. So stay away from these deeds so that you may have good luck" QS. Al-Maidah 5:90

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ لُغُومَةً وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ أَنْتُمْ مُنْتَهَوْنَ

It means: "Indeed, Satan intends to cause enmity and hatred among you because of the *khamr* and gambling, preventing you from remembering Allah and praying: so stop you."QS. Al-Maidah: 91

Based on this argument, the author argues that the prohibition of *khamr* and narcotics in Islamic teachings is interrelated. This is because both *khamr* and narcotics contain substances that can be intoxicating to cause physical and mental disorders for people who consume them. This is explained in surah Al-Maidah, which is the basis for the idea that narcotics can produce negative impacts on a person's health, psychology, and religion. Not only that, *khamr* and narcotics both contain many dangers. Even narcotics when viewed from their impact are considered to have a greater negative impact than *khamr*, Allah SWT has arranged in such a way that of course it has a good purpose for His servants. Therefore, we as His servants follow what He commands and forbids.

Although in Islamic teachings the regulations regarding the prohibition of narcotics are not mentioned directly, only implicitly. However, it can be seen from the study of *ushul fiqh*, in *ushul fiqh* it is stated that if a case does not have a definite legal status, it can be resolved through the *qiyas method*.(Putra, 2024) Qiyas is the source of law after Ijma (the consent of the scholars). Qiyas is an analogous reasoning approach used to discover laws related to new problems by comparing them with laws that have been explained in the Qur'an or As-Sunnah.

This method makes it possible to establish legal rules for situations that have not been directly regulated in the main legal sources, namely the Qur'an and the hadith of the Prophet. (Shomad, 2017)

Furthermore, mujtahid scholars compare narcotics with *qiyas jali*. *Qiyas jali* is a method of comparison that equates the law of higher things with the law of lower things because they have the same legal reason. The prohibition of narcotics is likened to *khamr* because both are intoxicating, even narcotics are considered more dangerous than *khamr*. (Najmudin, Fatimah, et al., 2024)

The use of narcotics that are abused or not under treatment standards can cause adverse impacts on individuals and society as a whole and even have the potential to pose a greater risk to the life and cultural values of the nation, which can ultimately reduce national resilience. (Setiawan, 2019) On the other hand, it turns out that narcotics have certain contents or substances that are useful for medical purposes, especially for the treatment of certain diseases. For example, in Indonesia, several diseases require (cannabinoid oil) contained in marijuana which is used as a medicine for people with cerebral palsy. They claimed to feel better after consuming cannabinoid oil. Therefore, cannabis is seen as a potential option as an alternative medicine in Indonesia. This approach demonstrates the importance of a legal understanding of the medical needs of communities and the utilization of local resources to achieve social justice. (Nasiri & Isa, 2023)

In addition, religious scholars have opinions related to the use of narcotics in medicine for treatment. Various pro and con opinions also occur among scholars regarding the use of narcotics for treatment. The opinions of these scholars are divided into two large groups. First, the view of scholars who agree that narcotics can be used as medicine refers to the thinking embraced by the Shafi'i madhhab group. In madhhab Shafi'i, it is permissible to use narcotics in treatment when there are no other drugs available or can be said to be an alternative option. (Sobirin & Mukhlas, 2023) Then, madhhab Syafi'i reiterated the restrictions related to the prohibition of treatment using narcotic liquor or *khamr*. They stated that the use of narcotics such as marijuana as a medicine is considered haram if the narcotics used in the drug are pure without any mixture with other ingredients that can be dissolved in it. However, if the narcotic (cannabis) is mixed with other ingredients, then the use of narcotic (cannabis) is allowed to be used as a drug. Second, the view according to (qaul rojih) states that using narcotics for treatment is considered haram. This includes using anything intoxicating to use as medicine and other things, such as mixing it with food, dissolving drugs, and so on. (Sobirin & Mukhlas, 2023)

Based on the above statement, the author concludes that scholars have different views on the use of narcotics for medical treatment. However, Islamic law has a flexible and adaptive nature and provides a dynamic opportunity for Muslims to choose opinions that are more under the situation, time, location, and place where the law is applied, as well as keep up with the times. Restricted areas in Islam are very limited compared to halal areas, so if no evidence explicitly prohibits or prohibits them, then the basic rules are permissible. (Usman, 2018) In this context, the author agrees with the view expressed by Madhhab Shafi'i which still allows the use of substances contained in narcotics such as substances contained in marijuana used in



medicine for treatment. With the reason that there are no more drugs other than non-narcotic substances and the use of these drugs is used as a last resort or alternative option in treatment.

### **Islamic Criminal Law and Indonesia's Positive Law Regarding Sanctions for Drug Abusers**

In Indonesia, drug abuse cases have reached alarming levels. Thus, posing a risk to the security and sovereignty of the country. Criminal acts involving narcotics can be punished based on law No. 35 of 2009 dividing the term narcotics abuse into the following categories:

a. Abusers are Users are Narcotics Addicts

An abuser is a person who uses drugs illegally or in violation of the law. (Undang-Undang No.35Tahun2009 Tentang Narkotika, 2009) According to article 111 of the Narcotics Law, planting or storing drugs without the permission of state officials is also categorized as narcotics abuse.(Rahmi, 2021)

Perpetrators of narcotics abuse can be threatened with criminal law because what is meant by abuse can be interpreted as a user or user of narcotics. If you look at the meaning of narcotics ownership, then narcotics possession can have many meanings, because it is possible that the form of narcotics possession can be intended to be used only for oneself or to be circulated to others. If the form of possession of narcotics turns out to be for direct sale, the perpetrator can be sentenced to 4 years in prison. To provide an opportunity for drug owners to undergo rehabilitation, judges must reconsider Article 54 of Law Number 35 of 2009 concerning Narcotics if it is known that the drug possession is only used for personal interests.(Prasetya, 2023)

Drug abusers and addictvictims,undergo rehabilitation.(Mahrus, 2021) This is because they can be said to be victims so they need treatment to be free from the use of these drugs. Rehabilitation is a process that includes comprehensive recovery activities, including physical, mental, and social aspects, with the aim that former drug addicts can return to social functioning in society. The provision of sanctions in this form is intended to help perpetrators, who can also be considered victims, to overcome their dependence on drugs so that similar incidents do not recur. Meanwhile, drug addicts also need rehabilitation. Article 1 Paragraph 13 of Law Number 35 of 2009 concerning Narcotics lists and explains drug addicts, which states: A narcotics addict is a person who uses or abuses narcotics and is in a state of dependence on narcotics, both physically and psychologically.

As discussed earlier, Article 54 of Law Number 35 of 2009 regulates what narcotics abusers must do for rehabilitation. This article covers various aspects of rehabilitation, ranging from medical aspects to social aspects. Rehabilitation assistance for addicts and victims of drug abuse in Indonesia follows the provisions contained in the Joint Regulation on the Handling of Narcotics Addicts and Victims of Drug Abuse in Rehabilitation Institutions issued in 2014. In addition, Government Regulation Number 25 of 2011 and Law Number 35 of 2009 concerning Narcotics refer to rehabilitation assistance. The two regulations ensure that drug addicts get the rehabilitation services they need and are no longer considered criminals. Therefore, the implementation of rehabilitation for drug addicts or abusers is considered important, considering that the mental coaching approach is more effective than criminalization in handling narcotics cases.(Bawono et al., 2022)



Government Regulation of the Republic of Indonesia Number 25 of 2011 concerning the Implementation of Reporting Obligations for Narcotics Addicts provides additional rules on how victims of narcotics abuse must follow medical and social rehabilitation. To eliminate drug addiction of addicts, medical rehabilitation is a series of thorough treatment procedures. Meanwhile, physical, mental, and social recovery activities called social rehabilitation are designed to help ex-drug addicts restore their social functioning and re-participate in society.(Winanti, 2019)

Three stages of medical rehabilitation are needed in drug treatment. The initial stage, called medical rehabilitation (detoxification), is the process by which a person who uses drugs under the supervision of a doctor stops taking drugs to reduce withdrawal symptoms. In the next stage, the addict must be monitored by a doctor in the hospital. Non-medical rehabilitation is the second stage. It includes different types of rehabilitation programs, such as therapeutic community programs, religious approaches, or moral and social support. The third stage, called the advanced development stage, provides activities that meet everyone's interests and talents. After passing this phase, addicts can return to society, including returning to school or work. The detoxification or medical rehabilitation process is always supervised by a doctor.(Wijaya, 2020)

It can be said that drug addicts cannot be stopped directly. Narcotics addicts refer to individuals who use drugs continuously, resulting in dependence, both physically and mentally. A drug addict has a desire to always consume drugs, so the dose of use increases. If the consumption of the drug is stopped abruptly, this will cause certain physical and psychological symptoms. So, it can be concluded that for a drug addict it cannot be done by stopping taking drugs suddenly, but it can be done gradually by reducing the dose of narcotics use. From the reduction in the dose, it is hoped that a drug addict can break free from drug dependence.

Rehabilitation is considered to have included the purpose of punishment itself, with a view to punishing the person who broke the law and preventing similar offenses in the future. In Islamic law, the rehabilitation process is also considered a way to stop the disease of social evil. In addition, the provision of rehabilitation is considered to have paid attention to the aspects of therapy and recovery for drug users to help perpetrators become free from narcotics.(Halim, 2019)

In addition to providing rehabilitation to narcotics abusers, both users and addicts, Indonesia also applies sanctions in the form of a minimum prison sentence of 5 years as stated in article 116 of the Narcotics Law.(R. Hakim, 2023) The provision of this prison sentence is given if it is in accordance with the level of abuse committed, it can be said that if the abuse of narcotics is still considered light, then the provision of rehabilitation is given, on the other hand, if the abuse of narcotics can be said to be large, then the prison sentence will be the solution to the problem or the solution.

In Islam, the punishment for drug abusers comes from the *ijtihad* of the caliphate, which occurs in the post-prophetic period. The punishment for drug abuse is determined based on the law of limit (*hudūd*). First, according to Abu Bakr, the punishment for drug users is subject to 40 strokes and some of his companions, namely Umar, increase it to 80 strokes for (narcotics addicts), but if these narcotics addicts continue to use up to four times (severe addicts), then they can be subject to the death penalty.(Maryadi, 2020)

After the prophetic period and the caliphate, Islamic law has undergone many changes, because basically Islamic teachings are flexible following the development of the times, times and situations faced. In this context, Islamic law currently is in line with the legal basis of rehabilitation in Islamic criminal law. In Islamic law, rehabilitation has the power of ta'zir or the full power of the judge. The fatwa of the Indonesian Ulema Council also says that the sanction for perpetrators or abuse of narcotics is ta'zir. (Rahmi, 2021) The part of Islamic criminal law related to ta'zir has the connotation of ta'dib which is the main basis for rehabilitation. Etymologically, ta'dib, also known as rehabilitation, refers to efforts to maintain the well-being of society or strengthen discipline. Ta'dib is a form of punishment given for actions that are considered immoral or reprehensible. (Halim, 2019)

Among religious scholars, the provision of rehabilitation to abusers raises different opinions. Some scholars argue that rehabilitation for drug users is a right that they have, meaning that providing rehabilitation is not an obligation that must be fulfilled or given to narcotics users. However, some scholars argue that sentencing drug abusers without providing intensive rehabilitation is considered less effective in solving the problem of drug abuse, because law enforcement should not only impose punishments such as imprisonment, fines, or drug abuse rehabilitation to instill a deterrent effect for the mistakes they have committed but also consider how these offenders can reform themselves for a better future, such as through rehabilitation. Here the author agrees with the argument of scholars who agree to provide rehabilitation to abusers both for users and narcotics addicts.

b. Narcotics manufacturers or makers.

The activity of producing or making narcotics is an act that is very inappropriate to imitate, because the activity is included in the criminal act so it can be criminalized. In the narcotics law that applies in Indonesia, it regulates narcotic producers or makers, namely in article 113, which provides a prison sentence of 15 years for narcotic producers. (R. Hakim, 2023)

Meanwhile, Islam views the activities of producing or producing narcotics as one of the great sins. According to Islamic law, group I drug abusers, both users, dealers and producers of narcotics are included in the jarimah ta'zir, and the ruler (ulil amri) determines the punishment. (Najmudin, Azzahra, et al., 2024)

c. Distributing narcotics

Distributing narcotics is included in the process of buying and selling narcotics. In national law, there are more than 30 articles that regulate, especially Articles 111 to 142, Law No. 35 of 2009, regulating the types of criminal acts committed and the threat of criminal sanctions for drug abuse. (R. Hakim, 2023)

The most serious problem related to narcotics crimes is narcotics producers and dealers (buying and selling). The connection between narcotics abuse cases and illegal trade as part of international crime is very close. Mafia groups involved in the illegal trade provide narcotics to arouse dependence on people, so the supply of narcotics continues to increase. The complexity of the relationship between the seller/dealer and the victim makes it difficult for the victim to escape the cycle of illegal trade. Not infrequently, victims are caught in the illegal trade due to their increasing need and dependence on narcotics. The increase in illegal narcotics trafficking

activities cannot be separated from the role of transnational criminal organizations operating in various countries through international criminal networks.(Pradana & Luthan, 2022)

Indonesia has now transformed from being a "transit country" to a "destination country" for illegal drug trafficking around the world. This is due to Indonesia's strategic geographical position: between the two continents of Asia and Australia and between the two great oceans of the Pacific Ocean and the Indonesian Ocean.(Wirogioto, 2022) Narkoba ilegal dikirim ke Indonesia melalui udara melalui beberapa negara, seperti Amerika Union to Jakarta, Malaysia to Jakarta, and Tangerang, then Nairobi to Abu Dhabi to Jakarta, China to Jakarta, Netherlands to Jakarta, Iran to Jakarta, Ghana to Jakarta after Surabaya, Nigeria to Jakarta after Bekasi, Nairobi to Doha to Jakarta, Kuala Lumpur to Jakarta after Surabaya, Malaysia to Jakarta after Bandung, Guangxi, Laos, and Vietnam.(Suhartanto, 2023)

Seeing this urgency, the illicit distribution and trafficking of narcotics is prohibited or illegal in the view of both Islamic law and national law. In Islamic teachings, narcotics trafficking activities are very prohibited or can be said to be illegal. There is a hadith that states that the prohibition of buying and selling illegal goods is:

Based on the hadith, the legal requirement in buying and selling is that the goods to be traded must be pure (not unclean) and have benefits that are beneficial to the owner and others. The haram of narcotics such as marijuana, heroin, morphine, and the like is equivalent to haram khamr and statues because both are useless and can actually damage various aspects of human life, such as intellect, soul, mental and physical health, economy, social, culture, as well as community security, and religious integrity. Therefore, the trade in these goods is considered a prohibited act as is the case with khamr haram and statues. Similarly, growing plants that are narcotic substances such as marijuana with the aim of processing, producing, selling, and consuming is also considered an impermissible act. The legal basis is a hadith that provides an explanation of the law of buying and selling and the haram of objects that are detrimental to humans and society.(Putra, 2024)

Meanwhile, in national law, Law Number 35 of 2009 concerning Narcotics is considered a strict and harsh regulation against drug dealers, but it is humane towards those who abuse narcotics.(Nur raharsi et al., 2019) This is due to the threat of severe punishment such as the death penalty, imprisonment, and fines imposed on narcotics dealers,(Suisno, 2017) Meanwhile, the provision of social and medical rehabilitation is given to narcotics abusers.(Muliasih & Kurniawan, 2023)

The criminal sanctions imposed on narcotics abusers have been regulated in such a way in law no. 35 of 2009, the author takes the following outline: Punishment for dealers and narcotics dealers, they are threatened with articles 81 and 82, with a prison term of 15 years.(R. Hakim, 2023)

The imposition of the death penalty sanction is considered as the last punishment given to producers or makers, narcotics dealers, and narcotics dealers is still relevant to be applied considering the level of crime committed is so severe and serious.(Maryadi, 2020) This is in accordance with the narcotics law in force in Indonesia. The author argues that the application of sanctions in the form of the death penalty to narcotics producers, dealers and dealers is considered not to violate human rights, due to the many benefits and negative impacts caused if not acted upon firmly.

Furthermore, the provision of fines to narcotics users. If the purpose of the death penalty is the loss of life, imprisonment and confinement symbolize the loss of freedom or freedom of movement, either for a certain period of time or for life, while the penalty of a fine symbolizes the loss of part of the convict's property.(Muliasih & Kurniawan, 2023)

In judicial practice in Indonesia, fines are rarely imposed by judges as an alternative to short-term imprisonment, which is a type of principal crime that is more often used. In terms of effectiveness, fines are considered less effective when compared to prison sentences, especially in terms of their implementation of the convict. This is because fines can be paid by others, while prison sentences cannot be represented by others. In addition, the convict may have collected money from various sources to pay the fine.(Wahongan & Pangkerego, 2020)

Based on the previous presentation related to the provision of sanctions for narcotics abuse from the perspective of national law, namely Law Number 35/2009 concerning narcotics, and from the perspective of Islamic law, in general, both certainly have their advantages and disadvantages in their implementation. Islamic criminal law has the advantage of emphasizing the prevention of drug crimes through moral and religious education and imposing strict sanctions such as the death penalty or whipping for serious offenses, which are expected to serve as a strong deterrent effect.(Nur, 2020) Another advantage is a rehabilitative approach that emphasizes the moral and spiritual improvement of the perpetrator, which can help to profoundly change the behavior of the perpetrator.(Maryandi, 2020) However, Islamic criminal law also faces shortcomings or challenges in its diverse interpretations according to different sects as well as criticism of human rights violations due to sanctions that are considered harsh.(Najmudin, Fatimah, et al., 2024)

On the other hand, positive criminal law has the advantage of offering legal certainty with clear and detailed written rules, as well as flexibility to adapt to the development of the times and social changes.(Faizal, 2015) The system also tends to pay more attention to human rights by avoiding punishments that are considered inhumane such as the death penalty. However, the disadvantages of positive criminal law are that it is often less effective in providing a strong deterrent effect, as well as the high costs required in the legal process and the problem of *overcrowding* in prisons that can reduce the effectiveness of offender rehabilitation.(Rais et al., 2021)

In the formation of laws and regulations related to the prohibition of narcotics in Indonesia, it is necessary to consider the existence of Islamic criminal law, Why should it be Islamic criminal law? The reason is that most Indonesian people are Muslims. In addition, One of the main reasons is a holistic approach by not only punishing but also improving the morals and spirituality of the perpetrators, which can provide long-term solutions in preventing drug crimes. A preventive approach and strict sanctions in Islamic criminal law can also be more effective in reducing drug abuse cases.(Maryadi, 2020) In addition, in Muslim communities, the application of Islamic criminal law is more relevant and accepted because it is in accordance with the religious values adhered to, so that it can support the success of law enforcement as a whole.

### **Obstacles to Handling and Preventing Narcotics Abuse in Indonesia**

Drug abuse in Indonesia is a major problem that the country has faced in recent decades.(L. Hakim, 2020) Although there have been various efforts to overcome this problem,

there are still several major obstacles that reduce the effectiveness of handling and prevention, including:

One of the main obstacles is policies and regulations that have not been well coordinated and weak cooperation between related agencies. As a result, there is an overlap of duties and responsibilities between institutions, and synergy in implementing prevention programs is less than optimal. In addition, limited resources are also an obstacle in efforts to handle narcotics. This includes the budget, personnel, as well as other supporting facilities such as rehabilitation and treatment. These resource limitations reduce the state's ability to provide optimal services to victims of narcotics abuse and the general public.(Afandi et al., 2020)

Limited rehabilitation facilities are often unable to meet the complex needs of individuals affected by narcotics abuse. Meanwhile, a few personnel face a heavy workload in enforcement and prevention efforts. The lack of public awareness and education about the dangers of narcotics is a significant obstacle in preventing their abuse. Further efforts are needed to improve public understanding of the negative impacts of narcotics abuse and the importance of prevention.(Kapten et al., 2022)

Social and cultural aspects also play an important role in hindering the handling of narcotics in Indonesia. Social stigma against drug users often prevents them from seeking legal help or protection, worsening their health conditions and slowing down the rehabilitation process. (Camellia et al., 2019) Cross-border narcotics trafficking and vulnerability to smuggling through poorly guarded borders are serious problems in Indonesia's narcotics handling efforts. Weaknesses in border surveillance allow narcotics to enter the country easily, complicating countermeasures.(Wulandari & Kirana, 2023)

In this context, a comprehensive and coordinated approach is needed between governments, civil society, and the private sector to address these barriers. Strengthening inter-agency coordination, increasing adequate resources, broader socio-cultural, educational or educational aspects, and loose and intensive international trade and borders are some of the strategic steps that need to be taken to improve the effectiveness of handling and preventing narcotics abuse in Indonesia.

Furthermore, to prevent and handle narcotics abuse, the National Police and BNN implement the following three strategies: (Hariyanto, 2018) First, the pre-emptive strategy is carried out by providing education and coaching. The focus is on developing an environment that supports a simple lifestyle and positive activities for adolescents, such as through productive, constructive, and creative activities. Second, the preventive strategy aims to prevent drug crime by controlling official channels and monitoring illicit trafficking routes directly. The goal is to inhibit the development of potential threats into real threats. Third, according to Law No. 2 of 2002, repressive strategies or law enforcement are carried out by arresting drug users and dealers, including Indonesian citizens and foreign citizens involved in this activity.

In addition, another effort that can be made to prevent narcotics abuse is by referring to Islamic criminal law. Although national criminal law is more dominant in Indonesia, the principles of Islamic law remain relevant and can be integrated in efforts to prevent narcotics abuse. Here are some forms of prevention of narcotics abuse according to Islamic criminal law that can be applied in Indonesia.

Islamic law highlights the importance of education and knowledge as a foundation to prevent sinful and evil acts. Through a solid religious education, individuals can understand the risks and sins associated with narcotics abuse. This education can be realized in several ways: Formal Education, such as including material on the dangers of narcotics in the religious education curriculum in Islamic schools and educational institutions. In addition, through Lectures and Religious Studies, by increasing the number of lectures, Friday sermons, and religious studies that discuss the dangers of narcotics and Islam's views on their use. Finally, the Media and Publications, which use mass media such as radio, television, and social media platforms to spread religious messages that affirm the prohibition of the use of narcotics. (Departemen Agama Republik Indonesia, 2020)

Furthermore, prevention efforts in strengthening families and communities can be divided into two parts. First, family education: The family is a basic unit in society that has a crucial role in preventing narcotics abuse. A solid religious education in the family environment can shape children's character and morals, keeping them away from unwanted behavior. Second, the formation of a community that cares about the problem of narcotics can provide social support and organize positive activities. A solid community can play an important role in overseeing and supporting its members to distance themselves from drug abuse. (Yusuf, 2021)

Strategies to prevent narcotics abuse in the context of Islamic criminal law in Indonesia include a range of comprehensive approaches, such as education, punishment, rehabilitation, and community support. By integrating the principles of Islamic law into national policies, a more effective and comprehensive prevention system can be created, which is expected to reduce narcotics abuse in Indonesia.

## CONCLUSION

Based on the results of the discussion in this study, the author concludes as follows: The sanctions or penalties given to narcotics abusers in national law and Islamic criminal law can vary depending on the level of the offense committed. The heavier the drug abuse committed, the heavier the sanctions that will be imposed on the narcotics abusers. In Indonesia itself, has regulated sanctions for violators of narcotics abuse contained in the national law, namely law number 35 of 2009. In the law, sanctions or punishments are divided into several types, including: Rehabilitation, imprisonment, fines to the death penalty. Meanwhile, Islamic criminal law emphasizes on the concepts of hudud and ta'zir, which aim not only to punish but also to prevent and rehabilitate perpetrators. The provision of criminal sanctions for narcotics abusers in national law or Islamic criminal law certainly has advantages and disadvantages in their implementation. Islamic criminal law has the advantage of emphasizing the prevention of drug crimes through moral and religious education and imposing strict sanctions such as the death penalty or whipping for serious offenses, which serve as a strong deterrent effect. However, Islamic criminal law also faces shortcomings in its diverse interpretations according to the sect. Meanwhile, sanctions for narcotics abuse according to national law tend to pay more attention to human rights by avoiding punishments that are considered inhumane such as the death penalty. However, the disadvantages of positive criminal law are that punishment is often less effective in providing a strong deterrent effect, as well as the high costs required in the legal process and the problem of *overcrowding* in prisons that can reduce the effectiveness of the offender's rehabilitation.

In addition, the handling of narcotics abuse also has the main obstacle, namely regulations that are not yet aligned and there is still weak coordination between related agencies. Other obstacles are limited rehabilitation facilities provided, lack of awareness and public education on the dangers of narcotics, lack of social and cultural aspects, and the speed of cross-narcotics trafficking. In this context, a comprehensive and coordinated approach is needed between governments, civil society, and the private sector to address these barriers. The efforts to prevent narcotics abuse carried out by the Indonesian government are pre-emptive efforts (in the form of guidance to the community) related to narcotics, preventive efforts (prevention) from narcotics abuse, and repressive efforts (enforcement or handling) of narcotics abuse. Meanwhile, prevention efforts according to Islamic criminal law are in the form of; can be done by providing religious education starting from the family from an early age, regulating the use of media and publications, the formation of a community that cares about the problem of narcotics.

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