



Law, Society, and Religion: Rethinking *Ta'zīr* and Capital Punishment for Drug Trafficking in Indonesia

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Abstract

This paper critically reevaluates the concept of *ta'zīr*—a discretionary category of punishment within Islamic criminal law—by examining its interplay with capital punishment for drug crimes in Indonesia. While *ta'zīr* is traditionally regarded as less severe than divinely mandated punishments such as *ḥudūd* and *qisās*, its contemporary implementation reveals a more intricate and expansive nature. Employing Indonesia's regulation of narcotics trafficking under Law No. 35 of 2009 (Articles 114 and 119) as a case study, the analysis contextualizes the legal framework within broader social and religious dimensions. The study demonstrates that considerations of *maṣlaḥah* (public interest), deterrence, and the classification of narcotics offenses as extraordinary crimes serve to legitimize the application of capital punishment. Several indicators suggest that *ta'zīr* may extend beyond its classical boundaries: the authorization of the death penalty for offenses not explicitly addressed in textual sources, quantitative criteria triggering maximum sanctions, reliance on state sovereignty in defining punishments, and the absence of traditional fiqh-based mitigation mechanisms. By integrating legal, societal, and religious perspectives, this study reveals that *ta'zīr* in the Indonesian context potentially surpass the severity of *ḥudūd* and *qisās* punishments, thereby raising critical questions regarding the flexibility and limits of Islamic criminal justice within modern nation-states.

Keywords

Drug Trafficking;
Ta'zīr; Capital
Punishment; Islamic
Criminal Law;
Indonesian Context

Introduction

Within the extensive discourse on Islamic criminal law, the concept of punishment (*uqūbāt*) is notably complex and multifaceted. Among its three principal categories—*ḥadd*, *qisās*, and *ta'zīr*—the latter is particularly distinctive due to its discretionary nature and is generally regarded as subordinate to the other two.¹ *Ta'zīr* grants judges or authorities the authority to impose penalties for offenses not explicitly prescribed in the Qur'an or Hadith, often serving corrective and

¹ Ibn Qayyim al-Jauzī (d. 1350) even made a special discussion on this topic by dividing it into two main topics: *ḥudūd* and *ta'zīr*. In other sources, such as those conducted by Mumisa and Muhyidin, they differentiate the punishments into three separate categories. The former divides into *qisās*, *ḥudūd*, and *ta'zīr*, while the latter differ in the second term, using *qisās* and *diyāt*. Ibn Qayyim al-Jauzī, *al-Ḥudūd wa al-Ta'zīrāt*, 2nd ed. (Dār al-'Āṣimah, 1994); Muhyidin Muhyidin et al., "Contribution of Islamic Law Concerning The Death Penalty to the Renewal of Indonesian Criminal Law," *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 73–90, <https://doi.org/10.15294/ijals.v4i1.55226>; Michael Mumisa et al., *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?*, with Mohammad Habbāsh (Penal Reform International, 2015).



deterrent functions. A central debate concerns whether *ta'zīr* may legitimately encompass punishments equivalent to or exceeding the severity of *ḥudūd* or *qisās* penalties, such as the death penalty, which is traditionally associated with the latter two categories. This issue raises important questions regarding legal legitimacy, proportionality, and the extent of human discretion in the application of divine law.

Indonesia presents a compelling case study for the examination of the intersection between *sharī'a* and the modern nation-state. As the world's second-largest Muslim-majority country, with approximately 230 million Muslims,² Indonesia has long faced challenges in reconciling Sharia with modern governance.³ Formally, the Indonesian legal system is significantly influenced by Islamic norms, as evidenced by the implementation of regional Sharia in certain areas, such as Aceh, and its incorporation into national criminal legislation.⁴ The application of the death penalty for drug trafficking illustrates the operation of *ta'zīr* in practice: despite the absence of this offense in primary Islamic legal sources, the state enforces the most severe punishment. Recent developments, including the 2023 sentencing of eight Iranian nationals for narcotics smuggling, highlight the critical need to analyze the role of *ta'zīr* within Indonesia and its broader implications for Islamic jurisprudence and state sovereignty.⁵

Classical Islamic law distinctly differentiates between fixed punishments (*ḥudūd*) and discretionary punishments (*ta'zīr*); however, the demarcation between these categories has not been consistently interpreted. Over the centuries, scholars have debated not only the scope of *ta'zīr* but also its potential to encompass the most severe penalties, including the death penalty and capital punishment. These debates underscore broader tensions within Islamic legal thought, particularly between strict adherence to textual sources and the exercise of judicial discretion, as well as between the safeguarding of divine law and the promotion of public welfare. Some scholars, drawing from the major Sunni legal schools, contend that capital punishment may be imposed as a form of *ta'zīr* under certain circumstances. Conversely, there is an argument that *ta'zīr* should be less severe than *ḥudūd* or *qisās* punishments.⁶ Far from being a settled issue, the extent to which *ta'zīr* may be applied reveals divergent conceptions of authority, justice, and ethical responsibility within Islamic jurisprudence.

Against this backdrop, this study investigates whether *ta'zīr* punishments, particularly capital punishment for drug trafficking, can effectively parallel or even surpass the severity of *ḥudūd* and *qisās* sanctions. Focusing on Indonesia as a case study, the research addresses two primary questions: (1) Is the death penalty for drug-related offenses in Indonesia implemented in

² Kemenag, "Menjadi Muslim, Menjadi Indonesia (Kilas Balik Indonesia Menjadi Bangsa Muslim Terbesar)," <https://kemenag.go.id>, accessed June 28, 2024, <https://kemenag.go.id/opini/menjadi-muslim-menjadi-indonesia-kilas-balik-indonesia-menjadi-bangsa-muslim-terbesar-03w0yt>.

³ Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (University of Hawaii Press, 2008).

⁴ The application of Sharia law in the province of Aceh, Indonesia, was the result of a national strategy of legal plurality implemented in 2001 when the central government granted special status and significant self-governance to this region. Hasnil Basri Siregar, "Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia," *Asian Journal of Comparative Law* 3, no. 1 (2008), <https://doi.org/10.2202/1932-0205.1056>.

⁵ The Jakarta Post, "Indonesia Sentences Iranian Drug Gang to Death - Society," The Jakarta Post, accessed June 29, 2024, <https://www.thejakartapost.com/indonesia/2023/10/29/indonesia-sentences-iranian-drug-gang-to-death.html>.

⁶ Adnan Trakic and Hanifah Haydar Ali Tajuddin, eds., *Islamic Law in Malaysia: The Challenges of Implementation* (Springer, 2021), 35.



accordance with the Islamic theory of *ta'zīr*? (2) Can *ta'zīr* punishments ultimately rival the authority and severity of divinely prescribed sanctions such as *ḥudūd* and *qisās*? By exploring these questions, the article contributes to broader discussions concerning the role of Sharia within modern nation-states, the extent of judicial discretion, and the legitimacy of state-enforced capital punishment under contemporary Islamic law. The study contends that although *ta'zīr* is theoretically regarded as a form of punishment less severe and stringent than *ḥudūd* and *qisās*, in practice it possesses the capacity to equal or even exceed these punishments under certain additional circumstances. Examining Indonesia's drug-related offenses and their regulatory framework, these additional circumstances are conceptualized as a transformation of *ta'zīr* into a modern state instrument for addressing extraordinary crimes. Specifically, *ta'zīr* may surpass *ḥudūd* and *qisās* when the state employs it as a repressive tool by imposing maximum penalties (including the death penalty) for non-textual offenses, lowering evidentiary standards, invoking principles of *maṣlahah* (public interest) and deterrence, establishing quantitative thresholds that automatically trigger sanctions, centralizing authority within the state, and eliminating traditional fiqh-based mitigation mechanisms. Consequently, the originally flexible nature of *ta'zīr* is institutionalized and applied more harshly than *ḥudūd* punishments.

Literature Review

In light of the aforementioned complexities, this study engages with existing scholarship to enhance the understanding of *ta'zīr*, particularly regarding its scope and its relationship to capital punishment, which represents the most severe form of penalty within the *ḥudūd* and *qisās* categories in Islamic law. Although there is a substantial body of literature addressing *ta'zīr*, especially within the broader discourse on crime and punishment in Islamic jurisprudence, the specific issue of its juridical authority and its connection to capital punishment remains insufficiently examined. Several studies address this topic only implicitly, leaving significant aspects inadequately explored.

One of the most comprehensive analyses is provided by Mohammad Hashim Kamali, whose recent scholarship on crime and punishment in Islamic law offers a contemporary reinterpretation aimed at reconciling classical jurisprudence with modern legal and ethical considerations. In his examination, Kamali reviews the positions of the four principal Sunni schools of law, observing that most permit capital punishment under *ta'zīr*, albeit with certain restrictions.⁷ A complementary viewpoint is presented by Peters, who contextualizes *ta'zīr* within the framework of deterrence, contingent upon the offender's circumstances. He emphasizes the theoretically unlimited and varied nature of *ta'zīr* punishments, while also referencing juristic opinions on the death penalty that largely align with Kamali's conclusions.⁸ Contributing further to this discourse, Safrizal contends that, although contentious, the death penalty may be classified as a form of *ta'zīr badanī* (bodily punishment), although the justification for this classification is not thoroughly explicated.⁹ Nevertheless, this rationale is echoed in other studies, which maintain that bodily punishments are permissible for certain offenses, including espionage, perpetrators of mischief on

⁷ Kamali, *Crime and Punishment in Islamic Law*, 191–93.

⁸ Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*, *Themes in Islamic Law 2* (Cambridge University, 2005), 65–67.

⁹ Safrizal, “Hukuman Tindak Pidana Human Trafficking (Studi Perbandingan Hukum Positif dan Hukum Islam)” (Undergraduate Thesis, UIN Ar-Raniry, 2017).

earth, homosexual acts, *muḥṣan* adultery, murder, and apostasy.¹⁰ Indeed, the issue of *ta'zīr* and capital punishment has been extensively addressed in classical *fiqh* literature, even if not always in direct comparison with *ḥadd* or *qisās* penalties, thereby constituting a vital foundation for contemporary scholarly debates.

In contrast, a more restrictive stance is presented in Penal Reform International's report on Sharia and the death penalty. The report contends that judicial discretion in the application of *ta'zīr* must not exceed the limits established by *ḥudūd*, thereby precluding the imposition of the death penalty for *ta'zīr* offenses. Furthermore, *ta'zīr* may not be imposed as an additional punishment alongside *ḥudūd* or *qisās*. This position reflects a contemporary interpretive trend that confines *ta'zīr* within the parameters of *ḥudūd* and *qisās*, characterizing it as a sanction of lesser severity. A similar perspective is evident in Topo Santoso's analysis of Indonesian Islamic criminal law, which regards *ta'zīr* as a form of punishment that does not meet the criteria of *ḥudūd* and *qisās*.¹¹ Santoso further notes that the determination of its minimum and maximum severity rests with the *ulū al-amr*, a process referred to as *ijmā'*.¹² Taken together with previously articulated more permissive views, these contrasting perspectives underscore the ongoing debate regarding the legitimacy of applying the death penalty within the framework of *ta'zīr*.

Darsi and Husairi offer a comprehensive analysis of the practical implications of this debate from the perspective of *fiqh jināyāt* (Islamic criminal jurisprudence). They underscore the necessity of meticulous deliberation in sentencing, contending that *jarīmah ta'zīr* (discretionary offenses) should be penalized in a manner that is both specific to the offense and consistent with established legal principles. Their framework integrates the principles of retribution, correction, and victim protection, drawing upon neo-classical criminological theory and advocating for the incorporation of scientific methods in sanction determination.¹³ This approach aligns with Harefa's regional study of narcotics trafficking in Indonesia, wherein he argues that capital punishment under *ta'zīr* may be justified when public welfare is at risk. However, he emphasizes that such cases require a balanced approach that upholds justice, efficacy, and humanity in addressing the harms associated with narcotics offenses.¹⁴ These perspectives correspond with broader discourses on the objectives of Islamic law (*maqāṣid al-sharī'a*), particularly regarding the didactic and deterrent functions of *ta'zīr* as mechanisms for education, instruction, and retribution—an observation similarly highlighted by Djalaluddin et al. in their examination of the educational purposes of *ta'zīr*.¹⁵

An additional aspect of *ta'zīr* implementation can be discerned in the regulatory approaches adopted by other countries. For example, Malaysia's management of *ta'zīr* in drug-related cases offers a valuable comparative framework. Adil and Abdullah examine this issue and propose a set

¹⁰ Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial Dan Hukum Islam* 05, no. 01 (2024): 22–31.

¹¹ Topo Santoso, "Implementation of Islamic Criminal Law in Indonesia: Ta'zir Punishment as a Solution?," *IIUM Law Journal* 19, no. 1 (2011): 133.

¹² Santoso, "Implementation of Islamic Criminal Law in Indonesia: Ta'zir Punishment as a Solution?," 144.

¹³ Darsi Darsi and Halil Husairi, "Ta'zir dalam Perspektif Fiqh Jinayat," *Al-Qisthu: Jurnal Kajian Ilmu-ilmu Hukum* 16, no. 2 (2018): 60, <https://doi.org/10.32694/010500>.

¹⁴ Safaruddin Harefa, "The Controversy of The Death Penalty for Narcotics Dealers: A Review of Indonesian Criminal Law and Islamic Criminal Law," *Istinbath: Jurnal Hukum* 22, no. 1 (n.d.): 79, <https://doi.org/10.32332/istinbath.v22i01.10346>.

¹⁵ Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zir Punishment as an Educational Reinforcement in Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 399, <https://doi.org/10.22373/sjhk.v7i1.15101>.



of guidelines for *ta'zīr* in drug offenses that emphasize punishments that are proportionate, non-harmful, and incremental.¹⁶ These guidelines aim to balance the principles of justice and deterrence while considering both the offender's rehabilitation prospects and the broader societal implications of sentencing. This approach is particularly insightful, providing a perspective of regional specificity that may align with, or parallel, developments in Indonesia.

The existing scholarship collectively elucidates the conditions under which *ta'zīr* may encompass the death penalty, while simultaneously highlighting its limitations in relation to *ḥudūd* and *qisās*, whose connection to capital punishment remains a subject of ongoing legal and ethical debate. However, much of the discourse is articulated in general terms, indicating the necessity for more detailed and precise analyses of how *ta'zīr* operates in practice and the circumstances under which it may be extended to capital punishment. Although implementation varies regionally, certain cases in specific areas offer valuable insights into the practical application of *ta'zīr*. Accordingly, this study aims to address this gap by examining the implementation of *ta'zīr* in Indonesia, with particular focus on the imposition of the death penalty on drug traffickers.

Method

To address the research questions, this study employs a qualitative research design that integrates bibliographic research with interpretive legal analysis. The primary sources consist of classical Islamic jurisprudential texts on *ta'zīr* (e.g., al-Mawardī, Ibn al-Qayyim al-Jawziyya) and Indonesian legal documents, notably Law No. 35 of 2009 on Narcotics, with particular emphasis on Articles 114 and 119. These articles are examined due to their significance as the principal loci where Indonesian positive law enforces *ta'zīr* in its most severe form—the death penalty—and simultaneously illustrate the interaction between classical jurisprudential texts and contemporary legal practice. Secondary sources encompass peer-reviewed journal articles, recent monographs, theses, and pertinent court decisions. The selection of sources was guided by three criteria: (1) direct relevance to the categories of Islamic punishments (*ḥudūd*, *qisās*, and *ta'zīr*); (2) scholarly or legal authority, including academic publishers, peer-reviewed journals, and government publications; and (3) contextual pertinence to the Indonesian context of drug trafficking and the application of the death penalty.

The analysis employs a thematic and comparative methodology. Initially, the selected texts were coded to identify recurring themes related to the definition, scope, and limitations of *ta'zīr*. Subsequently, the relevant Indonesian legislation was examined to determine how the transgression may be classified as *ta'zīr* within the established framework and its relationship to Islamic law. Thirdly, classical interpretations were compared with contemporary legal applications in Indonesia, with particular emphasis on whether *ta'zīr* punishments can be equivalent to or exceed *ḥudūd* or *qisās* penalties. This comparative textual analysis is complemented by hermeneutic interpretation to contextualize the Indonesian case within the broader discourse of Islamic jurisprudence. A qualitative and bibliographic approach is deemed most appropriate, as the study aims to interpret legal concepts, debates, and jurisprudential reasoning rather than to assess empirical outcomes.

¹⁶ Mohamed Azam Mohamed Adil and Ahmad Badri Abdullah, "The Application Of Shari'ah Principles of Ta'zīr in Malaysian Common Law: A Maqāṣid-Based Proposal," *Islam and Civilisational Renewal Journal* 7, no. 1 (2016): 54–56.

Result

Defining *Ta'zīr*: Concept and Characterization in Islamic Criminal Law

This section provides a discussion about *ta'zīr* and its definition, as it becomes the foreground understanding for the subsequent analysis. Many interpretations have been conducted on elucidating *ta'zīr* and its nature, encompassing the classical to the contemporary era. *Ta'zīr*, in its literal meaning, is derived from the Arabic word *'azzara-yu'azziru-ta'zīran*, which means *al-radd* or *al-man'ū* (rejection).¹⁷ This refers to a punishment that causes the perpetrator to refuse to commit the crime again, acting as its deterrent.¹⁸ It is also argued that the word stands for help (*al-nasratu wa al-ta'zīm*),¹⁹ taking the literal interpretation from the Qur'ānic verse of al-Mā'idah [5]: 12, which says: "...*fā in 'azzartumūhum...*" Al-Shāfi'ī (d. 820), while interpreting the verse, cited Ibn al-A'rābī and stated that *al-nasru* from *'azzartumūhumu* (*nasartumūhum*) means *al-nasru bi al-saif*, also *al-ta'dīb dūna al-ḥadd*.²⁰ The former (*al-nasru bi al-saif*) denotes winning by a blade, while the latter indicates disciplining below the level of *ḥudūd*. Other interpretations from exegetes, like al-Ṭabārī (d. 923), suggest that the meaning refers to strengthening through help (*al-taqwiyyatu bi al-nasrat*).²¹ In addition, Hashim Kamali defines the word *ta'zīr* using several synonyms, including: to avert, to deter, to discipline, and even to honor, help, and dignify.²²

With regard to the term, it should be noted that the meaning (*istilāh*) of *ta'zīr* also varies. Suhaib Hasan al-Mubarakfūrī defines it as an unquantifiable punishment against the rights of God or the rights of the people for any offense for which there is no *ḥudūd* or *kaffārah*. In *Al-Ḥudūd wa al-Ta'zīrāt* of Ibn al-Qayyim al-Jauzīy (d. 1350), it asserts that there exist different views on the term *ta'zīr*. He includes different arguments from four distinct *madhhāb* (Mālikī, Hanāfi, Shāfi'ī, and Hanbālī) and concludes with a similar point from those four schools. In his interpretation of *ta'zīr*, al-Jauzīy illustrates *ta'zīr* as "Discipline in every sinful act for which there is no *ḥadd* or *kaffārah*."²³ This interpretation is identical to that proposed by al-Jawzīy's teacher, Ibn Taimiyyah (d. 1328). He, in a similar vein, suggests that any sin that does not have a prescribed punishment (*ḥadd*) or expiation (*kaffārah*) is subject to discretionary punishment (*ta'zīr*).²⁴ In addition to that, Kamali interprets *ta'zīr* as penalties or punishments imposed for crimes that are not stipulated explicitly by the Sharia. Referring to al-Mawardī (d. 1058), he argues that the regulations pertaining to it vary according to the circumstances under which it is enforced and the terms of the violation.²⁵ The conduction and enactment of *ta'zīr* is, of course, grounded in several aims. According to Salīm 'Awwā, there are two views on *ta'zīr*'s aims. First, it is a punishment of deterrence, and second, it is a punishment of reformation. He cited Ibn Farḥūn (d. 1397), who asserts that *ta'zīr*'s aim might

¹⁷ al-Jauzīy, *al-Ḥudūd wa al-Ta'zīrāt*, Almaany Team, Accessed June 30, 2024,

<https://www.almaany.com/ar/dict/ar-ar/%D8%AA%D8%B9%D8%B2%D9%8A%D8%B1/>.

¹⁸ al-Muznī Abū Ibrāhīm Ismā'īl ibn Yaḥyā, *Al-Mukhtaṣar min Qaul al-Shāfi'ī wa min Ma'nā Qaulihī*, 1st ed. (Dār Madārij li al-nashr, 2019).

¹⁹ While Ibn Qayyim al-Jauzīy here utilizes the word *al-nasratu wa al-ta'zīm*, Bahnasī in his book *al-Ta'zīr fī al-Islām* refers solely to *al-nasratu*, which means it can reject its enemy from hurting. Aḥmad Fathī Bahnasī, *Al-Ta'zīr fī al-Islām*, 1st ed. (Muassasah al-Khalīj al-Arabīy', 1988); al-Jauzīy, *al-Ḥudūd wa al-Ta'zīrāt*.

²⁰ Abū 'Abdillāh Muḥammad ibn Idrīs al-Shāfi'ī, *Tafsīr al-Imām al-Shāfi'ī*, vol. 3 (Dār al-Tadmariyah, 2006).

²¹ Ibn Jarīr al-Ṭabārī, *Jāmi' al-Bayān min Ta'wīlī Āy al-Qur'ān*, 1st ed., vol. 12 (Badr Hījr, n.d.).

²² Kamali, *Crime and Punishment in Islamic Law*.

²³ al-Jauzīy, *al-Ḥudūd wa al-Ta'zīrāt*.

²⁴ Abī Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb al-Mawārdī, *Al-Aḥkām al-Ṣulṭāniyyah Wa al-Wilāyāt al-Dīniyyah*, 1st ed., ed. Aḥmad Mubārak al-Baghdādī (Maktabah Dār Ibn al-Qutaibah, 1989).

²⁵ Kamali, *Crime and Punishment in Islamic Law*; see also, al-Mawārdī, *Al-Aḥkām al-Ṣulṭāniyyah Wa al-Wilāyāt al-Dīniyyah*.



include the two components into one, combining reformative and deterrent.²⁶

Michael Mumisa, along with Penal Reform International, addresses this issue with an in-depth examination of the three kinds of punishment Islam has. For *ta'zīr* offenses, it is said that they constitute crimes for which no punishment is mentioned, particularly in the Qur'ān, with their nature being less severe than *ḥudūd*. Furthermore, it is mentioned that there are four punishments in which the *ta'zīr* will be used: (1) Actions that fail to satisfy the specific criteria for *ḥudūd* or *qisās*, such as attempted adultery; (2) Offences that are typically subject to *ḥudūd* punishment but involve mitigating circumstances or uncertainty; (3) Prohibited and condemned actions by the Qur'ān or *sunna* that are harmful to public welfare but are not subject to *ḥudūd* or *qisās*, such as false testimony; and (4) actions that breach societal norms, such as obscenity.²⁷ The basic causes of *ta'zīr* are also explained by Bahnasī in his book *al-Ta'zīr fī al-Islām*. According to him, there are two occasions where *ta'zīr* can be carried out, including (1) the punishment of *ta'zīr* is imposed on anyone who commits an offense not mentioned in the *ḥudūd* punishment with a restrictive method; and (2) like the punishment of *ḥudūd* offenders, a *ḥadd* is not obligatory if one of its pillars is missing.²⁸

The authority to enact *ta'zīr* punishments traditionally resides with the ruler (*sulṭān*) or his appointed deputies. In some cases, Islamic jurists (*fuqahā*) have also played a role in determining *ta'zīr* penalties. In the contemporary context, however, the responsibility for implementing discretionary punishments has shifted mainly to state institutions, particularly the judiciary. *Ta'zīr* remains a flexible category within Islamic criminal law, granting the head of state or judge the discretion to impose punishment or offer amnesty based on considerations of justice, public interest (*maṣlaḥah*), and context. This distinguishes *ta'zīr* from *ḥudūd* and *qisās*, which are fixed penalties derived from divine injunctions and allow for far less judicial discretion.²⁹ Based on the prevailing definitions, *ta'zīr* encompasses both deterrence and reformation, aiming to prevent bigger crimes and prevent offenders from repeating their crimes. It refers to punishments not explicitly prescribed by *ḥudūd* or *qisās* and is implemented under the discretionary authority of rulers or jurists. This formulation represents a widely accepted consensus on the definition of *ta'zīr*. However, considerable debate persists regarding the extent of its application, particularly in determining the limits of judicial or state discretion and whether *ta'zīr* punishments can, or should, equal or exceed those established under divine law.

Drug Trafficking in Indonesia and Its Nexus with Islamic Criminal Law

To exemplify the earlier discussion on *ta'zīr*, as is mentioned previously, Indonesia serves as a pertinent case study. Drawing on Kamali, any act involving mischief or corruption that is not explicitly addressed in the primary Islamic texts falls under the jurisdiction of *ta'zīr*.³⁰ Accordingly, punishments not specified in Sharia can be classified as *ta'zīr*, granting the head of state or judge

²⁶ Muḥammad Salīm 'Awwā, *Punishment in Islamic Law: A Comparative Study* (Indianapolis: American Trust Publications, 1982); see also. Ibn Farḥūn, *Tabṣīrat al-Ḥukkām fī Uṣūl al-Aqdiyyati wa Manāḥij al-Aḥkām*, 1st ed. (Cairo: Maktabah al-Kulliyāt al-Azhariyya, 1986).

²⁷ Mumisa, Jaber, and Macalesher, *Sharia Law and the Death Penalty*; see also, Matthew Lippman, "Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law," in *Issues in Islamic Law*, ed. Mashood A. Baderin, 1st ed. (Routledge, 2017), 347–80, <https://doi.org/10.4324/9781315092386-20>.

²⁸ Bahnasī, *Al-Ta'zīr fī al-Islām*.

²⁹ Kamali, *Crime and Punishment in Islamic Law*.

³⁰ Kamali, *Crime and Punishment in Islamic Law*.

the authority to impose deterrent and corrective measures as deemed appropriate. Kamali further notes that *ta'zīr* is more widely applied in practice than either *ḥudūd* or *qisās*. In this light, criminal legislation enacted by the Indonesian government, such as the imposition of the death penalty for drug trafficking, can be understood as a form of *ta'zīr*, given its discretionary nature and its basis outside explicit scriptural injunctions. This framework situates the Indonesian context as a valuable example for further analysis and forms the foundation for the subsequent section.

Indonesia has a long-standing history of combating drug-related crimes, a challenge exacerbated by its vast archipelagic geography and strategic position as a major transit route for drug circulation in Southeast Asia.³¹ Alongside other ASEAN member states, Indonesia has committed to addressing drug smuggling as not only a threat to national security but also to human security more broadly.³² The historical development of Indonesia's anti-narcotics legislation has been thoroughly examined by Rachmi (2019), who traces its origins to the *Verdovende Middelen Ordonnantie, Staatsblad* 1927 No. 278 jo No. 536, a colonial-era regulation issued by the Dutch government. However, the present discussion focuses specifically on the contemporary legal framework governing drug smuggling and trafficking, particularly as outlined in Chapter XV of Law No. 35 of 2009 on Narcotics, which sets forth the penalties currently in force.

To begin with, this Law No. 35 of 2009 primarily targets drug traffickers and smugglers. According to Lilik Mulyadi, a drug trafficker is defined as an individual involved in the distribution and transportation of illegal substances, particularly opioids and psychotropic drugs. More broadly, traffickers encompass those who participate in any stage of the illicit drug trade, including selling, purchasing, circulating, transporting, storing, possessing, supplying, exporting, and importing narcotics or psychotropic substances.³³ Law No. 35 of 2009 contains specific provisions regulating penalties for drug-related offenses. Notably, Articles 114 and 119 outline the legal consequences for individuals engaged in drug trafficking, including the possibility of capital punishment. Each article is divided into two paragraphs, detailing the scope of criminal acts and corresponding sanctions.³⁴ The relevant provisions are as follows:

Article 114:

- (1) *Every person who without the right or against the law offers for sale, sells, buys, receives, or becomes an intermediary in the sale, purchase, exchange, or delivery of Class I Narcotics shall be punished with life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).*

³¹ Indonesia was initially regarded primarily as a transit point for narcotics, but it has since developed into a significant site for the production of illegal drugs. This growing concern is compounded by the rising prevalence of drug use, as reflected in data reported by the National Narcotics Board (BNN) in 2006. Putra Nova Aryanto, "Drug Abuse as an Extra-Ordinary Crime: Some Legal and Political Debates," *Dinasti International Journal of Management Science* 6, no. 5 (2025): 1161, <https://doi.org/10.38035/dijms.v6i5.4523>.

³² Rendi Prayuda et al., "Problems Faced by ASEAN in Dealing with Transnational Drug Smuggling in Southeast Asia Region," *Foresight* 23, no. 3 (2021): 353–66, <https://doi.org/10.1108/FS-12-2019-0106>.

³³ Lilik Mulyadi, *Pemidanaan Terhadap Pengedar Dan Pengguna Narkoba: Penelitian Asas, Teori, Norma, Dan Praktik Penerapannya Dalam Putusan Pengadilan: Laporan Penelitian*, with Puslitbang Hukum dan Peradilan (Indonesia) (Puslitbang Hukum dan Peradilan, Badan Litbang Diklat Kumdil, Mahkamah Agung RI, 2012).

³⁴ In the law on narcotics, the articles related to distribution and so on are quite diverse. Looking deeper, the wording of the applicable criminal provisions starts from Article 111 to Article 149. Sanela Amalia Putri and Vidy Fauzizah Sampurno, *Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika: Kompilasi Dengan UU Perubahan, dan Peraturan Pelaksanaan*, ed. Imam Wildan Purbo Prakoso and Reza Azhari (Pusat Pemantauan Pelaksanaan Undang-Undang Badan Keahlian, Sekretarian Jenderal DPR RI, 2022).



- (2) *In the event that the act of offering for sale, selling, buying, intermediating in the sale and purchase, exchanging, delivering, or receiving Class I Narcotics, as referred to in paragraph (1) which in the form of plants weighs more than 1 (one) kilogram or more than 5 (five) tree trunks or in the form of non-plants weighs 5 (five) grams, the perpetrator shall be punished with the death penalty, life imprisonment, or imprisonment for a minimum of 6 (six) years and a maximum of 20 (twenty) years and the maximum fine as referred to in paragraph (1) plus 1/3 (one third).*

Article 119:

- (1) *Every person who, without the right or against the law, offers for sale, sells, buys, receives, or becomes an intermediary in the sale, purchase, exchange, or handover of Narcotics Group II, shall be sentenced to a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp800,000,000.00 (eight hundred million rupiah) and a maximum of Rp8,000,000,000.00 (eight billion rupiah).*
- (2) *In the event that the act of offering for sale, selling, buying, receiving, intermediating in the sale, purchase, exchange, or delivery of Class II Narcotics as referred to in paragraph (1) exceeds 5 (five) grams in weight, the perpetrator shall be punished with death penalty, life imprisonment, or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years and the maximum fine as referred to in paragraph (1) plus 1/3 (one third).*

Based on the aforementioned legal provisions and Lilik Mulyadi's definition of drug traffickers, it is evident that the harshest penalty applicable under Indonesian law is the death sentence. Law enforcement agencies regard capital punishment as a measure of last resort, justified by the severity and far-reaching impact of drug trafficking. In the Indonesian legal context, narcotics-related offenses are classified as extraordinary crimes (*kejahatan luar biasa*), given their potential to endanger national security and undermine societal well-being.³⁵ Consequently, the state maintains that the imposition of the death penalty is both necessary and legitimate. Several scholars have argued that drug trafficking constitutes a violation of human rights due to its profound and detrimental effects on society, particularly among the younger generation.³⁶

The 2023 Indonesian case involving Iranian nationals who smuggled approximately 300 kilograms of crystal methamphetamine resulted in the imposition of the death penalty. Given the excessive quantity of narcotics involved, the court deemed capital punishment appropriate. In light of the provisions in Law No. 35 of 2009 on Narcotics, particularly Articles 114 and 119, the death

³⁵ In Indonesia, the nature of a crime can be considered extraordinary in that it has a massive effect on violating human rights and victims. Husni and Muhammad Nur, "An Overview of Drug-Related Criminal Acts as Extraordinary Crimes in Indonesia," *International Journal of Law, Social Science, and Humanities* 1, no. 1 (2024): 36, <https://doi.org/10.70193/ijlsh.v1i1.142>; Vidya Prahassacitta, "The Concept of Extraordinary Crime in Indonesia Legal System: Is The Concept an Effective Criminal Policy?," *Humaniora* 7, no. 4 (2016): 513–21; Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 91; Ony Rafsanjani and Aminuddin Mustaffa, "Why Should The Death Penalty Not Be Abolish For Narcotics Crimes? A Case Study In Indonesia," *JiIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 8 (2022): 3104–10, <https://doi.org/10.54371/jiip.v5i8.813>; Tarmizi Tarmizi and Sintong Marbun, "Rehabilitation And Execution Of The Death Penalty In Narcotics Offenses," *International Asia Of Law and Money Laundering (IAML)* 1, no. 2 (2022): 123–27, <https://doi.org/10.59712/iaml.v1i2.22>; Muhammad Nasir Sitompul and Ariman 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>.

³⁶ Bungasan Hutapea, *Kontroversi Penjatuan Hukuman Mati Terhadap Tindak Pidana Narkotika Dalam Perspektif Hukum Dan Hak Asasi Manusia*, 1st ed. (Badan Penelitian dan Pengembangan Hukum dan Hak Asasi Manusia Kementrian Hukum dan Hak Asasi Manusia RI, 2016).

penalty is a legally mandated sanction for severe drug trafficking offenses. Accordingly, this case exemplifies the application of the harshest punishment available under Indonesian drug law.

In Islamic jurisprudence, narcotics are often equated with *khamr* (intoxicants) due to their similar effects on human consciousness. Through the method of *qiyās* (analogical reasoning), scholars argue that since both substances impair the mind and harm the body, narcotics, like *khamr*, are deemed *ḥarām* (forbidden). The use of drugs is viewed as a threat to several key objectives of Islamic law (*maqāṣid al-sharīʿa*), including the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-ʿaql*), progeny (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Moreover, drug distribution is often likened to the crime of *ḥirābah* (armed robbery or terrorism) due to its widespread societal harm, especially its detrimental impact on the youth and national stability.³⁷ In the Indonesian case, the large quantity of methamphetamine smuggled by the Iranian drug traffickers is classified as an extraordinary crime due to its threat to public safety and national stability. From the perspective of Islamic law, such an act bears resemblance to *ḥirābah*, a crime that entails spreading corruption on earth (*fasād fī al-arḍ*). Given the severity and societal impact of the offense, the imposition of the death penalty is considered appropriate and consistent with both Islamic legal principles and Indonesian national law.

Discussion

Can Taʿzīr Punishments Extend Beyond Ḥudūd and Qiṣās in Modern Contexts?

It is advisable to reconsider the interpretation of the relevant provisions of Law No. 35 of 2009. Notably, the law incorporates quantity thresholds explicitly articulated in Articles 114 and 119, which constitute a significant feature. For example, Article 114 (2) stipulates that if the quantity of Class I non-crop narcotics exceeds five grams, the offender may be subject to the death penalty, life imprisonment, or a minimum imprisonment term of six years accompanied by a fine. In the case of plants, the threshold is set at more than one kilogram or more than five trees. Similarly, Article 119 (2) establishes a comparable threshold for Class II drugs, also set at more than five grams. These thresholds operate as an “automatic trigger” for the imposition of the maximum sentence. Consequently, once the quantity of evidence surpasses the specified threshold, the court is authorized to impose the most severe penalties, including the death penalty, without requiring the specialized evidentiary standards characteristic of *ḥudūd* procedures, which demand specific testimonies or stringent proof. Therefore, the quantitative measure of the evidence serves as the principal basis for justifying aggravated punishment.

Furthermore, Law No. 35 of 2009 prescribes a wide range of sanctions, including the death penalty, life imprisonment, and long-term imprisonment. This approach indicates that the law operates within a modern positive criminal law framework rather than adhering to a rigid and ritualistic textual *ḥudūd* framework. In classical Islamic law, *ḥudūd* sanctions are fixed and immutable, such as stoning or one hundred lashes for adultery, or amputation of the hand for theft. By contrast, the Narcotics Law grants judge’s discretion to select from various sanction options based on the specific circumstances of the case and considerations of public interest. This flexibility reflects the discretionary nature of *taʿzīr* punishments; however, the inclusion of the death penalty among the available sanctions demonstrates that the contemporary state’s

³⁷ I Gusti Ayu Ketut Rachmi Handayani and Zainab Ompu Jainah, “Death Penalty For Drugs Dealers and Traffickers From The Perspective of Islamic Law,” *AL-ʿADALAH* 15, no. 1 (2019): 17, <https://doi.org/10.24042/adalah.v15i1.2657>.



application of *ta'zīr* can reach a severity comparable to, or even exceeding, that of *ḥudūd*. Based on these interpretations and the characteristics of *ta'zīr* outlined previously, the imposition of the death penalty on drug traffickers may be classified as a *ta'zīr* punishment. This classification is further supported by the underlying objective of deterrence, which is central to the purpose of *ta'zīr*. Moreover, since drug trafficking is not explicitly addressed in the primary Islamic texts (*naṣṣ*), nor does it fall within the categories of *ḥudūd* or require *kaffārah*, its status as a discretionary offense is thereby reinforced.

There is a general consensus regarding the definition of *ta'zīr*; however, scholarly debate continues concerning the extent to which such punishments—especially severe measures such as capital punishment—may be legitimately imposed by state authorities. In this context, Ibn al-Qayyim al-Jawziyya (d. 1350), in his work *al-Ḥudūd wa al-Ta'zīrāt*, engages with the discourse on the minimum and maximum boundaries of *ta'zīr*. He references Ibn Qudāmah (d. 1223), who contends that *ta'zīr* should not be assigned a fixed minimum punishment, as doing so risks conflating it with *ḥadd* penalties, which must be grounded in explicit textual evidence. From the Hanafite legal tradition, al-Qudūrī (d. 1037) proposes that the minimum effective *ta'zīr* punishment is three lashes, reasoning that lesser penalties would lack sufficient deterrent effect. Nonetheless, the dominant perspective, particularly in the absence of direct textual mandates, maintains that *ta'zīr* does not possess a prescribed lower limit, thereby underscoring its discretionary character. Scholarly disagreement is most pronounced concerning the extent to which *ta'zīr* punishments may be applied in their most severe forms, with four distinct positions identified,³⁸ as outlined in Table 1 below.

Table 1. Normative dimensions of *ta'zīr* punishments

No.	Aspect	Description
1	<i>Maṣlaḥah</i> -based determination	<i>Ta'zīr</i> punishments are prescribed by the appropriate authority based on considerations of <i>maṣlaḥah</i> (public interest). The severity of these punishments is not predetermined; instead, it is calibrated according to the nature of the criminal act, with the aim of advancing <i>maṣlaḥah</i> and mitigating <i>mafsadah</i> (harm).
2	Non-equivalence with <i>ḥadd</i> punishment	<i>Ta'zīr</i> punishments are not permitted to match the severity of <i>ḥadd</i> punishments. For instance, a judge may not impose a <i>ta'zīr</i> penalty equivalent to the <i>ḥadd</i> punishment for <i>zinā</i> on an individual involved in a dating offense. ³⁹
3	Minimal <i>ḥadd</i> restriction	<i>Ta'zīr</i> punishments do not extend to the lowest level of <i>ḥadd</i> sanctions. This position is derived from a hadith narrated by Nu'mān ibn Bashīr, in which the Prophet stated that anyone who issues a ruling equivalent to a <i>ḥadd</i> punishment in a case that does not warrant <i>ḥadd</i> is considered a transgressor.
4	Punishment threshold doctrine	<i>Ta'zīr</i> punishments are restricted to a maximum of ten lashes. This restriction is grounded in a hadith which stipulates lashes should not exceed ten unless they are part of a <i>ḥadd</i> punishment in accordance with the principles of <i>ḥudūd</i> .

³⁸ These four arguments are categorised by Ibn al-Qayyim al-Jawziyy. See al-Jawziyy, *al-Ḥudūd wa al-Ta'zīrāt*.

³⁹ The reasoning of the opinion is based on the *ḥadīth* of Nu'mān ibn Bashīr in the case of a man who is brought to him who has fallen in love with his wife's slave girl. The punishment given to him is 100 times of slash. See al-Jawziyy, *al-Ḥudūd wa al-Ta'zīrāt*.



Table 1 illustrates that within Sharia, particularly under the framework of *ta'zīr*, the majority of scholars assert that *ta'zīr* punishments should not surpass the severity of *ḥudūd* or *qisās* penalties. This position is substantiated by the four preceding arguments, three of which explicitly affirm that *ta'zīr* must be confined within specific boundaries. The underlying rationale is that *ḥudūd* and *qisās* are divinely mandated for particular offenses, with their severity proportionate to the gravity of the violation, whether against divine commands or individual rights. Conversely, *ta'zīr*, characterized by its discretionary and flexible nature, must function within the overarching framework of Islamic law. As Kamali emphasizes, *ta'zīr* should never exceed the limits established by divine injunctions, thereby ensuring the proportionality and coherence of Islamic penal theory.

In practice, particularly within Islamic-influenced legal systems or jurisdictions incorporating elements of Sharia, *ta'zīr* punishments—such as extended imprisonment or even the death penalty—are frequently imposed for serious offenses like drug trafficking, which are not explicitly covered under *ḥudūd* or *qisās*. Although these penalties may appear to exceed the traditional limits associated with divinely prescribed punishments, they are generally justified through broader interpretative frameworks aimed at ensuring justice and addressing contemporary social challenges. Consequently, *ta'zīr* penalties, including capital punishment for drug-related offenses, can, in certain cases, be more severe than some *ḥudūd* or *qisās* punishments, depending on their application and the relevant legal and sociopolitical context. Moreover, Ibn al-Qayyim's classification of the death penalty under *ta'zīr* delineates a narrowly defined scope, identifying only three specific instances: the execution of habitual *khamr* drinkers after four offenses, the execution of spies, and the execution of an individual accused of slandering the Prophet's wife, Maria al-Qibṭiyya. These limited cases indicate that, while capital punishment under *ta'zīr* is permissible, its application should remain exceptional and contextually justified.⁴⁰

The application of the death penalty for drug traffickers in Indonesia extends beyond the traditional parameters of *ta'zīr*-based capital punishment as delineated in premodern Islamic jurisprudence. In comparison to the initial category recognized by classical scholars—such as the execution of an individual convicted of consuming alcohol for the fourth time—the scope of drug trafficking offenses is considerably broader and more intricate. Consequently, this form of *ta'zīr* punishment may be regarded as approaching or even surpassing the severity associated with *ḥudūd* penalties. This perspective is consistent with the position of Ibn al-Qayyim al-Jawziyya (d. 1350), who endorsed the imposition of *ta'zīr* punishments, including the death penalty, in circumstances where societal harm is deemed intolerable. Thus, Indonesia's employment of capital punishment in drug-related cases can be interpreted as a contemporary manifestation of *ta'zīr* that meets or exceeds the threshold of *ḥudūd* penalties, particularly if one accepts that the severity of the punishment surpasses that of any divinely ordained penalty.

Debating the Implementation of Ta'zīr Punishments in the Contemporary Era

In light of the preceding discussion regarding the interpretation of Law No. 35 of 2009, it can be contended that *ta'zīr* possesses the capacity not only to match but also to exceed the severity of *ḥudūd* punishments. The application of the death penalty to drug traffickers, characterized as a form of state-administered *ta'zīr*, exemplifies this tendency. From such instances, several

⁴⁰ al-Jauzīy, *al-Ḥudūd wa al-Ta'zīrāt*.



indicators emerge that facilitate the assessment of the degree to which *ta'zīr* corresponds to or surpasses *ḥudūd* in practical implementation (see Table 2).

Table 2. The dynamics of *ta'zīr* in contemporary legal frameworks

No.	Indicator	Specification
1	Lacking an explicit religious legal basis	Sanctions have been applied to narcotics offenses despite their exclusion from the traditional <i>ḥudūd</i> categories, effectively elevating non-textual crimes to the status of <i>ḥudūd</i> offenses
2	Relaxation of evidentiary requirements	Convictions can be based on physical evidence, confessions, or forensic findings, which differ from the stringent evidentiary standards required for <i>ḥudūd</i> punishments
3	Reliance on <i>maṣlaḥah</i> considerations	Capital punishment is justified as a measure to protect public safety from exceptionally serious crimes
4	Quantitative thresholds	Specific quantities of narcotics automatically invoke capital punishment, thereby establishing a legal framework that is not present within the traditional <i>ḥudūd</i> provisions
5	Primacy of state authority	Sentencing is established by legislative, executive, and judicial authorities as an expression of state sovereignty
6	Absence of fiqh-based mitigation	The law offers limited provisions for leniency or exemption, marking a departure from the traditional principles governing the enforcement of <i>ḥudūd</i>

Table 2 above illustrates the first indicator demonstrating the potential for *ta'zīr* to exceed *ḥudūd*: the imposition of the death penalty for crimes lacking a textual basis (i.e., outside the *naṣṣ*, which includes Qur'anic and Prophetic traditions). As previously noted, Law No. 35 of 2009, Articles 114 (2) and 119 (2), explicitly prescribe capital punishment for narcotics offenses when the quantity of evidence surpasses a specified threshold. This is significant because *ḥudūd* applies exclusively to offenses explicitly designated in Islamic textual sources (*naṣṣ*), whereas narcotics-related crimes are not included in this category. Consequently, subjecting drug offenses to the death penalty elevates non-textual acts to the level of *ḥudūd*. This initial measure has been discussed earlier in relation to the general characterization and nature of *ta'zīr*, both from classical and contemporary perspectives. The second indicator concerns the relaxation of evidentiary standards. In narcotics cases, death sentences may be imposed based on physical evidence, confessions, or forensic proof. This contrasts with classical *ḥudūd*, which require stringent evidentiary criteria, such as the testimony of four eyewitnesses in adultery cases. Although the severity of the sanction is comparable to that of *ḥudūd*, the procedural requirements are more lenient, illustrating how *ta'zīr* in modern legal contexts can transcend traditional boundaries by lowering evidentiary thresholds. In other words, *ta'zīr* may be regarded as more flexible than traditional *ḥudūd* punishments, albeit under certain additional circumstances.

The third indicator pertains to the invocation of *maṣlaḥah* (public benefit) and deterrence as justifications for punishment. Indonesian legislators, jurists, and practitioners consistently characterize narcotics offenses as “extraordinary crimes” that threaten national resilience and the well-being of future generations. This characterization aligns such offenses with *hirāba*, understood as crimes involving the widespread corruption of the earth (*fāsād fī al-arḍ*), thereby legitimizing concerns about societal harm. Consequently, capital punishment is framed as a

preventative measure aimed at safeguarding the public interest.⁴¹ Although *ta'zīr* punishments have historically been justified on the basis of public benefit, extending this rationale to encompass capital punishment represents a significant expansion beyond the doctrine's traditional scope. Thus, this third indicator reflects the primary objective of *ta'zīr*, which is to serve as a means of prevention and deterrence.⁴² The fourth indicator involves the establishment of quantitative thresholds that automatically trigger specific penalties, alongside the normalization of maximum penalties. Under the former Law No. 35 of 2009, death or life imprisonment is prescribed for possession of certain quantities of narcotics (e.g., five grams, one kilogram, or more). This threshold-based approach diverges from the *ḥudūd* framework, which does not impose punishments based on quantity. By adopting this logic, Indonesian positive law equates the severity of punishment with the magnitude of evidence, thereby institutionalizing a novel proportionality framework that escalates to capital punishment. It is also noteworthy that, in practice, Indonesian courts impose the death penalty for drug offenses with considerable frequency—arguably more often than the historical application of *ḥudūd* punishments. This pattern indicates that capital punishment has transitioned from an exceptional measure to an institutionalized response, enabling *ta'zīr* to function on par with, or even beyond, the scope of *ḥudūd*.

Furthermore, the fifth indicator pertains to the centrality of state authority in the determination of punishment. In the Indonesian context, the legislative, executive, and judicial branches collaboratively construct the narcotics legal framework to protect national security and maintain social order. Prosecutorial discourse, judicial reasoning, and official declarations consistently frame capital punishment as an assertion of state sovereignty rather than as a continuation of classical fiqh principles. This reflects a transformation of *ta'zīr* into a state instrument capable of exceeding the severity prescribed by traditional legal frameworks. This cooperative engagement among the three branches in safeguarding national security corresponds, within Islamic terminology, to the concept of *ulū al-'amrī*, denoting the most authoritative entity empowered to determine the extent to which punishment (i.e., *ta'zīr*) is implemented in Indonesia.⁴³

Lastly, the final indicator is the absence of mitigation mechanisms grounded in fiqh. Within the classical Islamic criminal tradition, jurists exercised considerable caution in enforcing *ḥudūd* penalties, frequently applying the principle of *ta'rīd*, which entails refraining from implementing *ḥudūd* in cases of doubt (*shubḥah*) regarding the circumstances of the offense or the sufficiency of evidence. This principle embodies the prophetic maxim, “Warding off *ḥudūd* punishments in

⁴¹ The application of capital punishment, or the death penalty, is often presented as a rational effort to combat crimes. Its imposition is grounded in criminal policy determined by state authorities. Criminal policy constitutes a component of the broader framework of national legal policy, which in turn forms part of social policy encompassing both social welfare and social defense. Rusito and Kaboel Suwardi, “Development of Death Penalty in Indonesia in Human Rights Perspective,” *Ganesha Law Review* 1, no. 2 (2019): 45–46.

⁴² Although the outcomes may differ, the overarching objective of *ta'zīr* in general, and the death penalty in particular, especially under Law No. 35, is to create a deterrent effect. Hartanto Hartanto and 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*, no. 1(15) (March 2021): 35–36, <https://doi.org/10.15587/2523-4153.2021.225793>.

⁴³ The imposition of punishment for drug trafficking involves collaboration among three political institutions, reflecting the role of state authority in shaping *ta'zīr*. While the administration of the death penalty also renders it susceptible to politicization, this study does not engage with that dimension. Rather, the analysis will remain focused on exploring the potential of *ta'zīr* itself. Ricky Gunawan and Raynov T. Pamintori, “The Death Penalty in Indonesia,” in *Crime and Punishment in Indonesia* (London: Routledge, 2021), 379.



cases of doubt” (*idrā’ ū al-ḥudūd bi al-shubuhāt*).⁴⁴ Similarly, considerations of emergencies or extenuating circumstances—such as coercion (*ikrāh*), necessity (*ḍarūrah*), or public welfare (*maṣlahah*)—were acknowledged as valid grounds for mitigating or even nullifying punishment. These safeguards underscore the classical understanding of *ḥudūd* as exceptional penalties intended to preserve social order rather than as sanctions to be applied indiscriminately. In contrast, Law No. 35 of 2009 on Narcotics affords minimal scope for such mitigation, particularly in cases involving substantial quantities of narcotics.

Once the statutory threshold of evidence is met (e.g., exceeding 5 grams or 1 kilogram, depending on the type of narcotic), the law mandates the possibility of capital punishment. Although judges retain discretion to impose penalties ranging from death to life imprisonment or long-term incarceration, the legal framework does not systematically account for subjective factors such as coercion, social vulnerability, or the potential for rehabilitation. In practice, the quantity of narcotics alone can effectively elevate a case to the most severe level of punishment, thereby circumventing the individualized assessments typically permitted under classical fiqh. Similar indicators and measures are observable in other jurisdictions, such as Malaysia. As noted in the literature review, the study conducted by Adil and Abdillah highlights that the criteria for implementing the death penalty in drug offenses—such as proportionality and legality—are primarily applied outside the scope of fixed laws like *ḥudūd* or *qisās*. Furthermore, the principal objectives of *maṣlahah* (public interest) and deterrence are similarly emphasized, reflecting concerns about the future consequences of such punishments.⁴⁵

Conclusion

The findings of this study indicate that the implementation of capital punishment in Indonesia—particularly in relation to drug trafficking as governed by Law No. 35 of 2009—aligns fundamentally with the discretionary principles inherent in the *ta’zīr* framework. Given that drug trafficking is not explicitly addressed in the *naṣṣ* of the Qur’an and Hadith, it appropriately falls within the jurisdiction of *ta’zīr*. Its designation as an “extraordinary crime” justifies the enforcement of stringent deterrent measures within this legal context. The state’s rationale for capital punishment, grounded in considerations of *maṣlahah* (public interest), deterrence, and sovereignty, corresponds with the primary objectives of *ta’zīr*, despite diverging from the traditionally cautious mitigation approach characteristic of classical fiqh. Thus, the Indonesian case exemplifies how contemporary legal systems have adapted *ta’zīr* as a flexible mechanism to address crimes deemed exceptionally harmful, including drug trafficking.

In addressing the second research question, the findings reveal that *ta’zīr* punishments, although originally intended to be less severe than *ḥudūd* and *qisās*, can, in practice, rival or even surpass them in severity. By lowering evidentiary standards, implementing quantitative criteria for automatic sanctions, and restricting opportunities for mitigation, Indonesia’s narcotics law enables *ta’zīr* to operate with a severity comparable to, or exceeding, that of divinely mandated penalties. While numerous classical jurists cautioned against allowing *ta’zīr* to attain the level of *ḥudūd*, the Indonesian case exemplifies how modern state authority—embodied in the *trias politica* of the

⁴⁴ al-Zaḥīlī Muḥammad Muṣṭafā, *Kitāb al-Qawā’id al-Fiqhiyya wa Taṭbīqātihā fī al-Madhāhib al-’Arba’* (Dār al-Fikr, 2006), 706.

⁴⁵ Adil and Abdullah, “The Application Of Sharī’ah Principles of Ta’zīr in Malaysian Common Law: A Maqāṣid-Based Proposal,” 54–61.

executive, legislative, and judicial branches—has transformed *ta'zīr* into an instrument that institutionalizes maximum penalties, including the death penalty. Ultimately, this case illustrates the dual nature of *ta'zīr*: although grounded in flexibility and discretion, it possesses the capacity, when shaped by state power and public interest, to rival the authority and severity of divine law, thereby reshaping the traditional hierarchy of Islamic punishments in contemporary contexts.

Nonetheless, this study is limited in scope to a legal-theoretical analysis within the Indonesian context. It does not empirically investigate judicial decision-making processes, public opinion, or comparative regional practices beyond brief references. Future research could explore how judges, policymakers, and religious authorities practically negotiate the boundaries of *ta'zīr* concerning drug offenses, as well as whether alternative approaches, such as rehabilitation or restorative justice, might more effectively realize the balance of deterrence, justice, and mercy envisioned in Islamic law. Furthermore, a broader comparative study of *ta'zīr* implementation across Muslim-majority countries would enhance understanding of how modern states operationalize discretionary punishments in response to evolving social challenges.

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Bibliography

- Abū Ibrāhīm Ismā'īl ibn Yaḥyā, al-Muznī. *Al-Mukhtaṣar min Qaul al-Shāfi'ī wa min Ma'nā Qaulihī*. Cairo: Dār Madārij li al-Nashr, 2019.
- Adil, Mohamed Azam Mohamed, and Ahmad Badri Abdullah. "The Application of Sharī'ah Principles of 'Ta'zīr in Malaysian Common Law: A Maqāṣid-Based Proposal." *Islam and Civilisational Renewal Journal* 7, no. 1 (2016): 47-64. <https://doi.org/10.52282/icr.v7i1.283>
- Aryanto, Putra Nova. "Drug Abuse as an Extra-Ordinary Crime: Some Legal and Political Debates." *Dinasti International Journal of Management Science* 6, no. 5 (2025): 1157–66. <https://doi.org/10.38035/dijms.v6i5.4523>.
- Bahnasī, Aḥmad Fathī. *Al-Ta'zīr fī al-Islām*. Beirut: Muassasah al-Khalīj al-Arabīy', 1988.
- Darsi, Darsi, and Halil Husairi. "Ta'zir dalam Perspektif Fiqh Jinayat." *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 16, no. 2 (2018): 60. <https://doi.org/10.32694/010500>.
- Djalaluddin, Muhammad Mawardi, Bulqia Mas'ud, Dedy Sumardi, Isnawardatul Bararah, and Kamus Kamus. "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 399. <https://doi.org/10.22373/sjhk.v7i1.15101>.
- El-Awa, Mohamed S. *Punishment in Islamic Law: A Comparative Study*. American Trust Publication, 1998.



- Farḥūn, Ibn. *Tabṣīrat al-Ḥukkām fī Uṣūl al-Aqḍīyyati wa Manāḥij al-Aḥkām*. Cairo: Maktabah al-Kulliyāt al-Azhariyya, 1986.
- Gunawan, Ricky, and Raynov T. Pamintori. "The Death Penalty in Indonesia." In *Crime and Punishment in Indonesia*. London: Routledge, 2021.
- Harefa, Safaruddin. "The Controversy of The Death Penalty for Narcotics Dealers: A Review of Indonesian Criminal Law and Islamic Criminal Law." *Istinbath: Jurnal Hukum* 22, no. 1 (2025): 60–83. <https://doi.org/10.32332/istinbath.v22i01.10346>.
- Hartanto, Hartanto, and 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* 15 no. 1 (2021): 29–37. <https://doi.org/10.15587/2523-4153.2021.225793>.
- Husni and Muhammad Nur. "An Overview of Drug-Related Criminal Acts as Extraordinary Crimes in Indonesia." *International Journal of Law, Social Science, and Humanities* 1, no. 1 (2024): 38–49. <https://doi.org/10.70193/ijlsh.v1i1.142>.
- Hutapea, Bungasan. *Kontroversi Penjatuan Hukuman Mati Terhadap Tindak Pidana Narkotika Dalam Perspektif Hukum dan Hak Asasi Manusia*. Jakarta: Badan Penelitian dan Pengembangan Hukum dan Hak Asasi Manusia Kementrian Hukum dan Hak Asasi Manusia RI, 2016.
- ‘Awwā, Muḥammad Salīm. *Punishment in Islamic Law: A Comparative Study*. American Trust Publications, 1982.
- al-Jauzīy, Ibn Qayyim al-. *al-Ḥudūd wa al-Ta’zīrāt*. Beirut: Dār al-‘Āṣimah, 1994.
- Kamali, Mohammad Hashim. *Crime and Punishment in Islamic Law: A Fresh Interpretation*. Oxford: Oxford University Press, 2019.
- Kemenag. "Menjadi Muslim, Menjadi Indonesia (Kilas Balik Indonesia Menjadi Bangsa Muslim Terbesar)." <https://kemenag.go.id>. Accessed June 28, 2024. <https://kemenag.go.id/opini/menjadi-muslim-menjadi-indonesia-kilas-balik-indonesia-menjadi-bangsa-muslim-terbesar-03w0yt>.
- Lestari, Wilda. "Ta’zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments." *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 5, no. 01 (2024): 22–31. <http://dx.doi.org/10.58836/al-qanun.v5i1.21486>.
- Lippman, Matthew. "Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law." In *Issues in Islamic Law*, 1st ed., edited by Mashood A. Baderin. London: Routledge, 2017. <https://doi.org/10.4324/9781315092386-20>.
- al-Mawārdī, Abī Ḥasan ‘Alī ibn Muḥammad ibn Ḥabīb. *al-Aḥkām al-Ṣultāniyyah Wa al-Wilāyāt al-Dīniyyah*. 1st ed. Edited by Aḥmad Mubārak al-Baghdādī. Beirut: Maktabah Dār Ibn al-Qutaibah, 1989.
- Muḥammad Muṣṭafā, al-Zaḥilī. *Kitāb al-Qawā’id al-Fiqhiyya wa Taṭbīqātihā fī al-Madhāhib al-‘Arba’*. Beirut: Dār al-Fikr, 2006.
- Muhyidin, Muhyidin, Yuli Prasetyo Adhi, and Triyono Triyono. "Contribution of Islamic Law Concerning the Death Penalty to the Renewal of Indonesian Criminal Law." *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022): 73–90. <https://doi.org/10.15294/ijals.v4i1.55226>.
- Mulyadi, Lilik. *Pemidanaan Terhadap Pengedar dan Pengguna Narkotika: Penelitian Asas, Teori, Norma, dan Praktik Penerapannya Dalam Putusan Pengadilan*. Puslitbang Hukum dan Peradilan, Badan Litbang Diklat Kumdil, Mahkamah Agung RI, 2012.

- Mumīsa, Michael, Tagreed Jaber, and Jacqueline Macalesher. *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?* London: Penal Reform International, 2015.
- Nasir Sitompul, Muhammad, and Ariman 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>.
- Peters, Rudolph. *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century*. Cambridge: Cambridge University, 2005.
- Post, The Jakarta. "Indonesia Sentences Iranian Drug Gang to Death Society." The Jakarta Post. Accessed June 29, 2024. <https://www.thejakartapost.com/indonesia/2023/10/29/indonesia-sentences-iranian-drug-gang-to-death.html>.
- Prahassacitta, Vidya. "The Concept of Extraordinary Crime in Indonesia Legal System: Is The Concept an Effective Criminal Policy?" *Humaniora* 7, no. 4 (2016): 513–21. <https://doi.org/10.21512/humaniora.v7i4.3604>.
- Prayuda, Rendi, Tulus Warsito, and Surwandono Surwandono. "Problems Faced by ASEAN in Dealing with Transnational Drug Smuggling in Southeast Asia Region." *Foresight* 23, no. 3 (2021): 353–66. <https://doi.org/10.1108/FS-12-2019-0106>.
- Putri, Sanela Amalia, and Vidy Fauzizah Sampurno. *Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika: Kompilasi Dengan UU Perubahan, dan Peraturan Pelaksanaan*. Edited by Imam Wildan Purbo Prakoso and Reza Azhari. Pusat Pemantauan Pelaksanaan Undang-Undang Badan Keahlian, Sekretarian Jenderal DPR RI, 2022.
- Rachmi Handayani, I Gusti Ayu Ketut, and Zainab Ompu Jainah. "Death Penalty for Drugs Dealers and Traffickers from The Perspective of Islamic Law." *Al-'Adalah* 15, no. 1 (2018): 17–36. <https://doi.org/10.24042/adalah.v15i1.2657>.
- Rafsanjani, Ony, and Aminuddin Mustaffa. "Why Should the Death Penalty Not Be Abolish for Narcotics Crimes? A Case Study In Indonesia." *JIIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 8 (2022): 3104–10. <https://doi.org/10.54371/jiip.v5i8.813>.
- Rusito, and Kaboel Suwardi. "Development of Death Penalty in Indonesia in Human Rights Perspective." *Ganesha Law Review* 1, no. 2 (2019): 38–53. <https://doi.org/10.23887/glr.v1i2.53>.
- Safrizal. "Hukuman Tindak Pidana Human Trafficking (Studi Perbandingan Hukum Positif dan Hukum Islam)." Undergraduate Thesis, UIN Ar-Raniry, 2017.
- Salim, Arskal. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Hawai: University of Hawaii Press, 2008.
- Santoso, Topo. "Implementation of Islamic Criminal Law in Indonesia: Ta'zir Punishment as a Solution?" *IJUM Law Journal* 19, no. 1 (2011): 123–48. <https://doi.org/10.31436/iiumlj.v19i1.6>.
- al-Shāfi'ī, Abū 'Abdillāh Muḥammad ibn Idrīs. *Tafsīr al-Imām al-Shāfi'ī*. Beirut: Dār al-Tadmariyah, 2006.
- Siregar, Hasnil Basri. "Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia." *Asian Journal of Comparative Law* 3, no. 1 (2008). <https://doi.org/10.2202/1932-0205.1056>.
- al-Ṭabārī, Ibn Jarīr. *Jāmi' al-Bayān min Ta'wīli Āy al-Qur'ān*. 1st ed. Vol. 12. Badr Hijr, n.d.



- Tarmizi, Tarmizi, and Sintong Marbun. "Rehabilitation and Execution of the Death Penalty in Narcotics Offenses." *International Asia Of Law and Money Laundering (IAML)* 1, no. 2 (2022): 123–27. <https://doi.org/10.59712/iaml.v1i2.22>.
- Team, Almaany. Accessed June 30, 2024. <https://www.almaany.com/ar/dict/ar-ar/%D8%AA%D8%B9%D8%B2%D9%8A%D8%B1/>.
- Tongat. "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives." *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 90–104. <https://doi.org/10.22219/ljih.v32i1.32335>.
- Trakic, Adnan, and Hanifah Haydar Ali Tajuddin. *Islamic Law in Malaysia: The Challenges of Implementation*. New York: Springer, 2021.