



Deterrent Effect as a Punishment Goal from the Perspective of Criminal Law and Islamic Criminal Law

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Abstract

The implementation of criminal sanctions under Islamic law has long been a subject of legal and human rights debates in Indonesia. While Islamic criminal law is regarded by its proponents as an effective mechanism for creating a deterrent effect and maintaining public order, critics argue that some forms of punishment are inconsistent with contemporary human rights standards and Indonesia's pluralistic legal system. This study aims to examine the concept of deterrence in Islamic criminal law and analyze its effectiveness in achieving justice, legal certainty, and social welfare. The research employs a normative juridical method using a qualitative descriptive approach based on library research. Primary and secondary legal materials, including legislation, books, scientific journals, and other relevant literature, were analyzed through qualitative and inductive methods. The findings reveal that the deterrent effect in Islamic criminal law is reflected in four categories of punishment, namely *hudūd*, *qisās*, *kafārah*, and *ta'zīr*, each of which serves preventive, corrective, and educational purposes. Unlike positive criminal law, which predominantly relies on imprisonment, Islamic criminal law provides differentiated sanctions according to the nature and severity of the offense. The effectiveness of these sanctions is not merely measured by the severity of punishment but by their ability to protect public interests (*maṣlaḥah*), uphold justice, prevent future crimes, and maintain social order. Therefore, the deterrent effect in Islamic criminal law represents a comprehensive approach that combines punishment with moral education and social protection, making it an integral component of the broader objectives of Islamic law (*maqāṣid al-sharī'ah*).

I. INTRODUCTION

The history of the development of Islamic law in Indonesia began in the 13th century, when Islam began to enter Indonesia through traders and scholars from India and Arabia. At that time, Islamic law in Indonesia was more studied through oral traditions and local practices that had been adapted to Islamic teachings.¹ During the Dutch colonial period, Islamic law began to be officially enforced through Law Number 1 of 1937 concerning Religious Courts. After Indonesia's independence, Islamic law was further strengthened with the issuance of Law Number 1 of 1974 concerning Marriage, which regulates marriage according to Islamic law (Syamhari, S 2015).

Islamic law has an important role in criminal law in Indonesia. Islamic criminal law in Indonesia is enforced in areas that adhere to Islamic law, such as Aceh and several cities. In these regions,

Islamic criminal law is enforced through Qanun (local regulations) and applies in parallel with national criminal law. The journey of the implementation of Islamic criminal punishment in Indonesia has been discussed at length, especially in terms of human rights violations. Some legal experts consider that the Islamic criminal law system causes a person to be punished without a fair court process and not accompanied by an advocate (Darliana, D., Sapriadi, S., & Nur 2022).

The controversy surrounding the implementation of Islamic criminal punishments in Indonesia is also related to the public's assessment of these punishments. Although Islamic criminal punishment is considered an effective way to provide a deterrent effect, some consider it a violent and inhumane form. In addition, the debate about the relevance of Islamic criminal law in Indonesia today by some people considers that Islamic criminal law is no longer

relevant to Indonesia's increasingly modern and pluralistic social and cultural conditions. Basically, the position of criminal law is to prevent actions that have the potential to violate human rights. These actions in the legal world are known as crimes/criminals. Criminal law is a means made by the government in order to protect all people and realize a peaceful life in state life (Noveria Devy Irmawati and Barda Arief, 2021).

II. RESEARCH METHODS

This study employed a normative juridical method with a qualitative descriptive approach. The research was conducted through library research by examining primary, secondary, and tertiary legal materials, including legislation, books, scientific journals, and other relevant literature concerning Islamic criminal law and the concept of deterrence. A statutory and conceptual approach was applied to analyze legal norms, theories of punishment, and the objectives of Islamic criminal law. The collected data were analyzed qualitatively using descriptive and inductive methods to examine the effectiveness of the deterrent effect in Islamic criminal law in achieving justice, legal certainty, and public welfare.

III. RESULTS AND DISCUSSION

The term deterrent effect often appears in various discourses in the wider community, both among campuses, mass media, non-governmental organizations, legislative, executive and judicial institutions. The emergence of the term deterrent effect cannot be separated from the anger and anxiety of the public due to the gap between the law that should be and the law in reality (*das sollen* and *das sein*). The term deterrent effect has actually been proposed by scholars since Greek times, but the term deterrent effect is not found in the legislation in Indonesia (Kamisa 2019).

Islamic criminal law or also known as Islamic jinayah law is a law that applies in Islam to overcome crimes or violations of the law committed by mukalla. Meanwhile, Mukalla fis is a person who meets the criteria to be burdened with commandments and prohibitions in Islam.

The criteria are that they have entered the age of puberty and are sensible. Islamic criminal law is based on the teachings of the Quran and Sunnah, as well as the opinions of scholars and customary practices in Islamic society (Noveria Devy 2021).

Islamic criminal law is a sharia that aims to realize the benefits of society, both the benefits in this world and in the hereafter. Materially, Islamic sharia obliges every human being to carry out the basic obligations contained in the sharia. This fundamental obligation places Allah taala as the holder of authority, both in oneself and in others. Each individual only performs the duties that Allah commands. God's commands that are fulfilled contain benefits for the community (Otto Yudianto 2012).

Abdul Qadir 'Audah explained that *al-'uqūbah* (punishment) is a proper retribution to uphold the public good for doing an act that is not in accordance with Allah's commands. The main purposes of punishment in Islamic sharia are prevention (*al-Raddu wa al-Zajru*), teaching and education (*alIslāh wa al-Ta'dīb*), creating benefits, keeping away from deceit, disobedience and calling for obedience. The sentencing in Islamic law is solely for the benefit of human beings to improve individuals and maintain public order (Muhammad Ali Rusdi 2017).

The interesting thing in Islamic criminal law related to the imposition of sanctions is that Islamic criminal law not only recognizes sanctions in the form of criminal but also recognizes sanctions in the form of actions, which nowadays are used as a form of double track system sanctions. Thus, the perspective of Islamic criminal law on the determination of sanctions for perpetrators of criminal acts has actually moved forward, so that the concept of action is not a concept born in the present day (Yudianto 2018).

One of the peculiarities of Islamic law is the determination of different types of punishment for different cases. Each punishment imposed has its own preventive and repressive force, the type of punishment can only be imposed in one case, and cannot be applied to another case. In contrast to Indonesia's positive law, where all punishments are in the form of confinement in

prison, although there is also a death penalty for a very sadistic murder case, the difference is only a matter of time, i.e. how long a person is sentenced to prison (Andi Hamzah and Sumangelipu 1985).

In the context of Criminal Law, the term deterrent effect is also known. This deterrent effect is often associated with punishments or legal sanctions given to the perpetrators of crimes. In the study of Criminal Law, the term deterrent effect is rarely discussed comprehensively. This deterrent effect is only briefly discussed which is usually more focused on the perpetrators of crime. When the perpetrator of the crime is given a punishment, then of course the essence of the punishment is always associated with a deterrent effect. In other words, the punishment given to the perpetrator of the crime can have a deterrent effect on the perpetrator or not (Wojo Wasito 2020).

Some legal experts say that the deterrent effect is not just to provide retribution for the crimes committed. But also to foster, improve the perpetrators of crimes so that they do not repeat the same act. In addition, there are those who are of the view that in Indonesia, punishments such as imprisonment no longer have a deterrent effect on criminals, but prison is only a place of coaching. Another view also says that the deterrent effect is the essence of punishment. This means that the punishment given to the perpetrator of the crime aims to get suffering, so that there is awareness from others to avoid the crime (Eddy O.S. Hiarij 2015).

IV. CONCLUSION

The application of the deterrent effect in Islamic law is first, the punishment of *hudūd*, which means the punishment determined by the sharia. Second, the punishment of *kisas*, which means that the perpetrator of the crime is retaliated for his deeds, if he kills, he is retaliated with murder and if he cuts off his limbs, his limbs are also cut off. Third, the punishment of *kifarat*, which is the punishment set for some crimes of *kisas* and some crimes of *takzir*. Fourth, the punishment of *takzir*, a punishment imposed on

the basis of the judge's discretion because it is not found in the Qur'an and hadith. The effectiveness of the deterrent effect of a punishment according to Islamic law is to create benefits, uphold the rule of law and justice for human beings and keep away from *mafsadat* that will harm themselves and others. To measure the effectiveness of the law, one of them can be seen from the more or less cases of violations, the fewer violations of the law or no violations of the law at all indicate that the law is effective.

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