

Juridical Analysis of The Execution of Confiscated Objects: A Case Study of Narcotics in the Blora State Court of Positive Law And Islamic Law Perspective

Karyono^{1*}, Aidul Fitriadi Azhari², Natangsa Surbakti³

¹⁻³Universitas Muhammadiyah Surakarta, Indonesia

*Corresponding Author E-mail: karyonohs0@gmail.com

ABSTRACT

The Blora District Prosecutor's Office is a state agency with authority to carry out lawsuits against perpetrators of criminal cases, including narcotics crime cases. In the case of narcotics, the Prosecutor's office is also authorized to store and destroy confiscated narcotics. This is to the laws and regulations that narcotics confiscated objects should be stored in the State Confiscated Objects Storage House (Rupbasan) by Article 44 of the Criminal Procedure Code. The destruction of narcotics confiscated objects is carried out no later than seven days after obtaining a legal decision and has permanent legal force from Blora District Court, as regulated in Law Number 35 of 2009 concerning Narcotics. In this study, researchers took several legal decisions at the Blora District Court, which had differences in executing narcotics confiscated objects. This qualitative research combines data on legal decisions and interviews with law enforcement officials. This study also uses positive legal theory and Islamic Law to analyze the problems that occur in criminal narcotics cases, especially in the execution of narcotics confiscated objects. So the results of this study conclude that there is discretion from the results of legal decisions with laws and regulations governing the execution of confiscated objects in narcotics crime cases at the Blora District Court.

Keywords: Execution, Narcotics Confiscated Objects, Blora District Court, Positive Law, Islamic Law

ABSTRAK

Kejaksaan Negeri Blora merupakan instansi negara yang memiliki kewenangan dalam melakukan tuntutan hukum terhadap pelaku kasus pidana, termasuk kasus tindak pidana narkotika. Dalam kasus narkotika, kejaksaan juga berwenang melakukan penyimpanan serta pemusnahan benda sitaan narkotika. Hal ini sesuai dengan aturan perundang-undangan, bahwa benda sitaan narkotika semestinya disimpan di Rumah Penyimpanan Benda Sitaan Negara (Rupbasan) sesuai ketentuan pasal 44 KUHP, dan pemusnahan terhadap benda sitaan narkotika dilaksanakan paling lama 7 hari setelah memperoleh putusan hukum dan berkekuatan hukum tetap dari Pengadilan Negeri Blora, sebagaimana diatur dalam Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika. Dalam penelitian ini, peneliti mengambil beberapa putusan hukum di Pengadilan Negeri Blora yang memiliki perbedaan dalam mengeksekusi benda sitaan narkotika. Penelitian ini merupakan penelitian kualitatif yang menggabungkan data-data putusan hukum serta wawancara terhadap aparaturnya penegak hukum. Penelitian ini juga menggunakan teori hukum positif serta hukum Islam untuk menganalisa problem yang terjadi dalam kasus pidana narkotika, terutama dalam eksekusi benda sitaan narkotika. Sehingga hasil penelitian ini menyimpulkan bahwa terdapat diskresi dari hasil putusan hukum dengan peraturan perundang-undangan yang mengatur eksekusi benda sitaan dalam kasus tindak pidana narkotika di Pengadilan Negeri Blora.

Kata Kunci: Eksekusi, Benda Sitaan Narkotika, Pengadilan Negeri Blora, Hukum Positif, Hukum Islam

INTRODUCTION

Drug abuse and trafficking have caused many victims and other social problems worldwide. In Indonesia, it turns out to be a country targeted for illicit trafficking or just a target for drug transactions or transit. Still, Indonesia is also one of the largest drug-producing countries in the world. This is evidenced by several cases of arrests of big drug dealers, their networks or syndicates uncovered from various large factories producing drugs in Indonesia. This fact is worrying, especially related to the future and sustainability of the nation. Drugs have spread not only in cities but also in remote areas. Drug users are no longer at the age limit; even young children have become victims, and the teenagers most vulnerable to being influenced by drugs are the younger generation (Syafii, 2009).

Narcotics crime in all Indonesian jurisdictions, according to BNN data, states that the prevalence in the 2017 to 2021 period has increased. Indonesia has experienced a narcotics emergency phase (Phahlevy, et al, 2019). The transnational distribution of narcotics that uses a covert mode of operation has been supported by an extensive network which has had an impact on causing victims as narcotics users, especially among the younger generation and even children. This situation is very concerning and endangers the lives of the community, nation and state (Wiantama, 2021) because the circulation of narcotics has penetrated or expanded to areas such as Blora Regency, Central Java Province.

In the jurisdiction of Blora Regency, narcotics cases submitted by the Narcotics Satres Investigator of the Blora Police in the prosecution and judicial process every month range from 5 (five) to 6 (six) cases. With various criteria, the perpetrator acts as an intermediary for buying and selling or as a user of narcotics of methamphetamine and marijuana (methamphetamine) types, which are class I narcotics with levels below 5 (five) grams. However, legal action has not touched the perpetrators who act as dealers. Therefore, the need for serious handling by the government and law enforcement officers using preventive (prevention) or repressive (legal action) to deter the perpetrators and impact the decline in cases. Narcotics, especially the jurisdiction of Blora district.

To prevent and eradicate abuse and illicit trafficking of narcotics which are very detrimental and endanger the lives of the community, nation and state, strategic steps have been drawn up with the enactment of Law Number 35 of 2009 concerning Narcotics, which is *Lex Specialis* (special) as a substitute for Law No. . 22 of 2007. Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, that cause a decrease or change in consciousness, loss of taste to relieve pain and can cause dependence (Syafii, 2009). Narcotics are divided into groups, as attached in Law no. 35 of 2009 concerning Narcotics. The so-called Narcotics Precursors are substances or starting materials or chemicals that can be used to manufacture narcotics, which are distinguished in the table attached to this Law (Wibowo, 2020).

Narcotics are substances or drugs that are useful for treating a certain disease. Still, suppose they are misused or used not in accordance with standard treatment. In that case, they can cause side effects that will be detrimental to a person or society, especially the younger generation. To get this drug, you must go through a doctor's approval. Still, in reality, illicit narcotics circulation makes this drug easy to obtain even without a doctor's approval. This, if left unchecked, will be a great danger to the life and cultural values of the nation, which in the end will weaken national resilience due to the weakening of the nation's generation (Zubaidah, 2020).

About narcotics crimes regarding the status of confiscated objects (evidence), narcotics or other tools related to narcotics crimes in the process of confiscation by investigators and submitted in court as evidence to support evidence, the procedure has been regulated in Law no. 35 of 2009 concerning Narcotics and its explanation and Regulation of the Head of the National Narcotics Agency (BNN) No. 7 of

2010 concerning Technical Instructions for Handling Confiscated Narcotics Goods, Narcotics Prosecutors and Other Chemicals and the Criminal Procedure Code. 8 of 1981. In connection with the criminal justice process at the Blora District Court concerning the status of confiscated narcotics and other narcotics-related equipment, there was a conflict or difference in perception of the application of the rule of Law by the Prosecutor as the Public Prosecutor in the letter of claim and the judge's decision in the decision. Between being confiscated for destruction or confiscated for the state.

RESEARCH METHOD

As research material, researchers took several decisions on narcotics cases at the Blora District Court as samples or examples, namely the narcotics case decisions in the period 2019, 2020 and 2021, which determined the status of confiscated objects and other objects or tools related to narcotics were confiscated for the state 3 (three) case files and confiscated for destruction 3 (three) case files, This case decision can be accessed in the case tracing system of the Blora District Court (SIPP Pn-blora.go.id.) (Wiantama, 2021). In connection with the 3 (three) narcotics crime cases above, which stipulate that narcotics and other objects related to narcotics are declared confiscated for the state with permanent legal force (*inkracht*) the Prosecutor must carry out the execution. However, the Prosecutor has encountered problems because there are no regulations or regulations in the form of legislation or government regulations related to the technicalities of how the Prosecutor executes narcotics and other objects related to narcotics crimes that have no economic value and are confiscated for the state. This type of research is qualitative research using normative Law, a conceptual approach, and a statutory approach. Systematics and certain thoughts aim to study data or certain legal phenomena. The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials, which are obtained through literature studies and equipped with interviews. The collected legal materials are then analyzed descriptively-analytical.

RESULT AND DISCUSSION

Narcotics confiscated object storage mechanism

The destruction of evidence of narcotics is regulated in Law Number 35 of 2009 concerning Narcotics and Regulation of the Head of the National Narcotics Agency Number 7 of 2010 concerning Technical Guidelines for Safe Handling of Narcotics Confiscated Goods. Based on the Law's provisions, confiscated narcotics should be destroyed after the court's decision has permanent legal force. The Prosecutor's office carries out the destruction of the confiscated objects and witnesses by officials representing the police and health department representatives by making a Minutes of Destruction. Article 45 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) in paragraph (4) confirms that confiscated objects which are prohibited or prohibited from being circulated are confiscated to be used for interests or destroyed. Included in the categories of confiscated goods that are prohibited for circulation are liquor, narcotics, psychotropic substances, weapons and explosives, and books or pictures included in the pornography group.

One of the instruments is the objects involved in a criminal act. These objects are commonly known as evidence (Harahap, 2015a). Evidence is goods belonging to the suspect/defendant obtained through a crime or intentionally used to commit a crime, as regulated in Article 39 of the Criminal Code paragraph (1) Items belonging to the convict obtained by crime or which are intentionally used to commit a crime, can be confiscated. Hamza, 2005). The evidence obtained from the crime will be returned to the right

person; otherwise, the evidence used to commit the crime is confiscated to be destroyed or confiscated for the state through a court decision (Harahap, 2015).

Based on the Law, the meaning of storing confiscated narcotics is not specifically stated. In the Narcotics Law itself, the storage of evidence is not strictly regulated, only regarding the mechanism for examining laboratory tests, confiscation and delegation procedures. However, by looking at the process and purpose of storage itself, an understanding can be drawn that storage is an investigator's action to secure confiscated objects so that they are not used by unauthorized parties and avoid outside influences that can cause the confiscated objects to be damaged, deformed or lost.

As for the essential differences between evidence and evidence, according to Jan Remmelink, Criminal Law is aimed at upholding the rule of Law and protecting the legal community (Siahaan, 2009). Because the Narcotics Law does not explicitly regulate the mechanism for storing narcotics evidence, the storage provisions refer to Article 44 of the Criminal Procedure Code, and confiscated objects are stored in the State Confiscated Objects Storage House or abbreviated as Rupbasan. Rupbasan is the only place to store all kinds of confiscated objects. Structurally and functionally, it is under the Ministry of Justice, which will be the centre for storing all confiscated goods from all agencies.

Article 44, paragraph (1) determines where the confiscated objects must be stored in the Rupbasan. No one is allowed to use it, as imperatively affirmed in Article 44, paragraph (2). The purpose is to avoid abuse of authority and position. In the past, many law enforcement officials controlled and enjoyed confiscated objects. As a result, there are many confiscated objects whose forest is not certain, and at the time of execution of the confiscated objects, there are no traces and traces of them. Some have become official property; some have been destroyed and run out. Based on this experience, the Criminal Procedure Code outlines provisions that can be expected to ensure the safety of confiscated objects. For the rescue effort, the following equipment has been established to ensure its integrity, in the form of:

1. Storage facilities in the Rupbasan.
2. Physical responsibility is at the head of the Rupbasan.
3. The juridical responsibility lies with law enforcement officials in accordance with the level of examination.

Meanwhile, suppose there is no Rupbasan in the area concerned. In that case, storage can be done in several places, including the Police Office, the Kejari Office, the District Court Office (PN), in the Government Bankbuilding. If in a state of necessity, it can be stored in another place. Confiscated objects stored in the Rupbasan are always required for examination, starting from the level of investigation, prosecution, and court examination. Sometimes the confiscated object must be removed in the interest of the process of proving a criminal act. In releasing confiscated objects from this Rupbasan as regulated in Article 28 PP No. 27/1983 jo. Chapter II Regulation of the Minister of Justice No. M.05-UM.01.06/1983 has given instructions addressed to the head of the Rupbasan with several provisions for the release of confiscated objects. The provisions stipulated in Article 28 of PP No. 27/1983 jo. Chapter II Regulation of the Minister of Justice No. M.05-UM.01.06/1983, including:

1. Issuance of confiscated objects for "investigation and prosecution purposes". In the formulation of Article 8 paragraph (1) Regulation of the Minister of Justice No. M.05-M.01.06/1983, a request for the release of confiscated objects from the Rupbasan is carried out by an agency that requires at the inspection level an agency that is legally responsible for confiscated objects with an official request for releasing confiscated objects.

2. Issuance of confiscated objects for "court proceedings". For the trial, those who are entitled to request the release of confiscated objects from the Rupbasan are the public prosecutors based on a court order issued by attaching a letter of request for the release of confiscated objects.
3. Issuance of confiscated items to be "returned". The release of confiscated objects to be returned is carried out by investigators or public prosecutors as stipulated by article 46, paragraph (1) of the Criminal Procedure Code.
4. Issuance of confiscated objects to be "confiscated or destroyed". The release of confiscated objects for confiscation or destruction can only be carried out based on court decisions, and the authority is given to investigators and public prosecutors based on court decisions as based on article 45 paragraph (1) of the Criminal Procedure Code and implementation instructions number 2 Attachment to the Decree of the Minister of Justice No. M.14-PW.07.03/1983.
5. Issuance of confiscated objects for "auction sale". Each agency at all levels of inspection is authorized to order auction sales if the object is perishable. The implementation is based on the Law and witnessed by the Rupbasan officer, who then keeps the money from the auction in the Rupbasan and registers in the register.

Legal Basis for Prosecutors and Judges in determining confiscated objects

The legal basis of the Prosecutor and Judge in determining the status of confiscated objects in the Judicial Process includes: Definition of confiscated objects, namely in a criminal act, the existence of confiscated objects or better known in everyday language as evidence used by Investigators, Public Prosecutors and Judges as supporting evidence that is supported by valid evidence as stipulated in article 184 of the Criminal Procedure Code, confiscated objects according to the provisions of article 39 paragraph (1) of the Criminal Procedure Code are:

1. Objects or claims of a suspect or defendant are wholly or partly suspected of being obtained from a criminal act or as a result of a criminal act.
2. Objects that have been used directly to commit a crime or to prepare it.
3. Objects used to hinder criminal investigations.
4. Objects specifically made or intended to commit a crime.
5. Other objects that have a direct relationship with the crime committed.

In Government Regulation of the Republic of Indonesia No. 40 of 2013 concerning the Implementation of Law no. 35 of 2009 concerning Narcotics, confiscated goods are Narcotics and Narcotics Precursors or suspected of Narcotics and Narcotics Precursors or containing Narcotics and Narcotics Precursors including tools or goods used to produce or distribute Narcotics and Narcotics Precursors and assets or property which is the result of narcotics crime and narcotics precursors and money laundering crimes from Narcotics and Narcotics Precursors which are subject to confiscation in the examination of Narcotics and Narcotics Precursors (Mawar, et al, 2009).

Confiscated objects or evidence as supporting evidence in a crime are obtained by confiscation in the form of a series of investigator actions to take over and or keep under their control movable or immovable, tangible or intangible objects for the purpose of proof in an investigation, prosecution and trial with permission or approval. Chairman of the local District Court as stated in the general provisions of Article 1 to 16 in conjunction with Article 38 of the Criminal Procedure Code.

Legal Basis of the Prosecutor in determining the status of confiscated narcotics. The confiscated goods (evidence) of narcotics confiscated by investigators in narcotics crimes are intended for proof in the investigation, prosecution and judicial process after obtaining approval from the Head of the local District

Court and the investigator is obliged to notify the confiscation he has made to the Head of the local District Attorney within a maximum period of 3 x 24 (three times twenty-four) hours since the confiscation. A copy is submitted to the Head of the local District Court, the Minister and the Head of the Food and Drug Supervisory Agency as stipulated in Article 87 paragraph (2) of Law No. 35 of 2009 concerning Narcotics.

Then the Head of the local District Attorney, after receiving notification of the confiscation of evidence of Narcotics and Narcotics Precursors from the investigators of the Indonesian National Police or BNN, within a maximum of 7 (seven) days, must determine the status of the seized goods of Narcotics and Narcotics Precursor, namely: for the sake of proving the case, the interests of the development of science and technology, the interests of education and training and destroyed as stipulated in article 91 paragraph (1) of Law no. 35 of 2009 concerning Narcotics, further in the explanation of this article states "that in determining narcotics and narcotic precursors confiscated for the state, judges pay attention to the provisions in the process of investigating narcotics crimes and narcotics precursors, in this provision, what is meant by "results" is whether in the form of money or other objects which are known or suspected to have been obtained from a criminal act".

In how many narcotic crime cases did the author mention in the introduction as samples of research or narcotics cases that are currently ongoing, by the Attorney General's Circular Letter No. SE-018/A/A/08/2015, dated August 21, 2015, regarding procedures for the handling of confiscated narcotics. The head of the local District Prosecutor's Office, in providing the status of the determination of narcotics confiscated objects submitted by investigators, must pay attention to the provisions of Article 91 paragraph (1) of Law no. 35 of 2009 and as much as possible, to avoid irregularities. The use of narcotics confiscated objects by officers as much as possible the Head of the local State Prosecutor's Office in determining the status of narcotics confiscated objects in the form of "annihilation" unless there is a request from investigators for the benefit of developing science and technology as well as for the benefit of education and training.

Taking into account article 91 paragraph (1) of Law no. 35 of 2009, the Head of the Blora District Prosecutor's Office in providing at the request of a determination by investigators, Narcotics confiscated objects are used for "evidence" the consideration of the Head of the local District Attorney's Office for narcotics confiscated objects does not provide a stipulation "to be destroyed" by the Attorney General's Circular No. SE-018/A/A/08/2015 with consideration of seeing the levels of narcotics whose weight levels are only around under 5 (five) grams and the place for storing narcotics is adequate under the supervision of evidence officers so that it is relevant that Narcotics that are used as evidence in court are used for "evidence."

In the judicial process of proving the Narcotics Crime Case, the Prosecutor, as the Public Prosecutor in his juridical analysis, states that Narcotics evidence (confiscated objects) and other objects related to Narcotics have no economic value and are objects of criminal acts, which are contained in several Narcotics cases taken as the research material referred to or in the case of narcotics crime which has subsequently been stated to be confiscated for destruction, this is based on the provisions of Article 45 paragraph (4) that confiscated objects which are prohibited or prohibited from being circulated, are not included in the provisions of Article 45 paragraph (4).

There are differences in several narcotics cases in the decisions of the Blora District Court judges regarding the status of confiscated narcotics and other narcotics-related objects, namely confiscated for the state, in the legal considerations of the Blora District Court's decision by taking several samples of the cases referred to above which state the confiscated objects or evidence. as well as other objects related to criminal acts confiscated for the state are guided by the provisions of Article 101 paragraph (1) of Law no.

35 of 2009 states that Narcotics, Narcotics Precursors and tools or goods used in narcotics crimes and narcotics precursors or relating to narcotics and precursors and the proceeds are confiscated for the state in conjunction with Article 136 of Law no. 35 of 2009 which states Narcotics and Narcotics Precursors and the results obtained by Narcotics crime and/or Narcotics Precursor criminal acts in the form of assets in the form of movable or immovable, tangible or intangible, as well as goods or equipment used to commit crimes. The state confiscates narcotics crimes and Narcotics Precursor crimes.

Meanwhile, the legal considerations of the Blora District Court judge, whose decision was that narcotics confiscated objects and other objects related to narcotics crimes were declared confiscated for destruction, were in line with the demands of the Public Prosecutor that the confiscated objects/narcotics evidence were objects and means of criminal acts committed carried out by the defendant and narcotics items are prohibited from being circulated unless there is permission from the competent authority then it should be declared confiscated for destruction, this is in line with the provisions of Article 45 paragraph (4) of the Criminal Procedure Code.

In Law no. 48 of 2009 concerning Judicial Power, what is meant by judicial power is the power of an independent state to administer the judiciary to enforce Law and justice based on Pancasila and the 1945 Constitution for the sake of the implementation of the State of Law of the Republic of Indonesia. In the Republic of Indonesia, the judge's decision must be in line with the principle of legal objectives that can be studied from the point of view, namely:

1. An ethical school assumes that, in principle, the purpose of Law is solely for justice.
2. Utilitarianism assumes that, in principle, the purpose of Law is to bring benefit or happiness to society.
3. The normative juridical school assumes that the purpose of Law is to create legal certainty.

In practice in the courts, it is very difficult for a judge to accommodate these three principles. In a judge's decision to decide a case casuistically, it is always faced with these three principles: the principle of justice, the principle of expediency and the principle of legal certainty. In this situation, the judge must choose one of these principles to decide a case, and it is impossible to cover all three principles at once. Part of the principle and the judge's justification are associated with a judge's decision. This can be studied through the theory of the decision approach.

Narcotics Crime in the Perspective of Islamic Law

Narcotics is a part of narcotics. In addition to drugs, another term introduced by the Ministry of Health of the Republic of Indonesia is NAPZA which stands for Narcotics, Psychotropics and other Addictive Substances. Narcotics are substances derived from plants or synthetic or semi-synthetic that can reduce consciousness, eliminate waste, reduce to eliminate pain and can cause dependence. Meanwhile, psychotropics are natural or synthetic non-narcotic substances that have psychoactive properties through selective effects on the central nervous system that cause distinctive changes in mental activity and behaviour. Then addictive substances are substances or chemicals that, when they enter the human body, will affect the body, causing changes in mental, emotional, and behavioural activities. If used continuously, it can lead to dependence, both psychologically and physically (Drug Prevention Advocacy Material, 2005). All of these terms refer to a group of substances that generally carry risks that many consider dangerous.

Naturally, drugs, both synthetic and semi-synthetic, are not specifically and explicitly stated in the texts of the Qur'an and the hadith of the Prophet Muhammad. However, a number of scholars then make an analogy between psychoactive substances (drugs) and alcohol because of the similarity of *illat* (cause) between the two, which are both intoxicating. Drugs are intoxicating with various types, namely heroin or

putaw, marijuana or marijuana, cocaine and other psychotropics; ecstasy, methamphetamine/*shabu-shabu* and tranquilizers; Koplo pills, and so on. In general, something intoxicating is called *khamr* in the Koran, which means something that can eliminate the mind. Although they differ in form, the way they work and their impact are the same. Both are intoxicating and have destructive power to the function of reason.

In Arabic, there are at least three (3) terms regarding Narcotics, namely *al-Mukhaddirat* (المخدرات), *al-aqqair* (العقاقير), and *hasyish* (حشيش). Narcotics *al Mukhaddirat* (المخدرات), etymologically means something veiled, dark or weak. Taken from the word *al-Khidr* (الخنز), which means the curtain that hangs in the corner of a girl's room. In general, the word is used as a house curtain. The word *al-Mukhaddirat* (المخدرات) can also be taken from the word *al-Khadar* (الخنز), which means laziness and weakness. Al-Khadir (الخنز), the form of *fa'il* (إسم الفاعل) or the subject of the word *al-Khadar* (الخنز), means people who are weak and lazy (al-Munawir, 1984).

It is understood that the basic purpose of the formulation of Islamic Law is to realize the benefit by maintaining five fundamental goals: religion, soul, reason, honour and lineage, and property. These five main things are obligatory to be realized and maintained by everyone if they want a happy life in this world and the hereafter. Every effort to realize and maintain these five points is a pious act and, therefore, must be made by every Muslim (M. Zein, 2001).

Therefore, any action that can or can potentially threaten the safety of one of the five main things is considered a prohibited crime. People who are really steeped in the ins and outs of Islamic Law will admit that every formulation of Islamic Law leads to the realization or maintenance of these five points. Based on this description, crimes can be categorized into five groups: crimes against religion, crimes against the soul or self, crimes against reason, crimes against honour and offspring, and crimes against property. Each of these crimes is described at length in the fiqh literature across schools of thought. And major crimes against the five main things are regulated in the jinayah chapter (M. Zein, 2001).

In the construction of Islamic Law, *jinayah* or *jarimah* means criminal acts in the form of shari'a prohibitions which Allah SWT threatens with had or *ta'zir* punishments (Hanafi, 1967). What is meant by *hadd* punishment is a punishment that is determined directly through revelation, which is the right of Allah as shari'a (regulator). While the *ta'zir* punishment is a punishment with no text, it is not determined directly through revelation, and the decision is determined based on the judge's consideration (*qadhi*) (M. Zein, 2001).

Given the imbalance between the benefits posed by drugs on the one hand and the magnitude of the harm posed on the other, Islamic Law expressly states that drug abuse must be punished according to what it does. Drugs of various types, including narcotics, the form and name of which have been identified for their effects on the human mind and body. The punishment is categorized as *khamr*, which is strictly and strictly prohibited in Islam.

The prohibition of consuming alcohol in Islam is explained in stages. First, the Koran provides information that one drug is beneficial, but the danger is greater in the other. For example, the word of Allah SWT in Surah *al-Baqarah* verse 219: "They ask you about alcohol and gambling. Say in both of them there is a great sin and some benefits for people. But the sin is greater than the benefit. Second, give an affirmation that drugs can cause a person to lose the balance of emotions and thoughts. Allah SWT forbids a person to pray while drunk. The word of Allah in Surah *an-Nisa* 'verse 43 explains this: "O you who believe, do not pray while you are drunk so that you understand what you are saying". Then the third is the affirmation that drugs are something disgusting, part of the devil's habit and therefore forbidden to be consumed. In Surah *al-Ma'idah* verse 90, Allah says: "O you who believe, surely (drinking) alcohol,

gambling, (sacrificing for) idols, drawing fate with arrows are heinous acts, including the actions of the devil. So stay away from these things so that you will get good luck."

The legitimacy of prohibiting something intoxicating is also found in a number of Hadith of the Prophet SAW. In a hadith narrated by Abdullah ibn Umar, the Prophet SAW said, "Every intoxicant is *khamr*, and every *khamr* is haram" (Al-Naysaburi, 1994). In another hadith, the Prophet SAW also explained, "Everything that is intoxicating when drunk in large levels, the slightest level is haram" (al-Nasa'i, 1998). In addition, Imam Bukhari narrates that Umar bin Khattab once made a speech which means as follows: "Verily a law has been sent down that forbids alcohol, and it is made of one of five elements: wine, dates, honey, corn and wheat. *Khamr* is something that corrupts the mind. Then, another narration from Abdullah ibn Umar states that the Messenger of Allah said: "Allah cursed wine, its drinkers, its sellers, its buyers, its extortionists, those who ordered extortion, its carriers and its recipients" (Al-Sajastani, 1994).

Regarding the lightness or severity of punishment for drinking *khamr*, it is not explicitly stated in the Qur'an but is only mentioned in the hadith instructions of the Prophet Muhammad, namely: "He has told us Hisham bin Ammar, has told us Shuaib bin Ishak, has told us Said bin Abi Arubah bin Bahdalah from Zakwan Abi Salih from Mu'awiyah bin Abi Sufyan that the Messenger of Allah said: "When they drink *khamr*, then you should lash / volume, then if you drink again then chastise him, then if you drink again lashing him, then drink again then kill him" (Majah, 1995).

Drinks or substances/medicines have varied in form and type along with the rapid development of the times, although there have been no significant changes in the Law. For example, the hadith narrated by Ayesha explains this: The Prophet SAW said, "Every intoxicating drink is haram" (Al-Naysaburi, 1994). The prohibition of drugs does not depend on the quantity, a lot or a little. If a lot intoxicates, then even a little is still haram even though it is not intoxicating. Likewise, drug abuse perpetrators, users, sellers, buyers, producers, dealers and recipients of drugs are equally unlawful.

Islam has clearly and unequivocally regulated the forms of punishment for any violation of Allah's prohibition, both in the form of *had* and *ta'zir*. The punishment for drinking alcohol is lashed forty (40) times in public. The Prophet SAW said: "That the Prophet SAW has beaten people who drink alcohol with two tamarind leaves 40 times. Abu Bakr also has 40 lashes, and Umar ibn Khattab has 80 lashes. According to the scholars of Malikiyah, Hanafi, Hanabilah and the consensus of the Companions, the penalty for drinking alcohol is 80 lashes.

Meanwhile, Syafi'iyah states the legal sanction for drinking alcohol is 40 lashes. However, the Shafi'iyah group later added that the priest might increase it to 80 lashes. So, the 40 times the lashing is had, and the other 40 times as a form of *ta'zir* (Al-Jaziri, 1994).

In the development of the Islamic world, alcohol then underwent a metamorphosis into an increasingly sophisticated form commonly called narcotics, psychotropic substances, and addictive substances. Therefore, the ulama then differed in determining the legal sanctions for the perpetrators of this narcotics abuse crime. Ibn Taimiyah, for example, argues that legal sanctions for perpetrators of drug abuse are limited, as are sanctions for alcohol drinkers who abuse it, as imposed for those who drink alcohol (Taimiyah, 1978).

Slightly different from Ibn Taimiyah, some scholars do not make an analogy between drugs and alcohol. Imam Zuhayli, for example, stated that the sanction for drug abusers is *ta'zir*. Zuhayli's rationalization is because drugs did not exist at the time of the Prophet Muhammad, there is no explanation in the Koran or hadith, and drugs are far more dangerous than the dangers of alcohol (Zuhayli, 1998). Meanwhile, Al-Hasari argues that actually consuming marijuana is haram and no sanctions are imposed

on the perpetrators, it is obligatory for people who consume it to be subject to *ta'zir* sanctions not had (al-Hasari, 1979). This view is in line with the fatwa of the Indonesian Ulema Council (MUI) that sanctions for drug abusers are *ta'zir* because drugs are more dangerous than alcohol (Indonesian Ulema Council, 2009). *Ta'zir* is an educational punishment imposed by judges on perpetrators of crimes or immorality whose laws have not been determined in Islamic Law.

The enforcement of a number of arguments and some of the opinions of scholars above are details of Islamic Law that must be applied in practice to prevent narcotics crimes from becoming more widespread and disturbing the community. However, in the context of a nation-state such as Indonesia, law enforcement is the absolute authority of a state, not the authority of a person or group of people. In this regard, legal sanctions for perpetrators of criminal acts of narcotics abuse are limits that Islamic Law has determined. Meanwhile, the *ta'zir* sanction becomes the domain of the judge as the authority holder in determining the severity or severity of the sentence, although the judge must consider the circumstances of the perpetrator, the finger, the victim of the crime, the time and place of the activity so that it can produce a decision that is preventive, repressive, educative and curative. With a judge's decision of such a nature, it is hoped that there will be a deterrent effect for every perpetrator of a narcotics crime.

CONCLUSION

The process of handling the execution of objects or evidence related to narcotics crimes before the decision is final and binding at the Blora District Attorney is guided by Government Regulation Number 40 of 2013 and the Attorney General's Circular Number: SE-018/A/JA/08/2015. The stages of handling evidence of narcotics crime include the process of confiscation and sealing, elimination and testing to the process of storage, security, and supervision. Meanwhile, handling evidence related to narcotics crimes after a decision has permanent legal force, including storage and destruction. Destruction is carried out when there is a permanent legal force on the judge's decision witnessed by elements of the relevant law enforcement officers, namely representing officials, elements of the Prosecutor's office, the ministry of health and the drug and food supervisory agency, relevant law enforcement officers and the public. In addition, in the view of Islamic Law has regulated the *ta'zir* punishment for narcotics crimes. Because naturally, drugs, both synthetic and semi-synthetic, are not specifically and explicitly stated in the Law of the Qur'an and the hadith of the Prophet Muhammad SAW. However, many scholars then analogize psychoactive ingredients (drugs) with *khamr* (intoxicating drinks) because of the similarity of *illat* (cause) between the two, which are both intoxicating. So that in Islam, the crime of narcotics is implicitly actually regulated explicitly to avoid these illicit goods because narcotics are objects that, when consumed, have more harm than benefits for mankind.

REFERENCES

- al-Hasari, A. (1979). *Al-Siyasat al-Jaz'iyah*. Beirut: Dar al-Jalil.
- Al-Jaziri, A. al-R. (1994). *Al-Fiqh ala Madhahib al-Arba'ah*. Beirut: Dar al-Fikr.
- al-Munawir, A. W. (1984). *al-Munawir Kamus Arab Indonesia*. Yogyakarta.
- al-Nasa'i. (1998). *Sunan al-Nasa'i bi Syarh al-Hafiz Jalal al-Din al-Suyuti*. Beirut: Dar al-Ma'arif.
- Al-Naysaburi, A. -I. A. H. M. ibn H. al-K. (1994). *Sahih Muslim*. Beirut: Dar al-Fikr.
- Al-Sajastani, A. D. S. al-A. (1994). *Sunan Abu Dawud*. Beirut: Dar al-Fikr.
- Hamzah, A. (2005). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.
- Hanafi, A. (1967). *Asas-Asas Hukum Pidana Islam*. Jakarta: Bulan Bintang.
- Harahap, Y. (2015a). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.

- Harahap, Y. (2015b). *Pembahasan Permasalahan dan Penerapan KUHAP*. Jakarta: Sinar Grafika.
- M. Zein, S. E. (2001). *Kejahatan terhadap Harta dalam Perspektif Hukum Islam*. Jakarta: Pustaka Firdaus.
- Majah, I. (1995). *Sunan Ibnu Majah*. Beirut: Dar al-Fikr.
- Majelis Ulama Indonesia. (2009). *Himpunan Keputusan dan Fatwa MUI*. Jakarta: Sekretariat MUI.
- Materi Advokasi Pencegahan Narkoba, (Jakarta: BNN, 2005)*. (2005). Jakarta: BNN.
- Mawar, S. dkk. (2009). Mekanisme Penyimpanan dan Pemusnaan Benda Sitaan Narkotika (Studi Kasus Pada Kejaksaan Tinggi Aceh). *Jurnal Ilmu Hukum*.
- Phahlevy, R. R. dkk. (2019). Pergeseran Konsep Narkotika dalam Sistem Hukum Indonesia. *Jurnal Res Judicata, Vol.2 No.2*.
- Siahaan, R. . (2009). *Hukum Pidana I*. Cibubur: RAO Press.
- Syafii, A. (2009). Penyalahgunaan Narkoba dalam Perspektif Hukum Positif dan Hukum Islam. *Jurnal Hunafa, Vol.6 No*.
- Taimiyah, I. (1978). *Majmu' al-Fatawa*. Beirut: Dar al-Arabiyyah.
- Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika*. (n.d.).
- Wiantama, I. P. K. L. (2021). Mekanisme Penyimpanan dan Pemusnahan Barang Sitaan Narkotika (Studi Kasus Pada Kejaksaan Negeri Badung). *Jurnal Kontruksi Hukum, Vol. 2 No*.
- Wibowo, T. (2020). Pelaksanaan Pengelolaan Benda Sitaan Negara dalam Peradilan Tindak Pidana oleh Kejaksaan: Studi Kasus di Kejaksaan Negeri Kota Kediri. *Jurnal Uniska Law Review, Vol. 1 No*.
- Zubaidah, I. N. (2020). Kedudukan Penyitaan Barang Bukti Sebagai Hasil Kejahatan Narkoba," *Jurnal Hukum Progresif. Jurnal Hukum Progresif, Vol. 5 No*.
- Zuhayli, W. (1998). *al-Fiqh al-Islami wa Adilatuhu*. Beirut: Dar al-Fikr.