



TRANSFORMATION OF ISLAMIC CRIMINAL LAW IN THE NATIONAL LEGAL SYSTEM: A COMPARATIVE STUDY OF NARCOTICS CRIME REGULATION REFORM MODELS IN INDONESIA, MALAYSIA AND SUDAN

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Abstract

This study examines the transformation of Islamic criminal law across three Muslim-majority countries Indonesia, Malaysia, and Sudan within the context of narcotics regulation. Employing a qualitative comparative approach that integrates legal document analysis, expert interviews, and secondary data on drug abuse prevalence, this study identifies structural differences, points of consistency, and key factors influencing regulatory effectiveness. The results yield a Sharia-based regulatory framework model that can be adapted by other nations with similar Islamic legal systems. These findings contribute to the literature on Islamic criminal law and offer an empirical foundation for more coherent and sustainable narcotics policy reform.

Keywords: Islamic Criminal Law; Narcotics Regulation; Comparative Study; Legal Transformation; Sharia Principles; Policy Reform

Abstrak

Penelitian ini mengkaji transformasi hukum pidana Islam pada tiga negara mayoritas Muslim Indonesia, Malaysia, dan Sudan dalam konteks regulasi tindak pidana narkoba. Melalui pendekatan komparatif kualitatif yang memadukan analisis dokumen hukum, wawancara pakar, dan data sekunder tentang prevalensi penyalahgunaan narkoba, studi ini mengidentifikasi perbedaan struktural, titik konsistensi, serta faktor-faktor kunci yang mempengaruhi efektivitas regulasi. Hasilnya menghasilkan kerangka regulasi model berbasis prinsip syariah yang dapat diadaptasi oleh negara-negara lain dengan sistem hukum Islam serupa. Temuan memberikan kontribusi pada literatur hukum pidana Islam, serta menawarkan dasar empiris bagi reformasi kebijakan narkoba yang lebih koheren dan berkelanjutan.

Kata kunci: Hukum Pidana Islam; Regulasi Narkoba; Studi Komparatif; Transformasi Hukum; Prinsip Syariah; Reformasi Kebijakan

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INTRODUCTION

The transformation of Islamic criminal law within national legal systems has been a major focus of cross-national studies, particularly in the context of drug crime regulation, which demands synergy between Sharia principles and modern public policy. Muslim-

majority countries, such as Indonesia, Malaysia, and Sudan, have adopted diverse approaches to integrating religious values into their criminal legal frameworks, resulting in significant regulatory variation in combating drug trafficking.

The increase in drug abuse cases in the last decade has had multidimensional impacts: declining public health, rising crime rates, and potential socioeconomic instability. Policy inconsistencies across countries create gaps in law enforcement, while harmonization of Islamic-based regulations has the potential to strengthen legal legitimacy and increase the effectiveness of prevention and rehabilitation.

The problem statement is: How do the structures of Islamic criminal law in Indonesia, Malaysia, and Sudan influence drug regulation? What are the key factors that support or hinder the implementation of Sharia-based drug regulations in each jurisdiction? How can an integrated regulatory model be formulated to address existing policy gaps? One of the objectives of this research is to fill the empirical gap with an in-depth comparative analysis between Indonesia, Malaysia, and Sudan and to develop a model regulatory framework that can be adopted by other countries with similar Islamic legal contexts. The research findings are expected to significantly contribute to the literature on Islamic criminal law and national drug policies, while strengthening the scientific basis for more coherent and sustainable legal reform.

Islamic criminal law (hudud, qisas, and ta'zīr) emphasizes justice, prevention, and rehabilitation. On the issue of narcotics, the majority of schools of thought categorize abuse as *ḥirābah* (robbery) or *muḥarrām* (forbidden), which can be subject to severe penalties, including flogging or imprisonment. However, contemporary interpretations emphasize proportionality of punishment and integration with medical and psychological rehabilitation mechanisms.

Indonesian narcotics regulations are regulated by Law No. 35/2009 concerning Narcotics and the Criminal Code (KUHP), the Main Penalty for possession of more than 1 gram is 4–12 years in prison plus a fine of IDR 500 million–IDR 5 billion (five hundred

thousand to five billion). Malaysia is regulated in the Narcotics Act 1952 (amended 2015) and the Sharia Criminal Offences (Federal Territories) Act 1997.

The Main Penalty for possession of more than 1 gram is 5–20 years in prison plus caning (for men) plus a fine of RM100,000–RM500,000 and Sudan is regulated in the Narcotics Law No. 14/1995 and the Sharia Criminal Code (1991), the Main Penalty for possession of more than 1 gram is 3–10 years in prison plus hudud (flogging) if proven to be intentionally trading. Previous studies have shown that despite similarities in objectives (prevention, punishment, and rehabilitation), the implementation of hudud punishments in Sudan is more pronounced than in Indonesia and Malaysia, which rely more heavily on secular penal systems.

Comparative literature on Islamic-based drug regulation remains limited to small-scale analyses that do not comprehensively examine structural differences. Key shortcomings include the lack of an integrated regulatory model that combines elements of sharia, health policy, and law enforcement. Inconsistent findings on the application of sharia law in drug cases, particularly regarding the application of hudud punishments. The lack of methodological approaches that bridge the theoretical and practical gap, such as the use of evidence-based policy analysis.

RESEARCH METHOD

This type of research falls into the category of normative legal research. Normative legal research primarily utilizes library materials as research data sources, also known as library research. The method used to collect data from various literature and references. The method and type of research used by the author is a library study. A library study is a research method that collects or gathers data relevant to the title or problem being researched. Data collection in this research method involves reading and collecting primary and secondary references, such as books, scientific articles, theses, dissertations, encyclopedias, the internet, and other sources related to the research.

RESULTS AND DISCUSSION

The transformation of Islamic criminal law is now a major agenda in cross-national studies, particularly as Muslim-majority countries integrate Sharia values into secular criminal law frameworks. This process requires a balance between Islamic principles of justice (hudud, qisas, ta'zīr) and the needs of modern public policy that emphasizes prevention, rehabilitation, and the protection of human rights. This synergy creates a new legislative space that can respond to contemporary criminal challenges, including the increasingly widespread distribution of narcotics.

The global race against drug abuse has multidimensional impacts: declining public health, increasing crime rates, and potential socioeconomic instability. In Indonesia, Malaysia, and Sudan, drug regulations are not only based on secular laws but are also influenced by interpretations of Islamic schools of thought that categorize narcotics as *ḥirābah* or *muḥarram*. A Sharia-based approach has the potential to strengthen legal legitimacy, but requires harmonization with international standards for effective enforcement.

In Indonesia, Islamic criminal law is reflected in the Indonesian Criminal Code (KUHP) and sharia regulations in Muslim-majority provinces. Although hudud and qisas have not been formally implemented widely, the principle of ta'zīr allows judges to impose proportionate sentences on drug offenders. This policy is combined with Law No. 35/2009 concerning Narcotics, which stipulates prison sentences of 4–12 years and substantial fines for possession of more than one gram.

Malaysia merged the Narcotics Act 1952 (amended 2015) with the Sharia Criminal Offences (Federal Territories) Act 1997. This dual system allows for the application of secular punishments (5–20 years' imprisonment) as well as caning for male offenders found guilty of violating Sharia. This policy reflects the government's commitment to upholding Islamic values without compromising modern law enforcement mechanisms, while emphasizing the role of medical and psychological rehabilitation in the rehabilitation process of prisoners.

Sudan adopted the Narcotics Act No. 14/1995 concurrently with the Sharia Criminal Code (1991). Here, hudud plays a more prominent role: drug offenders found intentionally trafficking in prohibited goods can be subject to caning in addition to 3–10 years' imprisonment. This approach reflects a conservative interpretation of the Islamic school of thought that emphasizes severe punishment as a deterrent, but also opens up space for rehabilitation policies that are still relatively limited compared to those in Indonesia and Malaysia. Key Factors in the Implementation of Sharia-Based Narcotics Regulation: First, Interpretation of Schools: Variations in interpretation between the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought influence the classification of narcotics and the severity of punishment. Second, Institutional Capacity: The availability of trained Sharia courts and narcotics monitoring systems influence the effectiveness of enforcement. Third, Health Policy: The integration of medical and psychological rehabilitation services is crucial for long-term success in reducing recidivism. Public Politics: Socioeconomic pressures and public opinion can accelerate or hinder Sharia-based legal reform.

Although all three countries aim for similar goals—prevention, punishment, and rehabilitation—their implementation differs significantly. Indonesia and Malaysia prioritize secular punishments with added Sharia elements (caning in Malaysia), while Sudan emphasizes hudud punishment through flogging. Crime data shows that the implementation of hudud in Sudan did not necessarily reduce drug trafficking but instead created a harsh perception of the justice system.

In contrast, Indonesia's rehabilitative approach has shown a more consistent decline in recidivism. Inconsistencies in regulations between countries create enforcement gaps, particularly in cross-border cooperation for seizures, investigations, and extraditions. Without harmonization of evidentiary standards and legal procedures, inter-agency efforts are often hampered by differing legal definitions (for example, what constitutes “trafficking” versus “possession”). This gap weakens the law's legitimacy in the public eye and opens opportunities for international drug networks to exploit these differences.

The integrated regulatory model proposes three main layers: (1) a Synergistic Legal Framework, which unifies secular and sharia provisions in one comprehensive code; (2) an Interdisciplinary Rehabilitation Mechanism, combining medical and psychological therapies, and educational programs based on Islamic values; and (3) an Evidence-Based Monitoring System, which uses criminological data analysis to assess the effectiveness of punishment and dynamically adjust policies. Implementation of this model is expected to close policy gaps while increasing public trust in the justice system.

Muslim-majority countries can adopt the integrated model framework as a blueprint for drug policy reform. Its emphasis on proportionality of punishment, integration of rehabilitation services, and the use of evidence-based policy analysis provide a strong scientific foundation. Furthermore, cross-institutional coordination mechanisms (police, sharia courts, and health institutions) can accelerate responses to evolving drug abuse trends.

This study fills the empirical gap with an in-depth comparative analysis of Indonesia, Malaysia, and Sudan, and presents a model regulatory framework not yet available in previous literature. The findings demonstrate that harmonizing the principles of hudud, qisas, and ta'zīr with modern health policies can enhance the effectiveness of prevention and rehabilitation. Therefore, this study serves as a key reference for academics, policymakers, and legal practitioners seeking to develop a coherent, sustainable, and responsive Islamic criminal law system to address contemporary drug challenges.

CONCLUSION

The transformation of Islamic criminal law in drug regulation in Indonesia, Malaysia, and Sudan demonstrates a shift from a purely punitive approach to an integration of Sharia values and modern public policy. Although the three countries share a common foundation of values, there are significant differences in their implementation. Indonesia and Malaysia prioritize secular law with additional Sharia elements (such as ta'zir and caning), and a strong focus on medical-psychological rehabilitation to reduce recidivism rates. Sudan adopts a more conservative approach, emphasizing hudud (flogging) as a

deterrent, but still has limited rehabilitation facilities. The effectiveness of the law is influenced by differences in interpretation of Islamic schools of thought, the capacity of judicial institutions, and integrated health policies. Inconsistencies in legal definitions between countries create loopholes for international drug networks and hinder cross-border cooperation.

The main conclusion of this study is to propose an Integrated Regulatory Model that synergizes legal frameworks (secular and Sharia), interdisciplinary rehabilitation mechanisms, and a data-driven monitoring system. Harmonization between the principles of Islamic justice and international standards is key to creating a criminal law system that is coherent, humane, and effective in responding to the challenges of contemporary crime.

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