

## Sanctions for Narcotics Abuse: A Comparative Analysis of the Double-Track System and Jarimah Ta'zīr

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### ABSTRACT

Narcotics abuse is a multidimensional offense that threatens individual health, family resilience, and social stability, requiring a firm, proportionate, and just legal response. This article analyzes the concepts and legal foundations of sanctions for narcotics abuse under Indonesian positive law and Islamic criminal law, focusing on their similarities, differences, and relevance to national narcotics-control policy. The study employs normative legal research with a comparative legal approach and descriptive-qualitative analysis of primary, secondary, and tertiary legal materials collected through library research. The findings show that Indonesian positive law applies a double-track system combining criminal punishment and rehabilitation under Law Number 35 of 2009 on Narcotics. In Islamic criminal law, narcotics abuse is classified as jarimah ta'zīr through qiyas with khamr, with sanctions determined by ulil amri based on maqāṣid al-syarī'ah, particularly ḥifẓ al-'aql. Both systems emphasize public protection and offender rehabilitation but differ in legal sources, forms of sanctions, and judicial authority. Integrating rehabilitative principles with maqāṣid al-syarī'ah may strengthen the effectiveness, proportionality, and fairness of narcotics-control policy in Indonesia.



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## INTRODUCTION

Narcotics abuse remains one of the most serious legal and social problems faced by countries worldwide, including Indonesia. Advances in information technology and digital transactions have significantly transformed patterns of narcotics distribution, making illicit networks increasingly difficult for law-enforcement authorities to detect. Contemporary criminological studies indicate that dark-web-based narcotics trafficking in Indonesia has emerged as a new challenge for law enforcement because of its concealed nature, cross-jurisdictional reach, and resistance to conventional tracing methods (Pratama et al., 2025). This development reinforces the view that narcotics abuse is not merely a criminal-law problem, but a multidimensional issue involving public health, social, economic, and moral dimensions.

From a health perspective, recent neurobiological studies emphasize that the abuse of psychoactive substances can cause serious disruption to the brain's reward system, resulting in impaired cognitive functioning and addictive behavior that is difficult to discontinue without clinical intervention (Fang et al., 2023). These findings demonstrate that a purely repressive approach is unlikely to be effective unless it is accompanied by medical and psychosocial treatment for individuals with substance dependence. This reality has encouraged many countries to develop harm-reduction-based policies, including Indonesia, which has initiated outreach programs for users of addictive substances in major cities (Rigoni et al., 2019). Nevertheless, recent bibliometric evidence suggests that harm-reduction research in developing regions, including Southeast Asia, continues to lag behind that of developed countries (Sweileh, 2024).

Within the framework of Indonesian positive law, narcotics are specifically regulated under Law Number 35 of 2009 on Narcotics, which places narcotics abusers in a dual position: as criminal offenders and, simultaneously, as victims of dependence who are entitled to medical and social rehabilitation. This policy is commonly described as a double-track system, namely a sentencing framework that combines criminal sanctions with measures such as rehabilitation (Hermanto et al., 2023). In practice, however, implementation of the double-track system continues to encounter

substantial structural and cultural obstacles, with judges tending to impose imprisonment more frequently than rehabilitative measures (Lubis et al., 2025). A further technical challenge concerns the suboptimal design of the integrated assessment mechanism used to determine the legal status of narcotics abusers, particularly whether they should be placed in rehabilitation or processed through criminal proceedings (Handayani & Angrayni, 2024).

Narcotics abuse may also be examined from the perspective of Islamic criminal law. As a comprehensive legal system, Islam places the five essential objectives of the Shari'ah (maqāṣid al-syarī'ah) at the foundation of its legal norms, including the protection of reason (ḥifẓ al-'aql), which is regarded as a divine endowment distinguishing human beings from other creatures (Ikhwan et al., 2026). Because neither the Qur'an nor the Hadith explicitly refers to modern narcotics, Muslim jurists employ qiyas by analogizing narcotics to khamr on the basis of a shared effective cause ('illah), namely intoxication and impairment of reason (Azhara et al., 2025). Consequently, narcotics abuse is classified as jarīmah ta'zīr, an offense for which the form and severity of punishment are not fixed explicitly by the scriptural texts, but are entrusted to ulil amri or the judge on the basis of considerations of public welfare (maṣlaḥah) (Munawaroh et al., 2024).

The paradigmatic differences between these two legal systems warrant comparative examination, particularly because both coexist within Indonesian society through the national legal system and, in Aceh, through the implementation of jinayat law (Fajryan et al., 2023). Debate over the most just and effective forms of sanction has become increasingly relevant following the enactment of Law Number 1 of 2023 on the Criminal Code, which, among other reforms, reconceptualizes the death penalty as a conditional sentence subject to a ten-year probationary period (Amrullah, 2024). This reform has generated renewed discussion regarding the compatibility of capital punishment for narcotics-related offenses from both human-rights and religious perspectives (Ariawan, 2025).

Against this background, this article addresses two principal questions: first, what are the concepts and legal foundations governing sanctions for narcotics abuse under Indonesian positive law and Islamic criminal law; and second, what similarities, differences, and policy relevance emerge from comparing the two systems for the effectiveness of narcotics-control policy in Indonesia? The novelty of this article lies in its attempt to synthesize the rehabilitative orientation of positive law with the welfare-oriented principles of Islamic law as an argumentative basis for reforming narcotics sentencing policy in a more humane and just direction. This approach is consistent with comparative cross-national policy studies indicating that purely repressive strategies are less effective in reducing the prevalence of addictive-substance abuse (MZ et al., 2023).

## RESEARCH METHOD

This study employs normative legal research, which treats law as a set of norms or rules operating within a legal system and examines those norms through relevant legal materials without conducting fieldwork or collecting empirical data (Wijaya et al., 2025). The principal method is a comparative legal approach aimed at comparing the regulatory framework, concepts, and sentencing orientations of two legal systems: Indonesian positive law and Islamic criminal law. This approach is used to identify similarities, differences, distinctive characteristics, and the juridical and conceptual implications of imposing sanctions for narcotics abuse. Cross-system legal comparison is also relevant to contemporary Islamic criminal-law scholarship when addressing modern legal issues, including comparisons between positive criminal law and Islamic criminal law as well as cross-national narcotics policies (Hapsari et al., 2022).

This study is descriptive-analytical. It first systematically describes the regulation and conceptualization of sanctions for narcotics abuse under Indonesian positive law and Islamic criminal law, and subsequently analyzes them critically through relevant legal theories and principles. From the perspective of positive law, the analysis focuses on Law Number 35 of 2009 on Narcotics and developments in sentencing policy under Law Number 1 of 2023 on the Criminal Code. Within Islamic criminal law, narcotics abuse is examined as jarīmah ta'zīr through qiyās by analogy with khamr and through the principles of maqāṣid al-syarī'ah, particularly the protection of reason (ḥifẓ al-'aql) and life (ḥifẓ al-nafs).

The legal materials used in this study consist of primary, secondary, and tertiary sources. Primary legal materials include the Qur'an, the Hadith, Law Number 35 of 2009 on Narcotics, Law Number 1 of 2023 on the Criminal Code, and court decisions relevant to narcotics abuse and sentencing,

including Supreme Court Decision Number 677 K/Pid.Sus/2021. Secondary legal materials include national and international scholarly journal articles, books, research reports, and academic works addressing narcotics offenses, sentencing theory, *jarimah ta'zīr*, *qiyās*, and *maqāṣid al-syarī'ah*. Tertiary legal materials consist of legal dictionaries, encyclopedias, and other reference sources that clarify the legal terms and concepts employed in the study.

The legal materials were selected according to several criteria. First, each source had to be directly relevant to the study's focus on sanctions for narcotics abuse under Indonesian positive law and Islamic criminal law. Second, primary legal materials were selected on the basis of their legal status and authority, particularly statutory provisions that remain relevant and court decisions closely related to the issues under examination. Third, secondary materials were prioritized when they were academically credible, relevant, and scientifically accountable, especially peer-reviewed journal articles published within the preceding five years, without excluding classical works that provide the conceptual foundations of Islamic criminal law. Fourth, materials were selected for substantive adequacy, namely their ability to provide information on legal foundations, forms of sanction, sentencing objectives, legal reasoning, and the concepts of *jarimah ta'zīr* and *maqāṣid al-syarī'ah*. Repetitive materials, sources lacking clear academic provenance, and materials without substantive relevance to the research questions were excluded from the analysis.

Legal materials were collected through library research by inventorying, tracing, identifying, and classifying sources according to their type and relevance to the research questions. The search covered legislation, court decisions, criminal-law literature, Islamic criminal-law literature, and relevant scholarly journal articles. The collected materials were then read critically and recorded thematically, including the legal basis of narcotics sentencing, the form and severity of sanctions, sentencing objectives, judicial considerations, the concept of *jarimah ta'zīr*, *qiyās* with *khamr*, and the principles of *maqāṣid al-syarī'ah*. The materials were subsequently screened and grouped to obtain the normative data most relevant to the focus of the study.

The legal materials were analyzed qualitatively and normatively through legal interpretation and argumentation concerning the relevant provisions, doctrines, and concepts. The comparative analysis proceeded through several stages. First, the norms and concepts governing narcotics sanctions in each legal system were identified and mapped separately so that the internal characteristics of each system could be understood comprehensively. Second, the dimensions of comparison were determined, including the legal basis, classification of conduct, forms and types of sanctions, sentencing objectives, considerations underlying the imposition of sanctions, and the orientation toward protection of legal interests. Third, the two systems were compared across these dimensions to identify their similarities and differences. Fourth, the normative and conceptual factors explaining those similarities and differences were analyzed. Fifth, the implications of each approach for sentencing objectives, public protection, and the protection of human life and reason were assessed. Sixth, comparative conclusions were drawn regarding the characteristics and relevance of each legal system in responding to narcotics abuse.

The results were then organized systematically and argumentatively by connecting the provisions of Indonesian positive law with the principles of Islamic criminal law. Accordingly, the comparison is not limited to descriptive comparison, but extends to functional and normative analysis of how the two legal systems formulate the objectives, forms, and legitimacy of sanctions for narcotics abuse. These stages provide the basis for conclusions concerning the similarities, differences, and juridical and conceptual implications of the two systems in addressing narcotics abuse.

## RESULTS AND DISCUSSION

### Concept and Legal Basis of Sanctions for Narcotics Abuse under Indonesian Positive Law

Indonesian positive law specifically regulates narcotics through Law Number 35 of 2009 on Narcotics, which addresses narcotics classification, authorized medical use, prohibited abuse, and sanctions for narcotics offenses. The Law places narcotics abusers in a distinctive legal position: they are treated as offenders while simultaneously being recognized as victims of dependence who are entitled to medical and social rehabilitation. This legal construction gives rise to the double-track system, a dual sentencing framework that allows judges to impose criminal sanctions, such as imprisonment or fines, rehabilitative measures, or a combination of both, depending on the offender's role in the narcotics distribution chain (Nurohim et al., 2025).

In practice, implementation of the double-track system faces a number of obstacles. Research on its application at the Class II A Correctional Institution in Langkat Regency found that, although the law provides opportunities for rehabilitation of persons with narcotics dependence, judges in practice impose imprisonment more frequently, contributing to a continuing increase in the number of narcotics-dependent inmates and undermining the rehabilitative objectives of the system (Sulistyawati et al., 2020). Another study applying Lawrence M. Friedman's legal-system theory shows that obstacles to this non-penal policy arise not only from legal substance, but also from institutional structure and the legal culture of law-enforcement actors, which remains strongly punitive in orientation (Mahendra, 2024). Mapping of rehabilitation policy for narcotics abusers in Indonesia likewise confirms a gap between regulation and implementation, particularly in relation to the availability of rehabilitation facilities and inter-agency coordination (Ramdlonaning et al., 2022).

Another significant obstacle is the weakness of the integrated assessment mechanism, which should function as the principal instrument for determining whether a narcotics abuser is eligible for rehabilitation or should be processed through the criminal justice system. The absence of uniform assessment procedures across law-enforcement agencies creates disparities in legal decisions that may prejudice the rights of narcotics abusers as victims (Handayani & Angrayni, 2024). The issue becomes more complex in cases involving children as either perpetrators or victims of narcotics abuse. Studies of district-court decisions indicate considerable variation in sanctions imposed on child offenders: some judges apply diversion mechanisms under the Juvenile Criminal Justice System Law (Indrawati & Mirasari, 2018), whereas in other cases children continue to receive custodial sentences even though rehabilitation is, in principle, more consistent with the best interests of the child (Zuwanda & Prayitno, 2022).

With respect to criminal liability, positive law also differentiates the roles of actors in narcotics offenses, ranging from abuse for personal use (Article 127) and unlawful possession or control (Article 112) to distribution and sale (Article 114), which carry substantially heavier penalties. Research on the criminal liability of traffickers toward victims of narcotics abuse indicates that the imprisonment and fines imposed to date have not produced an adequate deterrent effect and have likewise failed to provide sufficient redress to victims targeted by illicit distribution networks (Iskandar, 2021). Meanwhile, studies of rehabilitation during judicial proceedings show that successful rehabilitation depends heavily on consistent application of internal law-enforcement guidelines, including the Attorney General's guidelines on resolving narcotics-abuse cases through a restorative-justice approach (Dee et al., 2025).

A further development complicating narcotics law enforcement in Indonesia is the migration of distribution methods into the digital sphere. Contemporary criminological studies emphasize that dark-web-based narcotics trafficking creates new challenges for law-enforcement authorities because transactions are conducted anonymously and across borders, making conventional enforcement strategies focused on physical networks increasingly inadequate (Ningrum et al., 2026). This development requires adaptation of positive-law policy both in procedural substance and in the institutional capacity of cyber-law-enforcement agencies.

Overall, Indonesian positive law has accommodated a dual paradigm of punishment and recovery through the double-track system. Its implementation, however, continues to face structural challenges, including judges' preference for custodial sentences, weaknesses in integrated assessment mechanisms, disparities in the treatment of children, and the growing complexity of technology-enabled narcotics distribution.

### **Concept and Legal Basis of Sanctions for Narcotics Abuse under Islamic Criminal Law**

Unlike positive law, which regulates narcotics explicitly through written legislation, Islamic criminal law contains no direct reference to modern narcotics in either the Qur'an or the Hadith, because such substances in their contemporary forms were unknown at the time of revelation. To address this normative gap, Muslim jurists employ *qiyas* (legal analogy), equating narcotics with *khamr* because both share the same 'illah (effective legal cause), namely intoxication (*iskār*) and impairment of reason. Thematic exegesis of Qur'anic verses concerning the prohibition of *khamr* shows that its prohibition developed gradually (*tadrij*), ultimately establishing a comprehensive prohibition of intoxicating substances, even in small quantities, in accordance with the maxim that every intoxicant is *khamr* and every *khamr* is prohibited (Roni & Nasution, 2021).

Fiqh jinayah analyses of khamr consumption and its effects on human health further reinforce the legitimacy of qiyas between khamr and narcotics (Zulfadli et al., 2024). These studies show that the medical consequences of consuming intoxicating substances—ranging from damage to vital organs and cognitive impairment to aggressive behavior—closely resemble the medical consequences of narcotics abuse. Accordingly, the qiyas based on their common ‘illah can be justified both scientifically and under Sharī‘ah reasoning (Azhar et al., 2025). From a neuroscience perspective, this conclusion is also consistent with contemporary biomedical research showing that psychoactive substances, whether alcohol-based or synthetic narcotics, disrupt dopaminergic neurotransmission in the brain, a system that plays a critical role in behavioral control and decision-making (Fernández-López et al., 2025).

On the basis of this qiyas, the majority of contemporary Muslim jurists classify narcotics abuse as *jarimah ta’zīr*, namely an offense for which neither the type nor the severity of punishment is fixed definitively by the Sharī‘ah texts, but is left to the discretion of *ulil amri* or the judge according to considerations of *maṣlaḥah* and the degree of harm caused. This flexibility is a distinctive feature of Islamic criminal law, in contrast with positive law, which generally specifies the form and limits of punishment more rigidly. Studies on the application of Islamic criminal law to narcotics abuse by children demonstrate that the principle of *ta’zīr* allows punishment to be differentiated according to age and the offender’s level of awareness, for example through *ta’dīb* (education or discipline) for children below a certain age and more severe *ta’zīr* for adults who repeatedly offend (Munawaroh et al., 2024). A similar principle appears in studies on the rehabilitation of children with narcotics dependence from the perspective of Islamic criminal law, which emphasize that protecting children who are victims of narcotics abuse is a collective responsibility of the family, society, and the state, consistent with the Sharī‘ah objective of protecting progeny (*ḥifẓ al-nasl*) (Hardiman, 2021).

The philosophical foundation of these provisions lies in the concept of *maqāṣid al-syarī‘ah*, the five essential objectives of the Sharī‘ah: protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-naḥs*), reason (*ḥifẓ al-‘aql*), progeny (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*). Sanctions for narcotics abuse are particularly directed toward protecting *ḥifẓ al-‘aql*, because reason is regarded as a divine endowment that distinguishes human beings from other creatures and constitutes a prerequisite for the performance of religious obligations. Scientometric studies of *maqāṣid al-syarī‘ah* research over the past two decades show a substantial increase in the application of the *maqāṣid* framework across contemporary fields, including criminal law, public health, and social policy, demonstrating its relevance to modern legal problems such as narcotics abuse (Mohammed, 2024). The systems approach to *maqāṣid al-syarī‘ah* developed by Jasser Auda likewise emphasizes that *maqāṣid* is not merely a normative doctrine, but also a methodological framework capable of adaptive application in the formulation of contemporary legal policy, including narcotics-control policy (Syarifuddin, 2021).

The formal application of Islamic criminal law to narcotics-related conduct in Indonesia can be observed in the implementation of *qanun jinayat* in Aceh Province, the only region authorized to apply certain elements of Islamic criminal law as positive law. Studies of the impact of this criminal-law regime indicate that the existence of *qanun jinayat* has contributed to increased religious activity within the community, although effective implementation continues to require synergy between the regional government and the Ulama Consultative Council in strengthening the capacity of law-enforcement institutions (Fajryan et al., 2023). Beyond formal-juridical measures, religious-value-based approaches have also played a role in non-formal rehabilitation, as reflected in the practice of *muḥasabah* (self-introspection) as a spiritually oriented rehabilitation method for former drug users, emphasizing self-awareness and individual moral responsibility alongside medical intervention (Saefulloh, 2018).

Thus, Islamic criminal law classifies narcotics abuse as *jarimah ta’zīr* on the basis of qiyas with khamr and orients its response toward the protection of reason as one of the essential objectives of the Sharī‘ah. Its principal characteristic lies in the flexibility afforded to judges to determine the form and severity of punishment in accordance with the specific public-interest considerations of each case.

### **Similarities, Differences, and Policy Relevance of the Comparative Sanctions Framework for Narcotics Control in Indonesia**

A comparison of Indonesian positive law and Islamic criminal law in relation to narcotics abuse reveals both significant points of convergence and important differences. The first similarity lies in the recognition that narcotics abuse is prohibited conduct subject to legal sanctions. Positive law establishes this prohibition explicitly through Law Number 35 of 2009, while Islamic criminal law derives it

through *qiyas* with *khamr*, as discussed above (Roni & Nasution, 2021). The second similarity concerns sentencing orientation: both systems seek to protect society and rehabilitate the offender rather than focus exclusively on retribution. Positive law develops a rehabilitative approach through the double-track system (Sulistyawati et al., 2020), whereas Islamic criminal law employs *ta'zīr* oriented toward the realization of public welfare (*jalb al-maṣāliḥ wa dar' al-mafāsid*) and the reform of the offender (Hardiman, 2021).

The first fundamental difference concerns the source of law. Positive law derives from legislation enacted by state institutions, whereas Islamic criminal law derives from the Qur'an, the Hadith, and methods of *ijtihād* such as *qiyas* and *maqāṣid al-syarī'ah* (Syarifuddin, 2021). The second difference concerns the degree of certainty in the form of sanctions. Positive law specifies the types and minimum–maximum limits of criminal penalties in detail, while Islamic criminal law, through the concept of *ta'zīr*, affords *ulil amri* considerably broader discretion to tailor punishment to the offender's circumstances and the degree of harm caused (Munawaroh et al., 2024). The third difference concerns child offenders: positive law provides diversion mechanisms based on the best interests of the child (Indrawati & Mirasari, 2018), whereas Islamic criminal law recognizes gradations of response according to age and legal capacity, progressing from *ta'dīb* to *ta'zīr*, as described by Munawaroh.

A central issue in comparing the two legal systems is how to position persons who misuse narcotics for personal use as subjects who must bear legal responsibility while also receiving protection and recovery. Under Indonesian positive law, narcotics abuse for personal use is specifically regulated by Article 127 of Law Number 35 of 2009 on Narcotics. This provision distinguishes personal users from other narcotics offenders, particularly in terms of sentencing orientation and the possibility of rehabilitation. Accordingly, narcotics abuse for personal use should be analyzed separately from narcotics distribution or trafficking offenses, which involve different characteristics and substantially different penal consequences.

Changes in sentencing policy under Law Number 1 of 2023 on the Criminal Code should also be understood within the broader development of Indonesia's penal system, which increasingly seeks to balance legal certainty, public protection, and respect for human rights (Amrullah, 2024). In the context of narcotics abuse for personal use, the more relevant issues are not the application of the death penalty, but the proportionality of punishment, offender accountability, and the extent to which rehabilitation can be integrated into the legal response to narcotics users.

Studies of sentencing policy toward narcotics users indicate that an approach oriented solely toward punishment has not fully addressed the distinctive nature of narcotics abuse, which is also closely related to dependence and individual recovery. Rehabilitation policy therefore becomes a crucial component in determining an appropriate legal response to narcotics users. This approach is consistent with the need to distinguish persons who use narcotics for themselves from those involved in illicit narcotics distribution.

From the perspective of Islamic criminal law, narcotics abuse can be analyzed through the principles of protecting life (*ḥifẓ al-nafs*) and reason (*ḥifẓ al-'aql*), both of which form part of the principal objectives of *maqāṣid al-syarī'ah*. The prohibition of intoxicating or reason-impairing substances is fundamentally intended to prevent harm to individuals and society. When the offender is a person who misuses narcotics for personal use, however, the legal response need not be directed exclusively toward punishment; it may also take into account education, prevention, and recovery. Accordingly, the comparison between Indonesian positive law and Islamic criminal law in this study focuses primarily on concepts of responsibility, forms of sanction, and rehabilitative orientation toward personal narcotics users, rather than on narcotics trafficking offenses or the death penalty.

The relevance of this comparison to narcotics-control policy in Indonesia can be considered from several perspectives. First, in terms of rehabilitation effectiveness, cross-national comparative findings on narcotics policy indicate that approaches emphasizing health recovery rather than punishment alone are more effective in reducing relapse rates and the transmission of diseases associated with injecting-drug use (Hapsari et al., 2022). The synergy between the rehabilitative orientation of positive law and the welfare-oriented principles of *ta'zīr* in Islamic law may therefore strengthen the normative basis for more consistent rehabilitation policy in Indonesia. Second, from an institutional perspective, studies on the challenges of integrated assessment emphasize the need to standardize procedures for determining the legal status of narcotics users so that the case-by-case

reasoning characteristic of ta'zīr can be accommodated, where appropriate, within a more standardized positive-law system (Handayani & Angrayni, 2024).

Third, this relevance can be illustrated through Supreme Court Decision Number 677 K/Pid.Sus/2021, which concerned a defendant who used a Category I narcotic, methamphetamine, for personal use. In that decision, the Supreme Court affirmed the defendant's legal classification as a narcotics abuser under Article 127 paragraph (1)(a) of Law Number 35 of 2009 rather than as a trafficker, and revised the sentence to one year and six months of imprisonment without ordering rehabilitation. The decision reflects a broader tendency identified in the literature: punitive responses continue to dominate rehabilitative ones even though the normative framework provides legal space for rehabilitation (Sulistyawati et al., 2020). Viewed through maqāsid al-syarī'ah, cases of this kind would ideally place greater emphasis on restoring the offender's reasoning capacity (ḥifz al-'aql) through rehabilitation rather than relying solely on imprisonment where the defendant has not been proven to participate in narcotics distribution or sale (Azhara et al., 2025).

The foregoing analysis demonstrates that comparing legal sanctions for narcotics abuse under Islamic law and positive law is not merely an academic exercise. It has practical relevance for developing policies that respond more appropriately to the reality of narcotics users as victims of dependence, while maintaining firm law enforcement against actors involved in illicit narcotics trafficking.

### Comparative Matrix of Legal Sanctions and Analysis of Previous Studies

To clarify the patterns of similarity and difference identified in the two preceding subsections, the following comparative matrix summarizes seven principal dimensions of comparison between Indonesian positive law and Islamic criminal law in relation to narcotics abuse.

*Table 1. Comparative Matrix of Legal Sanctions for Narcotics Abuse under Indonesian Positive Law and Islamic Criminal Law*

| Aspect                       | Indonesian Positive Law                                                                                                                             | Islamic Criminal Law                                                                                                                                                                 |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Source of Law                | State legislation, particularly Law No. 35 of 2009 on Narcotics and Law No. 1 of 2023 on the Criminal Code.                                         | The Qur'an, the Hadith, and juristic ijtihad through qiyas (analogy with khamr) and maqāsid al-syarī'ah.                                                                             |
| Classification of Conduct    | A special criminal offense classified by degree: personal use (Art. 127), unlawful possession/control (Art. 112), and distribution/sale (Art. 114). | <i>Jarīmah ta'zīr, established through qiyas based on the shared 'illah of "intoxication and impairment of reason" with khamr, without explicit mention in the scriptural texts.</i> |
| Types of Sanctions           | Detailed and statutorily defined: imprisonment, fines, life imprisonment, and, for large-scale trafficking, capital punishment (now conditional).   | Open and flexible: reprimand, advice, fines, supervision, rehabilitation, imprisonment, and more severe punishment for repeat offenders, according to judicial/ulil amri ijtihad.    |
| Rehabilitation               | Formally regulated through the double-track system (punishment and/or measures), although implementation remains dominated by custodial sentences.  | Part of the ta'zīr orientation toward reform (iṣlāḥ) of the offender and not sharply separated from punishment itself.                                                               |
| Scope of Judicial Discretion | Relatively limited; judges are bound by statutory minimum and maximum penalty ranges.                                                               | Very broad; judges/ulil amri may determine the form and severity of punishment on the basis of case-specific public welfare.                                                         |
| Sentencing Objectives        | A combination of retribution, deterrence, public protection, and rehabilitation (combined theory).                                                  | To realize public welfare and prevent harm (jalb al-maṣāliḥ wa dar' al-mafāsid), centered on the protection of reason (ḥifz al-'aql).                                                |

| Aspect              | Indonesian Positive Law                                                                                                                            | Islamic Criminal Law                                                                                                                      |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Policy Implications | Integrated assessment and technical guidelines should be strengthened so that judicial discretion to order rehabilitation is applied consistently. | The discretionary principle of ta'zīr may serve as a conceptual reference for expanding individualized consideration within positive law. |

The table above demonstrates that the most striking distinction between the two legal systems does not concern the existence of a prohibition on narcotics abuse, but rather the degree of normative certainty and the scope of discretion afforded to legal decision-makers. Positive law prioritizes legal certainty (*rechtszekerheid*) through detailed sanctioning provisions bounded by statutory minimum and maximum limits, whereas Islamic criminal law places greater emphasis on case-specific public welfare through the open-ended concept of ta'zīr.

The findings summarized in the matrix both reinforce and extend several earlier studies. First, consistent with Sulistyawati et al. (2020) and Mahendra (2024), who found that the double-track system in positive law formally accommodates rehabilitation, this study argues that the principal difficulty lies not in the absence of legal norms, but in the limited structural discretion available to judges to choose rehabilitation consistently over punishment. By comparing this framework directly with ta'zīr, which grants judges broad discretion, the study offers an additional line of argument that has not been made explicit in much of the previous literature: the broader judicial discretion recognized in Islamic criminal law may serve as a conceptual reference for expanding judicial consideration within positive law without sacrificing legal certainty as a whole.

Second, the weaknesses in the integrated assessment mechanism identified by Handayani and Angrayni (2024), together with the problems in mapping rehabilitation policy discussed by Anisya Ramdlonaning et al. (2022), are consistent with this study's analysis of Supreme Court Decision Number 677 K/Pid.Sus/2021, in which a person who used narcotics for personal purposes was sentenced to imprisonment without rehabilitation. This study extends those findings by offering the maqāṣid al-syarī'ah framework, particularly ḥifẓ al-'aql, as an additional philosophical justification—beyond the public-health arguments commonly advanced—for prioritizing rehabilitation for persons whose conduct is limited to personal use.

Third, regarding the gradation of sanctions for children, the findings are consistent with Munawaroh et al. (2024), who identify age-based differentiation in Islamic criminal law (ta'dīb for children and ta'zīr for adults), while also complementing the findings of Indrawati and Mirasari (2018) and Zuwanda and Prayitno (2022) concerning variations in diversion and child sentencing in positive-law practice. This comparison indicates that age-based gradation is recognized in both systems; however, positive law still requires more uniform technical guidance to ensure consistent judicial application, comparable to the flexibility inherently embedded in the concept of ta'zīr.

Fourth, with respect to the death penalty, this study's identification of a point of convergence between the reformulation of conditional capital punishment under Law Number 1 of 2023 (Amrullah, 2024) and the welfare-oriented principles of Islamic criminal law expands a debate that has frequently been framed as a binary opposition between human rights and Sharī'ah (Mubarok et al., 2023). The study argues that the two frameworks may be brought into dialogue through the principles of precaution (*ihtiyāt*) and proportionality of punishment, as also suggested by Anugrah and Desril (2021) and Ariawan (2025) from the perspective of positive law. From this standpoint, conditional capital punishment may be understood not merely as a compromise in legal politics, but as a potential point of convergence between two paradigms of justice.

Fifth, in contrast to studies that examine a single legal system in isolation, such as neurobiological research on addiction or cross-national studies of harm-reduction policy, this study contributes an integrated legal-comparative framework combining health, policy, and religious perspectives. Its novelty therefore lies not in establishing that the two legal systems share similar objectives—a point already recognized in earlier scholarship—but in proposing a model of normative integration in which the discretionary space of ta'zīr functions as a structural complement to the limitations of the double-track system in positive law.

## CONCLUSION

Two principal conclusions may be drawn from the comparative analysis. First, the concepts and legal foundations governing sanctions for narcotics abuse under positive law and Islamic criminal law differ fundamentally in their sources of law but share a broadly similar orientation in their objectives. Indonesian positive law regulates sanctions through the double-track system under Law Number 35 of 2009, combining criminal penalties with rehabilitative measures. Islamic criminal law, by contrast, classifies narcotics abuse as *jarīmah ta'zīr* through *qiyas* with *khamr*, with the form and severity of punishment entrusted to *ulil amri* in accordance with the principles of *maqāṣid al-syarī'ah*, particularly the protection of reason (*hifẓ al-'aql*). Second, the two systems converge in their objectives of protecting society and restoring the offender, while differing in the certainty of sanction forms, sources of law, and the scope of judicial discretion, differences that are also reflected in contemporary debates surrounding capital punishment following the enactment of Law Number 1 of 2023 on the Criminal Code.

These findings support a more consistent application of rehabilitation for narcotics users and victims of narcotics abuse by policymakers and law-enforcement authorities, without diminishing firm enforcement against actors involved in illicit trafficking. Integrating the rehabilitative orientation of positive law with the welfare-oriented principles of Islamic criminal law may provide a foundation for a more effective, humane, and just model of narcotics control in Indonesia. Future research should empirically evaluate the effectiveness of integrating these two approaches in judicial practice, particularly in regions that implement *jinayat* law, such as Aceh, in order to strengthen the evidence base for future narcotics-control policy.

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