

## Sanctions for Criminal Act of Fishing with Explosives: Islamic Law Perspective

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Article	Abstract
<p><b>How to cite:</b> Nur Khovidatur Rohma &amp; Rumawi, 'Sanctions for Criminal Act of Fishing with Explosives: Islamic Law Perspective' (2022) Vol. 3 No. 3 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v3i3.192</p> <p><b>Article History</b> Submitted: 25/07/2022 Reviewed: 28/09/2022 Revised: 19/12/2022 Accepted: 22/12/2022</p> <p><b>ISSN:</b> 2723-0406 (printed) <b>E-ISSN:</b> 2775-5304 (online)</p>	<p>The state loss of 30 trillion rupiah is part of the negative impact of the crime of fishing with explosives in Indonesia. A more severe negative impact is damage to marine habitats and ecosystems. This includes fishing with explosives accompanied by destruction to the environment. If this natural damage is not repaired immediately, then the threat of greater losses will haunt the Indonesian state which will also have a major impact on the earth's environment and global climate change. Islamic law does not tolerate any crime that harms the nation and society, which is very suitable to be a source of Indonesian law. So that the crime of fishing with explosives can be studied using Islamic law in its entirety. Then, the Qiyas method is used to analogize it to Islamic law which textually does not mention the term criminal act of fishing with explosives. Finally, the authors come to the conclusion that the crime of fishing with explosives is included in the ta'zir crime, namely a crime that does not fulfill the head or qisas diyat requirements perfectly. However, with this ta'zir punishment, the strict attitude of Islamic law towards the perpetrators does not disappear, in fact, these strict sanctions can be in the form of death penalty, imprisonment, exile, and fines. The party authorized to impose the sentence is Ulil-Amri, who of course must be supported by all of society, so that the sanctions imposed can be effective. Hopefully the strictness of Islamic law can become a source of positive Indonesian law in the future.</p> <p><b>Keywords:</b> <i>Criminal Act, Fishing with Explosives, Islamic Law.</i></p> <p><b>Abstract</b> Kerugian negara sebesar 30 triliun rupiah adalah sebagian dampak negatif dari kejahatan tindak pidana penangkapan ikan dengan bahan peledak di Indonesia. Dampak negatif yang lebih parah adalah kerusakan habitat dan ekosistem laut. Termasuk di dalamnya penangkapan ikan dengan bahan peledak yang disertai perusakan terhadap lingkungan. Kerusakan alam itu jika tidak segera diperbaiki maka ancaman kerugian lebih besar menghantui negara Indonesia yang akan berdampak besar juga pada lingkungan bumi dan perubahan iklim global. Hukum Islam tidak mentolelir setiap kejahatan yang merugikan bangsa dan masyarakat sangat cocok untuk menjadi sumber hukum Indonesia. Sehingga kejahatan tindak pidana penangkapan ikan dengan bahan peledak ini bisa dikaji menggunakan hukum Islam secara lengkap. Kemudian, digunakan metode Qiyas untuk menganalogikannya ke dalam hukum Islam yang secara tekstual tidak menyebutkan istilah tindak pidana penangkapan ikan dengan bahan peledak. Akhirnya penyusun memperoleh kesimpulan bahwa kejahatan tindak pidana penangkapan ikan dengan bahan peledak termasuk ke dalam tindak pidana ta'zir, yaitu tindak kejahatan yang tidak memenuhi syarat had ataupun qisas diyat secara sempurna. Namun dengan pidana ta'zir ini sikap tegas hukum Islam terhadap pelaku tidak hilang, bahkan sanksi tegas tersebut bisa berupa hukuman mati, hukuman jilid, hukuman penjara,</p>

hukuman pengasingan, dan hukuman denda. Adapun pihak yang berwenang menjatuhkan hukuman tersebut adalah Ulil-Amri, yang tentunya harus didukung oleh semua masyarakat, agar sanksi yang dijatuhkan bisa efektif. Mudah-mudahan ketegasan hukum Islam ini bisa menjadi sumber hukum positif Indonesia ke depan.

**Kata Kunci:** Sanksi Pidana, Penangkapan Ikan, Hukum Islam.

## Introduction

According to Food Agriculture Organization of the United Nations (FAO), fishing with explosives that occurs in Indonesian waters, and national losses due to fishermen's actions reach 30 trillion rupiahs per year, considering the amount reaches 25% of the total fishery potential of Indonesia. It means deepen 25 times 6.4 million tons to produce 1.6 million tons or 1.6 billion kilograms.<sup>1</sup>

Fishery products from sea fishing activities are still the main production in the world, especially in Indonesia. Fisheries managers are one of the most important resources for maintaining the continuity of natural resources and their utilization as other fishing activities. Wealth that is in the sea area that is in Indonesian waters, both in the eastern part of Indonesian waters or the western part of Indonesian waters is a target for fish theft from neighboring countries such as Thailand, Korea and China. The arrival of fishermen and ships from neighboring countries illustrates that the sea area of Indonesian waters has fish resources which are quite high or abundant.<sup>2</sup>

Indonesia has enormous potential one of them is potency very big fishery. It seen from quality nor diversity kind.<sup>3</sup>

Uncontrolled use of natural resources in coastal areas can cause damage to the natural resources themselves. There are a number of human activities that are known to have the potential to cause damage to the environment in coastal and marine areas. These human activities can be grouped into several types, namely settlement, agriculture, fisheries, industry, (maritime) tourism, destruction, sea transportation (including port), mining and energy. Some of these activities are direct in nature, namely directly damaging the ecosystem of natural resources in coastal areas, for example fishing using explosives, dredging the bottom of shipping lanes, anchoring boats in coral areas collecting coral for building materials and or aquarium decoration (aquarium trade), and indirectly, namely through the production of residual waste materials that are disposed of in coastal areas. The waste of these materials can pollute the natural resources environment, especially biodiversity, in coastal areas.<sup>4</sup> There is hands naughty for carry out illegal fishing in Indonesian territorial waters carried out by local fishermen as well as foreign for grind Indonesia 's wealth should be matter the could subject to appropriate sanctions with law.<sup>5</sup>

<sup>1</sup> Data according to FAO regarding the number of illegal fishing losses that are rife in Indonesian waters <http://www.p2sdpkpendari.com/index.php?> Accessed on June 23, 2022.

<sup>2</sup> Ministry of Maritime Affairs and Fisheries "Pengelolaan Perikanan Dengan Pendekatan Ekosistem", <https://kkp.go.id/djpt/ditpsdi/page/5057-pengelolaan-perikanan-dengan-dinding-ekosistem> on Accessed on June 23, 2022.

<sup>3</sup> Halimatul Maryani and Adawiyah Nasution, "Rekonsepsi Model Pemberantasan Illegal Logging Fishing Di Perairan Indonesia (Analisis Perspektif Hukum Internasional)", Journal Indonesian Legislation, Vol. 16, No. Sept. 3, (2019), 632.

<sup>4</sup> Supriharyono, *Konservasi Ekosistem Sumberdaya Hayati* (Yogyakarta: Pustaka Belajar, 2009), 13.

<sup>5</sup> Ayub Torry Satriyo Kusumo, "Optimalisasi Pengelolaan dan Pemberdayaan Pulaupulau Terluar Dalam Rangka Mempertahankan Keutuhan Negara Kesatuan Republik Indonesia", Journal of Legal Dynamics , Volume 10, Number 3, September (2010), 321.

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia can be determined that the State of Indonesia is a State of Law. There is affirmation that as exists that every violation or crime that occurred in Indonesia is necessary followed up with applicable law. If action taken could threaten soul self yourself, others as well could threaten continuity life source power will life which thing they could utilized by humans.<sup>6</sup>

The number of cases that occurred in the crime of fishing with explosives. Most fishermen on the coast still choose alternative ways to produce fish in large quantities in ways that are prohibited by the state. Even though using explosives is strictly prohibited, there are still many fishermen who still use explosives such as fish bombs which have an impact on preserving life and beauty under the sea. such as the destruction of coral reefs. One of the factors causing them to do things that may be against the law is the low education of fishermen who are in remote areas, a weak economy so they have the will to meet their economic needs in this way, and a lack of awareness of how important it is to protect and preserve fish resources. They are only concerned with their own interests to earn large amounts of income without thinking about the consequences of their actions which result in large losses and damage to the nature they make.

As Article 8 paragraph 1 of Law Number 45 of 2009 amendment to Constitution 31 of 2004 reads the following article namely: "Every human being is prohibited from catching fish and cultivating fish with chemicals, biological materials, explosives, tools, and methods, or buildings that can harm or endanger the preservation of fish resources and their environment, in the Indonesian Fish Cultivation Territory."<sup>7</sup>

From complex problems, researchers will examine how to draft positive law itself that is based on in law in Indonesia and Islamic law. Pollution and destruction of fish resources and uses of ingredient explosive for catch fish, operation fish resources and operations arrest fish without permission. Arrest fish use ingredient explosives are on Article 84 paragraph (1) regulates actors using dynamite for catch fish, which sounds as follows: Everyone who with on purpose catch fish and use ingredient chemical for cultivate fish, ingredients life, materials explosives in the area management fishery Republic Indonesian. As meant in Article 8(1) which can bother or endanger sustainability preparations fish and its environment, shall be punished with criminal prison a maximum of 6 years. and fine maximum 6 (six) years 1,200,000,000.00 (1.2 billion rupiahs)".<sup>8</sup> In its contribution to eradicating criminal cases of fishing with explosives, as well as Islamic law and Islamic law must be an alternative solution.<sup>9</sup>

Everything we enjoy everything in the nature universe and all its contents is a gift given by Allah SWT creature especially on earth that is humans, favors from God that is not valuable and great big. With the grace of Allah SWT commands us and our duties as Muslims to guard what is already bestowed by Allah SWT for keep it, because Allah SWT trusts to give human advantages that are not given to creature others, and God trusts us to give authority to his people especially humans to manage and utilize earth and produce earth with best, and no pollute or damage environment resulting life loss benefit environment for man alone. All the damage that has occurred so far from year to year must have been cases due to human actions.

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<sup>6</sup> Isro Daeng Halim, "Efektifitas Penegakan Hukum Terhadap Tindak Pidana Penangkapan Ikan Yang Menggunakan Bahan Peledak Di Taman Nasional Wakatobi", *Al- Ishlah* , Vol. 21, No. November 2, (2019), 61.

<sup>7</sup> Article 8 paragraph 1 Law Number 45 of 2009 amendment to the Constitution 31 of 2004 about Fisheries

<sup>8</sup> Article 84 Law Number 45 of 2009 about Fisheries

<sup>9</sup> Article 84 Law Number 45 of 2009 about Fisheries

Therefore, Allah SWT reminds his people, in these rules are designed to maintain human behavior so that it always has a commendable character, does not cause harm and is disobedient. Therefore, the purpose of these different rules is to create a just, safe and peaceful life order based on the concept of *maqāsid ash-syāri'ah*. Therefore, there are various legal rules in Islam that regulate all aspects of life in the form of strict sanctions. With the existence of severe sanctions for perpetrators of fishing with explosives, with the aim that all people do not relax and do not indulge in dishonorable behavior. Threats and punishments for fishing with explosives are in the interest of the people. Therefore, the purpose of implementing sharia is to protect five things called *maṣlahah darūrī*, namely *din* (for the protection of religion), *nafs* (soul), *nasl* (offspring), *'aql* (mind), and *māl* (property).<sup>10</sup>

وَيَقُومُوا أَوْفُوا الْمِكْيَالَ وَالْمِيزَانَ بِالْقِسْطِ وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْنُوا فِي الْأَرْضِ مُفْسِدِينَ ٨٥

"O my people, fulfill the measures and scales fairly! Do not harm people in their rights and do not cause evil on earth by being a destroyer!" (Surah Al-Hud verse 85)

In general, the aim of *syar'i* in enforcing its law is to realize the benefit of mankind by guaranteeing the basic needs of mankind (*darr*), the fulfillment of needs (*hajiyyāt*) and the benefit of mankind (*taḥsiniyyāt*). So as to realize the interests of mankind. As a result of the impact of fishing using explosives, the interests of humanity are greatly harmed, causing a lot of losses to society and the country in terms of the economic and environmental sustainability of Indonesian marine fisheries. However, with such huge losses, the Indonesian people still do not have strong legal rules for eradicating the criminal act of fishing with explosives.<sup>11</sup>

## Formulation of the problem

The issues raised as the subject matter are as follows:

1. How is the application of criminal sanctions against the criminal act of fishing with explosives?
2. What is the view of Islamic law on the criminal act of fishing with explosives?

## Research methods

In this study, researchers used *library research*. In this literature research uses scientific research procedures that aim to find the truth based on logic in the law of oneself. This research examines the criminal act of fishing with explosives committed by fishermen obtained from various sources, namely from online media, books, journals, and also from previous research which then analyzes statutory regulations and applicable legal theories. These sources will be used as primary data and secondary data for research purposes.

## Results and Discussion

### Application of Criminal Decision Sanctions Against the Crime of Catching Fish with Explosives

Important part in system punishment is drop sanctions. punishment that alone is the most complicated process in system Justice criminal because involve many different people

<sup>10</sup> Makhrus Munajat, *Dekonstruksi Hukum Pidana Islam* (Yogyakarta: Logung Pustaka, 2004), 5.

<sup>11</sup> Bella Asih Sahdewi. " Hukum Pidana Islam Dan Penologi Terhadap Tindak Pidana Penangkapan Ikan Dengan Bahan Peledak " UIN Sunan Ampel Surabaya. <http://digilib.uinsby.ac.id/50886/> accessed on July 22, 2022.

and institutions. Related with problem sanction, GP Hoefnagels say that, sanctions in law criminal is all reaction to violation law that has determined Act, begins from detention suspects and prosecution defendant until the fall verdict by the judge.<sup>12</sup>

For implement Constitution about fishery could followed up with something rule government that is covered from various element in fishery among them is provision of production security food, provisions when as well as tool catch, there is pollution waters as well exists sanction related with there is illegal fishing.<sup>13</sup>

There is the practice of blast fishing is naturally could damage source fish power along with the ecosystem so that matter the could Become factor inhibitor to the protection ecosystem. In abstracto based on Article 84 paragraph (1) of the Law Number 45 of 2009 concerning change on Constitution Number 31 of 2004 concerning fishery confirm that everyone who uses ingredient explosive or other tools that can threaten continuity source fish power as well environment could be threatened with criminal prison maximum 6 (six) years and a fine maximum Rp. 1,200,000,000.00.<sup>14</sup> It also in line with the mandate The 1945 Constitution namely could applied for welfare and prosperity Indonesian society.<sup>15</sup> With exists matter the existence of illegal fishing is a very serious problem for handled because matter the could endanger sustainability source of fish power as well economy in a manner national.<sup>16</sup>

In chapter two type of criminal is criminal main and criminal addition. On criminal tree covers criminal dead, criminal prison, criminal financial, and criminal fine. Criminal extras include repeal rights particular, deprivation of goods certain as well as announcement decision by the judge. Difference between the second criminal the seen from facet drop criminal, on criminal tree fall characteristic *imperative* which mandatory. Whereas in criminal addition drop characteristic *elective* which is not mandatory.<sup>17</sup>

Aim with existing judgment to use for prevent exists follow criminal the so that magnitude something punishment must customize not enough or more to what is needed naturally with exists penalty for the perpetrator is refers to principles justice.<sup>18</sup> Although exists a penalty possible punishment gives effect wary to the perpetrators of *illegal fishing* in fact still not yet give protection in a manner real as *primum remedium*.<sup>19</sup>

As for the factors that become inhibitors are :

- a) Weak coordination between enforcer law
- b) Problem proof
- c) scope follow still criminal narrow

<sup>12</sup> Bambang Waluyo, *Pidana dan Pemidanaan* (Jakarta: Sinar Grafika, 2000), 16.

<sup>13</sup> Inggrit Fernandes, "Tinjauan Yuridis Illegal Fishing di Indonesia Berdasarkan Undang-Undang Perikanan" *Jurnal Hukum Republika*, Vol. 17, No. 1 of (2017), 193.

<sup>14</sup> Ayu Izza Elvany, "Analisis Yuridis Tindak Pidana Blast Fishing Yang Dilakukan Nelayan Kecil" *Jurnal Hukum Unissula*, Vol. 37, Number 1, (202), 118-119.

<sup>15</sup> Bella Cahya Ningrum et all, "Analisis Yuridis Penggunaan Bom Dalam Penangkapan Ikan Di Wilayah Perairan Laut Pulau Sebuku Kabupaten Lampung Selatan (Studi Putusan Nomor: 321/Pid.Sus/2021/Pn.Tjk)", Vol. 2 No. 1 (2022), 76.

<sup>16</sup> Ketut Darmika, "Penegakan Hukum Tindak Pidana Perikanan Oleh Kapal Perang Republik Indonesia (KRI) dalam Perspektif Undang-Undang Nomor 45 Tahun 2019 tentang Perikanan" *Jurnal Hukum dan Peradilan*, Vol. 4, Number 3, (2015), 45.

<sup>17</sup> Bambang Waluyo, *Pidana dan Pemidanaan* (Jakarta: Sinar Grafika, 2000), 38.

<sup>18</sup> Fitri Wahyuni, "Sanksi Bagi Penista Agama Dalam Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam", *Journal of Das Sollen*, Volume 1, Number 1, June (2017), 69.

<sup>19</sup> Maya Shafira, et all, "Illegal Fishing: Optimalisasi Kebijakan Penagakan Hukum Pidana Sebagai Primum Remedium", *Wawasan Yuridika*, Vol. 5, No. March 1, (2021), 41.



- d) Formula penalty criminal
- e) Subject and doer follow criminal
- f) Foreclosure proceedings
- g) Change loss ecological
- h) Lack of insight and integrity of the enforcers law .<sup>20</sup>

Following in three the researcher's decision get in a study this , the verdict and sentence obtained explained in table following :

a. Decision No. 162/Pid.Sus/2012/PN. Junior high school

State the defendant Lasimo Bin Lamoasim is proven guilty to follow a criminal with deliberately in the management area fishery The Republic of Indonesia did fishing with use ingredient possible explosives \_ endanger sustainability source fish and the environment.

On Verdict Decision No. 162/ Pid.Sus /2012/PN. Junior high school this enter type criminal tree without there is criminal addition with the punishment he received that is imprisoned for 6 months and a fine 1,000,000.00 IDR ( one million rupiahs). Defendant get relief punishment because defendant admit keep going light on his actions and regretted it , and the accused act up polite in the judge walk .

b. Verdict No. 152/Pid.Sus/2013/PN.Ktb

Defendant I Muslimin Als. Muslim Bin H. Muklis as Skipper Motorized Fishing Boat (KMN) Arti Buana 03 has ordered his crew with on purpose come over Waters Kalambau Subdistrict Pulau Sembilan, Regency Kotabaru is on point coordinates 04° 14' 812"S - 116° 15' 137"E which is the territory of the Regency Kotabaru and includes the management area fishery Republic of Indonesia with meaning for stop by after catch fish with method use ingredient 25 (two) fish explosives/ bombs twenty-five) fruit that has defendant get with method bought from someone who waters Pangkep South Sulawesi Province with price Rp. 1.500.000,- ( one million five hundred thousand rupiah), which is material explosives/bombs the is assembly with method enter materials explosive them to in jerrykan plastic color white as well as bottle size with size 1 Liter, medium all ingredient explosive the fish bomb has defendant explosion previously precisely around KMN SAID JAYA did fishing with \_ method use ingredient explosive not in water Kalambau , District Pulau Sembilan, Regency Kotabaru , however waters Masalima Pangkep Regency South Sulawesi and because Kmn Said Jaya is experience damage, so Kmn Arti Buana 03 was the captain are Muslimin Als. Muslim Bin H. Muklis sister biological Defendant I Muh. Jufri came help after called through orar and help with method interesting ship, however because weather not enough good (wind tight accompanied with wave big) finally Kmn Said Jaya was pulled by Kmn Arti Buana 03 to stop in the waters Kalambau, Pulau Sembilan, Regency Kotabaru which is included in the management area fishery Republic of Indonesia. defendant behave polite During trial. Defendant dropped 6 months each imprisoned and fined 5,000,000 ( five million rupiahs).

c. Decision Number 13/Pid.Sus/2020/PN Lwk

That The accused named Akbar Karim Alias Akbar has proven in a manner legitimate do follow criminal "without right use something ingredient explosive as has been arranged in Constitution Emergency Number 12 of 1951 in single indictment. Drop criminal to the defendant Akbar Karim in the form of criminal prison for 9 months imprisoned Here defendant threatened in Article 1 paragraph (1) of the Law Emergency Number 12 of 1951.

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<sup>20</sup> Asrul Asrul, "Kepolisian Perairan Resort Biak Numfor Dalam Pencegahan Illegal Fishing", Journal Kijadiren Legal Studies , Vol. 1, Number . 2, (2020), 86-88.

According to meant in Article 8 paragraph (1), sentenced with criminal maximum imprisonment of 6 (six) years and a maximum fine of IDR 1,200,000,000.00 ( one billion two hundred million rupiah).”

So that pulled conclusion from third decision on with context application penalty follow criminal fishing with ingredient explosive, from third decision the stipulated penalty to each of the defendants only get criminal main and criminal addition matter this based on with judge's consideration of each defendant, related loaded condition against each defendant, as well method implementation punishment after from judge's decision.<sup>21</sup>

### Sanctions for the Criminal Act of Catching Fish with Explosives in Islamic Law

In Islamic law, the meaning of sanction or punishment is عقوب which comes from the term Abd. al-Qadir Awdah provides a definition of punishment as follows: there are sanctions for perpetrators of fishing with explosives because of crimes and violations of sharia law<sup>22</sup> Whereas understanding about follow criminal (delict, finger ) namely interpreted in Islam all which action can prohibit based on syara' and threatened with hudūd punishment, qishas or ta'zir .<sup>23</sup> As for Ta'zir, according to Kahalani as quoted by Haliman, is the form of maşdar from azzara which comes from azara, which means to reject (radu or man'u), then AR Ramli adds, according to linguistics, ta'zir is a noun that is great in nature (asmaul adhad), because the word absolutely shows greatness or majesty and shows to understanding teaching ( ta'dib ), and to understanding blow which very, and to understanding blow besides than blow limit.<sup>24</sup> Meanwhile, Amir Abdul Aziz defines the notion of jarimah, namely that punishment in jarimah ta'zir is not determined by its size or level, meaning that determining the lowest and highest limits is left entirely to the judge (ruler). Thus, syar'i delegates to the judge to determine the forms and punishments for the perpetrators of jarimah.<sup>25</sup>

There is a matter the need investigated in a manner law Islam because matter the could be related with the transformation towards a possible future \_ expected To use for realizing Indonesia as a unitary state that is *supreme law* in the face of the Republic of Indonesia.<sup>26</sup> Besides that urgent exists role in a manner live To use for educate not to happening violations in Indonesia p the as controlling factor for capable realize exists violation to norm .<sup>27</sup> In matter this if reviewed in facet law Islam anything related \_ with sanctions is as following :

#### a. Ta'zir Sanctions Related to the Agency

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<sup>21</sup> Bambang Waluyo, *Pidana dan Pemidanaan*, ( Jakarta: Sinar Grafika, 2000 ), 57.

<sup>22</sup> Abd. al-Qadir Awdah... , 609.

<sup>23</sup> Budi Dermawan , M. Noor Harisudin, “Transformasi Pemikiran Hukum Pidana Islam Terhadap Hukum Pidana Nasional (Analisis Implementatif Jarimah Hudud, Qishash dan Ta’zir)” *Rechtendstudent Journal* , Volume 1, Number 3 December (2020), 252.

<sup>24</sup> Haliman, *Hukum Pidana Syariat Islam; Menurut Ajaran Ahlu Sunnah* (Jakarta: Bulan Bintang, 1970), 458-459.

<sup>25</sup> Amir Abdul Aziz, *Al-Fiqh Al-Janai Fi Al-Islām Durub Al-Qatl, Al-Qiṣoṣ, Al- Diyat, Hudud, Al-Ta’zīr Amṣilatun Wa Tatbiqatun Nazariyyatun*, (Dārussalām, 1997), 9.

<sup>26</sup> Dwiyan Achmad Hartanto, “Kontribusi Hukum Islam Dalam Pembaharuan Hukum Pidana di Indonesia” *Journal, Sharia Studies and Law* , Vol. 1, (2016), 187.

<sup>27</sup> Erfin Dermawan Surbakti and Endang Agoestian, “ Analisis Yuridis Qanun Jinayat dalam Strukturisasi Hukum Pidana Nasional”, *Rechtendstudent Journal* , Vol. 1, Number 2, (2020), 118.

This sanction is in the form of punishment for criminal offenders who have been legally and convincingly proven, with the existence of permanent legal force from the judge as the party authorized to impose ta'zir criminal sanctions.<sup>28</sup>

b. Death penalty

The Hanafi school allows ta'zir sanctions in the form of the death penalty with the condition that if the act is repeated, such as a crime committed after being sentenced to stealing. The Malik and Hanabilah schools also allow the death penalty as the highest ta'zir sanction. They provide examples of sanctions for espionage and those who do mischief on earth. Likewise, the Shafi'i School, some of the Syafi'iyah Schools allow the death penalty, as in the case of homosexuality. Therein lies the strictness of Islamic law against the crime of fishing with explosives which causes huge losses to the country's economy and damages the marine environment.<sup>29</sup>

From Ibn Mas'ud radhiyallahu 'anhu, he said: Rasulullah shallallahu 'alaihi wa sallam said: "It is not lawful for the blood of a Muslim (to be shed) except for one of 3 cases: tsayyib (a married person) who commits adultery, a soul with soul (qishash) and people who leave their religion (apostasy) and separate themselves from the jama'ah (Muslims)." (Reported by al Bukhari and Muslim).<sup>30</sup>

Based on the hadith above, only three types of jarimah can be sentenced to death. Namely insults to religion, acts of theft or robbery that are carried out repeatedly then acts of espionage and people who do damage to the face of the earth. In this way, of the two opinions, the stronger one is the opinion that allows death penalty as the highest ta'zir sanction, even though in practice there are strict requirements to be subject to death penalty. Including the death penalty for perpetrators of fishing crimes with explosives must comply with the following conditions:<sup>31</sup>

- a) There is a legal decision from the court with permanent legal force.
- b) Convicts in cases of fishing with explosives must be recidivists, whose previous sentences did not have a deterrent effect on them.
- c) The crime of fishing with explosives is accompanied by the destruction of nature and the marine environment.
- d) Economic losses due to the crime of fishing with explosives have a negative impact on the country's economy and society, especially traditional fishing communities.
- e) It must be seriously considered for the benefit of the people. It also includes aspects of the unity and integrity of the ummah so that divisions do not occur, as well as preventing damage from spreading over the earth.<sup>32</sup>

In addition, in several countries now there are those who apply the death penalty as the highest ta'zir sanction, such as the death penalty for narcotics dealers and smugglers.<sup>33</sup>

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<sup>28</sup> A Djazuli, Fiqh..., 192

<sup>29</sup> A Djazuli Fiqh..., 192

<sup>30</sup> HR al Bukhari and Muslim 14th hadith

<sup>31</sup> A Djazuli, Fiqh..., 198

<sup>32</sup> Komnasham, Requirements for the death penalty in Indonesia, <https://www.komnasham.go.id/index.php/news/2021/2/16/1675/condition-hukuman-mati-di-indonesia.html> accessed on July 23, 2022.



c. Volume

Binding punishment in ta'zir punishment is based on the Qur'an, hadith and ijma'. In the Qur'an there is a form of sanction in the form of a binding punishment, for example a binding punishment for nusyuz perpetrators in Surah An-Nisa verse 34.

وَلَا يَنْفَعُكُمْ نُصْحِي إِنْ أَرَدْتُ أَنْ أَنْصَحَ لَكُمْ إِنْ كَانَ اللَّهُ يُرِيدُ أَنْ يُغْوِيَكُمْ هُوَ رَبُّكُمْ وَإِلَيْهِ تُرْجَعُونَ<sup>٣٣</sup>

Even though in this verse ta'zir is not imposed by Ulul Amri, but by the husband. However, the message implied in it shows the intention of binding punishment in ta'zir punishment. According to the scholars, examples of immorality that are subject to ta'zir sanctions with volumes, including in this case, namely: damage to morals, people who help robbery, thieves who do not reach the nishab, then jarimah-jarimah who are threatened with binding as had, but on him there is doubt. Then the lowest limit of volumes in ta'zir includes the issue of ijtihad. Therefore, it is natural that there are differences of opinion among the Ulama'.

It's just that for the sake of legal certainty, Ulul Amri has the right to determine the lowest limit, because the jinayah problem is related to the benefit of the people. Among the opinions of the Ulama regarding this is the general opinion of the Hanafiyah Ulama who state that volume is a ta'zir sanction that the lowest limit must be able to have a preventive and repressive impact on the people. But if there has been a judge's decision, then there will be no difference of opinion, in accordance with the rules.<sup>34</sup>

Lessons that can be drawn from this sanction, both for the convict and for the community, are:

- a) This volume is more discouraging and has more preventive power, because it can be felt physically, especially for people who are not afraid of other forms of sanctions.
- b) The sanction for binding bodies in the ta'zir is not a rigid sanction, but a very flexible sanction. This means that the amount can vary according to the different fingers while still paying attention to the condition of the convict. Thus, this sanction can be mutually beneficial for all judges' ijtihad according to the cases handled.
- c) Its application is very practical, does not require a lot of money.
- d) The volumes in the ta'zir are purer in applying the principle that sanctions are personal only for the convict, not having consequences for other people, because after carrying out these sanctions the convict can immediately be released and can work as usual, so that it does not have any unwanted consequences. need for his family. This is in accordance with the principle of the word of Allah SWT in surah Al-An'am verse 164.<sup>35</sup>

قُلْ أَغْيَرَ اللَّهُ آبِغِي رَبًّا وَهُوَ رَبُّ كُلِّ شَيْءٍ وَلَا تَكْسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ثُمَّ إِلَىٰ رَبِّكُمْ مَرْجِعُكُمْ فَيُنَبِّئُكُم بِمَا كُنتُمْ فِيهِ تَخْتَلِفُونَ ١٦٤

<sup>33</sup> Legal and Human Rights Research and Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia, *Kontroversi Penjatuhan Hukum Mati Terhadap Tindak Pidana Narkotika Dalam Perspektif Hukum dan Hak Asasi Manusi* (Jakarta: Tim Pohon Cahaya, 2016), 18.

<sup>34</sup> Achmad Djazuli, *Fiqh...*, 195-196.

<sup>35</sup> A Djazuli, *Fiqh...*, 195-196.

This sanction is a sanction that is directly felt by the body of the convict, so that it is more likely to have an effect on the healing of his sick soul. Moreover, this volume of sanctions can be adjusted to the right degree to make the convict a deterrent by considering the crime, the perpetrator, the place, and the time. Therefore, when viewed from a humanitarian point of view, the death penalty is more severe than capital punishment, both of which are corporal punishment, only the difference is that the death penalty does not only sacrifice its humanity, but also sacrifices its life and severs its relationship with society.<sup>36</sup>

## Conclusion

The view of Islamic law on the crime of fishing with explosives is a breakthrough in the field of Islamic law, with its firm nature but still paying attention to human rights, Islamic law is of the view that the crime of fishing with explosives is included in the ta'zir finger crime, of course with strict sanctions. The strict sanction could be in the form of death penalty, binding sentence, imprisonment, exile, and fine. The party entitled to impose the sentence is the government which must be supported by all of society, so that the sanctions imposed can be effective.

Strict sanctions must be emphasized in fisheries. In accordance with Article 8 paragraph 1 of Law Number 45 of 2009 amendment to Constitution 31 of 2004 the following article reads: "Every human being is prohibited from catching fish and cultivating fish with chemicals, biological materials, explosives, tools and methods, or buildings that can harm or endanger the preservation of fish resources and their environment, in the Indonesian Fish Cultivation Territory with the consideration that the losses caused by the crime of fishing with explosives are very large, namely damaging the preservation of fish in the Indonesian and international seas due to excessive fishing. , harming the country's economy up to 30 trillion rupiahs per year, destroying ecosystems and the marine environment due to fishing using fish bombs. The majority of perpetrators of fishing crimes with explosives are foreign nationals who also violate the territorial boundaries of Indonesia's sovereignty.

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<sup>36</sup> A Djazuli Fiqh..., 195-196.

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