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The Drug Addicts Rehabilitation: On Perspective of the *Maqashid Shari'ah* and Law Basic Principle

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Abstract

The drugs abuse has been becoming the tendency, the drug addicts were punished by executing imprisonment, meanwhile a treatment called rehabilitation could be proposed as an alternative. The rehabilitation has its own fundamental rules. To respond, this research was focused on how the rehabilitation carried the result toward the drug users in maqasid syari'ah and law basic principles use. To find the answer, a qualitative research has been conducted, employing descriptive analysis. The data was in the form of prime, secondary and tertiary legal materials. The result showed that the process of rehabilitation is based on maqasid syari'ah, to recover the abuser physical health according to hifz an-nafs, mental health recovery, is based on hifz al-'aql, beside using the religious approach in carrying out the hifz ad-din principles. The process was ended by employing hifz al-mal and hifz an-nas. The expediency theory that focus on the criminal law can guarantee the human life. The rehabilitation become more effective if it is followed by the social punishments. The sanctions are aim to invite, to model, guide, or force people to obey the social norms.

Keywords: rehabilitation, drugs, maqashid shari'ah, law basic principle

1. Introduction

The abuse and dependency on drugs have complex medical, psychosocial aspect of live (economy, politic, social, culture, criminality, mass riots and Etc.). The cases cause the quality degradation of family relationship, students learning ability and productivity, and the ability in determining the good and the bad deeds [1]. The drug abuse experienced by the 16-25 ages as the productive age or as national future assets [2]-[3]. This Related to *Wasail* (means) in dealing with narcotics abuse and the attainment of maqasid shari'ah. Indonesia has legal provisions that as the way to meet the desired maqasid. In the context of law number 35/2009 that concern with narcotics while the second part concerns with rehabilitation is stated as follows: *Article 54*: Narcotics addicts and victims of narcotics abuse must undergo a medical rehabilitation and social rehabilitation.

According to the narcotics law number 35/2009 about drugs part related to rehabilitation: *The article number 54*, the narcotic addicts and the users must attend a medical treatment and rehabilitation. The article 127 verse 2 of law number 35/2009

about narcotics, reemphasized that “in deciding a case as intended in verse 1, the judge must pay attention to the provisions (article 54, 55, 103, and 127 verse 3). “Someone who has been legally proven as the user, he must attend a social and medical rehabilitation”. The Drug Law number 35/2009 about narcotics and the Islamic Law through its’ purpose has some relevant ideas related with drug use prevention. On the other side, the law does not fully protect children from drug abuse and use because the prohibition on the drugs uses is not separately stated.

According to Islam, one of the religion function is to educate, protect and maintain the benefits of humanity [4]. These are the ways how should Islam implement the values as the *rahmatan lil ‘alamin* as the fundamental purpose. The laws are created to deterrent effect, retaliation, fostering, restoration and penance. Basically, Islam has very serious attention on to each individuals protection and guarantee for the life needs and protection [5]. Failure in completing the needs causes chaos and disorder in completing the five primary needs of life (*dharuriyyah*), namely religion, reason, descent, wealth, and soul.

Maqasid Syari’ah is one of the Islamic laws, `Epistemologically, *maqasid al-shari’ah* is composed of two words, *maqasid* and *shari’ah*. *Maqasid* is the plural form of the word *qasd*, which means ‘intends’, ‘towards a goal’, ‘middle’, ‘fair’ and does not cross the line while *syari’ah* means “ ways to a “ spring”, habit or Sunnah [6]. The meaning of the word in the epistemology means *al-thariqah*, which means the way that people pass toward the water sources. According to Izz al-Din Ibn ‘Abd al-Salam (D. 660 H/1209 M) [7], the word *al-syariah* refers to a straight path and the rule of law that Allah accepts for His servants.

Based on the background of the problem, the problem of this research is how the rehabilitation efforts for drug trafficking in Sharia maqasid and principles of legal benefit. The purpose of this research is to know the rehabilitation efforts for drug addicts in Sharia maqasid and principles of legal benefit.

2. Methodology

In accordance with the object of study, this type of research is in the form of library research. Research is carried out by collecting data through literature materials that are relevant to the problem being discussed. The approach used in this research is qualitative research that is descriptive analysis. The sources of the data were acquired from primary, secondary and tertiary legal materials. For primary sources, al-Qur’an, Hadith, Fiqh and Ushul Fiqh such as al-Muwafaqat fi Ushul al-Ahkam by al-Syatibi, Maqasid al-Shari’ah al-Islamiyyah by Muhammad Tahir Ibn ‘Ashur, Ushul Fiqh by Muhammad Abu Zahra and Law No. 35 of 2009 concerning drugs. Secondary sources of authors use books, journals, research results and magazines. Whereas tertiary sources are in the form of dictionary and encyclopedias. To collect the data, it was necessary to do the documentation study, examine, and record the written document both in primary and secondary form. Then, the data reduction was also done before data description. The next stage was to find the connection among the variable which were aimed at answering the research question.

In light of the background above, the formulation is the rehabilitation efforts for the drugs addicts in *maqasid syariah* usefulness legal principle. The purpose of this study is to describe the rehabilitation efforts for drug addicts in the *sharia maqasid* and the o usefulness legal principle.

3. Results and Discussion

According to the data found in various literature, it is the fifth of the principles including the basic needs (*dharûriyyah*) [8]. To keep the existence, the benefits or Maslahat Syari'ah has created the punishment, drinker and drugs user as the examples. Keeping the mind and soul from the bad habit is categorized in *adharûriyyah* level. Islam with its' legal implication commands the people to do good deeds and forbids for committing the crimes as the prevention of becoming *fasiq* [9], those who walk out of the tracks, to doing immoral acts or doing major sins, such as using drugs and must be prevented.

Maqasid syari'ah as the purposes of Islamic law pay more concern to human wellness in the world and here after. In Islam, every factors that have bad effect toward the goodness both for individuals and communities, as the consequences, drugs become forbidden or sinful as they can endanger human life.

To save mind and soul is seen as the *dharuriah* level and people must keep it exist. As one of the *maqasid*, *hifzh al-nafs* branches, which means to provide factors that make human strong and keep exist and reject human awakening factors. *Hifzh al-nafs* is to make human stay in the ideal condition and make them active in doing their duty. There are many verses related with *hifzh al-nafs* in *Al-Quran*.

Being gifted by logic to recognize his God, with mind, God send them orders. Human are regarded less than other creatures if they do not use their mind. Having no control on their mind may cause ugliness, sin evil and contempt. Since mind is the most precious gift to humans, God orders humans to do deeds that guarantee the safety and development of reason such, cultivating themselves with knowledge, and forbidding them to do anything corrupting the mind or weakens their strength and potentials by consuming drinks, intoxicating (*khamr*) and drugs (*mukhaddirat*).

Hifzh al-'aql is associated with prohibition of consuming *khamr* and other drugs that can damage mind and cause social depravity. In the attempt to preserve here is a need for a commitment in eliminating the drugs, preventing people to drink it and punishing people to drink it.

Hifzh al-'aql must be developed by studying the Qur'an's moral messages related with mind through studying verses that introduce the terms intellect with all forms and emphases. At a glance, the meaning of *hifzh al-'aql* is preserving the intellect of the congregation and *mukhaddirat*, makes it the director, guide and controller for rationality (*'aqlaniyah*). In this term, *hifzh al-'aql* has closer meaning with the necessity in working the common sense in all attitudes, in action and words. The meaning frame is to stay avoid form all of the bad attitudes contrasted with *aqlaniyah* demand such as nullifying the common sense (*jahiliyah*), national fanaticism (*'asabiyah*), group fanaticism (*ta'ifiyah*), and tribal fanaticism (*'irqiyah*).

The most common characters in al-Qur'an for calling and appreciation on mind. The Qur'an remain, directly or indirectly, implicitly or explicitly, in global or in detail, must respect mind and make it as an important reference. This point has been repeated by al-Quran for many time, showing that mind has a high and noble status in al-Quran. To emphasize the position on mind, the Holly Quran uses various terms such as *tafakkur*, *qalb*, *fu'ad*, *lubb*, vows, *'ilm*, *tadhakkur*, *rushd*, wisdom, *fiqh*, *ra'y*, and other terms whose meaning revolves around the function of reason with a variety of meanings and scope.

After tracking the *Nazr* verses, it is concluded that the Qur'an invites humans to use reasoning, it is called as logical thinking process and systematically to form and evaluate a belief. *Nazr* expected by *nazr* verses is not merely seeing things without involving feelings and thoughts, but conscious observations and aims, capturing the nature behind

what is observed. Al-Quran in its verses attempts to call people to use their mind until they reach the faith and find the Oneness.

The researches on verses related to “‘*aql*” conclude that a normal sense can bring people obey the Gods’ rules and those who follow God's path have traced the path of heaven. The exclamation of using mind is empowered by other similar meaning such *libb*, *fu’ad* and *hijr*.

In Islam, keeping the mind, (*hifz al-‘aql*) is one of among the purposes the Islamic Law (*Maqasid As-Syariah*) the efforts in keeping the mind (*Hifz al-‘aql*) lead people to think in objective way and distinguish the right and false, and between the benefits and the harms. Maintaining the mind in an obligation [10], human since mind is a miracle gift of Allah to humans, make a clear distinction between men and animals, to praise Allah as *Ahsan Taqwim* [11].

Regarding that the desire in *maslahah* can be used as a guideline for human better life, *maslahah* with *ushul* characteristic, (The main, Fundamental and basics) beside the problem related with *wasail* aimed at addressing the purposes to reach *Usl* (the Main) [12]. Based on both components, the *maqasidiyyun* divided *maslahah* into: a) *maqasid al-usul* (the basic and fundamental objectives) and, b) *maqasid al-wasail* (goals).

First, *maqasid al-Usul* as the basic goal to achieve by the provisions of Islamic or in the form of *al-dharuriyyah al-khams* includes *hifzh al-din* (safe guarding the religion), *hifzh al-nafs* (protecting souls), *hifzh al-‘aql* (guarding reason), *hifzh al-nasl* (guarding off spring), *hifzh al-mal* (guarding wealth). In addition, there are also basic principles that automatically stick to Islamic law itself, such as justice (*al-‘is*) [13], freedom [14] (*al-hurriyyah*), equality (*al-musawah*), wisdom (*al-hikmah*), and goodness for humans (*masalih al-ibad*).

Second, *maqasid al-wasail* is a mean to achieve basic or fundamental objectives (*maqasid al-ushul*). Imam al-Shatibi termed this second point as the *maqasid al-tabi’I* [15], means to achieve basic objectives (*maqasid al-usul*), then it must go through certain means and the means in question is *maqasid al-wasail* [16].

With no doubt, Ibn ‘Ashur makes a distinction between *maqasid* and *wasail*. He defined *maqasid* as a goal to achieved by the mukallaf both in *maslahah* or *mafsadah*, while *wasail* is defined as a legal provision which at last becomes the way to meet *maqasid* [17]. In line with Ibn ‘Ashur, Nur al-Din Mukhtar al-Khadimi explained two main character of *wasail*, first is: permanent and does not change by time, place and condition, such as Friday Prayer (Moslem weekly prayer in Friday) in the mosque and going pilgrimage to Mecca [18]. The second types are the *Wasail* that has permanent characteristics. It means that the two services can run simply through listening to the radio or hajj through television. The second character is (elastic and dynamic according to the changing circumstances and conditions), such as the worship of *ghairu mahdah*. Hasan Hanafi, an admirer of al-Shatibi thought, wrote in his book *Min al-Nass ila al-Waqi ‘as* follows:

Shariah refers the purposes and means. The goal is for itself, while the means aims to achieve the goals. Then, there is no destination without means and no means without goals. In light, Shari’a certainly has a purpose and means that can be achieved through research (and tracking) instead of forcing and shackling humans to carry it out. Sharia contains universal values, in line with various religions, [19] sects, groups and beliefs. In term of a social context, its function is to accommodate human rights and national human right [20], that includes the basic human rights and individual human obligations as well as responsibilities.

Using a direct language al-Qarafi (d. 684 H/1285 AD) [21] explains that the motives of law (*mawrid al-ahkam*) revolve around *maqasid* and *wasail*, where both illegitimate and halal *wasails* remain based on *maqasid*. The purpose of the law is divided into two: (1) *maqasid* which contain *maslahah* and *mafsadah* to themselves; and (2) *wasail*, namely various ways to arrive at *maqasid* in the form of halal and haram laws, even to the lowest level of *maqasid* [22]. The means to achieve the highest goal is the best means. Means are to achieve the goal as the medium of value. Likewise, the means to achieve a good goal is a good means.

In accordance with the provisions of Law number 35 2009 concerning narcotics, it can be simply known that when someone abuses drugs for one self. There has been an act previously related to the source of the goods obtained. In general, this usually occurs when there is an influence of internal conflict or the external condition of the offender he accepts the offer of illicit goods in order to calm down for a moment or even just to try, so that at a certain time when the user is in a position that is addicted as a result of these substances, the user will usually also find their own or buy these drugs to be consumed. In the view of psychology, the drugs abuser is keep depend on using the substances. For those who directly stop using the drug usually experience an adverse effect. Feared to cause death, the best solution is to punish drug abusers is rehabilitation.

This is occurring and in my opinion, the behavior of drug abusers completely violates the existing laws both positive and Islamic law. These may include the state law and the existing Islamic law. However, the process of providing punishments for drug abusers cannot directly be subject to severe penalties, directly in the form of imprisonment. This is concluded based on psychological theories about the pattern of handling addicts or drug abusers as well as the theory of *maqasid sharia*.

Psychological drug abuse behavior is not a behavior that can be stopped directly. Narcotics addicts are people who use drugs in addiction, both physically and psychologically. While drug dependence is a condition characterized by the urge to use continuously with a tendency to increase. If the numbers of the drug user reduced or stopped in time, it can cause a unique physical and psychological symptoms. The psychological theory above has made it clear that the addiction in drug abusers will be dangerous if it is stopped immediately. Therefore, a gradual rehabilitation process is needed as a solution to the abuser can escape from dependency.

The Theories in Islamic *maqasid* generally confirm the direct effect of drug use is to damage physical health and reason, as well as the potential to eliminate the belief in religion and loss of property, due to the dependence on drugs. The *maqasid* aspect of *sharia* is guaranteeing, providing protection and preserving human benefit. In the first level it is called as *Dharuriyah* (inevitability) has 5 main points: *hifzh al-din* (protecting religion), *hifzh an-nafsi* (protecting body and soul), *hifzh al-'aql* (protecting reason) and *hifzh al-mal* (protecting the mind) protect property), *hifzh al-nasl* (protect offsprings).

Dharuriyah is considered as an essential treatment because of the goal it has behind divine law and the purpose of rehabilitation for drug abusers, to repair the damages caused by drug use. The aim is to restore physical health based on the *hifzh an-nafs*, restore the mind health based the *hifzh al-aql*. Rehabilitation can also use a religious approach, by implementing *hifz ad-din*. After completing the rehabilitation process and the perpetrators have returned to their proper lives, *hifz al-mal* and *hifz an-nasl* effort must be executed. Thus, to achieve the *sharia maqasid*, the preservation of reason from drug abuse influence, the rehabilitation is the most appropriate treatment for the drug abuse.

Based on the its purposes, Maqasid Syariah are classified into: *ashliyyah* purpose and *tabi'iyah*. The *ashliyyah* purpose is as the main purpose demanded by Commanded by Allah, there is no doubt that the it has most fundamental purpose among others [23]. In relation to its purposes, Al- Syatibi (D.790 H) argue that human must fully pay attention to the main purpose, since it is a prime, and later considered an imperative in religion. The benefits contained by the goal is common and absolute, has no limitation on situation, space and time [24]. Meanwhile, the *tabi'iyah purpose*, is defined as the supporting for the *ashliyyah* purpose. In light, it can be stressed that the *tabi'iyah purpose* is the connector and the complementary of the *ashliyyah*. Al-Sayatibi states that the *tabi'iyah* in particular, consider or pay attention to human happiness and fun.

The *ashliyyah* purpose is as the sanction for alcohol consumers or drug abusers, aimed at educating and cause a deterrent effect, staying away from the habits. Meanwhile, the *tabi'iyah* is as the deterrent for preventing the records. The rehabilitation is aimed at preventing of doing the same action, retracing he right way.

The principle of legal usefulness is considered as an appropriate tool to analyze the implementation of the rehabilitation. The theories of usefulness (*Utilitarianism*) was initiated by p Bentham (1748-1832). For him, law is legally regarded as a law if it gives significant benefits to most of people. This principle was stated by Bentham in his work *the greatest happiness of the greatest number*. The purpose of legislation is to create happiness for the human. This benefit theory describes what is actually done by rational people to make decisions in their life. This can be reasonable that alternative sanctions for action are given, namely rehabilitation, as an appropriate sanction was given to prevent and restore abusers and drug addicts.

The reference analysis of the application of criminal law policies in terms of implementing medical and social rehabilitation [25] "emphasizing on the law or criminal law policy should provide high quality of happiness in life" [26]. Legal objectives, justice, usefulness and legal certainty which are used in formulating the more effective efficient policies there is a need integrate law enforcement officials (Police, Prosecutors, Judges and BNN) with the executive. The Indonesian Ministry of Social Affairs in doing effort of rehabilitation.

The next Prevention Theory is proposed by Peter Hoefnagels, between the preparation of regulations on criminal law policies and services through rehabilitation institutions for the complainants is quite related in supporting the roles and functions of government responsibility [27]. In its relation to the authority charge, the judge who manages the case of drug addicts is slightly different and even has no good inter communication in the attempts of achieving the policies.

The priority of the rehabilitation must be addressed to healing, finding causes that triggerise deviant behavior from drug addicts. Stout and Clamp, said that it is better to prevent than to experiencing the treatment. The aim of rehabilitation maintaining or turning the individuals physical [13], social relation, skills and having other functions.

The policies related to social rehabilitation for narcotics addicts issuing the therapeutic community method, with a social group work method. It is intended for drug abuse, which carries the principle of "helping others to help themselves". This method emphasizes the cutting down of user behavior, by carrying out conditioned individual and group activities, within the rehabilitation center where the drug addicts get special treatment.

According to the author, rehabilitation sanction type does not necessarily give a deterrent effect on drug users, and prevents others from committing the same crime because rehabilitation is an effort to restore or treat and reconditioning for abusers as well as victims of drug abuse and this make them reacquire their social functions, carrying out

activities in normal and natural way. Indeed, the goal of criminal prosecution which is on Islamic law and positive law has not yet been achieved, this is just to prevent, improve, educate and make a person feel deterrent and preventing them to repeat the actions and detain others people from the bad acts beside keeping them far from an environment that against the law.

Deterrent effect may be achieved social supporting rehabilitation. Social sanctions or social control / social control as a process of limiting actions aimed at inviting, setting an example, guiding, or forcing every member of the community to comply with the social norms [28]. According to [29]-[30], social sanctions includes process both are planned or unplanned, which aims to invite, guide or even coerce citizens into complying with applicable values and norms.

Social sanctions and social work for people involved in drug abuse can be given in any forms [31]: a) Social community and the leaders in Batang Angkola District, South Tapanuli provide social sanctions for people who have drugs, by exclusion from the community; b) The Head of the Indonesian National Police (Kapolri), social sanctions for narcotics abusers in Indonesia are given if the suspect has been caught red-handed and arm the evidences, then it must be introduced without wearing a face mask; c) Sweeping the road with clear attributes to make people know that he is abusing drugs; d) Become a yellow troop by taking household trash every day; e) Clean the ditches at the edge of the road.

The kinds punishment for social sanctions and social work is indeed not yet regulated in Indonesian laws and regulations, it is a need to be firmly regulated, and related with the relevant laws and regulations [32]. However, this concept has been conceived in the new Draft Penal Code. The purpose of the formation of penalties /social work penalties is as an alternative to the deprivation of short-term independence (short prison sentence) that will be handed down by the judge, the social work sentence can help to free themselves from guilt. In addition, this can prevent the destructive effects of criminal deprivation of liberty. The community can interact and participate actively to help the convicted person in carrying out their social life properly by doing useful things.

The implementation of social rehabilitation provides the legal benefits for drug addicts. The considerations for the imposition of criminal /social work penalties are: a) the defendant's confession of the criminal act committed; b) the defendant's proper working age according to the applicable laws and regulations; c) the defendant's consent after being explained about the purpose and all matters relating to social work crime; d) defendant's social history; e) defendant protection on the work safety; f) defendant's religious and political beliefs; g) the ability of the defendant to pay criminal fines. In practice, social work penalties must not be commercialized and imposed for a minimum of 7 hours and the longest: a) 240 hours for the defendant who is 18 years old or above; and b) 120 hours for the under the age of 18 years defendant [33].

Based on The Islam Punishment Objectives the social sanction are as follows: a) Retaliation is a form of responsibility for acts of drug abuse that have been carried out and tarnish the honor toward the community, b) Prevention is to detain people who commit drug abuse to prevent them from repeating their actions because they have a deterrent effect on the perpetrators, and prevent others from doing the same actions, c) The improvement is to educate perpetrators of drug abuse, treat them to be good and aware of their mistakes. In the terms of the Islamic Shari'a attention, this punishment arises the awareness for keeping away from drug abuse not and hoping for God's Bless.

As a preventive and more effective effort the implementation of social sanctions in public is intended convicted persons feels ashamed and does not pose a risk to their

family. This type of social sanction also make government offices pay less compared to other types of penalties. Implementation in public shows a philosophical motive to humiliate the perpetrators of the violation of the law they have committed, and with their willingness to carry out the punishment allows it to obtain an honorable way being back into society without fear of stigmatization.

The author argue that social sanctions are important to apply and it has been proven to be ineffective in deterring drug abusers, even now many drug sales transactions are controlled in prisons. Indeed, Drug abusers who have experienced rehabilitation are not free from sanctions after all, but to be more effective they must undergo the social sanctions

The advantages of the social sanctions threats are intended as an effort to give awareness to the perpetrators and at the same time warn the community for not to commit drug abuse. In addition to social sanctions an educational and coaching effort are provided, so that the sideline will realize and regret the mistakes made and lead them to *taubat nasuhah*. According to Islamic values, repentance is the only way for humans to cleanse themselves from various forms of errors and sins and release them from anxiety that shakes the soul.

4. Conclusion

As the objectives of the rehabilitation sharia maqasid aims is to restore physical health based on *hifzh an-nafs*, restore health to the mind based on *hifzh al-'aql*. Rehabilitation can also use a religious approach as well as implementing *hifz ad-din*. After completing the rehabilitation process and the perpetrators have returned to their proper lives, there has been an attempt at *hifz al-mal* and *hifz an-nasl*. The theory of expediency as a reference analysis of the application of criminal law policies to the implementation of medical and social rehabilitation that "emphasizes on criminal law policies should provide maximum happiness in life. Rehabilitation will be even more effective if accompanied by social sanctions. Social sanctions or social control/social control as a process of limiting actions aimed at inviting, setting an example, guiding, or forcing every member of the community to comply with applicable social norms.

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