

DEATH PENALTY TO DRUG TRAFFICKERS FROM THE PERSPECTIVE OF *SIYĀSAH* *SYAR'YYAH*

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Abstrak: In Malaysia, drug abuse and drug trafficking began affecting the society seriously around the 70s and, the trend has continued unabatedly in the first decade of the new millennium. The outcomes are staggering, as it is the cause of various social ills such as murder, burglary, prostitution, and even causes family disintegration and erodes social relations. The main objective of this study is to analyze from the Islamic perspective on the death penalty based on the *siyāsah Syar'yyah* principles since the punishment by death for drug trafficking is not an offence directly stated in the al-Quran and al-Sunnah under the hudud law. Based on textual analysis, the study finds that the death penalty meted out against drug traffickers is justified based on the severity of the act in affecting the individual involved, society and the nation.

Keywords: Death Penalty, Drug Traffickers, *Siyāsah Syar'yyah*.

A. Introduction

Drug abuse and drug trafficking in Malaysia is not a new malady, as it began taking root at the end of the 19th Century, as a result of the Chinese labourers' arrival in Malaya during the British colonization (1824-1957) era. The immigrants not only came with the aims of seeking riches, but they also brought along some unhealthy culture, such as the community's opium, marijuana-smoking habit, and their ethnocentric way of life. The unhealthy activities became rampant when the British administration failed to tackle the problem early; and it was only solved when the government punished the culprits by incarcerating them or deporting them back to their homeland. However, drug trafficking and drug abuse cases have been on the rise since the 1970s. To combat this social ill, the government has launched anti-narcotics campaigns and

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proclaimed the substance as a major enemy of the nation. This is due to the fact that illicit drugs could affect a country's peace, economic development and stability, as it harms not only the addicts, but the family and society at large as well.

From various research conducted, most discussions focus on the dangers of drugs, factors that cause the increase in the number of drug addicts and the effects of the crime to the country's security and stability. Among the publications that focus on this issue are '*Drug abuse in Malaysia*' by Abdul Rani Kamaruddin (2007, 22) and '*The law of drugs possession and trafficking in Malaysia*' by Hisyam Abdullah (2006) which analyses Malaysia's Law on handling of drug trafficking cases. There are also studies that attempt to link Islamic Law with drug trafficking such as the article by Geethan Vincent, '*Pandangan Islam mengenai hukuman untuk jenayah pengedaran dadah*', but it is not based on the *siyāsah Syar'iyah* principles (Ram 2006).

The overriding objective of the *siyāsah shar'iyah* is to provide the mandate to authorities to decide on a just punishment upon offences that are of high severity, however is not explicitly categorized under hudud law. Among them, the role of takzir law in sentencing serious crimes such as *hudud* crimes, and whether the implementation of the death penalty is justified or not. The issue is discussed by Shukri Mohamad (1994) in his article, '*al-siyāsah al-syar'iyah wa qawā'iduha fi al-'iqāb al-ta'zīr*'. Even though the study does not focus on drug-related cases, but the method could be adopted in analyzing whether capital punishment could be applied upon drug traffickers. Therefore, this study will focus on the status of *siyāsah Syar'iyah* as a guideline in determining the penalty for drug trafficking cases. It is a method applied by the government to aid the judicial process in determining the type of penalty for crimes or felonies that are not directly stated in the al-Quran and al-Sunah.

B. Drug and Its Hazards

Drug, a type of chemical substance that can be found either in its natural or synthetic form is made by processing leaves or the sap of certain plants. In the medical field, drugs are classified as a chemical substance or poison that is used to determine the type of illnesses, cure or provide immunity against diseases, which is prescribed in a specific

dosage. Therefore, it can be concluded that drug is a chemical substance that can cure various chronic diseases if taken in specific doses as prescribed by general practitioners; however, it is also capable of harming the body physically and mentally if consumed in large doses (Glenn 1994, viii; Encyclopedia Americana 1970, 404; Mohd Reduan 1990, 8).

Generally, drugs can be classified into a few categories, such as opium, marijuana, heroin, morphine, cocaine, amphetamines and barbiturates, and each type is harmful in different manners.

Drug Type	Effects on Addicts
Opium	<ul style="list-style-type: none"> ○ Impaired thoughts, delusion, contracted pupils, runny nose, nausea, loss of appetite, and amnesia. ○ Experience physical dependence, that is, if one attempts to overcome the addiction, withdrawal symptoms will kick in, such as restlessness, anxiety, confusion, profuse perspiration, tremor and diarrhoea. ○ Isolate themselves from family and neglect their health
Marijuana	<ul style="list-style-type: none"> ○ Psychologically, addicts take pleasure in being in trance, rambling, laughing, feeling elated, and get agitated and frustrated easily. ○ Risks of contracting chronic diseases like pneumonia, cough, chest pains, brain damage and sexual dysfunction. ○ Experience withdrawal symptoms like body aches, diarrhoea, and muscle pain and headaches
Heroin	<ul style="list-style-type: none"> ○ Hallucinating, sweating, lethargy, drowsiness, loss of appetite, and cramps that could be fatal. ○ Experience withdrawal symptoms like body aches, stomach aches, glassy eyes, vomiting, sniffles, diarrhoea, and palpitation ○ Risk contracting diseases like AIDS, hepatitis, locked jaw and blood poisoning caused by sharing of needles ○ Expecting addicts would suffer from anaemia, diabetes, pneumonia, and miscarriage. Babies born usually suffer from poor health, and could experience fits and even die at birth.
Morphine	<ul style="list-style-type: none"> ○ Addicts would feel delirious, experience pain in the heart, incontinence, and disrupted blood flow. ○ Needle-sharing would lead to highly-complicated diseases like AIDS, locked jaw, hepatitis and blood poisoning

	<ul style="list-style-type: none"> ○ Addicts often experience sorrow, sadness, anxiety, laziness and anger. ○ Experience withdrawal symptoms like irritability, back pain, anxiety, vomiting, amnesia, sweating, and loss of appetite
Cocaine	<ul style="list-style-type: none"> ○ Users have high level of awareness, confidence, physical endurance, and could withstand prolonged periods of hunger, which explains the causes why it is highly popular. ○ Hallucinate, as they experience seeing non-existent objects or things. ○ If addicted, addicts would experience confusion, impaired thoughts, paranoia and sorrow. ○ Experience withdrawal symptoms like lethargy, hunger pangs, lack of sleep, depression and these would drive them to take drugs again. ○ If taken in high doses, it could lead to fatality.
Amphetamines	<ul style="list-style-type: none"> ○ Guilty, depressed, vicious, restless, and anxious. ○ Addicts are prone to be inflicted with chronic ailments like pneumonia, heart problem, hypertension, permanent brain damage, fainting spells and fatality in overdose cases.
Barbiturates	<ul style="list-style-type: none"> ○ Cause addicts to be drunk-like, childish, lethargic, nauseous, imbalanced, sad, sleepy, chaotic thoughts and could cause fatality. ○ An overdose could cause one to lose consciousness or die. ○ Withdrawal symptoms include shaking, amnesia, body aches, affected eyesight, depression, increased body temperature, fits and death.

Table 1: Drug types and the effects on addicts (Griffith and Brian, 31-33).

Based on the above table, it is clear that drug abuse could seriously harm addicts, as their addiction could lead them to resort to committing crimes in order to fulfil their addiction needs.

C. The Effects of Drug Trafficking to The Nation's Stability

The major concern of drug trafficking is the drug-related crimes that stem from it. Generally, drug crimes can be divided into two types, which are crimes related to addiction, and crimes linked to drug trafficking.

1. Crimes Caused by Drug Addiction

The safety of the public will be threatened when addicts need money to supplement their habit, and drugs are expensive, many a time, they have to resort to committing crimes. Many male addicts are involved in risky and violent crimes such as burglary, theft, break-ins and extortions. Meanwhile, female addicts would often turn to prostitution to support their addiction. The felonies are not only degrading and could cause fatality, but also threaten the society by harming and damaging lives, property, and dignity (Bruce 1990, 11; Dana 1990, 160), as listed in Tables 1 and 2.

For the most common crimes committed such as burglary and break-ins as they use violence on victims, it could turn disastrous as they might cause the death of their victims. As criminal cases keep increasing, the society's peace and harmony are affected. The Prison Department's statistics reveals that from 2000-2006, almost 40 percent inmates of prisons across the nation are drug addicts. This shows a significantly high relation of drug-related cases, either as addicts or dealers; and criminal activities in the country (Mohd Reduan 1990, 56; Mohamad Sabri and Che Bakar 2008). If the effects are analysed from the perspective of Islam, it shows high similarities with *al-hirabah* crimes, the types of crime that affect the peace and security of a community.

Types of crime	Percentage of Crimes Committed by Addicts	Percentage of Crimes Committed by Non Addicts
1. Burglary	26.3 %	24.6 %
2. Shoplifting	37.9 %	11.5 %
3. Forgery	14.7 %	1.6 %
4. Car-accessories theft	40.0 %	16.4 %
5. Car theft	15.8 %	14.8 %
6. Pickpocket	3.2 %	-
7. Embezzlement	12.6 %	3.3 %
8. Property burning	4.2 %	-
9. Blackmailing	3.2 %	-
10. Stealing by prostitutes	9.5 %	-
11. Possessing stolen items	39.0 %	19.7 %
12. Other types of theft	21.1 %	6.6 %
13. Assault / robbery	12.6 %	23.0 %
14. Armed robbery	29.5 %	19.7 %

15. Gambling	5.3 %	3.3 %
16. Prostitution	85.7 %	33.3 %

Table 2 The types and percentage of drug-addict crimes versus non addict crimes (Narcotics Department Royal Malaysia Police 2009).

Types of Crime	Percentage of Crime
1. Theft	1.5 %
2. Assault	<0.1 %
3. Burglary	0.3 %
4. Car theft	<0.1 %
5. Car-accessories theft	0.6 %
6. Shoplifting	10.4 %
7. Pickpocket	2.9 %
8. Other types of theft	1.4 %
9. Forgery	1.3 %
10. Embezzlement	0.5 %
11. Peddling stolen items	2.6 %
12. Prostitution	52.7 %
13. Drug peddling	15.9 %
14. Vandalism	<0.1 %
15. Gambling	2.2 %

Table 3: The types and percentage of crime by female addicts (Narcotics Department Royal Malaysia Police 2009).

Drug addiction could also disintegrate familial ties, as many drug-induced individuals are prone to hurting their family members like beating or even killing, in order to obtain money. At the community level, peace is threatened when different types of crime begin cropping up such as burglary, break-ins, to the point that residents fear for the safety of their homes whenever they go off for work or holidays. In fact, things would worsen if the gang wars could escalate into racial tensions, especially if certain ethnics are actively involved in drug trafficking while other ethnics become victims of drug abuse and blackmailing (Agensi Dadah Kebangsaan Kementerian dalam Negeri, 46).

2. Drug Trafficking

Drug trafficking is a crime that is more serious than drug abuse as it involves the sales of illegal substances. Hence, any problem faced by the

drug traffickers cannot be reported to the authorities (Bruce 1990, 11; Dana 1990, 160). Therefore, they have their own means of tackling their problems, which include:

1. Selecting individuals that have previous criminal records such as hardened criminals, or those with abusive personalities, strong physical abilities, and aggressive. These types of individuals will instil fear in addicts, dealers and the community.
2. Obtaining the latest firearms to warn small-time drug dealers to ensure that they do not hide any drug or money made from drug dealing, or even informing the police of their activities. If the rules were broken, the individual will either be tortured or murdered.
3. Using certain tactics to cover up their drug dealing activities from being tracked by the authorities, such as by providing money and 'aids' to the needy, such as low-income earners, the unemployed, mothers in distress and old folks to ensure that their secrets are safe. If the tactics are ineffective, the dealers would resort to using brutality or torturing any party that come in their way. As a result, the community would live in fear, and dare not make any report to the police (Bruce 1990, 35).

Other than that, drug traffickers are often linked with more dangerous crimes such as fights, clashes and disputes between drug-dealing gangs. The issue often rears when the dealers fight among themselves when disputing their claims over supplying rights to clients, and in wrangling over territories. To ensure that their territories are not trespassed, they often resort to violent means, such as by abducting or even killing committee members or addicts (Bruce 1990, 38). In Malaysia itself, statistics shows that drug-related cases continue to increase from 2002 to 2006. The majority of those involved are young people from the ages of 25 to 29, around 32,284.

The second highest age group are those in the ages of 30 to 34, around 27,411 (Narcotics Department Royal Malaysia Police 2009). The severity of the problem is also witnessed in other nations, such as in the USA, as the city of New York recorded around 40% of drug-related homicide cases in 1983-1990. In fact, there were also reports of murders due to disputes among drug-dealing mobs, who clashed over the rights to

control strategic territories. (Dana 1990, 191) In Mexico, since President Felipe Calderon waged war against drugs, 34,612 murders were recorded. In fact, a huge hike of 60 per cent was witnessed in the number of homicide cases recorded in 2010 compared to the previous year (Harian Metro Newspaper 2011). The phenomenon was serious, as it threatened the peace and safety of the public.

There are also problems that arise between dealers and buyers, as most drug peddlers will sell low quality drugs at inflated prices, while the buyers expect it to be vice-versa. When distrust sets in, it will lead to conflicts, which would escalate into fights, especially if drugs purchased are found to be mixed with synthetic substance. Based on the Police Department reports, many criminal cases like murder and burglary in Malaysia involve feuds between drug-trafficking mobs (Utusan Malaysia Newspaper 2010).

This scenario is similar in Florida, as Mc Coy (1978) claims that two-thirds of assassination cases are due to drug deals that went wrong between dealers and buyers (Duane 1990, 105). In conclusion, it is proven that most of drug-related crimes are traced to drug sales and trafficking activities. Therefore, to curb the situation from deteriorating further, the government had no other choice but to resort to implementing the strictest measure by imposing death penalty to any individual found guilty of drug trafficking.

D. Execution by Hanging Sentenced on Drug Traffickers in Malaysia

Based on the effects of drug trafficking crimes upon addicts and their family, the society and the country, the Malaysian jurisdiction has taken a tough stance by applying the death by hanging sentence upon any convicted traffickers. The rationale is that drug is capable of destroying the peace and harmony of society, as the crime of drug trafficking is akin to murder (Agensi Dadah Kebangsaan Kementerian dalam Negeri 2007, 78-79).

The penalty was enacted under Section 39 (B) of the Dangerous Drugs Act 1952 which was revised in 1983 (Dangerous Drugs Act 1952, 3-82). Act A 533 was legislated on 15 April 1983, which states:

No one is allowed either on behalf of himself or herself or other party either in or outside Malaysia: (1) Trafficking of dangerous drugs; (2) Offering to sell dangerous drugs; and (3) Manufacturing or proffering to prepare the means of trafficking dangerous drugs. Any individual found to be violating any provision in Section (1) is deemed to have committed a felony under the act, and if found guilty, is punishable by death.

Based on section 39 (B)² of the Dangerous Drugs Act, there was a notable increase in the number of drug dealers arrested from 2000 to 2009 that is from 1000 to 2000. The number is high, and most of those detained under the Act would be sentenced to death. Therefore, the question that arises from here is that, does the penalty is congruent with the Islamic principles, as the religion would only execute crimes committed within the jurisdiction of Hudud and Qisas laws, while drug dealing does not fall under any of the laws.

Therefore, this study will analyse the crime under the principles of *siyāsah Syar'īyyah* as every Muslim ruler is provided with the authority to decide on a suitable penalty to be meted out on criminals, including death sentences, based upon the severity of the crime. The analysis is important as it would shed light on Malaysia's status as a sovereign Islamic nation. To determine whether the death penalty sentenced upon drug traffickers fits the *siyāsah syar'īyyah* principles, the negative impacts of drugs to the society at large will form the basis of the discussion.

E. The Accuracy of the Death Penalty (Death by Hanging) Upon Drug Traffickers in Malaysia According to the *Siyāsah Syar'īyyah* Principles

Based on the severity of drug-related criminal cases and the implications to society and the nation, the following deliberation will look into whether the death penalty or death by hanging sentence adopted by the Malaysian government is in accordance to the *siyāsah Syar'īyyah*

² Section 39B (2) of the Dangerous Drugs Act (1952), the mandatory death sentence on anyone involved in drug trafficking offense. Act came into force on 15 April (1983) to repeal the law and is punishable by life imprisonment and caning. Sentence will be carried out if any individual has a drug exceeds the limits set.

principles. The analysis will be based on the definition, concepts and methods related to *siyāsah Syar'īyyah*.

1. Defining *Siyāsah Syar'īyyah*

The usage of *siyāsah syar'īyyah* as a law term has been proposed by a number of past and present *fuqahā*. The findings resulting from the debate can be broken down into two aspects: *Firstly*, the institutionalization of *siyāsah syar'īyyah* as a system of administration based on Islamic laws which means that a nation is ruled based on al-Quran, al-Sunnah and *ijtihad*³ to maintain peace and stability of the society. All aspects of the nation's administration like politics, economy, judiciary, finance, society, etc., are based on the principles of *siyāsah syar'īyyah*. It has resulted in the birth of *siyāsah dusturīyyah* (سياسة دستورية), *siyāsah maliyyah* (سياسة مالية), *siyāsah qada'īyyah* (سياسة قضائية) and others.

Thus, every initiative taken by the government is granted by the *syariah* authorities as the rules are based on Islamic sources. The meaning of *siyāsah* is based upon a few clarifications put forth by some early *fuqaha*. Ibn Nujaim (1985, 11) defined it as actions taken by rulers to protect the people's interest, even without the presence of *juz'i* proof. Meanwhile, Ibn 'Uqail (Ibn Qayyim 1961, 13) states that it involves that any action that promotes good deeds and rejects bad deeds, even if it is not outlined by the Prophet PBUH. Ibn 'Ābidīn (1960, 16) claims that *siyāsah* is improvisation by the government that could inculcate peace in the society by meting out severe punishment on crime as a form of deterrent. The act is considered a form of rule even though there is no provision in the Islamic law that specifically states it.

Abdul Wahab Khallaf (1987, 14) also concurs with the stand as he proclaims *siyāsah syar'īyyah* as a resource to govern a nation based on rules that could foster goodness and prevent bad deeds as long as it does not go against Islamic laws and general principles. A similar stand is voiced by al-Duraini (1987, 189) and the only difference is that he includes all internal and foreign affairs that refers to the rules of *maslahah*.

³ According to Abd Karim Zaidan (2006, 317), *ijtihad* means performing the utmost effort to derive a Shariah Law which is as clearly stated in al-Quran and al-Sunnah.

Secondly, *siyāsah syar‘iyyah* is referred to as a method that determines the type of penalty as deemed fit by the government of the day in order to resolve matters and deadlocks that are not directly stated in the holy al-Qurān and al-Sunnah. In this case, *syarak* had provided the government with the mandate of applying the methods of *ijtihad* like *qiyas*, *istislah*, *sad al-dhara‘i* as guidance. Any penalty imposed must be aligned with the Islamic rules and laws. Hence, many Hanafi *fuqaha* have expanded the usage of *siyāsah syar‘iyyah* as a method in determining the type of punishment especially for offences that include *budud* and *ta‘zīr* laws. In fact, *syarak* has also allocated the provision to the authorities to determine certain types of penalty in convicting criminals.

Based upon the above opinions, additional laws can be made by the government in order to deter recurrence of criminal acts. This stance suits the definition proposed by Ibn ‘Ābidīn (1960, 15) that is, *siyāsah syar‘iyyah* means multiplying the punishment based upon *syarak* in order to eradicate bad deeds and sinful acts and he likens *siyāsah syar‘iyyah* to *ta‘zīr* law. According to Ibn Fūdi (1988, 75), the intention of *siyāsah syar‘iyyah* is to nurture peace and avert transgression. Therefore, certain methods adopted by the authorities such as by detaining individuals suspected of any wrongdoing are allowed, in order to achieve the desired result.

In short, *siyāsah syar‘iyyah* is the method implemented by an Islamic governments that is based on the al-Quran, al-Sunnah and *ijtihad* that aims to uphold peace in the society (‘Abdul Fatah 1998, 24). It is also a method applied by the governments to settle disputes that are not explicitly stated in the Islamic rules and laws. To uphold justice and prevent any form of injustice, *siyāsah syar‘iyyah* should be adopted, but based upon the regulations and terms as outlined by *syarak*.

2. The implementation of The Death Penalty on Drug Dealers According to *Siyāsah Syar‘iyyah*

a. The *siyāsah syar‘iyyah* concept

According to *fuqahā*’ of Hanafi, the government has the right to penalize criminals, especially if they keep repeating their criminal activities that could endanger the society. According to Ibn ‘Ābidīn (1960, 15), *siyāsah syar‘iyyah* includes provisions that allow administrators to double the penalty of a crime according to *syarak* rules as a means of damage

control. A similar stance is also adopted by Ibn Fūdi (1988, 75), who claims that the aims of *siyāsah syar‘īyyah* is to uphold stability in the community. To realize the objective, suitable methods and mechanisms can be adopted by the government (Ibn Fūdi 1988).

Most importantly, any type of retribution must conform to the objectives of *siyāsah syar‘īyyah*. Other than that, authorities must also hold on fast to a particular fiqh method, that is “*the government action must be for the benefit of the people*” (تصرف الإمام منوط بالمصلحة). Obeying this method is important as it could prevent any form of injustice. The interest of the society protected by the authorities must be something that does not breach Islamic rules as the religion does not condone any action that flouts the principles of *syarak*. If the punishment conforms to all the terms, then the authorities are granted the rights to apply severe penalty upon the offenders.

To get a better picture on the implementation of the death penalty from the aspect of *siyāsah syar‘īyyah*, Ibn Furhūn had suggested a few types of punishment applied during the Prophet’s PBUH and his Companions’ rule. For example, the Prophet had ruled that a Jew, Kinānah Ibn al-Rabī, be executed for reneging on a treaty. Based on the treaty, the Jewish community had to surrender all their wealth to the Prophet before leaving the Medina city. However, it was discovered that Kinānah had hid some of his assets. He admitted to the felony after being interrogated, and as a way of preventing repeat offenders that could threaten the peace of the society in the future, Muhammad bin Maslamah was appointed as the executioner of Kinānah (Ibn Furhūn 1995, 106-107).

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threaten the peace of the society in the future, Muhammad bin Maslamah was appointed as the executioner of Kinānah (Ibn Furhūn 1995, 106-107).

b. The principles of *siyāsah syar'īyyah*

The *siyāsah Syar'īyyah* outlines several methods that are not stated in the al-Quran and al-Sunnah. To comprehend the allowabiity of executing drug traffickers, the focus will be given on three methodology of *siyāsah syar'īyyah*, those are: (a) based upon the capital punishment in the *ta'zīr* context, (b) based on the *ijtibād* method, and (c) based on the *qawā'id fiqhīyyah* method.

1) The death penalty from the context of *ta'zīr* law

Ta'zīr is a process where the implementation of law is based on the *siyāsah syar'īyyah* method where the government of-the-day is given the mandate of choosing the appropriate punishment for crimes which punishment are not stated as in the crimes that fall under the *hudud* law⁴. Through the implementation, the aspiration of *siyāsah syar'īyyah* is realized, as it aims to improve, revitalize, and guarantee the safety and prosperity of the people. Based on the takzir law, *jumbūr fuqahā'* allows the death penalty to be executed on criminal acts which punishments are not determined in the al-Quran or al-Sunnah. When the death by hanging sentence on drug dealers is analysed, it is discovered that the type of punishment is classified as a takzir crime, as the felony could threaten the safety and harmony of the public.

The majority of fuqaha members allow the implementation of capital punishment as the aim of the penalty is to conserve, protect, improve and shield the society from any harm. All the aims are to uphold the Islamic rules and law, and the jumhur fuqaha include *fuqahā'* Hanafī (Ibn 'Ābidīn 1960, 247), part of the Māliki denomination (Ibn Furhūn 1995, 206), a number of Hanbali *fuqahā'* (Ibn Qayyim 1961, 108) part of the Syāfī'ī denomination (Al-Syīrazī 1925, 268). Among the *dalīl* put forward by *jumbūr* are:

⁴ Hudud Law refers to certain laws that are stated in al-Quran adn al-Sunnah in penalizing the crimes of adultery, theft, alcohol consumption and apostasy.

1. The death penalty can be applied upon individuals who consume alcohol for the fourth time, as recorded in the Prophet's PBUH saying by Tarmizi (Al-Tarmizi 48): "*Whoever consuming alcoholic drink, whips him, and if he or she repeats the offence for the fourth times, kills him*".

Based on the *hadith*, execution upon fourth-time liquor drinkers is classified under the *takzīr*⁵ category, not *hudud*. If it is categorized under *hudud*, the person would have been executed from the first time he consumed alcohol. Hence, the *hadith* is part of the proof that is applied for the *takzīr* offence (Ibn Qayyim 1961, 108).

2. Capital punishment for *al-hirābah* felonies as stated in the al-Māidah (Surah Al-Māidah: 33): "*The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter*".

Criminals can be executed if they take part in dangerous crimes by committing treason to their rulers, such as the rebellious faction who refused to pay the tithe during the rule of Saidina Abū Bakar al-Siddiq. Capital punishment will be carried out if the offenders refuse to repent (‘Abdul ‘Azīz ‘Amīr 1969, 310).

3. Based upon the Prophet's PBUH's saying (Al-Syawkāni 286): "*(1) Whoever follows the practise of the people of Luth (sodomy), kills him* ; and *(2) Whoever copulates with an animal must be killed, and the animal must be killed as well*".

Other than that, there are also some fuqaha who make references to Saidina ‘Ali bin Abi ‘Talib r.a.'s execution of the Zanādiqah tribe (‘Abdul ‘Azīz 1969, 307; Ahmad Fathi Bahnasi 1983, 187). They were convicted when they derided and accused the Prophet PBUH of being a hypocrite, crude, and to have never performed the junub bath ritual (Ibn Furhūn 1995, 194). The execution was allowed as their action sparked

⁵ The *takzīr* law is a type of law where the punishment is not determined by the *hudud* or *kaffarat* law. Implementation submitted to the government right where it is motivated by education, rehabilitation and prevention of all types of offenses committed by criminals.

some doubts in other Muslims, which could threaten the faith and devotion of the Muslim community towards the Prophet's integrity. Based on the above testimony, the death penalty applied to drug traffickers is indeed justified.

2) The *ijtihad* method

To further evaluate the death penalty sentenced upon drug dealers, three *ijtihad* methods will be used, those are *Istislah* (*Masalih Mursalah*), *Sad al-Dhara'i'* and *Qiyas*. The methods are given priority as they are more suitable in deliberating this issue.

3) The *istislah* method

Istislah means enacting a *syarak* rule based upon the *Masalih Mursalah*, which according to 'Abdul Karim Zaydan carries the meaning of bringing goodness and preventing misdeeds. Some fuqaha call for the position to place the importance on averting danger rather than seeking for blessing (Abdul Karim Zaydan 1974, 236). The institutionalization of any form of punishment is not objected by any *fuqaha'* if it fulfils the terms stated (Abdul Wahab Khallaf 2003, 86-87): "(1) The punishment aims to avert any harm to society; (2) All forms of goodness are for the sake of the general public and not for the vested interest of any party; (3) It does not go against any principles of *syarak*; and (4) It does not contradict any forms of *syarak*".

Based upon the terms, the execution of drug traffickers are found to meet all the terms stated as the objectives are not to torment criminals, but to protect the safety of the public from the criminal activities emanating from drug trafficking, and to deter others from committing similar crimes. In fact, it is the aim that aligns the punishment with the principles outlined by *syarak*. From the perspective of *ijma'*, the *fuqaha'* would not have disputes if they had concurred that the death penalty sentenced upon drug traffickers are to guarantee the peace and security of the public.

Under the *Istislah* method, harsh punishment such as execution can be sentenced upon villains if they threaten the stability of the society. The punishments ruled by Saidina Abu Bakar al-Siddiq r.a in burning alive those who participated in sodomy acts and Saidina 'Ali r.a in burning the Zana'diqah tribe for mocking the Prophet PBUH were not stated in

the forms of *syarak*, but the Companions implemented them to deter others from replicating the acts, and to protect the rights of other individuals (Ibn Qayyim 1961, 22; Ahmad Fathi Bahnasi 1983, 164).

The explanation clearly shows that implementing the death penalty is under the jurisdiction of *siyāsah syar‘iyyah* where rulers are provided with the mandate of sentencing the punishment if the crime is too dangerous and the convicts are aware of the hazardous implications of their crime. Therefore, based on the *Istislāh* principles, there is no doubt that the death penalty is warranted to ensure that public safety is not compromised.

4) The *sad al-dharā‘i‘* method

Sad al-Dharā‘i‘ means enacting the law with the objectives of sealing every path to destruction and opening the paths to righteousness or others that bring benefits (Muhammad Hisyam 1985, 52-56). Based on this, it is the rights of the authority to execute individuals that are deemed to pose risks upon the community and country. The elaboration on the matter was provided by Ibn Qayyim al-Jauziyyah in the manuscript titled ‘*Ilām al-Muwaqqi‘in*, such as in the case of *qisas* (Ibn Qayyim 1961, 176). The penalty for *qisas* offences emphasize on equivalent punishment such as a life for a life as described in the following verse (Surah al-Māidah, 45):

And We ordained therein for them: "Life for life , eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if anyone remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah has revealed, such are the Zalimun (polytheists and wrong-doers - of a lesser degree).

However, Saidina ‘Umār al-Khattāb r.a. executed four men who killed a Yemeni. Saidina ‘Ali r.a. also sentenced the death penalty upon three men found to have conspired in murdering another man (Ibn Qudāmah 1983, 290). Even though the sentences seemed to contradict the above verse, but the punishment was justified in order to prevent a similar kind of felony from recurring. Based on the aim, the *Sad al-Dharā‘i‘* method was implemented by the Prophet’s Companions by sentencing the *qisas* punishment upon the villains.

Therefore, there is no doubt that sentencing the death penalty upon drug traffickers is justified as their crimes cause serious harm to the public, and as a way to eradicate any form of evil deeds in the society. The penalty is not meant to simply torment any party, but as a means of upholding peace and stability in the community.

5) The *qiyas* method

The aim of *qiyas* punishment is to determine a type of retribution for new felonies that are not stipulated in existing laws, but based on the general principle of the law that have similarities from the perspectives of *'illah* (Wahbah al-Zuhaili 1986, 603). For example, the *'illah* for outlawing alcohol consumption is due to its intoxicating nature. Hence, any form of element that causes intoxication is definitely illegal, as it has similarities based on the *'illah* perspective on alcohol (Abdul Karīm 1974, 217).

Based upon the opinions of *jumbūr fuqahā'*, the *Qiyas* method can also be applied in the criminal acts of *hudūd* and *kaffārat*. It is implemented from the aspect of *qiyas*, which stipulates the offences of *al-hirābah*, which allows for the death penalty to be executed on anyone who causes destruction to the world, as stated in the Quranic verse (Surah al-Māidah, 33):

Indeed, the penalty for those who wage war against Allah and his messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the hereafter is a great punishment.

From the above verse, it is clear that *syarak* allows for the death penalty to be executed on *al-hirābah* offenders as they could pose serious hazards to the community. If we look at drug trafficking activities, there is no doubt that it is similar to *al-hirābah* crime, as drugs are capable of killing addicts, threaten the safety of the public, and cause upheavals in the society. Hence, based on the perspectives of the *'illah* ruling and *al-hirābah* crime, a similar punishment can be meted out against drug dealers. Other than that, drug trafficking can be categorized as a form of *qiyas* based upon the Qur'an as it is general in nature and not specifically targeted at any particular party.

If the *nas al-hirābah* is analysed, most *fuqahā'* disagree in determining the reason the verse was revealed on whether it was targeted at certain factions, or otherwise. Based on the opinions of al-Rāzi (1934, 169), al-Qurtubi (1993, 148), Jabir al-Tabari (1997, 549), and Hamka (Hamka 1996), there are three reasons why the verse was revealed. The first opinion is that it was intended for the Bani 'Uqal (عقل) and 'Urainah (عرينة), while the second group believed that it was targeted at the Musyrikin while the third faction felt that it was specifically aimed at the people of the book.

Even though the verse had its specific aims, it could be applied to general situations (Wahbah al-Zuhaili 1986, 273). This is because it is based on a popular method (العبرة بعموم اللفظ لا بخصوص السبب) (Wahbah al-Zuhaili 1986). Therefore, any new issue that arises which has similarities from the perspective of *'illah* and *al-hirābah*, similar punishments could be sentenced upon the offenders. According to Abu Ja'far Muhammad bin Jabir al-Tabari, the phrase “causing destruction to the world” (الأرض فساداً) (يسعون في) means anyone who commits sinful acts like robbing, murdering, taking others' property by force and other dangerous offences that could strike fear among the community (al-Tabari, 1997: 552).

Thus, any individual, if convicted of any of the crimes stated, they are bound to be sentenced with the death penalty by the authorities. Other than that, the execution of drug traffickers can be justified from the perspective of “*Tariq al-'Ibārah*” (طريق العبرة) (Wahbah al-Zuhaili 1986, 359). According to al-Alūsi in his manuscript, *Tafsīr Rub al-Ma'āni*, which means “*anyone who defies Allah s.w.t and the Prophet* in general, and it is based upon “*Tariq al-'Ibārah*” (al-Alūsi 1960, 175), which means that any form of crime that contradicts the Islamic law is deemed to have committed an *al-hirābah* offence. As drug trafficking is similar to *al-hirābah* offence, and contradicts the Prophet's Sunnah, a similar penalty can be applied upon them, that is the death penalty based on the *qiyas* method.

6) The *qawā'id fiqhīyah* method

To ensure good governance, every decision and action taken by a government must abide by principles outlined by the *Fiqhīyah* method, that is: “*actions by the rulers must be based upon the public's interest*” (بالمصلحة) (تصرف الإمام منوط). It is a form of guideline to authorities in ensuring a fair

and just administration that could prevent any form of malice and destruction. The method is the main principle of *siyāsah syar‘iyyah*. However, if the action of the government emphasizes upon the interest of the public that contradicts Islamic rules, then the death penalty cannot be applied.

Hence, the government must ensure that any action taken is beneficial to the public. For example, Saidina ‘Uthmān r.a.’s initiative in copying the al-Qurān based upon the manuscripts during the Saidina Abu Bakr al-Siddiq’s era and by issuing orders to burn the other manuscripts was done with the interest of the Muslims as the main priority (Ibn Qayyim 1961, 18-19). Even though the act is not stated in any rule, but it was implemented in the interest of the society, to avoid any conflict and strengthen the unity of the Islamic community as warranted by *syari‘ah*, as stipulated in the following verse (Surah al-‘Imrān, 103):

And hold fast, all of you together, to the rope of Allah (i.e. this Qur'an), and be not divided among yourselves, and remember Allah's favour on you, for you were enemies one to another but he joined your hearts together, so that, by his grace, you became brethren (in Islamic faith), and you were on the brink of a pit of fire, and he saved you from it. Thus Allah makes his ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) clear to you, that you may be guided.

The verse states that the unity of the Muslim community is an Islamic obligation, one of the *maqāsid syari‘ah*. Hence, Saidina ‘Uthmān r.a.’s action is as warranted by *syarak* as it aims towards preserving harmony among the Muslim community. In other words, the *Fiqhīyyah* method resembles the *Istislah* method as both of them aim to uphold the stability of society. Based on this method, any form of action taken by the government must conform to the objectives of *syari‘ah* and *syarak* in totality that is to maintain peace and safety of the public.

F. Conclusion

Based upon the explanations discussed in this article, it can be concluded that the death penalty or death by hanging sentenced upon drug traffickers is found to be align with the concept, objectives, methods of *siyāsah syar‘iyyah* and the execution under the *ta‘zīr* category. This is due

to the fact that the drug trafficking felony upsets the stability of the nation and society in numerous damaging ways.

G. References

- ‘Abdul ‘Azīz ‘Amīr, 1969, *Al-Uqūbah al-Ta‘zīriyyah fī al-Syarī‘ah al-Islāmiyyah*, Qāhirah: Dār al-Fikr.
- ‘Abdul Fatah ‘Amru, 1998, *Tatbiqāt al-Siyāsah al-Syar‘iyyah fī al-Ahwāl al-Syakhsiyyah*, Jordan: Dār al-Nafāis.
- “34,612 Mati Akibat Jenayah Dadah di Mexico,” *Harian Metro Newspaper*, Januari 14, 2011.
- “Dadah Musnahkan Generasi Secara Senyap.” *Utusan Malaysia Newspaper*, Oktober 28, 2010.
- Abdul Ghafar Taib, 1992, *Dadah Pembunuh*, Kuala Lumpur: Delmu, Vol 2.
- Abdul Karīm Zaydān, 1974, *Al-Wajīz fī Usūl al-Fiqh*. Baghdād: Matba‘ah Salmān al-A‘zami
- Abdul Rani Kamaruddin, 2007, “Drug misuse in Malaysia: Past and present”, dalam *Conference on Asian Law Institute (ASLI)*. Indonesia.
- Abdul Wahab Khallaf, 1987, *Al-Siyāsah al-Syar‘iyyah aw Niẓām al-Daulah al-Islāmiyyah fī al-Syu‘ūn al-Dustūrīyyah wa al-Khārījīyyah wa al-Mālīyyah*, Beirut: Muassasah al-Risalah.
- Abdul Wahab Khallāf, 2003, *‘Ilm Usūl al-Fiqh*, Maktabah al-Da‘wah al-Islāmiyyah, Syabāb al-Azhār.
- Agensi Dadah Kebangsaan Kementerian dalam Negeri, 2007, *Kenali dan Perangi Dadah Hidup Ceria Tanpa Dadah (Knowing and Waging War on Drug, Peaceful Life without Drug)*, Kuala Lumpur.
- Ahmad Fathi Bahnasi, 1983, *Al-Siyāsah al-Jina‘iyyah fī al-Syarī‘ah al-Islāmiyyah*, Bayrūt: Dār al-Syurūq.
- Al-Alūsī, 1960, *Rub al-Ma‘āni fī Tafsīr al-Qurān al-‘Azīm wa al-Sab‘ū al-Mathāni*, Dār al-Fikr, Vol. 5.
- Al-Qurtubi, 1993, *Al-Jamī‘ li Ahkām al-Qurān*, Dār al-Kātib al-‘Arabi, Vol. 6.
- Al-Rāzi, 1934, *Tafsīr al-Kabīr aw Mafātīh al-Ghāib*, Dār al-Kutub al-‘Ilmiyyah: Bayrūt Lubnān.
- Al-Syawkāni, 1982, *Nail al-Awtār min Hadīth Sayyid al-Akhyār*, Bayrūt: Dār al-Jail.
- Al-Syīrazi, 1925, *Al-Muhadhab fī Fiqh al-Imām al-Syāfi‘*, Dār al-Fikr, Vol. 2.

- Al-Tabari, 1997, *Tafsīr al-Tabari al-Musammā Jami' al-Bayān fī Ta'wīl Ayyi al-Qurān*. Bayrūt. Lubnan: Dār al-Kutub al-'Ilmiyyah.
- Al-Tarmizi. *Al-Jami' al-Sahih, wahuwa Sunan al-Tarmizi*, edited by Muhammad Fu'ad 'Abdūl Baqi. Raqam: (1444), Dār al-Ihya' al-Turāth al-'Arabiyy, Jilid 4.
- Bruce, D.J. et.al. , 1990, *Drug Abuse In The Inner City: Impact on Hard-Drug Users and The Community*, The University of Chicago.
- Chambers, C.D. et.al. , 1990, Criminal Involvement of Minority Group Addicts. In *The drugs-crime connection*, London: Sage Publication.
- Dana, E.H., 1990, *Drugs and Consensual Crime*. The University of Chicago.
- Dangerous Drugs Act. (1952).
- Duane, C.B., 1990, *Drugs and Violence*. London.
- Encyclopedia Americana, 1970, New York: Lexington Avenue, Vol. 9.
- Fathi al-Duraini, 1987, *Kh̄asa'is al-Tasyri' fī al-Siyāsah wa al-Hukm*, Beirut: Muassasah al-Risalah.
- Glenn, D.W., 1994, *Drugs and Crime in Lifestyle Perspective*. Sage Publication: London.
- Griffith, R., and Brian, P., 1988 *Working with Drug User*. Wildhood House.
- Hamka, 1996, *Tafsīr al-Azh̄ar*, Surabaya: Yayasan Nurul Islam, Vol. 4, 5 & 6.
- Hisyam Abdullah, 2006, *The Law of Drugs Possession and Trafficking in Malaysia*, Kuala Lumpur: Marsden Law Books.
- Ibn 'Ābidīn, 1960, *Hāsyiah Rad al-Muhtār 'alā al-Dur al-Mukhtār*, Beirut: Muassasah al-Risalah, Vol 4.
- Ibn Fūdī, 1988, *Diya' al-Siyāsāt wa Fatāwa al-Navāzil*, Qāhirah: al-Zahra' li 'Ilām al-'Arabiyy.
- Ibn Furhūn, 1995, *Tabsīrat al-Hukkām fī Usūl al-'Aqdiyyah wa Manābij al-Abkām*, Bayrūt: Dār al-Kutub al-'Ilmiyyah.
- Ibn Manzūr, 1990 *Lisān al-'Arab*, Beirut: Muassasah al-Risalah, Vol 6.
- Ibn Nujaim, 1985, *al-Asybah wa al-Nazāir 'alā Madhhab Abu Hanīfah al-Nu'mān*, Dār al-Kutub al-'Ilmiyyah.
- Ibn Qayyim al-Jauziyyah, 1961, *al-Turuq al-Hukmiyyah fī al-Siyāsah al-Syar'iyyah*, Qāhirah.
- Ibn Qudāmah, 1983, *al-Mughni*, Bayrūt: Dār al-Fikr.
- Mohamad Sabri Yusoh & Che Bakar Che Mat, 2008, *Penyalahgunaan dan Pengedaran Dadah di Malaysia*, Kuala Lumpur: Dewan Bahasa dan Pustaka.

- Mohammad Sa'īd Ramadhān al-Būṭī, 1991, *Fiqh al-Sīrah al-Nabawīyyah ma'ā Mujaz li Tārikh al-Khilāfah al-Rāsyidah*, Lubnan: Dar al-Fikr al-Mu'asir.
- Mohd Reduan Aslie, 1990, *Krisis Dadah*, Kuala Lumpur: Zafar Sdn. Bhd.
- Muhammad Hisyam al-Burhāni, 1985, *Sad al-Dharā'i' fi al-Syarī'ah al-Islamiyyah*, Bayrūt.
- Narcotics Department Royal Malaysia Police, 2009.
- Purcell, V., 1967, *The Chinese in Malaya*, Kuala Lumpur: Oxford University Press.
- Ram, G.V., 2006, *Pandangan Islam Mengenai Hukuman untuk Jenayah Pengedaran Dadah*. Fakulti Undang-undang: Universiti Malaya.
- Shukeri Mohamad, 1994, *al-Siyāsah al-Syar'īyyah wa Qawā'iduha fi al-'Iqāb al-ta'zīri*, Universiti Jordan, Vol. 3.
- Wagman, R.J., 1992, *The New Complete Medical Health Encyclopedia*, Lexington Publication United States of America.
- Wahbah al-Zuhaili, 1986, *Usūl al-Fiqh al-Islāmi*, Bayrūt, Lubnan: Dār al-Fikr al-Mu'āsir, Jilid 1.