



## Prison In Islamic Criminal Law Perspective

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### Abstract

Prison as one of the security systems which is part of the criminal system in Indonesia has become something that is prima donna in imposing sanctions on criminals. The implementation of prisons in Indonesia is regulated in Law Number 15 of 1995 concerning correctional facilities, as the name implies, this law regulates the implementation of prisons with a prison system which is a long process from the image of colonial-era prisons that seem to be an arena for revenge and imprisonment. In the Islamic legal system, Allah SWT. Has prepared a number of legal instruments to regulate human life, specifically found in the Islamic banking system which has basic characters, namely *zawajir* (prevention) and *zawabir* (redeemer). There are two punishments given by Islam to criminals, namely *Hudud* (*syar'i* punishment) and *Ta'zir* (disciplinary sanction), prison in Islam can be found in *Ta'zir* sanctions. This refers to the notion of *Ta'zir's* punishment that the punishment for *Jarimah* (criminal act) whose punishment has not been determined by the *syara'is* called *ta'zir law*. So that the general implementation guidelines for imprisonment as *ta'zir*, are left to the judge's *ijtihad* by taking into account the condition of the finger, the perpetrator, the place, the time, and the situation when the *jarimah* occurs. This research uses literature research or library research. This means that the required data is taken from books, magazines, articles, papers and so on in accordance with the theme that the author will adopt with a juridical normative approach. This study also produces several findings, including that the history of the prison system process has undergone a metamorphosis from a prison system that focuses on deterrence to a system of rehabilitation and resocialization. That the implementation of the prison system in Indonesia is carried out with the correctional system and prisons in the Islamic law system are known as one of the punishments in the *Ta'zir* category. Besides also having a set of security rules that are guaranteed to realize *rahmatan lil alamin* if applied in social life.

Keywords: Prison, Criminal, Islamic Law

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## INTRODUCTION

Criminal law literature according to a purely normative mindset, the discussion about criminal will always bump into a paradoxical point of conflict, namely that the crime on the one hand is held to protect someone's interests, but on the other hand it turns out to be raping someone else's beauty by giving punishment in the form of suffering to the convicted party.

The relationship between criminal law and human beings is marked by the growth of three streams of criminal law (*strafrechtsholen*), namely the classical, criminological, and sociological schools. Sometimes it is only called the two schools of groups, namely the classical school and the modern school (Poernomo, 1986). The conflict between classical and criminological (modern) schools is a source of conflict between the philosophy of *determinism* and *indeterminism* concerning the relationship of criminal law, criminal sanctions, and humans. In this connection, Sodarto explained, that with the development of the classical school which later became what was called the neo-classical school, the great controversy about indeterminism and determinism subsided, and this school then focused on *vergelding* and the mistakes of the maker (Sudarto, 1977).

Muladi said that basically there are three main points of contention, namely regarding the issue of human freedom to determine his will, to what extent human liability or error can be imposed, and when criminal sanctions can be applied to humans who are declared to have violated criminal law (Muladi, 1984). The benefits of contradicting these currents are felt in the preparation of the criminal code with the inclusion of the criminal system (*starffen*) and the system of action (*beveilingsmaatregelen*). So since the science of criminal law has received the influence of modern currents, the focus of attention has been centered on humans who have committed criminal acts and in the application of crimes it is inevitable that respect for humanity in order to uphold human dignity.

R. Cross in Bambang Poernomo (1986), provides a limitation on criminal renewal, that is, not every change in a criminal system can usually be called a criminal renewal, even though the change is intended to reduce crime. Therefore, criminal reform always covers broad and modern problems. Cross and Jones have warned about criminal reform that must be different from the past fifty years. His writing, among other things, states that one of the things that distinguishes the current criminal law administration system from the one that prevailed one hundred and fifty years ago is an increase in the perception of humanity.

Sutherland in Bambang Poernomo (1986), also made an idea that according to the old literature up to the codification of French law, which was made around 1670, there was no imprisonment, except in the sense of imprisonment by means of money or substitution of the death penalty before leniency was determined by other means. In post-medieval England (c.1200-1400) there was recognition of church confinement in the ancient form of cell and imprisonment at Bridewell and continued with the form of imprisonment for work under the *Act of 1576 and Act of 1609* and imprisonment for confinement under the provisions of *the Act of 1711*.

## RESEARCH METHODS

Zainuddin Ali (2010). in his book *Legal Research Methods* said that legal research generally has a juridical normative and empirical juridical approach. The normative juridical approach, apart from referring to legal norms contained in statutory regulations and court decisions and legal norms in society, also sees the synchronization of rules and other rules hierarchically, while the empirical juridical approach or sociology of law is an approach that sees a reality in the midst of society. The sociology of law approach is an approach used to view legal aspects of social interactions in society. This approach serves as a support to identify and clarify findings of non-legal material for legal research / writing purposes. Departing from

this opinion, the writing of this study has a normative juridical approach type and empirical juridical approach.

## RESULTS AND DISCUSSION

John Howard explained that since the time of the king of Egypt in 2000 BC, imprisonment was known as imprisonment in the sense of imprisonment while awaiting trial, and sometimes as detention for other purposes according to Roman law from the time of Justianus in the 5th century BC. Around the 16th century there was imprisonment in the sense of an act to train to work at Bridewel, which is known as *thriftless poor*, located in the former palace of King Edward VI in 1552. Then after the issuance of the *Act of 1630* and *Act of 1730*, there was a prison penal institution whose prisoners were trained in *The House of Correction* (Ali, 2010). In relation to how imprisonment conducted Dwidja Priyatno say it concerns the problem *stelsel* of imprisonment.

The first is the Cell system. Cell *Stelsel* was first performed in the city of Philadelphia. In the State of Pennsylvania in the United States. That is why it is called the *Pennsylvania Station*. Cell is a small room for a person. So the imprisoned people are separated from each other to avoid the transmission of the evil influence. Second is *Auburn Stelsel*. This system was first implemented in Auburn (New York), because of that it was called *Stelsel Auburn*. Indeed, this system of systems creates difficulties, especially in terms of giving jobs. Most of the handicraft work can only be carried out in large workshops with a workforce of tens of people together. Because the provision of work is considered to be an effort to improve the morals of the convicted person, a mixed system arises, namely when the nights are closed alone, and during the day they work together.

The conditions in the prisons following the Pennsylvania and Auburn Systems were unsatisfactory. This situation is an impetus for the renewal of imprisonment with the new system. Roeslan Saleh (1983), writes that in England people then tried to connect the gaps between cells and together by establishing this progressive system. Whereas previously cell punishment was the only form of imprisonment, now it is the basis of a progressive system. The sequence becomes *Cells - together - conditionally released*. Didalamya there is still a *Stelsel* class, which is divided into five classes, and everything is tied to the "*Marksystem*".

In accordance with the efforts for reform (improvement of the convicted person), imprisonment according to the Irish system is carried out through three levels, namely:

1. The first level (*probation*), the convict is kept in a cell night and day for eight or nine months or one year. The length of time in confinement in the cell depends on the behavior of the inmate.
2. In the second level (*public work prison*), the convicted person is transferred from one prison to another, where he is obliged to work together with other convicts. Usually the convicted prisoner was divided into four classes. The convict for the first time undergoing his crime is placed in a higher class after he has received several better treatments because his actions deserve areward, by using a system in accordance with the *fairmarksystem*.
3. The third level (*Ticket of leave*), the convicted person is released by agreement of his obligation to serve the remaining length of the sentence. He was given a "*ticket of leave*" but for the remainder of his long sentence he is still under surveillance.

Known in Criminal Law studies the prison system is called the *Elmira system*, which is a system that is heavily influenced by the Irish system that exists in Ireland and in England. In 1876 in the city of Elmira, New York State, a prison was established for convicts who were no more than 30 years old. This prison is also given the name *reformatory*, which is a place to improve people, turn them back into useful citizens. The prison system at Elmira is principally carried out on three levels of imprisonment, but with an even greater emphasis on trying to correct the convicted person. The convicted person is given teaching, education and work that

is beneficial to society. As a result of the existence of this system, then in a criminal judge's decision no longer determines the length of the imprisonment concerned. The length of time the convict is in prison until he is given "*Parole*", solely depends on the behavior of the inmate himself in prison. The Elmira system is not only widely recognized in the United States, but also in Western Europe. In 1902 a "*reformatory*" was established in the city of Brostal, which is a small town located close to the city of London. The system implemented in Brostal prison is as follows:

The length of imprisonment is determined by the court, however the Minister of Justice is given the authority to release by agreement to the convicted su, for example the convicted person is sentenced to three years, the Minister of Justice can have the authority to release the convicted person if he / she has served his sentence for six months, with an agreement, that is, during the remaining period of the sentence that has not been served by the convicted person, it does not need to be served, but the convicted person is placed under special supervision. As long as they are still under such supervision, there is still a possibility that the convicted person will be obliged to undergo the remainder of his sentence. The next is the *system Osborne system*, which was first discovered by Thomas Mott Osborne, this young man who served twice as Mayor of Auburn and then Director of the famous Sing-sing prison in the United States of New York. This system introduces a "*self-government*" system to prisoners inside and outside prisons (Utrecht, 1965). The growth of imprisonment that has been described above is related to the development of imprisonment that has grown and developed in several parts of the world, which is constantly metamorphosing to find appropriate conditions so that a convicted person can then be punished for an illegal act he has committed.

### **Implementation of Prison Criminal in Indonesia**

The view of law as protection that was expressed by Sahardjo paved the way for the treatment of prisoners by running the prison system by means of correctionalization as the goal of imposing imprisonment. This conception of correctionalism was then refined by the decision of the official conference of prison leaders on April 27, 1964, which decided that the implementation of imprisonment in Indonesia was carried out with the correctional system, a statement which as the direction of imprisonment could also be a way of guiding and fostering.

The mandate of the President of the Republic of Indonesia in official conferences conveyed the importance of reforming imprisonment in Indonesia. Namely changing the name of the prison to prison. Based on these considerations the president's mandate was compiled a statement regarding the birthday of the RI penitentiary on Monday 27 April 1964 and the Indonesian Penal Charter.

Furthermore, the Minister of Justice's remarks at the opening of the limited working meeting of the Directorate General of Civil Society Development in 1976 reaffirmed the principles for guiding and fostering the correctional system which had been formulated in the 1964 Lembang conference which consisted of ten formulations.

The principles for correctional guidance and guidance are at least ten points, namely:

1. People who are lost must be protected by providing provisions to live as good citizens and useful in society.
2. Imposing a crime is not an act of retaliation from the state.
3. Repentance cannot be achieved by torture but by guidance.
4. The state has no right to make a person a prisoner worse or worse than before he entered the institution.
5. During the loss of freedom of movement, prisoners must be introduced to the community and must not be isolated from the community.

6. The work given to prisoners must not be time-consuming or only intended for the interests of the institution or the State, the work given must be aimed at the development of the State.
7. Guidance and education must be based on the Pancasila principle.
8. Every person is a human being and must be treated as a human even though he has strayed, it should not be addressed to the prisoner that it is a criminal.
9. The prisoner was only sentenced to lose his independence.
10. Today's institutional building physical facilities are one of the obstacles to implementing the correctional system.

Based on the Circular Number KP10.13 / 3/1 dated 8 February 1965 concerning "Corrections as a process in Indonesia" prior to the enactment of Law Number 12 of 1995 concerning Corrections, the method used in the correctional process includes four stages, which are an integrated process as described in the following (Prayitno, 2009):

1. Orientation Stage / Introduction

Each prisoner who enters the Cipinang Class I Correctional Institution is subjected to research for all matters concerning himself, including the reasons he committed a crime, where he lives, how is his economic situation, economic background and so on.

2. Assimilation stage in a narrow sense

If the development of prisoners and their relationship with the community has been running for less than 1/3 of the criminal period, according to the Correctional Development Council, there has been sufficient progress in the process, among others: that the prisoner has shown sufficient improvements in behavior and skills. and others. So the main place or container of the construction process is the open penitentiary building with the intention of providing more freedom of movement or prisoners who are already at this stage can be transferred from an open penitentiary. At this stage the security program is medium. In this new place, prisoners are given responsibility for society. Simultaneously with this, a sense of self-respect and good manners is fostered, so that in the wider community trust arises and changes in attitudes towards prisoners. Contact with the frequency elements is increased, for example, by working with the wider community. At this time activities were carried out together with elements of the community. The period of detention that must be served at this stage is up to 1/2 of the actual sentence.

3. If the prisoner has served less than 1/2 of the prison term, which is actually stated by the Correctional Supervisory Board that the process of coaching has achieved even better progress, with regard to both the prisoner and other elements of society, the development process is expanded, starting with the assimilation of the prisoners with livelihoods. the outside community, such as activities involving public schools, working for private bodies or other agencies, traveling on leave for worship and exercising with the community and other activities. When the activities take place, everything is still under the supervision and guidance of the prison officials. At this level of assimilation, the level of security is minimum, while the prison term that must be served is up to 2/3.

4. Integration stage with the community environment

This stage is the last stage in the coaching process known as integration. If the guidance process from the observation, assimilation in the narrow sense, assimilation in the broad sense and integration can run smoothly and well and the criminal period that has actually been served is 2/3 or at least 9 months, then the prisoner can be given conditional release or leave. It is conditional in this stage that

the development process is in the form of a wider community while the supervision is increasingly less so that the prisoner can live with the community.

To be able to base the prisoner development program, the State also states in article 5 of Law Number 12 of 1995 concerning Corrections that the correctional guidance system is implemented based on the principles of:

- a. Protection;
- b. Equality of treatment and service;
- c. Education;
- d. Guidance;
- e. Respect for human dignity;
- f. Losing freedom is the only suffering; and
- g. Guaranteed the right to stay in touch with certain families and people.

The explanation regarding the principles of development above is as follows:

While in prison, the prisoners continue to receive other rights like humans, in other words, their civil rights are protected, such as the right to obtain health care, food, drink, clothing, bed, etc. exercise, skill, sport, or recreation. What is meant by guaranteed the right to remain in touch with certain families and people is that even though the Correctional Assistance Citizens are in LAPAS, they must be brought closer to and introduced to the community and must not be isolated from the community, among other things related to the community in the form of visits, entertainment. into LAPAS of free community members, and opportunities to gather with friends and family such as family visiting leave programs.

### **Prison in Islamic Criminal Law Perspective**

Sanctions (*uqubat*) for lawbreakers in the Islamic legal system are two things, namely *Hudud* punishment (syar'i punishment) and *ta'zir* (disciplinary sanction), so to find and get a position and position in prison. Islamic legal system, which can be expressed the opinion here is, imprisonment is known in Islamic legal system, which fall into the category imprisonmentsanctions, *ta'zir* namely punishing the law syar'i pelangarnothing *Had* in it or not explicitly regulated in the provisions of the Qur'an regarding sanctions for acts against the law. Next will be discussed the position and position of prisons in the Islamic legal system.

Abdurrahman Al Maliki and Ahmad Ad Da'ur (2008), in their book *Sanctions System and Law of Evidence in Islam (Nidzam al-Uqubat wa Ahkam al-Bayyinat)*, in the Chapter Types of *ta'zir* sanctions divides into several types including imprisonment,

1. Death Penalty Sanctions
2. Volume
3. Prison
4. Exile
5. Al-Hijri (Boycott)
6. Cross
7. Ghuramah (compensation)
8. Destruction of Treasure
9. Changing the Form of Goods
10. Tasyhir (pulikasi people who are sanctioned)
11. Tahdid (real threat)
12. Wa'dh (advice)
13. Hurman (partial revocation ofrights *maliyyahhis*)
14. Tawbikh (preventing sinners with words) Shari'i

imprisonment is to prevent or prohibit a person from managing himself. Whether it is done in the country, home, mosque, or in a prison, or in other places. The argument that

imprisonment is part of the shar'i sanction, is a hadith that was narrated from Bahaz bin Hakim from his father, from his grandfather, he said;

*"Rasulullah saw has arrested someone for accusations, then released him"*

*"Rasulullah saw detained someone one day and night, because of accusations"*

From Anas ra:

*"That Rasulallah saw imprisoned someone in the area of Tihamah"*

From Hasan ra:

*"There were two people killing each other, then among them some were killed. Then the incident was reported to Rasulallah SAW, then he imprisoned them. "*

Imprisonment at the time of Rasulallah SAW. Performed at home or at the mosque. It was the same at the time of Abu Bakr. At that time there were no prisons for those who litigate. During the time of Umar bin Khaththab, he bought a house belonging to Sufyan bin Umayyah for 400 dirhams and made it a prison. Even Kemandian Umar once imprisoned a bad and short man for being involved in a slanderous case. He has also been imprisoned Shabighan, because of his questions about surah adz-Dzariyat, al-Muralasat, an-Nazi'at, and others. It is narrated from Uthman bin Affan that he once imprisoned Dlabi bin Harith, a thief and Bani Tamim.

It is narrated from Ali ra that he built a prison from wood (tree), and named it *Nafi'an*. He put a thief in it. He also built a prison of hard clay, and named it *Makhisan*. Imprisonment is part of the sanctions, as are binding and cutting off hands. Such sanctions should inflict great pain on the jailed party. It must also be biased to be a sanction that has a preventive function.

However, people who are imprisoned must be fed sufficient food for their nutritional needs and survival. In addition, no one is allowed to visit it, except for relatives and neighbors, and even then they are not given much time. For inmates who are married, their wives may spend the night with them in prison. On condition, if the head of the prison has seen and considered that the condition of the person in prison really requires this. Or it could be if the head of the prison has known good morals and behavior during his imprisonment.

For inmates, it is prohibited to leave the prison except for cravings, and is permitted by the head of the prison. He may not be beaten, or left thirsty, tied up and insulted, unless there is a provision from the *qadliy* (judge) which states this. One of the heaviest tortures of being imprisoned was being thrown into a narrow isolation room alone (*hasyirah*), *having the door locked*, and being left alone to take care of himself. He was given food and water from the door opening. However, the transfer of a person who is imprisoned in *Assyirah* is not based on the opinion of the head of the prison or the warden, but is based on the provisions of the *qadliy*. Because, the sanction of *Assyria* is a sanction that is heavier than the sanction that has been determined, that is why it needs provisions from *qadliy*.

There are many types of punishments given by imprisonment, according to the crimes a person has violated. Regarding the type of imprisonment, it has been determined based on provisions *qadliy*. There are no political or non-political crimes. There is also no special treatment for public figures, or famous people, or anything else. Every disgraceful act is seen as a crime, the assessment of the size of the crime is returned to the decisions of the Imam (Caliph). Because he is the party who has the right to determine it. Anyone who insults someone's blood personality, then the perpetrator must be sanctioned for his actions, regardless of his existence as a famous person or not. Then, whoever denounces the rules without a valid reason, in such a case must be subject to sanctions, regardless of their status, as a politician or not.

However, in terms of determining the type of sanction, a *qadliy* may impose heavier sanctions on these individuals. He, for example, may imprison one person for one year and imprison another for one week, for the same crime. Or he may sentence one person to heavy imprisonment, while the others are thrown into light prisons. All of this was based on his knowledge of these two people; whether he is including people who like to sin (crime), or

including people who are devout, or whether the act is the result of an error committed due to the seduction of Satan, or something else.

People who are imprisoned sometimes have the status of prisoners, sometimes they are prisoners. If a person is a convict, then there is nothing to comment on in this regard. As for a person who is a prisoner, he must be placed in a place that is lighter than the prison. Because he is a person who is being detained on an accusation, not because of a crime. Therefore, the time limit for his detention should be limited as short as possible. And if there must be an extension of the detention period, there is a need for a provision to the *qadliy* (judge) but if there is no renewal of his detention period he will be released when his detention period has ended, without having to be troubled again.

If a *qadliy* was transferred, or replaced, or another *qadliy* appointed was, then *qadliy* the new had to start his job by examining the detainees. Whoever, whose accusation is proven, then of course he must be punished. Or if it is not proven, then he must immediately get out of detention. Thus, a person will not be jailed or detained unless it is based on the decision of (*Qadliy*).

It should be understood that the imprisonment sanction is not the *Had* which has been determined by *shara* ' so that no one may exceed it, as *vol*. Because, there is no *text* which shows that it is a *had* whose size has been determined by the *syara* '. There is also no text which shows a specific time limit for imprisonment. In this way, the determination of the size of the sanctions is left to the Caliph. When the sanction has a function as a deterrent, in terms of its stipulation, the Caliph must pay attention to the time limit of detention, so that the imprisonment sanction can be a deterrent for the perpetrator of sin and other people (who witness it). Whoever is obliged to be subject to sanctions *ta'zir*, then he must get *ta'zir* with sanctions that can prevent.

Imprisonment sanctions do not have an absolute maximum limit. It has been reported that He (saw). Has imposed a prison sentence, but he did not set a specific time limit. That way, the prison sentence remains absolute. Because, the texts that talk about imprisonment come in absolute form. There is an opinion expressed by some *jurists* that the shortest time limit for imprisonment is 1 year, by *qiyas* in the *taghrib* (exile) case.

Meanwhile, there is a history stating that the person who owes money (and does not return it), is imprisoned for at least ½ months and is imprisoned for a maximum of 2 months or 4 months according to the amount of money in the hands of the perpetrator. So, this is not a definite statute. Because, the case above occurred at a certain time and person, so it cannot be applied to other facts. Based on this, the problem of setting a maximum time limit for imprisonment could be imposed to punish a person. The Caliph may determine for certain crimes, a maximum or minimum limit of imprisonment. He can also set only a maximum limit, if he wants to set a certain size in *ta'zir*. If he did not set certain limits, then the matter was left to *Qadliy*. Thus, *qadliy* can stipulate a prison sentence when he wants to impose a sanction.

The Caliph is not obliged to set a time limit for imprisonment for every crime. This is because this kind of activity is part of the right *tabanniy* for the caliph (the right to adopt the law). Meanwhile, *tabanniy* for the caliph is *ibahah* (mubah), not mandatory. However,, *giving Qadliy* when a prison sentence to someone must clearly define the time limit for his imprisonment, so that the time limit for his imprisonment can be known, and not *majhul* (unknown). In addition, it is also so that the punishment is certain and not confusing. That is why, *Qadliy* must set a limit for his imprisonment with a certain time limit, such as 1 year, 1 month, or until a case is known to take place. For example, until the end of Ramadan, or until the Eid al-Fitr and others.

Thus, there must be a time limit for imprisonment imposed on the person who commits a sin, so that the sanctions set by *Qadliy* are clear. This is due to the condition that a charity can be known, then the charity must be determined by certain contracts and actions that are

binding in syara '. For example, buying and selling and trading requires a binding contract, so that the contract is clear. Likewise, in prayer and nadzar, certain binding actions are required so that the deeds are clear. The verdict from *punishable qadliyy* is part of charity, therefore the charity must be clear. Likewise, the imprisonment sanction is a sanction from *qadliyy*, therefore the sanction from *qadliyy* must be clear. Sanctions *Qadliyyare* not clear if the sanctions imposed are vague. As a result, there must be a stipulation of a time limit for imprisonment. And there must be a certain time limit, whether the sanction is imposed because of a criminal act or because of an accusation.

A *qadliyy* may not imprison a person with a sentence of punishment until he repents or until he dies. Because, this kind of punishment is *majhul*, so it is invalid because it is a punishment with unclear sanctions. And it is not known when he repented and when he died. It cannot be stated here that the time limit for the sentence with death is a clear time limit. Because, the limit of the sentence set for people who commit acts of sin with the limit of death, is the limit of the sentence period that is not known with certainty. The limit of the sentence is not with death but with a time limit until the arrival of death thus, the time limit of the sentence becomes unclear. After all, that kind of punishment was not an obvious punishment. It must not be stated that Allah SWT has limited imprisonment with death, as in his words:

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا  
 فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا

*in another house until they are up to them. (Surah An Nisa. 15)*

Because this verse has been deleted with the verse:

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا

*Women who commit adultery and men who commit adultery, give up (QS An Nur. 2)*

Therefore, this verse is not valid to be used as an argument for this case. In addition, the husband's prohibition against his wife from leaving his house is not considered as detention (al-habs or imprisonment) in syar'ie. The husband has the right to prohibit his wife from leaving the house whenever he wants. This kind of thing is not considered imprisonment for his wife. The reason is, if this is considered imprisonment, of course it will get legal sanctions. Because, imposing sanctions on humans is the special right of the ruler. Anyone other than the ruler has no right to impose sanctions. This is because Allah Almighty has explained the stages of treatment. Starting from warning (advice), silencing him, to allowing him to hit him without hurting. As explained in the verse:

فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ

*So take care of them and separate them in their beds, and beat them (QS an-Nisa: 34)*

As for the reason that imprisoning the wife is not allowed to include education for the wife. Based on this, the verse does not indicate that it is permissible to give imprisonment to death. Whereas what is narrated, that the Prophet SAW, Said:

*Kill the murderer, and be patient with those who are patient*

The meaning of this hadith is, whoever kills then he must be killed again. Whoever kills someone by imprisoning him with imprisonment can kill him on the grounds that he is killed, not imprisoned to death (for life), then this is a method of killing a murderer, and is included in the discussion of *jinayat* not *ta'zir*.

The hadith also does not indicate that it is permissible to imprison someone to death. That is why imprisonment to death is not allowed in syar'ie. there must be a limitation on the time of imprisonment for certain parties. It must also be understood, that imprisonment is detaining someone not employing someone. Forced labor is different from imprisonment. If a person is imprisoned, he cannot be employed (forced labor). This is because the word *al-habs* (prison) does not include *al-tasyghil* (to employ). Then is it permissible for *qadliyy* to punish someone with prison and work? Or only limited to imprisonment? The answer to this question

is, in fact there is no syara text which mentions the sanction of employing; either forced labor or not.

However, the *jurists are of the* opinion that a person who is in debt, but does not return his debt, then if he is sentenced to prison he can be employed with a salary to pay his debt. Unfortunately, this opinion is a law based on reason, not syara 'law. Therefore, this kind of opinion has no value at all. In addition, the types of sanctions decided by a *qadliyy* must be tied to what is mentioned in the text. Meanwhile, the sanction of "hard work" is never mentioned in the text. Thus, *qadliyy* should not punish someone with these sanctions.

## CONCLUSION

The prison system which later became a system of sanctions in criminal law which I can say as a form of sanction which is quite a *prima donna* has gone through various stages through the thought process by experts in the field of criminal law related to the philosophy of punishment, from western to eastern thinkers. Where these thinkers focus on the human aspect, they say that the punishment in the form of deprivation of life (death penalty) or the like does not uphold the human aspect. So there needs to be a new thought about the pattern of punishment, besides that prison in the classical era also made prison as something scary and terrible, for that a prison system that prioritizes the human aspect is necessary to be born as a criminal system that respects and upholds the human aspect. So that the current prison system was born, as in Indonesia, which underlies the prison system with a legal philosophy as protection and guidance.

The implementation of imprisonment in Indonesia according to Saharjo's view of law as protection, then the process of implementation is known as the correctional system. As this process is stated in Law Number 12 of 1995 concerning Corrections which is a refinement of the concepts of imprisonment initiated by previous Indonesian criminal law experts.

Prison in the Islamic legal system, which became known as *al-habs*. Is a system of sanctions which is also known in the realm of Islamic law, as in the division of sanctions in Islamic law, namely what is called *Hudud* and *Ta'zir*. The position of prison in the Islamic legal system is known in the second type of legal sanction above (*Hudud* and *Ta'zir*). However, prisons are mostly imposed for acts against the law which fall into the category of *ta'zir* which is determined by the judge (*Qadliyy*). Besides that, there are also fundamental differences from the prison system known in Islam and in the positive legal system, which can be seen in the system of giving sanctions to perpetrators of illegal acts.

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