



CRIMINAL OVERMACHT ISLAMIC LAW ON NARCOTICS CRIMES

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Abstract

This study examines the application of the concept of overmacht, or duress, within Islamic criminal law in relation to narcotics offences. The central issue concerns the extent to which coercion or circumstances beyond an offender's control may affect the assessment of criminal responsibility. This research employs a normative legal method using conceptual and statutory approaches. The materials examined include Islamic legal sources, relevant statutory provisions, and scholarly literature concerning overmacht, criminal responsibility, and narcotics offenses, which were analyzed qualitatively. The findings indicate that a state of duress does not automatically release an offender from criminal responsibility. Its legal significance must be determined by examining the specific circumstances surrounding the offense, including the nature and intensity of the pressure, the offender's ability to avoid the situation, and the causal connection between the coercive circumstances and the criminal act. From the perspective of Islamic criminal law, circumstances that substantially limit a person's ability to choose freely or place the individual beyond his or her reasonable capacity may affect the imposition of criminal responsibility. Nevertheless, in narcotics cases, a claim of overmacht must be established through concrete evidence and assessed in accordance with the applicable legal provisions. Therefore, overmacht should be regarded as a circumstance requiring careful judicial assessment rather than an absolute ground for exemption from criminal liability.

Keywords: Overmacht, Islamic Criminal Law, Criminal Offense, Narcotics, Criminal Liability.

INTRODUCTION

In criminal law, accountability for an act does not always result in criminal punishment. The law allows for consideration of specific circumstances that prevent a person from acting freely, one of which is through the concept of coercive power (overmacht) as regulated in Article 48 of the Criminal Code. This condition relates to pressure originating from outside the perpetrator and significantly limits their ability to determine their course of action. In criminal law doctrine, overmacht is positioned as a reason for forgiveness because its existence is related to the perpetrator's fault, not to the unlawful nature of their actions. The form of pressure experienced can be physical or psychological, provided that the pressure actually occurred, was of a certain degree of seriousness, and was difficult or impossible for the perpetrator to avoid. Therefore, the assessment of overmacht cannot be based solely on the perpetrator's confession, but must examine the overall situation underlying the crime.

Criminal responsibility, therefore, cannot be determined solely by proving that an act fulfills the elements of a crime. The circumstances surrounding the perpetrator at the time of the act also play a crucial role in determining whether or not blame can be assigned to them. The presence of grounds for expungement demonstrates that criminal law pays attention to both the subjective condition of the perpetrator and the circumstances surrounding the act. Therefore, the application of force majeure requires a careful examination of the relationship between the pressure experienced, the options available to the perpetrator, and the subsequent action. This approach is necessary so that the assessment of criminal responsibility does not stop at the formal act but also considers aspects of justice in the concrete circumstances faced by the perpetrator.

In addition to force majeure, criminal law also recognizes forced defense (noodweer) as a circumstance that can influence criminal liability. Article 34 of the New Criminal Code places forced defense in the context of actions taken by a person when facing an immediate attack or threat of attack. Acts committed under these circumstances may essentially fulfill the elements of a criminal prohibition, but the underlying circumstances form

the basis for considering the elimination of the criminal offense. In other words, these actions are viewed as a response to the danger being faced, not as actions taken without justifiable justification.

The scope of protection in forced defense encompasses legal interests related to oneself and others. This protection also encompasses honor related to morality and property, both owned by the person defending and others. This regulation demonstrates that the concept of *noodweer* has a broader scope than simply facing physical violence. Threats to honor and morality or to property can also be part of the legal interests being defended. Therefore, the assessment of forced defense must take into account the type of attack, the legal interest being protected, and the specific circumstances under which the defense is undertaken.

Criminal liability under Indonesian law is determined not only by the fulfillment of the elements of a crime, but also by the presence or absence of circumstances that influence the perpetrator's culpability. Within this framework, justification and excusal have different functions. Justification relates to conditions that cause an act to no longer be considered unlawful. Meanwhile, excusal relates to personal circumstances or specific situations that prevent blame from being placed on the perpetrator, even though the act remains unlawful. This distinction is important because it determines the legal basis for why someone cannot be convicted.

Force Majeure Force majeure or coercion falls into the category of excusable reasons recognized in Indonesian criminal law. Its basis is found in Article 48 of the Criminal Code (WvS), which provides an exception to criminal punishment when an act is committed under the influence of force majeure. This circumstance relates to a situation that places the perpetrator under such pressure that the options for acting differently are severely limited. Thus, the primary issue in the application of force majeure is not solely the act itself, but rather whether the pressure experienced actually affected the perpetrator's ability to freely determine their will. Based on this consideration, force majeure is linked to the issue of guilt (*schuld*) and not to the elimination of the unlawful nature of the act.

This principle continues to have a place in the development of national criminal law through Law Number 1 of 2023 concerning the Criminal Code. Article 36 paragraph (1) emphasizes the principle of *geen straf zonder schuld*, namely that punishment must be based on the existence of fault. This provision shows that criminal responsibility is not solely oriented on the occurrence of an act that fulfills the formulation of a criminal act, but also requires a basis for imposing blame on the person who committed it. In this context, force majeure becomes relevant to study, especially when the pressure experienced by the perpetrator is suspected of limiting his freedom of will in committing the criminal act.

The provisions regarding coercive power are more firmly established in the National Criminal Code through Article 42 of Law Number 1 of 2023 concerning the Criminal Code. This provision provides the basis for exempting a person from criminal liability when a crime is committed under circumstances beyond their normal ability to avoid. Article 42 distinguishes these circumstances into two forms: coercion arising from irresistible force and coercion arising from threats, pressure, or unavoidable force. This formulation demonstrates that the assessment of force majeure is closely related to the level of pressure experienced and the perpetrator's ability to extricate themselves from the situation.

“Any person who commits a crime shall not be punished because: a. he is forced by a force that cannot be resisted; or b. he is forced by a threat, pressure, or force that cannot be avoided.”

The provisions of force majeure in national criminal law have characteristics that require comparison with the concept of coercive circumstances in Islamic criminal law. These differences primarily relate to the basis of accountability, the measure of coercion, and how to determine the extent to which a person's circumstances influence the imposition of a penalty. From an Islamic criminal law perspective, these issues relate to a person's ability to act based on their will and conscience. Therefore, a comparison of the two legal systems is necessary to determine whether the available mechanisms provide proportional protection for individuals committing criminal acts under coercive circumstances.

This issue ultimately concerns not only the release of individuals from criminal liability, but also the balance between legal certainty and justice. Criminal law policy must ensure that the application of force majeure provisions is not overused, while simultaneously not ignoring those who actually committed acts under unavoidable pressure. Therefore, the existence of rules regarding coercive power must be considered as part of efforts to establish criminal accountability that is not merely formal but also takes into account the concrete circumstances surrounding the act.

The concept of force majeure in criminal law fundamentally stems from the issue of a person's freedom of choice. When an act is committed due to external pressure, the assessment of their culpability cannot be separated from the circumstances influencing that choice. In Indonesian criminal law, coercion is considered a justification

for excusing the act because the pressure experienced can influence the element of culpability, while the unlawful nature of the act does not automatically diminish. The form of pressure underlying force majeure can be related to physical or psychological conditions, but its existence must be assessed based on the actual circumstances experienced by the perpetrator. Therefore, judges need to consider the level of pressure, the perpetrator's ability to avoid it, and the relationship between that pressure and the crime committed.

The issue of free will also holds a crucial place in Islamic criminal law. A person's responsibility is not only linked to the occurrence of a prohibited act, but also to the perpetrator's mental state and capacity at the time of the act. Within this framework, an act is, in principle, accountable if the prohibited act is carried out at the perpetrator's will, and the perpetrator has knowledge of the consequences of their action. Circumstances that eliminate or limit this element of will can influence the assessment of criminal responsibility. Coercion is therefore one of the circumstances that must be taken into account when determining whether a person truly committed an act based on their free choice or was in a situation that limited their ability to choose.

However, the influence of force majeure in Islamic criminal law cannot be understood as an unlimited exemption. The assessment of the perpetrator must still consider the rights of the victim and the consequences of the act. The principle of justice in Islamic criminal law places the interests of the perpetrator and the victim in a balanced relationship, so that force majeure does not automatically eliminate all legal consequences of a crime. Therefore, force majeure is more accurately understood as a factor that can influence the form and level of accountability based on the concrete circumstances underlying the act. This approach demonstrates that Islamic criminal law not only considers the perpetrator's will but also considers the protection of the victim's rights and the broader public interest.

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In Islamic law, circumstances that can limit or eliminate a person's freedom of action can be studied through the concepts of *al-darurah* and *ikrah*. *Al-darurah* refers to an extraordinary situation when a person faces a serious need or threat which, if not immediately addressed, could result in greater harm. Meanwhile, *ikrah* relates to a person's actions carried out due to pressure or coercion from another party. These two concepts have a common ground with the discussion of *overmacht*, especially in looking at the extent to which certain circumstances can influence a person's ability to make free choices. Therefore, assessing coercive circumstances in Islamic law is not enough to just look at the actions taken, but also needs to pay attention to the level of need, forms of threat or pressure, as well as the conditions faced by the person concerned.

The discussion of force majeure becomes increasingly important when linked to drug crimes. Narcotics are a group of substances that can affect bodily functions and the human psyche and have the potential to cause dependence if used inappropriately. The term "narcotics" itself has its roots in the Greek word "narke," which

refers to a state of numbness or loss of sensation. Over time, the issue of narcotics has become more than just a matter of impact on individual health, but also has legal consequences, as their abuse and distribution can lead to various social problems. Therefore, when someone commits a drug crime under pressure or coercive circumstances, a specific assessment is needed to determine whether the situation truly meets the criteria for *force majeure* under Islamic criminal law and positive criminal law.

Legally, the definition of narcotics refers to the provisions of Article 1 of Law Number 35 of 2009 concerning Narcotics. In this provision, narcotics include substances or drugs derived from plants or non-plants, whether produced through synthetic or semi-synthetic processes. Their use can affect consciousness, eliminate or reduce the ability to feel pain, and cause dependence. The regulation also groups narcotics into several categories based on their characteristics and level of use. From a medical perspective, narcotics are known as a group of drugs that have analgesic or pain-reducing effects, but their use can also have certain effects on consciousness and has the potential to cause dependence if not used according to the provisions.

Legal issues arise when narcotics are used, possessed, or distributed outside the purposes and provisions permitted by law. Control of narcotics is necessary because their abuse can have impacts not only on individuals but also on society. Therefore, national law provides specific regulations through Law Number 35 of 2009 concerning Narcotics, including provisions regarding prohibited acts and the potential penalties.

In Islamic criminal law, sanctions for narcotics are not found in specific provisions explicitly mentioned in the Qur'an or Hadith. The legal determination then developed through *ijtihad* (judicial decision) among Islamic scholars, taking into account the characteristics and impacts of narcotics use. Differences of opinion arose regarding the appropriate type of sanctions to be applied. Some scholars linked it to *hadd* (lawful acts), while others placed such violations within the realm of *ta'zir* (sanctions whose determination is left to the competent authority based on considerations of public interest). These differences demonstrate that the discussion of narcotics crimes in Islamic criminal law cannot be separated from the goal of protecting the soul, mind, and public interest.

Islamic criminal law pays attention to a person's condition at the time of the crime, as this can influence the assessment of accountability. The principle of *raf' al-'uqūbah* can be used to explain certain circumstances that prevent criminal consequences from being imposed in the same manner as they would be for an offender with full capacity and will. The assessment goes beyond fulfilling the prohibited elements of the act, but also considers the perpetrator's capacity and condition at the time of the act. In the study of Islamic criminal law, issues such as coercion (*ikrah*), emergency (*darūrah*), mental illness, intoxication, and pre-maturity can all be part of the discussion of capacity for accountability. However, each of these circumstances has different provisions and limits of application. Therefore, the influence of personal circumstances on punishment must be determined based on the perpetrator's character and the extent to which they affect the offender's ability to act consciously and freely.

The relevance of this issue can be traced through the Langsa District Court Decision Number 158/Pid.B/2011/PN.Lgs relating to a narcotics case. In this case, the defendant was charged with committing a crime based on Law Number 35 of 2009 concerning Narcotics with alternative charges, namely Article 114 paragraph (1) as the first charge and Article 112 paragraph (1) as the second charge. This case is important to place in research because it provides a concrete picture of the application of narcotics criminal provisions through the judicial process. The existence of this decision can also be used to examine more specific issues, namely how the circumstances accompanying the defendant can be considered in determining criminal responsibility and whether the concept of coercive circumstances has relevance to narcotics cases examined by the court.

The assessment of the case does not stop at the choice of the article charged, but is based on the suitability between the trial facts and the elements of the crime that must be proven. Of the two alternative charges submitted, the provisions in Article 112 paragraph (1) of Law Number 35 of 2009 concerning Narcotics are considered to be most appropriate to the facts revealed in the trial. The evidence includes the identity of the defendant as a legal subject, the nature of the act carried out without rights or against the law, as well as the act of possessing, storing, controlling, or providing Class I narcotics. After the trial facts were linked to each of these elements, the court concluded that all elements of the crime had been fulfilled. On that basis, the defendant was found guilty of committing a crime as formulated in the second indictment.

The fulfillment of the elements of the offense then needs to be distinguished from the issue of whether or not the fault can be imposed on the defendant. The defendant's position as a legal subject indicates that in general he is a person who can be held criminally responsible. However, the defense presented in the trial opens up another issue regarding the circumstances that led to the act. The defendant essentially argued that there were certain conditions that influenced his actions and were related to circumstances that, according to his defense, were not entirely within his control. This argument becomes important when linked to the concept of *force majeure*, because

the existence of pressure or coercive circumstances can be a consideration in assessing the element of guilt. Therefore, the analysis of this decision is not sufficient to simply show that the elements of Article 112 paragraph (1) have been proven, but also needs to see how the court assessed the circumstances presented by the defendant in relation to criminal responsibility.

The series of events in this case began with the activities of members of the Langsa Police Narcotics Unit who were assigned to meet the target of handling seven narcotics cases. In carrying out the transaction, witness RN, who already knew the defendant and knew that the defendant could obtain methamphetamine, initiated the transaction through an undercover buy method. Witness RN went to the defendant's residence, while other police officers were at the location secretly. Because he already knew witness RN and had a good relationship with him, the defendant did not suspect the request. The defendant then contacted DAN, who was on the wanted list, to provide the methamphetamine. After DAN arrived and left the narcotics at the defendant's house, the defendant took the goods and handed them over to RN. During the handover, members of the Narcotics Unit, who had previously been marked by RN, immediately arrested the defendant. The defendant was then taken to the Langsa Police Department to undergo legal proceedings.

These facts then became the basis for the panel of judges in assessing the defendant's position in the crime. The court's considerations were not solely directed at the defendant's act of handing over narcotics, but also at the circumstances that preceded and prompted the act. In its decision, the panel of judges stated that the defendant could not be blamed for the legal incident because his actions were carried out after being ordered by witness RN. Thus, the defendant's position was considered within the framework of the party "ordered to do so," not merely as a perpetrator who independently determined the occurrence of the crime.

These considerations were further linked to witness RN's position as the party issuing the order in the course of carrying out his duties. The panel of judges considered that if there were reasons for RN not to be punished, for example because he was carrying out the order of a superior, a statutory order, or legitimate legal authority, then these circumstances also had consequences for the party carrying out the order. Based on this construction, the court linked the defendant's circumstances to the excuses inherent in carrying out the order. This consideration is an important part of the analysis because it shows how the circumstances underlying a person's actions can influence the assessment of their criminal responsibility.

Based on these considerations, the panel of judges considered that the defendant's involvement in the alleged act was factually proven, but the circumstances surrounding his involvement meant that the act could not be charged as a criminal offense. The defendant was in a position as a party carrying out the act on orders, while he himself did not know the true purpose of the act or its connection to the implementation of a specific task. Based on these considerations, the court did not impose a criminal penalty, but declared the defendant free from all legal charges. This decision shows the difference between whether an act is proven and whether or not a person can be held criminally responsible for that act.

A different picture can be found in Supreme Court Decision Number 1801 K/Pid.Sus/2014. The case relates to the possession and storage of Class I narcotics in the form of plants as charged under Article 111 paragraph (1) of Law Number 35 of 2009 concerning Narcotics. In this case, the defendant was found guilty of committing a crime as per the subsidiary charges and was sentenced to six years in prison and a fine of Rp. 800,000,000. The decision was also accompanied by a determination regarding evidence in the form of a pack of cigarettes containing dried marijuana leaves and a mobile phone to be confiscated and destroyed.

When these two cases are placed side by side, it is clear that the circumstances surrounding the perpetrator are crucial in determining the consequences of criminal liability. In the Langsa District Court case, the existence of certain circumstances related to the order became part of the judge's basis for not imposing criminal liability on the defendant. Conversely, in Supreme Court Decision Number 1801 K/Pid.Sus/2014, proof of the defendant's actions and accountability resulted in the imposition of a sentence. This difference demonstrates that narcotics cases cannot be analyzed solely on the basis of fulfilling the elements of the crime, but also require consideration of the perpetrator's position, the circumstances underlying their actions, and the presence or absence of grounds that could influence criminal liability.

The case of Anjar Dwi Santoso demonstrates a shift in the assessment of criminal responsibility at different levels of examination. At the first level, the Cibadak District Court, through Decision Number 101/Pid.Sus/2014/PN.Cbd dated May 21, 2014, found the defendant guilty of Class I narcotics abuse and sentenced him to one year in prison. Evidence, including a pack of U Mild cigarettes containing dried marijuana leaves and a mobile phone, was subsequently confiscated and destroyed.

The verdict was subsequently amended at the appeal level. The Bandung High Court, through Decision Number 196/Pid/Sus/2014/PT BDG dated July 15, 2014, declared the defendant guilty of unlawful and unlawful acts of possessing, storing, controlling, or providing Class I Narcotics in the form of plants. Unlike the first-instance verdict, the sentence imposed at the appeal level was heavier, namely four years in prison with a fine of Rp800,000,000. If the fine is not paid, there is a substitute in the form of two months' imprisonment. The same evidence was still confiscated for destruction.

The differences between the two decisions demonstrate that the assessment of drug crimes can change at each level of judicial review. Both the first-instance and appeal decisions acknowledge the existence of a crime, but differ in the legal construction and the criminal consequences imposed on the defendant. This case can be used as a comparison to the Langsa District Court Decision No. 158/Pid.B/2011/PN.Lgs, particularly to examine how the circumstances surrounding the defendant may influence the judge's assessment. Therefore, the issue of force majeure is not solely determined by whether or not the crime has been proven, but also by how the judge assesses the will, position, pressure, and circumstances underlying a person's involvement in a drug crime.

The difference in the verdict in the case continued to the cassation stage. The defendant filed a cassation petition and the Supreme Court ultimately granted the petition. The verdict at the appeal level was then overturned and the defendant was sentenced to one year in prison, while the evidence in the form of a pack of U Mild cigarettes containing dried marijuana leaves and a mobile phone was still ordered to be confiscated and destroyed. The Supreme Court's consideration was based on the assessment that the *judex facti* at the High Court level had applied the law properly, so there was reason to overturn the verdict based on the provisions of criminal procedure law regarding cassation examination.

The Supreme Court's authority in such circumstances is related to the provisions of Article 256 of the Criminal Procedure Code, which provides legal consequences for the granting of a cassation request. When a decision is overturned because the law was not applied or applied incorrectly, the Supreme Court can adjudicate the case itself, as regulated by the mechanism stipulated in Article 255 of the Criminal Procedure Code. This provision shows that the examination at the cassation level is not only related to the existence of the previous decision, but also to the correctness of the application of the law by the lower court. In this case, the change in decision from the appeal level to the cassation level shows that the application of the law to a narcotics case can result in different consequences when the legal basis for consideration is reassessed.

The issue of coercive power can also be found in Supreme Court Decision Number 675 K/Pid.Sus/2021, which concerns a defendant in a narcotics case who acted as a courier. This case is interesting because the reasoning behind coercive power was part of the issues examined throughout the judicial process from first instance, appeal, and cassation, with differing considerations and decisions at each level. This case demonstrates that the existence of force majeure cannot be accepted solely based on the assertion that someone was under duress. Circumstances claimed to constitute coercive power must be proven and assessed based on the nature of the pressure experienced, including whether the pressure actually restricted the perpetrator's freedom of action. Thus, the issue of proof is crucial in determining whether a situation can be categorized as coercive power that influences criminal liability.

The differing judgments in these cases demonstrate that the existence of coercive power does not automatically eliminate criminal liability. Even if the defendant claims that his actions were committed under threat or pressure, the judge must still assess these circumstances based on the facts that can be proven at trial. This assessment includes the nature and extent of the pressure, the relationship between the pressure and the act, and the defendant's ability to avoid or resist the circumstances. Therefore, acknowledging the existence of coercion is not sufficient to establish grounds for expungement of criminal liability unless supported by convincing circumstances and evidence. The differing judgments at the judicial level also demonstrate that the application of the concept of coercive power requires clear criteria to avoid relying solely on the interpretation of individual judges.

From an evidentiary perspective, conditions claimed to constitute coercive force can be examined through various pieces of evidence relevant to the case. Witness testimony, communication between the defendant and the party exerting the pressure, and other evidence that can illustrate the defendant's psychological condition and the circumstances facing him can help the judge form a judgment. This demonstrates the need for more focused measures in testing force majeure, particularly regarding the type of pressure that can be considered coercive, the degree of its influence on free will, and the causal relationship between the pressure and the crime. Clarity in these measures is crucial to ensure that the application of the excuse is not overly broad, but also to ensure that it does not preclude legal protection for those who truly acted under duress.

From the perspective of Islamic criminal law, this issue can be analyzed through the objectives of sharia (maqāṣid al-syarī'ah), particularly the protection of religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), reason (ḥifẓ al-'aql), descendants (ḥifẓ al-nasl), and property (ḥifẓ al-māl). The application of the law to perpetrators of criminal acts must take into account both the achievement of public welfare and the prevention of harm. Therefore, the punishment of someone who commits a crime under coercive circumstances must be viewed proportionally. Protection of society and victims remains important, but the condition of the perpetrator who has lost or experienced limitations in determining his will cannot be ignored.

The relationship between force majeure in positive criminal law and the concepts of ikrah and darūrah in Islamic criminal law is a key point in this research. All three relate to circumstances that can affect a person's freedom to commit an act, but they have conceptual bases and application limits that are not entirely the same. Studies that reconcile these three concepts with narcotics crimes still require more focused discussion, particularly regarding the dimensions of coercion, free will, proof of compelling circumstances, and their consequences for criminal liability. Based on this, this research is directed at analyzing the position of force majeure in narcotics crimes from the perspective of Islamic criminal law, while also examining the extent to which the concepts of ikrah and darūrah can be used to provide a more just and beneficial assessment.

PREVIOUS RESEARCH

Several previous studies have been related to discussions of force majeure and criminal liability, particularly in drug-related crimes. These studies serve as comparative material to assess the development of coercive power studies and identify areas that have not been widely discussed. The following studies are relevant to this study.

1. Research conducted by Rekha Hanafi Widiastuti, a student of the Legal Studies Program, Faculty of Law, Muhammadiyah University of Surakarta, through her thesis entitled Force Majeure in Criminal Law (Analysis of Decision Number 06/Pid.B/2016/PN.Byl., Decision Number 1002/Pid.B/2008/PN.Smg., Decision Number 533/Pid.B/2014/PN.Kis and Decision Number 4072/Pid.B/2011/PN.Sby.). The research focuses on the judge's considerations in determining whether or not there is force majeure by looking at the defendant's behavior and attitude when the crime took place. The research uses Article 48 of the Criminal Code as a basis for explaining the position of coercive power as one of the reasons for eliminating criminal penalties. The discussion also distinguishes between reasons for forgiveness related to the loss of the perpetrator's guilt and reasons for justification related to the loss of the unlawful nature of an act. Widiastuti's research provides an important basis for understanding the concept of force majeure in positive criminal law, especially regarding the relationship between force majeure and criminal responsibility.
2. Budi Setiawan Khatami's research from the Faculty of Law, University of Lampung, entitled Analysis of Criminal Liability for Narcotics Couriers Under Force (Overmacht) (Study of Decision Number 675 K/Pid.Sus/2021), specifically examines the application of overmacht to defendants acting as couriers in narcotics cases. The results indicate that the circumstances of overmacht presented by the defendant must be proven and assessed based on the character and level of pressure experienced. The study also shows that not every form of pressure can eliminate criminal liability. Differences in decisions at the District Court, High Court, and Supreme Court levels demonstrate that the assessment of overmacht is heavily influenced by the legal construction and facts considered by each level of justice. This study provides a more specific overview of the application of overmacht in narcotics cases from a national criminal law perspective.

Both studies share similarities with this one, as they both discuss force majeure as a condition related to criminal liability. Widiastuti's research provides a foundation for the concept of coercive power and its application in court decisions, while Khatami's research is more closely related, addressing force majeure in drug courier cases and using Supreme Court Decision No. 675 K/Pid.Sus/2021 as its object of study. However, there are fundamental differences in the perspectives used. Both previous studies focused more on the construction of force majeure based on positive criminal law and the judge's considerations in the cases studied.

This study takes a different approach by connecting the concept of force majeure in positive criminal law with the concepts of ikrah and dharurah in Islamic criminal law. This focus is important because coercive power in Islamic law is not only related to the presence or absence of pressure on the perpetrator, but also touches on issues of will, ability to choose, moral responsibility, and the achievement of public welfare. This study also places the concept of maqāṣid al-syarī'ah as a framework for examining the balance between community protection, the interests of victims, and the conditions of perpetrators who commit crimes under duress. Thus, this study does not

simply repeat the discussion on force majeure, but seeks to provide an integrative analysis of the accountability of perpetrators of narcotics crimes under duress based on positive criminal law and Islamic criminal law perspectives.

METHOD

This study uses a normative legal research method with a statutory approach and a conceptual approach. The statutory approach is used to examine legal provisions relating to force majeure, criminal liability, and narcotics crimes, including provisions in the Criminal Code and Law Number 35 of 2009 concerning Narcotics. Meanwhile, the conceptual approach is used to analyze the concept of force majeure in criminal law and its relationship to the concepts of *ikrah*, *darūrah*, and criminal liability in Islamic criminal law.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and court decisions that are the object of the study, especially the Langsa District Court Decision Number 158/Pid.B/2011/PN.Lgs and other decisions related to the application of force majeure in narcotics cases. Secondary legal materials are obtained from books, scientific journals, theses, and academic works that discuss criminal law, force majeure, criminal liability, Islamic criminal law, *ikrah*, *darūrah*, and *maqāṣid al-syarī'ah*. Tertiary legal materials are used as supporting sources to clarify the legal terms and concepts used in the research.

The legal materials were collected through a literature review by tracing, identifying, and categorizing legal sources relevant to the research problem. The collected materials were then selected based on their relevance to the focus of the study, particularly regarding the status of coercive power, the limits of criminal liability, and their application in narcotics crime cases. Furthermore, the legal materials were analyzed qualitatively by linking positive legal provisions, the judge's considerations in the decisions studied, and concepts in Islamic criminal law. This analysis was used to examine the suitability and differences between the concept of overmacht in positive criminal law and *ikrah* and *darūrah* in Islamic criminal law, while also assessing their application to the accountability of perpetrators of narcotics crimes.

RESULTS AND DISCUSSION

A. Criminal Responsibility of Narcotics Crime Perpetrators in Force Majeure According to Islamic Criminal Law

Drug crimes impact both individuals and society. Improper drug use can affect a person's mental function, physical condition, and psychological state, especially when use develops into dependence. This dependence can encourage someone to continue using drugs despite knowing the risks. The resulting problems are not only related to health consequences but also to the potential for various legal violations related to drug abuse and distribution. Therefore, drug regulations are not solely aimed at imposing sanctions but also at protecting individuals and society from the resulting impacts.

Drug dependence can involve both physical and psychological aspects. The urge to use drugs again can recur and persist over a period of time, especially when someone has already developed dependency. This situation demonstrates that the drug problem has complex dimensions, as it is related to a person's physical, mental, and social environment. However, dependency does not automatically constitute a basis for waiving criminal responsibility. In each case, an assessment of the perpetrator's condition, the nature of their actions, and the relationship between the condition and the crime committed is still necessary.

In Islamic criminal law, prohibited and sanctioned acts are called *jarimah*. Al-Mawardi explains:

Allah's blessings

Meaning: "Jarimah are actions prohibited by *syara'* which are threatened with the punishment of *ḥadd* or *ta'zīr*."

In Islamic criminal law, *ta'zīr* is a form of sanction whose application does not have a specific punishment provision as in *ḥadd*. Alotaibi in *Minors' Crimes in Saudi Arabia* explains that the authority to determine *ta'zīr* punishment rests with the ruler for criminal acts related to the rights of God or human rights and not accompanied by established *ḥadd* or *kaffārah* provisions. The imposition of this punishment is aimed not only at providing a learning effect for the perpetrator but also at preventing the recurrence of the crime.

Narcotics are not specifically mentioned in the Qur'an and Hadith as a type of crime with specific punishments. Therefore, the determination of the law develops through *ijtihād* (intelligence) among scholars. One basis used is the *qiyas* approach with *khamr*, because narcotics have an impact on the function of the mind. Based on this consideration, drug abuse can then be classified as a *ta'zīr* crime, so the form of sanctions is determined based on legal considerations and public interest. Thus, the regulation of narcotics in Islamic criminal law develops

through a process of legal reasoning regarding the impact and character of the act, not based on the provisions of hadd mentioned directly in the primary sources of sharia.

For Muslims, the Quran and Hadith are the two primary sources for understanding and establishing Islamic teachings and law. The Quran contains various provisions, some of which are presented in general terms, allowing for more detailed explanations through the Hadith. As new issues arise that are not directly addressed in these two sources, a process of legal thought and reasoning is necessary to ensure that Islamic teachings remain able to provide answers to evolving life issues. In this context, *ijtihad* plays a crucial role in discovering legal provisions for issues not explicitly explained in the primary sources of Islam.

Determining the law on narcotics is done through the process of *ijtihad* using the *qiyās* method. This method is used to determine the law on a matter that does not have a direct provision in the text by linking it to other matters that have a legal basis in the Qur'an or Hadith. Thus, the use of *qiyās* allows a new issue, including narcotics, to be analyzed based on the similarity of legal reasoning (*'illah*) with a matter that has been legally established in the sources of sharia.

The provisions regarding sanctions for drug abuse in Indonesia also received religious legitimacy through the Indonesian Ulema Council (MUI) Fatwa Number 53 of 2014 concerning Punishment for Drug Producers, Dealers, Distributors, and Abusers. In the fatwa, the production, distribution, and use of narcotics without authorization are declared haram (forbidden) and criminal acts subject to punishment (hadd) and/or ta'zir (restriction). The MUI also authorizes the state to impose ta'zir penalties up to the death penalty, taking into account the quantity of narcotics possessed and whether the offense is repeated. This consideration is related to the view that the impact of narcotics is considered more dangerous than alcohol.

The provisions regarding punishment for drug users in Islamic jurisprudence also show differences among scholars, particularly regarding the level of lashing that should be given. The Hanafi and Maliki schools stipulate a maximum of 80 lashes, while Imam Ahmad has two narrations on the matter, one of which also stipulates 80 lashes. This opinion is related to a practice carried out during the time of the Companions. When Umar ibn al-Khattab deliberated on the punishment for drinking alcohol, Abdurrahman ibn 'Auf proposed that the punishment be equal to the lightest punishment, namely 80 lashes. This opinion later became one of the bases used in determining the level of punishment for acts analogous to alcohol.

Ta'zir sanctions for drug abusers can be imposed in several forms, depending on the legal considerations applied by the judge. The first form concerns the body, such as the death penalty and flogging. The second form relates to restrictions on liberty, including imprisonment and exile. Furthermore, there are ta'zir sanctions related to property, including detention or certain measures against the perpetrator's property. In addition to these forms, the judge can also impose other types of sanctions according to the circumstances of the case. This determination is related to the absence of specific provisions for drug punishment in the Qur'an and Hadith, so the determination of sanctions is within the judge's authority, taking into account legal provisions and public interest.

B. Criminal Responsibility of Narcotics Crime Perpetrators in Force Majeure According to Criminal Law

Criminal liability in narcotics cases is not solely determined by whether or not a prohibited act has been proven. The circumstances of a person at the time of the act also play a role in determining whether criminal liability can be imposed. This issue becomes more complex when a person is aware of a narcotics crime but fails to report it due to pressure. In such circumstances, legal judgment must distinguish between voluntary actions and those arising from circumstances that limit freedom of choice.

Article 131 of Law Number 35 of 2009 concerning Narcotics provides the legal basis for failing to report a known narcotics crime. The use of the phrase "every person" indicates that this provision can be applied to any legal subject without limiting them to a specific status or position. However, a person's existence as a legal subject is not sufficient to constitute criminal liability. Its application depends on whether or not the elements of the crime have been fulfilled and the circumstances surrounding the act. Therefore, the perpetrator's identity as a legal subject must be distinguished from the question of whether all elements of criminal liability have been fulfilled.

The assessment of responsibility also relates to the mental state of the person committing the act. Someone who knows about a crime and then fails to report it is in a different situation than someone who is completely unaware of the incident. Knowledge is crucial because the obligation to report can only be attributed to those who are aware of the crime as defined by the law. Therefore, intent cannot be inferred simply from a person's presence around a drug user, but must be linked to actual knowledge of the crime and the actions taken after acquiring that knowledge.

In this context, the subjective element relates to the mental state that accompanies the act. Intentionality indicates awareness of a known circumstance and the will to perform or not perform a particular act. If a person is

aware of a drug crime and consciously chooses not to report it, this circumstance can be used to assess intent. Conversely, the conclusion of intent cannot be separated from the circumstances that led to that decision. If the decision not to report stems from serious threats or pressure, these circumstances must be examined before determining the perpetrator's culpability.

Meanwhile, the objective element relates to actions that are clearly subject to criminal prohibitions. Article 131 of the Narcotics Law addresses this issue, which relates to the failure to report a known crime. This means that examining this element is not sufficient simply to demonstrate that a report was never filed; it is also necessary to determine whether the individual was aware of the crime that should have been reported. The relationship between knowledge and failure to report is crucial in determining whether the criminal provisions have been met.

Thus, the elements of knowledge and the act of failing to report are interrelated, but not equivalent. Knowledge concerns what a person knows, while failure to report concerns the action chosen after that knowledge has been acquired. This distinction is important because the circumstances that led to a person's failure to report can influence the assessment of their culpability. If failure to report is a conscious and free decision, accountability can be assessed based on the fulfillment of the criminal elements. However, if there are circumstances that actually force a person not to report, the issue must be analyzed through the concept of force majeure.

In criminal law, a person's capacity to be accountable for their actions is related to their mental state and their ability to understand and control their actions. Under normal circumstances, a person with this capacity can be held accountable for actions they consciously commit. The situation is different when someone acts under pressure beyond their control. Coercion in such circumstances is a factor that needs to be considered, as a person may engage in actions they would not have chosen otherwise.

The concept of force majeure in Article 48 of the Criminal Code relates to a situation where external pressure causes a person to commit an act prohibited by law. Coercive force does not always take the same form. In criminal law theory, a distinction is made between *vis absoluta* and *vis compulsiva*. *Vis absoluta* refers to a situation where the physical force exerted on a person is so absolute that they essentially lack the ability to determine their own actions. Meanwhile, *vis compulsiva* relates to pressure that influences a person's will, forcing them to commit an act despite still possessing some capacity to determine their own actions.

The difference between these two forms has consequences for determining accountability. In absolute power, the perpetrator essentially has no control over the actions that occur because they are merely a means of another party's power or will. This condition causes actions that appear to be carried out by a person to not actually be entirely the result of their own will. Van Hamel views absolute power as a condition that eliminates accountability because the person committing the act is not in a position to freely determine their actions.

Vis compulsiva, on the other hand, is more related to pressure that influences a person's choices. This pressure can stem from the actions of others or from specific circumstances that present a difficult choice. Therefore, its assessment cannot be made automatically. The judge must consider the intensity of the pressure, the situation of the person experiencing it, and whether there was a reasonable possibility to avoid the prohibited act. This demonstrates that not every fear or pressure can be directly equated with force majeure. There must be circumstances that significantly influence a person's ability to make their own decisions.

The application of this concept becomes crucial when a person's inability to report a drug crime is based on threats or coercion. In such circumstances, the fact that reporting is not done may meet the definition of an act as defined in Article 131, but this does not automatically resolve the issue of criminal liability. It is necessary to examine whether the failure to report was a freely made choice or a consequence of unavoidable pressure. Therefore, the elements of the act and the reasons behind the act must be assessed simultaneously.

This situation differs from the concept of forced defense, or *noodweer*, as stipulated in Article 49 of the Criminal Code. Forced defense refers to actions taken to confront an unlawful attack or threat of attack that occurs immediately. The protection afforded by this concept encompasses the interests of oneself and others, honor or morality, and property. According to Andi Hamzah, the application of *noodweer* requires an unlawful attack or threat of attack that occurs immediately, and the defense action is taken under duress.⁵ Therefore, *noodweer* has a different character from *overmacht*, even though both are related to circumstances that can influence criminal responsibility.

This distinction is crucial in analyzing drug cases involving compelling circumstances. Force majeure focuses on the pressure that causes someone to commit or refrain from committing a prohibited act, while force majeure concerns actions taken to counter an unlawful attack or threat. Therefore, the perpetrator's stated reason must reflect the actual factual circumstances and cannot be confused simply because both are related to grounds for expungement.

Based on this description, criminal liability under Article 131 of Law Number 35 of 2009 concerning Narcotics must be viewed through the relationship between knowledge, failure to report, intent, and the circumstances underlying the action. Force majeure can be considered if it is proven that the pressure experienced by the perpetrator significantly limits his freedom to determine his actions. Conversely, if the perpetrator still had a reasonable opportunity to act and consciously chose not to report, the reason of force majeure cannot be used automatically to eliminate criminal liability. Thus, the determination of liability must be based on the concrete circumstances of each case and evidence regarding the extent to which the pressure influenced the perpetrator's will.

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