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## Selling and Buying Narcotics in Relation to Islamic Law

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### Abstract

*Narcotics are substances or drugs that can cause changes in consciousness, loss of pain, and addiction. The potential dangers of narcotics have led to the enactment of Law No. 35 of 2009 concerning Narcotics. Narcotics come in various forms such as pills, powders, plants, and liquids, although not all narcotics are in liquid form. This study aims to analyze the view of Islamic Criminal Law regarding the trade of narcotics. The study uses a normative legal research method by using secondary data, namely legislation, books, journals, and other secondary data related to the object of research and analyzed qualitatively. The results show that the sale and purchase of goods, or ma'kud 'alaih (object), require that the object of the sale and purchase must be pure and beneficial, which means that the object of the sale and purchase must be lawful and beneficial for the body and soul of the buyer. Narcotics are substances that can eliminate consciousness and reason of a person, and are included in the category of Khamr that is prohibited in Islam.*

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## INTRODUCTION

The economy, defined as "human behavior related to activities of earning and spending money," has received significant attention in the Qur'an and Sunnah, as it is crucial to human life and can even lead to its collapse or prosperity (M. Quraish Shihab, 2011).

Economic activity is one aspect of human relationships, and therefore, moral aspects must not be neglected in any of its activities. Thus, Allah SWT's regulations in the field of economics are always linked to emphasizing moral aspects (M. Quraish Shihab, 2011).

Islam does not forbid trading except for those that involve injustice, fraud, exploitation, or promote prohibited things. The trading of khamr, marijuana, idols, and similar items that are consumed, distributed, or utilized is prohibited and not condoned by Islam. Any income earned through such practices is considered haram and impure (Yusuf Qardhawi, 2003).

Narcotics are substances that can cause certain effects on the user, such as pain relief, stimulation, euphoria, hallucinations, and addiction. However, if narcotics are misused, they can have severe effects on the user's body. Most narcotics can cause addiction and damage brain cells. The effects of narcotics vary, including the loss of concentration, memory, attention, perception, and feeling, followed by depression, seizures, overdose, kidney, heart, and stomach disorders (Mudji Waluyo, 2007). In Article 1, Paragraph 1 of Law No. 35 of 2009, narcotics are defined as substances or drugs that come from plants or non-plants, both synthetic and semi-synthetic, which can cause a decrease or change in consciousness, pain relief, and addiction. In positive law in Indonesia, narcotics are regulated in Law No. 35 of 2009 concerning Narcotics. Sanctions for drug abuse range from mandatory rehabilitation to imprisonment, fines, and even the death penalty.

In Islamic Criminal Law, drug abuse is regulated under *uqubah* or illegal acts. Several verses that prohibit drugs are: "And make lawful for them the good things and prohibit for them the bad." (QS. Al A'raf: 157). Anything that is *khobits* (harmful) is forbidden by this verse. Among the meanings of *khobits* is anything that has a negative effect. "And do not throw yourselves into destruction." (QS. Al Baqarah: 195), "And do not kill yourselves; indeed, Allah is to you ever Merciful." (QS. An Nisa ': 29).

The two verses above indicate the prohibition of harming oneself or causing one's own destruction. Drugs, by their very nature, certainly harm a person's body and mind. Thus, from these verses, we can state that drugs are *haram* (forbidden). Previous studies have also shown this, such as the journal article by Syapar Alim Siregar, titled "Drug Dealers in Islamic Law" in the *Al-Maqasid Journal*, Vol. 5 No. 1, which concluded that in Islamic law, drugs are *haram*. This is because drugs are classified as *muskir* substances (intoxicating substances), and their prohibition includes producers (manufacturers), distributors, users, carriers, senders, pourers, sellers, buyers, and even the money obtained from them is *haram*.

The article by Ahmad Syafi'i, titled "Drug Abuse in the Perspective of Positive Law and Islamic Law" in the *Hunafa Journal*, Volume 6 No. 2, concluded that the prohibition of drug abuse is analogous to the prohibition of drinking alcohol (*khamar*) in Islamic law, and that producers, distributors, and users will be given a *had* or *ta'zîr* sanction. Meanwhile, in criminal law, drug abusers are prohibited by law and given severe criminal sanctions.

The problem of illegal drug trade and crime is a very complex issue because there are three factors causing the increase in illegal drug circulation, namely weak interdiction capacity, which will result in an increase in the risk of drug trafficking, an increase in drug abuse, which causes demand for drugs to increase, and a lack of cooperation between law enforcement agencies, both nationally and internationally, resulting in a lack of effectiveness in interdiction tasks. (Harifin A.Tumpa, 2013).

Drugs, which are forbidden both in positive law and Islamic law, have a high level of demand. High demand creates a profitable business opportunity for certain individuals. This is what inspired the author to write about the buying and selling of drugs in relation to Islamic law.

## **METHODOLOGY**

This research uses a normative legal research method by using secondary data, namely legislation, books, journals, and other related secondary data regarding the research object. The approach used is descriptive analysis related to the regulation and implementation of the criminal act of buying and selling narcotics. In this research, the regulations and arguments related to the trade of narcotics are analyzed using a qualitative data analysis method, which aims to understand and comprehend the buying and selling of narcotics in relation to Islamic law.

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## RESULTS AND DISCUSSION

The terms "narcotics" or "NAPZA" refer to a group of compounds that generally have addiction risks for users. According to health experts, narcotics are actually psychotropic compounds that are commonly used to anesthetize patients during surgery or as medicines for certain illnesses.

Narcotics are substances or drugs derived from plants or non-plants, both synthetic and semi-synthetic, that can cause a decrease or alteration in consciousness, loss of pain sensation, and can lead to addiction (Article 1 paragraph 1 of Law No. 35 of 2009).

Narcotics are classified into 3 (three) groups as stipulated in the appendix 1 of the law. Narcotics include the following types (Mudji Waluyo, 2007):

1. Narcotics group I: highly addictive substances that are not used for therapy (treatment). Examples include heroin, cocaine, and marijuana. Putauw is pure heroin in powder form.
2. Narcotics group II: highly addictive substances used in therapy as a last resort. Examples include morphine, meperidine, and methadone.
3. Narcotics group III: mildly addictive substances commonly used in therapy. Examples include codeine.

In general, drug abuse can be done in the following ways:

1. Oral ingestion (swallowing);
2. Inhalation (smoking or snorting through the nose) usually for powdered drugs;
3. Injection (intravenous), where the drug is usually in liquid form and is injected directly into a vein with a syringe;
4. Insertion (suppository), where the drug is inserted in solid form into the body through the rectum/anus;
5. Application to wounds, where powdered drugs are applied to cuts or wounds on the body. (Pulungan, 2015)

In 2015, there were 35 types of narcotics consumed by drug users in Indonesia, ranging from the cheapest to the most expensive, such as LSD. In the world, there are 354 types of narcotics. (wikipedia, 2017).

The criminal sanctions against drug abusers based on Law No. 35 of 2009 on Narcotics can be categorized as follows:

1. In the form of a single penalty (imprisonment or fine only);
2. In the form of alternative penalty (choice between imprisonment or fine);
3. In the form of cumulative penalty (imprisonment and fine);
4. In the form of a combination/mixed penalty (imprisonment and/or fine).

The lightest penalty for drug offenses is imprisonment for four years, and the heaviest penalty is the death penalty. The severity of the criminal penalty for drug abuse depends on the type of offense committed and the amount of drugs involved.

Islamic Criminal Law (*jinayah*) comes from the word "*jana*", which means crime, punishment, or criminal. *Jinayah* is an act that is prohibited or forbidden because it can cause harm or damage to religion, soul, mind, and property. Islamic Criminal Law or *jinayah* is a criminal law that exists within the scope of Islamic law, a translation of the concept of '*uqubah, jarimah, jinayah*'. *Uqubah* means punishment or torture (Mahmud Yunus, 1989).

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Meanwhile, according to the terminology of Islamic law, *al-'uqubah* is Islamic criminal law that covers things that are detrimental or criminal acts (Abd. Al-Rahman I Doi, 1992).

The word *jarimah* is synonymous with positive law as a crime or offense. It refers to a unit or characteristic of a legal violation. In positive law, examples of *jarimah* are referred to as criminal acts such as theft, murder, and so on. So, in positive law, *jarimah* is equivalent to a crime or offense. In *delict*, the term criminal act, criminal event, criminal violation, punishable act, which means the same as *delict*, are all translations from the Dutch word *strafbaarheid*. The term *delict* is often used in legal science in general, while the term crime is often associated with corruption and is commonly used in ordinary laws to refer to criminal acts.

In Islamic criminal law, the consumption of narcotics is considered *jarimah khamr*. In the terminology of Islamic law or fiqh, the term *jarimah* according to Al-Mawardi is: *Jaraim* (criminal actions) are all actions that are prohibited by Sharia law. Allah has prevented criminal actions from occurring by imposing *hudud* or *ta'zir* on the perpetrators (Abu Hasan Al-Mawardi, 1986).

*Jarimah* refers to committing a prohibited act that, if done, results in a certain legal penalty, or not performing a prohibited act, which is threatened with a certain legal penalty if not done. In other words, it refers to performing or refraining from an action that has been deemed unlawful by the *Shariah* and is accompanied by a specific legal punishment. (Abd Al-Qadir 'Audah, 1987).

All types of intoxicating substances fall under the category of *Khamr*. Narcotics and illegal drugs (*Narkoba*) are substances that can impair one's mental state and are considered *haram* (prohibited by Islamic law). They make a person weak in mind, weaken their desires, and prevent them from remembering Allah (Sayyid Sabiq, 1984). Abu Musa al-Asy'ari said, "O Messenger of Allah, give us a ruling regarding two types of drinks that people make in Yemen, bit which is honey mixed with yeast and mizn which is made from grains that are also mixed with yeast until they become alcoholic drinks." According to Abu Musa, the Prophet has given a verdict that says, "Anything that intoxicates is *haram* (prohibited)." (HR. Al-Bukhari no. 4087, 4088 bab *ba'ts Mu'adz ilal yaman qobla hajjatil wada'*, no. 5773, Muslim no.1733) In the hadith of the Prophet Muhammad: "Verily, Allah has cursed *khamr* (intoxicants), its maker, the one who presses it, the one who drinks it, the one who sells it, the one who buys it, the one who serves it, the one who utilizes its earnings, the one who carries it, and the one who is carried by it" (HR *Tirmidzi dan Ibnu Majah*). "Verily, *khamr* is not a medicine, but rather it is a disease" (Shhin, 2002) "Whatever intoxicates in large quantities, a small amount of it is also prohibited" (HR. Ibn Majjah melalui Jabir Ibn Abdillah).

Islam is not unaware of the benefits of alcohol, but in the view of Islam, the harmful impact of alcohol on human life is much greater than the benefits that can be obtained. This is stated in the Quran, Surah Al-Baqarah, verse 219, which means: "They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit."

Allah SWT informs us that the sin and harm caused by alcohol and gambling, such as loss of memory, wealth, and hindering one from remembering Allah, from praying, (causing) enmity and hatred, is greater than the benefit obtained from earning money through buying

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and selling alcohol or obtaining it through gambling or the pleasure of the heart when doing it. Khamr means everything that intoxicates and clouds the mind, regardless of its type.

Hawari (M Ra'uf, 2002) states that getting drunk is a deviant behavior that is a reflection of anti-social personality or behavioral disorders in adolescents. From the hadith mentioned, it is clear that substances that impair the mind and intoxicate without distinguishing between specific types and without being restricted to what is eaten or drunk. These substances are sometimes dissolved in water and then drunk, and sometimes eaten; all types of these substances are forbidden.

In general, some legal experts argue that law is a set of behavioral rules in the form of norms or principles, both written and unwritten, that can regulate and create order in society and must be obeyed by all members of society based on their belief and the authority of the law (Muhamad Sadi Is, 2015).

Business is one of the main economic activities that supports economic development. The word "business" is taken from the English word "business," which means business activities. According to Richard Burton Simatupang, broadly speaking, the word business is often interpreted as all business activities carried out by individuals or entities in a regular and continuous manner, namely in the form of providing goods or services or facilities to be sold, exchanged, or rented with the aim of making a profit (Richard Burton Simatupang, 1996).

Based on the definition that has been explained, it appears that business is a trading activity that includes broader elements such as work, profession, income, livelihood, and profit. A description of business activities in that definition can be further elaborated as follows:

1. Business is an activity that is routinely carried out because it is considered a job, livelihood, and even a profession.
2. Business is an activity in trading.
3. Business is conducted in order to gain profit.
4. Business is conducted by both individuals and companies. (Johannes Ibrahim & Lindawaty Sewu, 2007).

The term "business law" as a translation of the term "Hukum Bisnis" is widely used today among academics and practitioners. The term "business law" has become more popular than other terms, such as commercial law and corporate law. To understand the meaning of commercial law, various definitions of commercial law by legal experts are quoted as follows:

Ahmad Ihsan stated that commercial law is the law that regulates trade issues, which are issues that arise due to human behavior in trade (Ahmad Ischan, 1987). H H.M.M Purwosujipto, said that commercial law is the law of obligations that arises specifically from the corporate field (*Pengertian Pokok Hukum Dagang Indonesia*, 1981). Sri Redjki Hartono, argued that commercial law, in conventional understanding, is part of the field of civil law or in other words, besides being referred to as civil law in a broad sense, including commercial law, the principles of commercial law are part of the principles of civil law in general (Sri Redjki Hartono, 2000).

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Business law emerged because of the concept of business. Therefore, broadly speaking, business activities are defined as business activities carried out by individuals or businesses (companies) regularly and continuously, namely in the form of providing goods or services or facilities to be sold or leased with the aim of making a profit. Thus, business activities can be distinguished into the following three areas: (Sri Redjki Hartono, 2000)

1. Business in the sense of commerce, which is the overall buying and selling activities carried out by individuals or organizations both domestically and internationally or between countries for the purpose of making a profit. Examples of these activities include being a dealer, agent, wholesaler, retailer, etc.
2. Business in the sense of industry, which is the activity of producing or generating goods or services that are more valuable than the original. Examples include agriculture, plantations, mining, cement factories, clothing, etc.
3. Business in the sense of providing services, which is the activity of providing or delivering services carried out by individuals or organizations. Examples include hospitality, consulting, insurance, tourism, lawyers, accountants, etc.

The main objective of Islamic law (Maqasyid Al Syariah) is to realize the aspirations of human welfare based on the values of social justice and equality (Muassawah/Egalitarianism) as creatures of Allah. The goal of social justice in Islam is reflected in juridical-normative provisions found in both the Quran and Hadith, which are based on the values of equality (al-musawah), justice (al'adalah), and freedom (al-Huriyah). Islamic law is a comprehensive religious concept that regulates all dimensions of human life. Thus, Islamic law is a comprehensive concept of life. (Yamani, 1986).

The Islamic legal system, aims to realize the well-being of humanity as a whole. The well-being referred to is *jaib al-manfa'ah wa dar 'al mafasid*, which means to achieve benefit and prevent harm. This is reflected in the basic principles of Islamic law, both in the text of the Qur'an and the sayings of the Prophet Muhammad. The fundamental principles of Islamic law include justice ('*adl*), equality (*musawah*), mutual assistance (*taawun*), wisdom (*hikmah*), mercy, and other principles that are in line with the universality of well-being.

The objective of Islamic business law is to achieve *maslahah* or benefit for humanity by conducting activities that lead to the attainment of things that are beneficial for human beings or by directly carrying out activities that can realize that benefit. Other activities aimed at achieving *maslahah* include avoiding everything that brings harm or corruption (*mafsadah*) to human beings (Riyadi, 2014).

In fiqh terminology, buying and selling are referred to as "*al-bai*", which means to sell, exchange, and trade something with something else. The term "*al-bai*" in Arabic is sometimes used to refer to its opposite, which is the word "*asy syira*" (buying). Therefore, the word "*al-bai*" means to sell, but at the same time, it also means to buy. (Nasrun Haroen, 2000).

The Prophet said, "From Rif'ah bin Rafi', that the Prophet was asked: What kind of livelihood is better? He replied: A person's work with his own hands and every clean buying and selling" (HR. Al-Bazaar dan dishahihkan oleh Hakim). According to Sayyid Sabiq in his book "Fiqh Sunnah", it means exchanging goods with other goods by transferring ownership with a permissible way (Sayyid Sabiq, 1984).

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The scholars have agreed that buying and selling is permissible because humans will not be able to fulfill their needs without the help of others. However, the assistance or property of others that they need must be replaced with other items that are in accordance with the agreement between the seller and the buyer, or with exchange tools such as money or others. The basis of Ijma 'about the permissibility of buying and selling is as explained by Ibnu Hajar al-Asqolani in his book *Fath al-Bari*, which is that there has been an agreement among Muslims regarding the permissibility of buying and selling, and the wisdom behind it is that human needs depend on something that is in the possession of its owner, and sometimes it is not simply given to others (M. Amin Suma, 2004).

Based on the above evidence, it is clear that the law of buying and selling is jaiz (permissible). However, there is a possibility of changing the status of the buying and selling itself, which depends on whether the conditions and pillars of buying and selling are fulfilled or not. After understanding the meaning and legal basis, that buying and selling (business) is an exchange of property based on mutual consent and agreement. In order for the business we conduct to be halal (permissible), we need to pay attention to the pillars and conditions of buying and selling (business).

According to the term, rukun is defined as something that is formed (becomes existent) from something else, given its existence with its own pillar (element), not because of its establishment. Otherwise, the subject (actor) means becoming a constituent of the work, and the body becomes a pillar of the quality, and the object (al-maushuf) becomes a constituent of the quality (which characterizes it). As for the condition, according to the terminology of the fuqaha as formulated by Muhammad Khudlari Bek, it is something whose non-existence requires the non-existence of the law itself. The wisdom of the absence of these conditions also results in the nullification of the wisdom of the law or the cause of the law (M. Amin Suma, 2004). In Shariah, the pillars and conditions both determine the validity of a transaction. In definition, rukun is an element that is an inseparable part of an act or institution that determines the validity or invalidity of the act and the existence or non-existence of something (Dahlan, 1996).

According to the majority of scholars, there are four pillars of buying and selling (Zakaria). The first one is "*Akad*" (offer and acceptance), which means the bond that exists between the two ends of a commodity. According to the terminology of Islamic law, "*ijab qabul*" is the offer and acceptance in the way that is legislated so that its effects are apparent (Al-Zuhaily, n.d.). The second pillar is the contracting parties (subjects), which consist of the seller ("*bai*") and the buyer ("*mustari*"). They are also called "*aqid*", which refers to the person who performs the contract in buying and selling. A sale cannot take place without someone performing the contract. The third pillar is "*ma' kud 'alaih*" (object), which means that for the sale to be valid, there must be an object of sale or something that becomes the reason for the agreement to buy and sell (Chairuman dan Suhwardi, 1996: 37).

The object being sold and bought must meet the following requirements:

1. The object must be clean, which means that it is not considered impure or prohibited according to Islamic law. This is based on a hadith of Prophet Muhammad SAW: "Allah has forbidden the sale of alcohol, carcasses, swine, and idols." When asked about the fat of carcasses, Prophet Muhammad SAW replied, "May Allah curse the

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Jews, for Allah has forbidden the fat of carcasses to them, but they use it to grease their boats, make soap, and light lamps." (Muslim, t.th: 689). According to the Shafi'i school of thought, idols can be sold if they are broken into ordinary stones that can be used for building or other purposes (Hendi Suhendi, 2007).

2. The object must be useful, which means that it has a purpose and is not worthless. The seller must have the legal right to sell the object, which means that the seller is the rightful owner or has obtained permission from the rightful owner. Therefore, selling objects that are not owned or authorized by the owner is considered null and void (Abd.al-Rahman Al-Jaziri, 2003).
3. The object must be identifiable, which means that the seller and buyer must be able to clearly identify the object's substance, form, nature, and price to avoid any misunderstandings.
4. The object being sold must be in the seller's possession, which means that a sale agreement for an object that is not yet in the seller's possession is prohibited because the object may be damaged or cannot be delivered as promised (Chairuman Pasaribu, 1996).

The Fourth Pillar is the ability to deliver, meaning that the condition of the goods must be able to be handed over. Buying and selling goods cannot be delivered, because if the goods cannot be delivered, there is a possibility of fraud or disappointment on one party.

According to Endang Hidayat, the original law of buying and selling is permissible or jawaz (allowed) if the conditions and pillars are fulfilled. However, in certain situations, the law can change to mandatory, forbidden, and reprehensible:

1. Mandatory, if someone is very urgent to buy food and other necessities, then the seller should not hoard or not sell them.
2. Forbidden, to trade goods that are prohibited to be sold such as pork, khamr, and others.
3. Nadb, a seller swears to someone else that they will sell their merchandise, which will not cause harm if they sell it.
4. Reprehensible, selling cat or wild animal skin for use (Endang Hidayat, 2015).

In the context of the law in Indonesia, according to the compilation of Shariah economic law, there are three elements of buying and selling, namely:

1. Parties involved in the buying and selling agreement consisting of the seller, buyer, and other parties involved in the agreement.
2. Object, which consists of tangible and intangible objects, both moving and immovable, and registered or unregistered.
3. Agreement, which can be made in writing, orally, and by gesture. All three have the same legal meaning (Neni Sri Imaniyati, 2017).

The conditions related to the goods being sold are as follows:

1. The goods exist or not in place, but the seller declares their willingness to provide the goods.
2. Can be used and beneficial to humans. Therefore, goods that are prohibited according to Islam, such as carrion, khamr, pork, and blood, are not valid as objects of buying and selling because in the view of Islamic law, such things are not beneficial to a Muslim.
3. Belongs to someone, goods that have not yet been owned by someone cannot be bought and sold, such as fish transactions in the sea or gold in the ground, birds still in the air, because the seller has not owned them.



4. Can be delivered at the time of the agreement or at the agreed time during the transaction (Haroen, 2007). (Haroen, 2007).

## CONCLUSION AND SUGGESTION

Narcotics and illegal drugs (narcotics) are substances that can impair one's mind, weaken one's willpower, and prevent one from remembering Allah. According to Abu Musa, the Prophet has made a ruling stating that anything that causes intoxication is forbidden. From the above hadith, it can be concluded that any substance that impairs the mind and causes intoxication, regardless of its specific type and whether it is ingested or consumed, is prohibited and consuming it is considered a violation of the prohibition on intoxicants. Narcotics are prohibited not because they are harmful, but because consuming them can cause disasters for society. Whoever consumes narcotics is subject to punishment under Islamic criminal law.

Buying and selling, known as *al-bai'* in *fiqh* terminology, means selling, exchanging, and trading something for something else. Buying and selling is allowed (*jaiiz*). However, the status of buying and selling can change depending on whether the conditions and pillars of buying and selling are met. One of the pillars of buying and selling is that the object being sold must be clean and useful, meaning that the object being sold must be halal (permissible) and beneficial to the buyer's soul and body. Narcotics are substances that can impair one's consciousness and mind and fall under the category of *Khamr* (intoxicants), which is forbidden in Islam. This means that not only are narcotics harmful to one's mental and physical health, but it is also prohibited to consume them. Since narcotics are forbidden, buying and selling them is also prohibited.

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