

The Sanction For Not Wearing Masks in Public Places West Sumatera Provincial on 2020 Year of Regulation in Fiqh Jinayah

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Abstract. The purpose of this study is due to the issuance of Regional Regulation (Perda) Number 6 of 2020 concerning the Adaptation of New Habits in the Prevention and Control of Covid-19 and also the obligation for every community to comply with health protocols by wearing masks in public places, washing hands and maintaining distance. As well as criminal provisions against people who violate the rules of the Regional Regulation with the threat of punishment in the form of administrative sanctions and confinement. Based on this, the author wants to know in depth how the Islamic Criminal Law reviews the sanctions for not wearing masks in public places in the provisions of Regional Regulation Number 6 of 2020. This research uses library research (*Library Research*) which is normative. Library research can be interpreted as a method of data collection carried out using literature (literature), both in the form of books, notes, and reports on previous research results. The research conducted included quantitative research, namely normative juridical. The primary data used in this study are West Sumatra Regional Regulation No. 6 of 2020 and the Qur'an and Hadith as legal *problems* in Islamic teachings. Meanwhile, secondary data is from data collected from journals, theses, and other media by searching, recording, and studying books, documents and laws and regulations from the data obtained analyzed and reviewed using inductive, descriptive methods to obtain a review of Islamic Law on sanctions for not wearing masks in public places in Regional Regulation number 6 of 2020 concerning the adaptation of new habits in the prevention and control of Covid-19. The result of this study, that the sanction of not wearing a mask in public places contained in Regional Regulation Number 6 of 2020 article 101 of Regional Regulation Number 6 of 2020 paragraph (1) is punishable by imprisonment for a maximum of 2 (two) days or a maximum fine of Rp.250,000.00 (two hundred fifty thousand rupiah). This crime can only be imposed if the administrative sanctions that have been imposed are not complied with or the violation is committed more than once. Meanwhile, in the Islamic Penal Law, the sanction of not wearing masks in public places includes takzir punishment because the application of the punishment is carried out by a judge or authority. As explained in the elements in the takzir jarimah, namely the formal, material, and moral elements contained in the punishment of takzir and the penalty of fines (tahdid) are determined by Islamic shari'a as a form of takzir punishment

Keywords: penalty, jinayah, mask, takzir

1. INTRODUCTION

In West Sumatra Province, the first positive case of Covid 19 was confirmed on March 26, 2020 in Bukittinggi. As of May 27, 2020, all Regencies and Municipalities have reported positive cases of COVID-19. As of January 25, 2021, there are 26,452 cases being treated and 588 cases have died, in order to break the chain of transmission of COVID-19. The local government conducted massive contact tracing and testing in collaboration with the Biomtek Laboratory of the Faculty of Medicine, Andalas University and the Bukittinggi Veteiner Center under the leadership of Andani Eka Putra, Governor Irwan Prayitno gave confidence to the scientific community in controlling Covid-19.¹

¹ Wikipedia, "COVID-19 pandemic in West Sumatra" Retrieved January 25, 2021.

While many provinces are still struggling with patient screening under surveillance (PDP), West Sumatra has increased detection of asymptomatic people (OTG) and the percentage of COVID-19 positive patients in West Sumatra is only a small part of PDP and the rest of the people without OTG symptoms. The determination of COVID-19 as a national disaster was declared through Presidential Decree (KEPPRES) of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a natural disaster on April 13, 2020 which was declared directly by the President of the Republic of Indonesia Joko Widodo.²

Then in the Presidential Decree, the President also stipulates that national disaster management caused by the spread of COVID-19 is carried out by the Task Force for the Acceleration of Handling COVID-19 in accordance with Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona virus Disease (COVID-19), namely in the second point in the Presidential Decree. Then the third point in the Presidential Decree is an order to the Governor, Regent and Mayor as Chairmen of the Task Force for the Acceleration of COVID-19 Handling in their respective regions, in setting policies in their respective regions must pay attention to central government policies.³

Government policy in handling the COVID-19 pandemic has issued a policy on Large-Scale Social Restrictions (PSBB), which refers to Law Number 6 of 2018 concerning Health Quarantine, namely to overcome the impact of COVID-19 from an economic and social point of view, the government has taken policies.⁴

West Sumatra Governor Irwan Prayitno added, "that the adaptation of this new habit is an effort to prevent and control COVID-19. Of course, this is also to provide a deterrent effect to people who are not disciplined in health protocols, because there are still many people who ignore it."⁵

However, after the ratification of this Perda, there are still many people who do not comply with it, such as the data that the author got on the Article page (Noli Hendra-Sumbar-bisnis.com) where thousands of West Sumatran people were sanctioned, and some people who were sanctioned preferred social work. Chairman of Satpol PP West Sumatra Province Dedi Diantolani "said thousands of people affected by sanctions were scattered in a number of regencies and cities in West Sumatra. A total of 76 people were subject to administrative sanctions with 36 people implemented by the province, and 40 people implemented by districts and municipalities. As for 2,062 people carrying out social work sanctions".⁶

Regional Regulation (PERDA) of West Sumatra Province Number 6 of 2020 concerning Adaptation of New Habits in Prevention and Control, residents who ignore health protocols by not wearing masks when outside the home will be subject to strict sanctions in accordance with West Sumatra Regional Regulation No. 6 of 2020 concerning New Habit Adaptation.

For everyone who violates the obligation not to use a mask as referred to in article 11 letter d number 2, and for every person in charge of activities/businesses that violate the obligations as referred to in article 12 will be subject to administrative sanctions in accordance with article 92 of Regional Regulation No. 6 of 2020 concerning AKB.⁷

This administrative sanction is in the form of social work cleaning public facilities for 90 minutes or a fine of IDR 100,000 (one hundred thousand rupiah), then if two violations have been committed by the citizen is subject to sanctions for cleaning public facilities for 120 minutes. If they still commit violations, the citizen may be subject to imprisonment for two days or a fine of IDR 250,000 (two hundred and fifty thousand rupiah) according to article 101 which regulates Criminal Provisions.

² Presidential Decree (KEPPRES) No. 12 of 2020. About: Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster

³*Ibid*

⁴ I Wayan Wiryawan, "Government Policy in Handling the COVID-19 Pandemic in Indonesia", Retrieved January 25, 2021.

⁵ Wahyu Saputra, "Regional Regulations (PERDA) adapting new habits in the prevention and control of Covid-19", accessed on January 25, 2021

⁶<https://sumatra.bisnis.com/read/20201020/533/1307231/tak-pakai-masker-ribuan-orang-di-sumbar-kena-sanksi> accessed on January 25, 2021

⁷ Articles 11 and 12 of the West Sumatra Regional Regulation (PERDA), concerning the Adaptation of New Habits in the Prevention and Control of Covid-19, No.6 of 2020.

Based on this, in carrying out New Habit Adaptation in applying disciplinary behavior to activities outside the home by implementing recommended health protocols, which include:

1. Mandatory to wear a mask outside the home
2. Wash hands using water and soap or other hand washes
3. Maintain physical distancing
4. Say hello by not shaking hands

If the new habit is not implemented, it will be subject to West Sumatra Regional Regulation (Perda) No. 6 of 2020, Article 101. namely "Everyone who violates the obligation not to use a mask as referred to in Article 11 letter d number 2 shall be punished with a maximum imprisonment of 2 (two) days or a maximum fine of Rp.250,000.00 (two hundred fifty thousand rupiah)".⁸

In Islamic law it is explained that the fine to be paid for violating Allah's prohibitions or breaking promises is called kafarat. Kafarat is the origin of the word kaya kufir which means closed. That is, a person's heart is closed until he dares to violate the rules of shari'i. While in terms, Kafarat is a fine that must be paid by someone who has violated certain prohibitions of Allah. Kafarat is a sign of Allah's repentance and the redeemer of sins.

Islamic law also explains in obeying Ulil Amri so that something unwanted happens that causes criminal sanctions and fines to occur, it has been explained in the Qur'an Surat An-nisa: 59 which means:

"O believers, obey Allah and obey (His) Messenger, and ulil amri among you. Then if you have different opinions about something, then return it to Allah (the Qur'an) and the Messenger (its sunnah), if you really believe in Allah and the day after. Such is the greater (to you) and the better the result." (QS. an-Nisa verse 59).⁹

The content of this surah explains that: Everyone who believes must obey Allah and his Messenger, and our leader must also obey if the leader is right, based on the Qur'an and al-Hadith, but if the leader is not based on the Qur'an and al-Hadith we may disobey him. Then if there is a dispute in a matter, it must return to Allah and His Messenger. The point of returning to Allah and His Messenger is that we return to the Qur'an and al-Hadith, find the legal basis and postulate for what is in dispute.¹⁰

Then if there is a person who commands things that harm us, or not things that are considered good by common sense, shameful things, things that degrade authority, and for example at that time we are not obliged to obey the person. Let alone sin, we cannot obey others in evil deeds.

That one should not violate religion in order to obey beings, or to seek pleasure from others. In that regard there are several objectives in Islamic law namely: (*Maqashid ays-sharia*) in (Arabic مقاصد الشريعة, *Maqashid ays-sharia*, "purposes of sharia" or "purposes of sharia") is an idea in Islamic law that sharia was sent down by Allah to achieve certain goals, goals can be found or the main source of Islamic law (Qur'an and Sunnah) and must always be maintained when deciding legal decisions. Together with another classical idea is *Mashlahah* (general goodness).¹¹

Basically, the purpose of Islamic law is to realize and create the benefit of life for all mankind, uphold justice and constrict education and maintain human existence itself. Judging from the substance of the Shari'a, Islam is the only religion that provides complete life guidelines for humans with various aspects of life to achieve a level of happiness in life, both spiritually and physically, both in personal life and in community life. In general, God's purpose in establishing the law is for the benefit, importance, and preservation of the existence of human life which can be explained as follows:¹²

First, maintain religion (*hifdz al-din*). Religion is a basic rule or guideline of life that must be believed and owned by humans in order to live life according to what the Creator commands.

Second, the maintenance of the soul (*hifdz al-nafs*). Nurturing the soul is meant to guard oneself from all threats, both internal and external, both medical and psychic, both spiritual and physical.

⁸ Article 101 of the Regional Regulation (PERDA) of West Sumatra, No. 6 of 2020, concerning Sanctions for those who violate the obligation to use masks.

⁹ Mujamma' Khadim al-Haramain as-Syarifain al-Malik Fahd li Thiba'at al-Mushaf asy-Syarif, Qur'an and Translate, p. 128

¹⁰*Ibid*

¹¹ Busyro, "*Maqashid Al-Shariah*" (IAIN Bukittinggi Guidebook) p.5

¹² Muhammad Rezi, "*Al-Hurriyah Journal of Islamic Law*" published June 30, 2018.

Third, the maintenance of reason (*hifdz al-aql*). Maintaining reason aims to be able to think healthily and objectively. Common sense will produce good deeds that are in accordance with the demands of sharia. The maintenance of reason is considered very important because the true identity of man is seen from reason. With man's intellect, he can tadabburi the greatness of God, the surrounding nature, and himself.

Fourth. Maintenance of offspring (*hifdz al-nasl*) or keeping honor. Maintaining honor is oriented to maintain and give proportional affection to offspring so that they can grow healthy, normal and get a good education through procedures that have been regulated in Islam. The maintenance of honor is done with legal sex as stipulated in fiqh munakahat.

Fifth. Maintenance of property (*hifdz al-mal-waal-'irdh*). Is to organize yourself and your family so that you always get rizki in a good, correct, and halal way and results. Always various togetherness in property owned to those who are classified as incapable according to the demands of Islamic teachings.¹³

In the purpose of *maqashid sharia* is to use masks in life, new habits, the goal is to preserve the soul. However, in practice, there are still many people who do not use masks when carrying out activities outside the home and interacting with other communities. As the author obtained in Article (*Kompas.com/Ramadhani*) on Thursday, June 25, 2020, there were as many as 26 people in Padang City, West Sumatra Province, who were caught in raids who were convicted and required to carry out social work by cleaning public facilities. This happened when the Padang City Transportation Office conducted a health protocol raid on drivers and passengers, while 26 people who violated the health protocol were in law because they were caught not wearing masks, with the punishment given to clean public facilities using vests as identification marks.¹⁴

However, there are two types of sanctions applied in this matter, namely cleaning public facilities and then fining money, but the community does not want to take the penalty of the fine and prefers the punishment of cleaning public facilities, namely social work because the punishment given must pay Rp.100,000, (one hundred thousand rupiah)

2. METHODS

This type of research is normative legal research, which is a scientific research method carried out to find truth based on scientific theory theory from its normative side and based on laws and regulations. This normative legal research aims to find a truth whether the legal rules are in accordance with legal norms, and whether the legal norms containing sanctions and obligations are in accordance with legal principles or one's actions are in accordance with legal norms or legal principles. Therefore, normative legal research is also interpreted as a guideline in behavior.¹⁵ The data analysis method is carried out by collecting data through the review of literature materials or secondary data which includes primary legal materials and secondary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of the synchronization of local regulations with Islamic law. To analyze the legal material that has been collected, this study uses qualitative data analysis methods, namely normative juridical which is presented descriptively, namely by describing a policy related to synchronizing Regional Regulations (Perda) with human rights and Islamic law that connects to improve the performance of the legal system in Indonesia and then an assessment of whether the application is in accordance with its normative provisions.¹⁶

¹³*Ibid*

¹⁴<https://regional.kompas.com/read/2020/06/25/20275451/tak-gunakan-masker-26-orang-di-kota-padang-dihukum-kerja-sosial> accessed on April 30, 2021 at 17.00 WIB.

¹⁵ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, (Malang: Bayumedia, 2013). p.57

¹⁶Henni Muchtar, *journal of Normative Juridical Analysis of Synchronization of Regional Regulations with Human Rights*, (Faculty of Social Sciences, Padang State University, 2015). accessed April 18, 2020.

3. RESULTS AND DISCUSSION

3.1 Application of Sanctions for Not Wearing Masks in Public Places in Local Regulations Number 6 of 2020

Based on the provisions of Regional Regulation Number 6 of 2020 concerning Adaptation to New Habits in the Prevention and Control of Covid-19, it is explained that sanctions for not wearing masks in public places as stated in Regional Regulation Number 6 of 2020 Article 92 paragraph (1) for everyone who violates the obligation to use masks as referred to in Article 11 letter d number 2 and for every person in charge of activities/businesses that violate the obligations as referred to in Article 12 are imposed administrative sanctions. Sanctions for violations of the implementation of New Habit Adaptation in the prevention and control of Covid-19 as referred to in paragraph (1) in the form of:¹⁷

1. For individuals:
 1. Verbal reprimand
 2. Written reprimand
 3. Social work with clean up public facilitation
 4. Administrative fine of Rp.100.000,00 (one hundred thousand rupiah)
 5. Police force.
6. For those in charge of activities/businesses:
 1. Verbal reprimand
 2. Written reprimand
 3. Dissolution of activities
 4. Temporary suspension of activities
 5. Temporary suspension of permissions
 6. Revocation
 7. Administrative fine Rp.500.000,00 (five hundred thousand rupiah)

If administrative sanctions are not complied with and violations of not wearing masks in public places are committed more than once, then based on Regional Regulation Number 6 of 2020 Article 101 the criminal provisions are Article 101 paragraph (1) (2) and Article 102 paragraph (1) and (2) are:¹⁸

1. Article 101 of Regional Regulation Number 6 of 2020
 1. Any person who violates the obligation to use a mask as referred to in Article 11 letter d number 2 shall be punished with a maximum imprisonment of 2 (two) days or a maximum fine of Rp.250,000.00 (two hundred fifty thousand rupiah).
 2. Criminal acts as referred to in paragraph (1) can only be imposed if the administrative sanctions that have been imposed are not complied with or violations are committed more than once.
1. Article 102 of Regional Regulation Number 6 of 2020
 1. Any person in charge of activities/businesses that violates the obligation to implement health protocol discipline behavior in carrying out activities/businesses and other activities, as referred to in Article 12 point b shall be punished with a maximum imprisonment of 1 (one) month or a maximum fine of Rp.15,000,000.00 (fifteen million rupiah).
 2. Criminal acts as referred to in paragraph (1) can only be imposed if the administrative sanctions that have been imposed are not complied with or violations are committed more than once.

The application of sanctions for perpetrators who do not wear masks in public places in the provisions of Regional Regulation Number 6 of 2020 began to be implemented in West Sumatra in September 2020. The application of this sanction is applied because many people do not comply with health protocols. The existence of criminal sanctions in the Regional Regulation aims to

¹⁷Regional Regulation (Perda) Number 6 of 2020, Article 92 paragraph (1) concerning administrative sanctions for those who violate the obligation to use masks in public places.

¹⁸Regional Regulation (Perda) of West Sumatra Province No. 6 of 2020, article 101 concerning Criminal Provisions for violators (individuals) who do not wear masks in public places.

provide a deterrent effect to stubborn residents who do not comply with health protocols. Reporting from the REPUBLIKA.CO.ID website, PADANG as many as 277 thousand more people are sanctioned not wearing masks in public places. However, it does not make society a deterrent.¹⁹

On May 23, 2021, the West Sumatra Police Chief, he and his team are likely to intensify sanctions for violators who do not use masks in public places. He explained, according to Regional Regulation (Perda) Number 6 of 2020 concerning Adaptation to New Habits in the Prevention and Control of Covid-19, sanctions for violating health protocols include reprimands, social work, and fines. Administrative sanctions for individuals who violate health protocols according to the provisions in the form of verbal reprimands, written reprimands, social work cleaning public facilities, administrative fines of Rp.100,000.00 or police coercion. Meanwhile, sanctions for those in charge of activities or businesses that do not fulfill the obligation to implement health protocols in the form of verbal reprimands, written reprimands, dissolution of activities, temporary suspension of activities, temporary suspension of permits, revocation of permits, or fines of Rp.500.00,00.²⁰

According to local regulations, a resident who violates the obligation to wear a mask faces imprisonment for a maximum of two days and a maximum fine of Rp.250,000.00. The person in charge of activities or businesses that violate the obligation to implement health protocols, according to regional regulations, can be sentenced to imprisonment for a maximum of one month and a maximum fine of Rp.15,000,000.00.

Dedi Diantolani as Head of the West Sumatra Civil Service Police Unit said that the police proposed imposing sanctions because they considered that the sanctions and penalties imposed on violators of health protocols had not caused a deterrent effect to the community, so the West Sumatra Police Chief planned to burden sanctions on violators who did not comply with health protocols. Dedi Diantolani said that the imposition of sanctions on violators of health protocols was intended to increase residents' compliance with carrying out provisions regarding the prevention of Covid-19 transmission.

The implementation of sanctions for not wearing masks in public places has been carried out in various regions in West Sumatra including in regencies/cities. Reported through the website (*Metrokini.com*) accessed on October 20, 2020, there were 2,138 people who violated West Sumatra Regional Regulation Number 6 of 2020 concerning Adaptation to New Habits in the Prevention and Control of Covid-19, did not wear masks in public places and were subject to sanctions based on existing provisions.²¹

The sanction given is in the form of a fine of Rp. 100,000.00 imposed on people who do not wear masks in public places and do not follow health protocols. Meanwhile, the sanctions given to the person in charge of the business, namely a fine of Rp. 500,000.00, are imposed on the person in charge of the business who does not wear a mask in public places and does not follow health protocols. However, when viewed from the reality that exists in the community, sanctions against the community and those in charge of businesses that do not wear masks in public places do not have a deterrent effect on the community.

Reported from the Antarasumbar website on Wednesday, September 1, 2021, a meeting held by Bapemperda in Padang, West Sumatra with the Governor of West Sumatra related to the revision of Regional Regulation (Perda) Number 6 of 2020 concerning Adaptation to New Habits in the Prevention and Control of Covid-19. The Regional Regulation Formation Agency (Bapemperda) of the West Sumatra DPRD (West Sumatra) held an evaluation meeting of Regional Regulation number 6 of 2020 concerning New Habit Adaptation which was considered to have shortcomings in dealing with the Covid-19 pandemic situation.

Hidayat as Chairman of the Bapemperda DPRD West Sumatra, said that this revision proposal emerged from the West Sumatra Regional Police towards the enforcement of health protocols in the area. Gerindra politicians emphasized that the current spirit is how social and economic life processes can run in health protocols. For example, face-to-face implementation in schools continues to run with masks and half of capacity and others. In the discussion, the issue of this Regional Regulation has not been optimal such as not involving religious leaders, customs, community leaders in educating health protocols. We want this character to be embraced and then

¹⁹ Republika.co.id, Padang accessed on July 26, 2021. Time : 10.00

²⁰ Regional Kompas.co.id, Padang accessed on August 1, 2021, at : 13.20

²¹ Metrokini.com, retrieved August 20, 2021, at : 18.00

they do socialization so that people obey health protocols. Meanwhile, West Sumatra DPRD member Ali Tanjung said that the cause of the community's disobedience to health protocols was officials who did not give strict sanctions to residents who violated the rules, and the number of officers on duty was not commensurate with the community being supervised.²²

So from the description above, it can be concluded that in applying sanctions to people who do not wear masks in public places, it is necessary to affirm the provision of sanctions carried out by law enforcement, but because the number of law enforcement is very limited, the sanctions are difficult to apply fairly, awareness is needed from each community to obey and obey in following health protocols.

3.2 Review of Islamic Penal Law Against the Sanction of Not Wearing Masks in Place General in West Sumatra Regional Regulation No. 6 of 2020

Sanctions in the Islamic Penal Code are known as punishments. Punishment is a predetermined retribution for the benefit of society for violating the commandments of Allah and his Messenger. According to the term fuqaha, sanction (uqubah) is retaliation that has been established for the benefit of society for violating the commandments of Allah and his Messenger.²³

From the explanation above, it can be concluded that the sanction (punishment) is a retribution carried out by a person whose punishment provisions have been stipulated by Islamic law for actions that are considered to violate the commands of Allah SWT. The purpose of the punishment is to maintain public good, both to the victim of crime, his family, the perpetrator himself, or the general public.

The punishment / sanction in the Islamic Penal Law is divided into the first three, namely hudud punishment, the second qishas, the third takzir.²⁴

1. Hukuman Area.
The punishment of hudud is a punishment that has been determined in kind and amount and the punishment is a right of Allah that cannot be added and reduced by anyone and has no highest and lowest limits. The jarimah threatened with hudud punishment is adultery, qadzaf, sariqah, khamar, hirabah, rebellion, and apostasy.
2. Hukuman Vengeance.
Qisas punishment is a reward given to the perpetrator according to the actions he committed. For example, the act he did was to kill (lose the life of) someone, then the punishment must also be commensurate, namely the death penalty.
3. Sovereign Takzir.
Tazir punishment is a punishment that is left to a judge or ruler. The judge in this case is given the authority to impose punishment for the perpetrator of the criminal act. From the definition given above, it is clear that takzir punishment is a term for punishment for the jarimah whose punishment has not been established by shara'.

If viewed under the Islamic Penal Law, the sanction of not wearing a mask in public places includes takzir punishment because the application of the punishment is carried out by a judge or authority. The judge in this case is authorized to impose a general sentence on a crime that can be classified as takzir punishment is any form of action that contains elements of offense against soul, property, honor, reason or religion that is not threatened with a limit sentence. Such acts include all crimes whether abandoning religious, social, and cultural or worldly obligations or committing acts that are forbidden and prohibited by religion for the benefit of the public or special.²⁵

The criteria for people who commit crimes who are entitled to takzir punishment in the Islamic Penal Law are:²⁶

1. People who commit evil (who are not threatened with hadd punishment)

²² West Sumatra antaranews.com, accessed on September 10, 2021, at : 20.00

²³Mardani, "Islamic Criminal Law" (Jakarta : Prenada Media Group, 2017), p.47

²⁴ Ibid, p.49

²⁵ Makhrus Munajat, "Islamic Criminal Law in Indonesia", (Yogyakarta: Teras Publishers, 2009), h. 177

²⁶ Ibid p.179

2. Hurting or disturbing a Muslim or non-Muslim without a justified reason either in the form of words, actions or using gestures with eyes or hands.

The main source of reference for judges in determining a crime is based on Sharia, not reason and personal tendencies. In determining an act as a crime, the trial judge must be guided by his commandments and prohibitions contained in the Qur'an and the Sunnah, and use the results of *ijtihad* as his way of appointment. If it is not contained in the Qur'an and the Sunnah, this is what the ruler is authorized to determine and the judge must follow the decree.²⁷

Tazir punishment is always based on the principle of maintaining public good and rejecting general-scale harm must be rejected, so what is considered is the benefit of the individual without harming others.

Abdul Qadir Audah divided the punishment of takzir into three parts, namely:²⁸

1. Takzir punishment for immoral acts.
2. The punishment of Takzir in order to create a general disobedience.
3. Takzir punishment for transgressions (*mukhalafah*).
4. The Law of Takzir for immoral acts

According to *Jumhur*, the ulama can only be punished with takzir if his immoral act is not subject to the punishment of *hadd* nor *kifarat*, whether the immoral act offends the right of Allah (the right of society) or offends the right of *adami* (individual). The nature used as a reason (*Illat*) for establishing takzir punishment is the presence of elements detrimental to public interest or order. In order for these elements to be fulfilled, there are two things that must be fulfilled, namely:²⁹

1. He has committed acts that interfere with the interests of public order.
2. It is in a condition that disturbs public interest and order.

With these two things, if one of them is fulfilled, then the judge may not release the person who committed the act, but the judge must impose a takzir punishment in accordance with his actions. Although basically the act has no prohibition and no threat of punishment. The imposition of this punishment of takzir for safety and public interest was based on the actions of the Holy Prophetsa who arrested a man accused of stealing camels. After being examined and it turned out that he did not steal it, he was then released by the Messenger of Allah. In this case the Prophet carrying out detention is the practice of takzir punishment from the Prophet of Allah, while the punishment can only be imposed if the *jarimah* (crime) can be proven.

The prohibitions of takzir punishment called *jarimah* can be in the form of violations of prohibited things, for example: violating the prohibition of adultery, drinking alcohol and can also be in the form of abandoning things that are commanded, for example: ignoring the obligation of *zakat*. Actions that if done or abandoned are considered as *jarimah* are actions that have the effect of harming individuals or communities in *qidah*, property, self-respect, peace of mind and so on who are entitled to protection.

An action can be viewed as a *jarimah* if it satisfies the following elements:³⁰

1. Unsur formal

That is, there is a *nash* or legal basis that designates it as a *jarimah*. This element conforms to the principle that the *jarimah* is considered non-existent before it is expressed in the *nash*. For example, the word of Allah is found in the Holy Qur'an Q.s Al-Isra' verse 15:

مَنْ اهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا

Meaning: *Whoever does according to Hidayah (Allah), then verily he does it for (salvation) himself; and whoever goes astray is indeed lost for (loss) himself. And a sinner cannot bear the sins of others, and We will not sacrifice until We send an apostle.*

²⁷ Ibid, p.180

²⁸ Abdul Qadir Audah, "Islamic Criminal Law" (Jakarta : PT Kharisma Ilmu, 2015), Volume iv, p.123

²⁹ Makhrus Munajat, "Islamic Criminal Law in Indonesia", (Yogyakarta: Teras Publishers, 2009), h. 181.

³⁰ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta: Sinar Grafika, 2005), h.260.

The above verse teaches that God will not torture his servant before sending his messenger. This doctrine contained a provision that punishment would be meted out to those who disobeyed the teachings of God's Apostle. To be judged that a person has disobeyed the teachings of Allah's Apostle, it must first be known that there are teachings of Allah's Apostle as set forth in the *nash*.

In the Hadith it is also mentioned that the hadith of the Prophet Muhammad (PBUH) narrated by Bahz Ibn Hakim:

عن بهز ابن حكيم عن ابي عن جده. أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَبَسَ فِي التَّهْمَةِ (رواه ابو داود و الترمذي و النسائي والبيهقي و صحيحه الحاكم)

*Meaning: It is from Bahz ibn Hakim from his father from his grandfather, that the Holy Prophet (peace be upon him) detained a person suspected of committing a crime. (H.R. Abu Daud, Turmudzi Nasa'i, and Baihaqi).*³¹

The second hadith is the hadith of the Holy Prophet (peace be upon him) narrated by Abi Burdah:

عن ابي بردة الانصاري انه سمع رسول الله صلى الله عليه وسلم يقول : لا يجلد احد فوق عشرة اسواط الا في حد من حدود الله. (رواه مسلم)

*Meaning: From Abi Burdah Al-Anshari (ra). That he heard the Holy Prophet(sa) say: "It shall not be bound over ten whips except in the punishment prescribed by Allah the Exalted. (Muttafaq Alaih).*³²

From these two hadiths it can be concluded that in general the two hadiths explain the existence of ta'zir in Islamic law. The first hadith describes the act of the Prophet detaining a person suspected of committing a criminal offence in order to facilitate investigation. The second hadith explains the limit of ta'zir punishment which should not be more than ten lashes, to distinguish it from jarimah hudud. With this penalty limit, it can be known which ones include the hudud jarimah and which are the ta'zir jarimah.³³

The purpose of granting the right to determine the ta'zir fingers and punishment to the ruler is so that they can govern society and safeguard its interests, and can best deal with any sudden situation.

So it is clear that ta'zir was also applied in the time of the Prophet and its existence has also been decreed in Islam. While the purpose of ta'zir itself is so that the ruler can properly regulate the community in his leadership to uphold legal justice that is sudden, and at that time must also be decided, because with ta'zir judges can be given the freedom to *ijtihad* in determining punishment.

Then in the study of *jinayat fiqh* also states that takzir is fully on the authority of the ruler for the benefit of the people. In this case, the moral element is the most important consideration. For example, violations of the environment, traffic, and other traffic violations. In establishing the jarimah ta'zir, the main principle that the ruler refers to is to safeguard the public interest and protect every member of society from *madharatan* (danger). In addition, in establishing the jarimah ta'zir, the main principle of money as a reference for the ruler / judge is to safeguard the public interest and protect every member of society from *mudharotan* (danger). In addition, the enforcement of the ta'zir jarimah must be in accordance with the principles of *shari'i*. The punishments of ta'zir are numerous, ranging from the lightest punishment to the harshest punishment. The judge is given the authority to choose between these sentences, namely those that are appropriate to the circumstances of the finger and the person who made it.³⁴

The various punishments of ta'zir include:³⁵

1. Capital punishment

Basically according to Islamic Shari'ah, the punishment of ta'zir is to give teaching (ta'dib) and not to the point of destruction. Therefore, in ta'zir law there can be no

³¹ Sayekh Siyarifal Mahdi, "*Sinan Abu Dawud*", (Keru: Dar Abno al-Haismi, 2008), h.232

³² Al-Dazahabi, "*Sahih Bakhuri*", (Kiro: Dar al-Hadith, 2008), h.425

³³ Ahmad Wardi Muslich, "*Pengantar Dan Asas Hukum Pidana Islam Fikih Jinayah*" (Jakarta : Sinar Grafika, 2006), h.20

³⁴ Ahmad Hanafi, "*Asas-Asas Hukum Pidana Islam*", (Jakarta: PT. Bulan Bintang, 2000), H.80

³⁵ Ahmad Wardi Muslich, "*Hukum Pidana Islam*", (Jakarta : Pustaka Media, 2004), h.233

dismemberment or disappearance of life. However, some fuqoha' provide exceptions to the general rule, namely the permissibility of the death penalty if the public interest so desires, or if eradication cannot be carried out except by killing him, such as eyes, slanderers, dangerous recidivists. But according to some other fuqoha, in a ta'zir jarimah there is no death penalty.

2. Sentence-Control (Confinement Prison)

There are two kinds of control punishment in Islamic law. This division is based on the length of time of sentence. First, Penalty control is limited. The lowest limit of this punishment is one day, while the highest limit, scholars' dissent. Shafi'iyya scholars set a maximum limit of one year, because they likened it to exile in the jarimah of adultery. While other 'ulama' ulama' leave everything to the ruler based on maslahat. Second, Control punishment is unlimited. It has been agreed that this control punishment is not timed in advance, but continues until the death penalty or repentance and personal good. The person subject to this punishment is a dangerous criminal or a person who repeatedly performs dangerous jarimah jarimah.³⁶

1. Hukuman Salib

The punishment of the cross has been discussed in the hirobah, and for this jarimah it is a limit punishment. However, for jarimah ta'zir the punishment of the cross is not accompanied or preceded by the death penalty, but the condemned person on the cross lives alive and is not forbidden to eat and drink, is not forbidden to perform ablution, but in performing prayers simply by gesture. In this crucifixion, according to fuqoha' no more than three days.

2. Punishment of Threats (Tahdid), Reprimands (Tanbih) and Warnings

Threats are also one of the punishments of ta'zir, on condition that it will bring results and not just empty threats. For example, by threatening to be bound, imprisoned or punished with another sentence if the perpetrator repeats his actions again. Meanwhile, Rosulullah once reprimanded Abu Dhar's companion who cursed others by insulting his mother. So the Holy Prophetsa said, "O Abu Dhar, You insulted him by vilifying his mother. You are a person who is still plagued with the nature of the ignorant age." Warning punishments are also applied in Islamic Shari'a by giving advice, if this punishment is sufficiently fruitful. This punishment is stated in the Qur'an as is the punishment for wives who commit feared nushuz.³⁷

3. Penalty Fine (threat)

Fines are also prescribed by Islamic Shari'a as punishment. Among other things, regarding the theft of fruit that is still hanging on the tree, the penalty is fined with double the price of the fruit, in addition to other penalties that are in accordance with his actions. Rosulullah (peace be upon him) said, "And whoever brings something out, he will fine twice as well as punishment." The same punishment is also imposed on people who hide lost items. In general, the understanding of Jinayat is the same as criminal law in positive law, which is the law that regulates actions related to the soul or limbs, such as killing, maiming and so on. Jarimah (crime) in Islamic Penal Law (Jinayat) includes, jarimah hudud, qishash diyat and ta'zir. Ta'zir is a punishment not prescribed by the Qur'an and hadith relating to crimes that violate the rights of Allah and the rights of the servant that serves to teach a lesson to the condemned person and prevent him from repeating similar crimes. The determination of this type of ta'zir crime is left entirely to the ruler in accordance with the human benefit of the ta'zir jarimah must be in accordance with the principle of shari'i (*nash*).³⁸

1. Unsur material

That is, there are unlawful acts that have actually been committed. The reason that jarimah must fulfill the material element is to pass punishment to the people of the Prophet Muhammad for something that is still contained in the heart as long as he does not say it verbally or do it tangibly.

1. Moral element

³⁶ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta : Pustaka Media, 2004), h.245

³⁷ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta : Pustaka Media, 2004), h.250

³⁸ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta : Pustaka Media, 2004), h.254

That is, there is an intention or intention of the perpetrator to do jarimah. This element concerns responsibilities that are only imposed on people who are adults/puberty, sound in mind and not forced to do so. In other words, this moral element relates to criminal responsibility that is only imposed on believers who are free from coercion. It can be viewed as a jarimah takzir if it harms the perpetrator or others. Regarding the threat of punishment, it is determined by the size of the harm to society as a result of the jarimah committed, and can also be determined by the authorities.³⁹

From the theory of takzir punishment that has been put forward above, it can be concluded that Islamic Penal Law views that takzir punishment is a term in Islamic law for punishment for jarimahs whose punishment has not been determined by shara'. Tazir punishment is a punishment whose execution of the punishment is carried out by a judge or authority. In this case, the judge is given the authority to impose punishment for the perpetrator of the crime.

If viewed under the Islamic Penal Law, the sanction of not wearing a mask in public places includes takzir punishment because the application of the punishment is carried out by a judge or authority. The judge in this case is authorized to impose a general sentence on a crime that can be classified as takzir punishment is any form of action that contains elements of offense against soul, property, honor, reason or religion that is not threatened with a limit sentence. Such acts include all crimes whether abandoning religious, social, and cultural or worldly obligations or committing acts that are forbidden and prohibited by religion for the benefit of the public or special. As contained in Regional Regulation number 6 of 2020 concerning the adaptation of new habits in the prevention and control of COVID-19. For people who violate it, sanctions will be imposed in the form of fines and social work. In this case, sanctions in the form of fines and social work given to people who violate Regional Regulation number 6 of 2020 concerning the adaptation of new habits in the prevention and control of COVID-19 do not wear masks outside the home, then the fines and work sanctions include takzir punishment.

As explained in the elements in the takzir jarimah, namely the formal, material, and moral elements contained in the punishment, takzir says that the penalty of fine (*tahdid*) is prescribed by Islamic shari'a as punishment. Regarding sanctions in the form of fines and social work given to violators who do not wear masks when leaving the house, the penalty is fined Rp.100,000.00 for individuals who violate, and Rp.500,000.00 for business entities or business persons who violate.

5. CONCLUSION

Sanctions for not wearing masks in public places contained in West Sumatra Regional Regulation Number 6 of 2020 Article 92 for individuals are in the form of verbal reprimands and written reprimands as well as social work by cleaning up public facilities and administrative fines of Rp.100,000.00 (one hundred thousand rupiah). Meanwhile, for the person in charge of activities/businesses, namely verbal reprimands and written reprimands, as well as dissolution of activities, temporary suspension of activities and administrative fines of Rp.500,000.00 (five hundred thousand rupiah). Meanwhile, article 101 of Regional Regulation Number 6 of 2020 paragraph (1) states that everyone who violates the obligation not to use a mask as referred to in Article 11 letter d number 2 shall be punished with a maximum imprisonment of 2 (two) days or a maximum fine of Rp.250,000.00 (two hundred fifty thousand rupiah). This crime can only be imposed if the administrative sanctions that have been imposed are not complied with or the violation is committed more than once.

In the Islamic Penal Code, the sanction of not wearing a mask in public places includes takzir punishment because the application of the punishment is carried out by a judge or authority. The judge in this case is authorized to impose a general sentence on a crime that can be classified as takzir punishment is any form of action that contains elements of offense against soul, property, honor, reason or religion that is not threatened with a limit sentence. Such acts include all crimes whether abandoning religious, social, and cultural or worldly obligations or committing acts that are forbidden and prohibited by religion for the benefit of the public or special. As explained in the elements in the takzir jarimah, namely the formal, material, and moral elements contained in the

³⁹ Teuku Muhammad Hasbi Ash Shiddieqy, "Islamic Law", (Semarang : Pustaka Riski Putra, 2001), p.202

punishment, takzir says that the penalty of fine (tahdid) is prescribed by Islamic shari'a as punishment.

References

1. 'Audah, Abd al-Qadīr. *at-Tasyri' al-Jina'i al-Islamy*, Juz II .Bairut: Dār al-Kātib al-'Araby. 1998.
2. al-'Asqalānī, Ahmad bin 'Ali bin Hajar. *Fathulbārī Syarh Hadis al-Bukhārī*, http://library.islamweb.net/newlibrary/display_book.php?flag=1&bk_no=52&ID=33 (18 Februari 2018).
3. Hamsir, *Pengantar Hukum Pidana dan Hukum Acara Pidana (Analisis Sosiologis Pasal-Pasal Tertentu Dalam KUHP dan KUHPA)*. (Makassar: Alauddin University Press, 2013).
4. Hasan, Hamzah. *Pidana Hukum Islam II*. Makassar: Syahadah, 2016.
5. Kamāl bin al-Sayid Sālīm, Abū Mālik. *Ṣaḥīḥ Fiqh al-Sunnah Wa Adillatuhā Wa Tauḍīḥ Mazāhib al A-immah*, Juz IV, Kairo: Maktabah al-Taufiqiyah, 2003.
6. Kementerian Agama Republik Indonesia, *Al-Qur'ān dan Terjemahnya*. Jakarta: Samad, 2014.