



Consequences for Counterfeiting and Distributing of Counterfeit Vaccines under *Jināyah* and Criminal Law: A Comparative Study

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Abstract: The proliferation of counterfeit vaccinations was producing significant public health problems and was related with legal issues. This article compared the sanctions imposed by Islamic criminal law and national legislation on counterfeiters and distributors of fake vaccines. Several rules and regulations control the use and distribution of vaccinations in Indonesia. In accordance with Articles 196 and 197 of Law Number 36 of 2009 on Health, the criminal act of distributing counterfeit vaccines is punishable by a maximum prison sentence of ten years and a maximum fine of one billion in IDR. As opposed to Article 197, which stipulates a maximum punishment of 15 years in prison and a maximum fine of Rp. 1,500,000,000,000. counterfeiting and distributing counterfeit vaccines are considered serious crimes in both Islamic criminal law and *Jināyah*. The punishment for these crimes varies depending on the severity of the offense and the harm caused to society. In both systems of law, the punishment can range from fines and imprisonment to the death penalty. It is important to note that these punishments are intended to deter individuals from engaging in these crimes and protect public health and safety. It was believed that the government would increase legislation addressing the punishment of counterfeiters and drug dealers, who can harm the Indonesian national character.

Keywords : Counterfeit Vaccines, *Jināyah*, Criminal Law; Sanction; Punishment.

Abstrak: Peredaran vaksin palsu saat ini menyebabkan masalah kesehatan masyarakat yang cukup serius dan berkaitan dengan permasalahan hukum. Artikel ini bertujuan untuk mengungkap perbandingan sanksi antara hukum pidana Islam dan hukum nasional terhadap pemalsu dan pengedar vaksin palsu. Hasil penelitian menemukan bahwa beberapa peraturan perundang-undangan yang mengatur terkait penggunaan dan pengedaran vaksin di Indonesia. Sanksi tegas dari hukum nasional bahwa tindak pidana pengedaran vaksin palsu ini hukumannya seperti diatur dalam Pasal 196 dan 197 Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan dipidana penjara paling lama 10 tahun dan denda paling banyak Rp 1.000.000.000. Sedangkan dalam Pasal 197 dipidana penjara paling lama 15 tahun dan denda paling banyak Rp 1.500.000.000. memalsukan dan mendistribusikan vaksin palsu dianggap sebagai kejahatan serius baik dalam hukum pidana Islam maupun

Fiqh Jināyah. Hukuman untuk kejahatan ini bervariasi tergantung pada beratnya pelanggaran dan kerugian yang ditimbulkan terhadap masyarakat. Dalam kedua sistem hukum tersebut, hukuman dapat berkisar dari denda dan penjara hingga hukuman mati. Penting untuk dicatat bahwa hukuman ini dimaksudkan untuk mencegah individu terlibat dalam kejahatan ini dan melindungi kesehatan dan keselamatan masyarakat. Diharapkan pemerintah memperkuat regulasi tentang hukuman bagi pemalsu dan pengedar obat-obatan yang dapat merusak jiwa bangsa Indonesia.

Kata Kunci : Vaksin Palsu, Jināyah, Hukum Pidana, Sanksi, Hukuman.

Introduction

Islam emphasizes the importance of maintaining and protecting the soul from various threats for the continuity of human life.¹ In relation to human life and other living things, human and livestock bodies can fight almost all types of organisms or toxins that tend to damage the tissues and organs of the body.² This ability is called immunization.³ Most acquired immunizations only occur once disease-causing bacteria or toxins first attack the body, often taking weeks or months to develop.⁴ Therefore, this virus is God's creation which may target all of His servants,⁵ whether practicing spiritual piety or not.⁶

In accordance with Article 28H paragraph (1) of the 1945 Constitution, which reads, "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care," the government guarantees the availability of health facilities and infrastructure for the Indonesian country to improve the quality of human life in the health sector, which is a very broad and comprehensive endeavor. These efforts include improving public health both physically and non-physically. Basically, health problems concern all aspects of life and cover all the time of human life, both past, present, and future lives.

According to the World Health Organization (WHO), health is a complete physical, mental and social well-being and not merely the absence of disease or infirmity. Health can affect all aspects of life, both in the past, present and future.

The trafficking of illegal drugs is currently causing serious public health problems related to legal issues. In accordance with Article 28H paragraph (1) of the 1945 Constitution, which reads, "Every

¹ Makia G A Himat, "Sociological Approach to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Critical - Comparative - Study)," *International Journal of Gender and Women's Studies* 3, no. 2 (2015): 120-37, <https://doi.org/10.15640/ijgws.v3n2p11>.

² Akriti Srivastava et al., "Toxin-Antitoxin Systems and Their Medical Applications: Current Status and Future Perspective," *Appl Microbiol Biotechnol* 105 (2021): 1803-1821, <https://doi.org/10.1007/s00253-021-11134-z>.

³ Marek Petráš and Ivana Králová Lesná, "SARS-CoV-2 Vaccination in the Context of Original Antigenic Sin," *Human Vaccines & Immunotherapeutics* 18, no. 1 (2022), <https://doi.org/10.1080/21645515.2021.1949953>.

⁴ Lisa Menning et al., "Communications, Immunization, and Polio Vaccines: Lessons from a Global Perspective on Generating Political Will, Informing Decision-Making and Planning, and Engaging Local Support," *Journal of Infectious Diseases* 216, no. Suppl 1 (2017): S24-32, <https://doi.org/10.1093/infdis/jix059>. starting with the type 2 component; and strengthen routine immunization programs - set an ambitious series of targets for countries. Effective implementation of IPV introduction and the switch from trivalent OPV (containing types 1, 2, and 3 poliovirus

⁵ Abdul Syatar et al., "Integrating Washiyah Paradigm to the Issuance of COVID-19 Fatwa; Indonesia Case," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 20, no. 1 (2022): 48-59, <https://doi.org/10.31941/pj.v20i1.1717>.

⁶ Sunarto, "Harmoni Syariah Terhadap Teror Korona: Kemudahan Beribadah Dalam Menghadapi Pandemi Covid-19," *MISYKAT: Jurnal Ilmu-Ilmu Al-Quran, Hadist, Syari'ah Dan Tarbiyah* 06, no. 1 (2021): 65-94, <https://doi.org/10.33511/misykat.v6n1.65-94>.

person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care,” the government guarantees the availability of health facilities and infrastructure in Indonesian country. According to the World Health Organization (WHO),⁷ health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Health can affect all aspects of life, both in the past, present and future. Basically, pharmaceutical preparations can only be produced by business entities that already have industrial business licenses. This aims to meet the requirements for quality, safety, and benefit. Thus, good production for drugs, including vaccines, can prevent errors and mistakes in the production process and guarantee production that consistently produces products that meet the specified requirements. In this case, drug is one of the aspects that can improve human life with their availability and use to improve public health services.

From a legal point of view, vaccine counterfeiting is not just brand counterfeiting but is also an act that endangers human life if the vaccine’s contents are inappropriate or unclear.⁸ The crime of vaccine counterfeiting is still a matter of concern and very critical for the world of health. World Health Organization (WHO) estimates that 10 percent of the total drugs trafficking in the world are counterfeit drugs.

The trafficking of illegal drugs is currently causing serious public health problems related to legal issues.⁹ Illegal drugs, or counterfeit drugs or vaccines, can occur either in patent or generic drugs. These drugs can be counterfeited, as the quality is completely different between real and counterfeit drugs. Sometimes brand fakes, drugs that do not contain active substances, or reduced or even different active substances are found.¹⁰ The manufacture of counterfeit vaccines is used as a business by several companies, and many of us are currently dealing with counterfeit drugs or well-known brands, but not the production of officially licensed drug factories. From a legal point of view, counterfeiting vaccines and drugs is related to brand counterfeiting and the composition of the drug or vaccine, so this is an act that can be life-threatening.

The practice of counterfeiting can occur in brands and patent drug products as well as generic drugs with various counterfeiting criteria, such as no active substance, reduced levels of active substance, different active substances, same active substance with the counterfeit packaging, same as the original drug (imitation), and very different quality.¹¹ Counterfeit vaccines are pharmaceutical dosage forms that cannot be circulated because they do not comply with the pharmaceutical quality standards set by the government. This is because there is an element of deception against patients or

⁷ David Greacy Geovanie and Kadek Bobby Reza Arya Dana, “Perlindungan Konsumen Terhadap Kasus Vaksin Palsu Dalam Perspektif Undang-Undang,” *Jurnal Locus Delicti* 2, no. 1 (2021): 1–12, <https://doi.org/10.23887/jld.v2i1.454>. the form of responsibility of business pelau (producers)

⁸ Sahuri Lasmadi, “The Legal Act on Counterfeiting the Covid-19 Vaccine in Indonesian Health Law,” *International Journal of Law Reconstruction* 5, no. 2 (2021): 173–80, <https://doi.org/10.26532/ijlr.v5i2.17545>.

⁹ Yusep Mulyana, “Efforts of Counterfeiting Criminal Acts Passport Identity,” *International Journal for Educational and Vocational Studies* 2, no. 8 (2020): 690–96, <https://doi.org/10.29103/ijevs.v2i8.2761>.

¹⁰ I Kadek Candra Karunia Bagiarta Putra Sugiantara, I Nyoman Gede Sugiarta, and Ida Ayu Putu Widiati, “Sanksi Pidana Terhadap Pelaku Pemalsuan Surat Rapid Test Di Masa Pandemi Covid- 19,” *Jurnal Preferensi Hukum* 2, no. 3 (2021): 525–29, <https://doi.org/10.22225/jph.2.3.3995.525-529>.

¹¹ Sabrina Siahaan, Sonya Airini Batubara, and Noel Yoga Panggabean, “Criminal Trafficking Of Drug Trafficking Based Law Number 36 Of 2009 About Health,” *Journal of Education, Humaniora and Social Sciences (JEHSS)* 3, no. 1 (2020): 252–59, <https://doi.org/10.34007/jehss.v3i1.221>.

the public. In Islam, deception is something that can not be allowed. Allah SWT also explains about people who cheat in their lives mentioned in Q.S. Al-Muthaffin/83:7.¹²

Counterfeiting is a criminal act containing a system of falsification or untruth in a thing or object that looks from the outside like something true or genuine but only looks genuine when the object or something does not fit as correctly.¹³ Counterfeiting act is an act of violating a basic norm, including: (1) truth (belief), it can be said that the violation can also be a thing that belongs to a group of criminal acts, namely fraud, and (2) public order, the violation of which constitutes something belonging to the category of a crime committed against a country or public order. Therefore, it is necessary to study more deeply regarding the potential punishment for the perpetrators of the crime of counterfeiting and distributing of counterfeit vaccines, both from positive legal aspects and *Fiqh Jināyah* aspects.

The perpetrators of counterfeit vaccines are responsible for violating the law they have committed. To overcome this, monitoring should be conducted. The monitoring should be carried out not only on hospitals, pharmacists, drug stores, and pharmaceutical companies but also on market production and sales systems, overseeing any complaints from the general public. Regarding law enforcement, the government must decide to impose sanctions on perpetrators in response to cases of counterfeit vaccines. The production and trafficking of counterfeit vaccines can increase if the imposition of sanctions is uncertain. Consistent law enforcement actions can provide a deterrent effect for counterfeit vaccine manufacturers.

Vaccine comes from the Latin, namely *vacca* (cow) and *vaccinia* (cowpox). Vaccines are antigenic substances used to produce active immunity against a disease to prevent or reduce the effects of infection by natural or wild organisms. Vaccines can be strains of viruses or bacteria that have been weakened, so they do not cause disease. Vaccines can also be dead organisms or their purification products (proteins, peptides, virus-like particles, etc.). The first vaccine discovery came from China in 900 BC. The Chinese, at that time, invented a form of vaccination called variolation. This vaccination method prevents smallpox from attacking healthy people with scabs caused by the virus. They did this by removing the pus and fluid from the smallpox lesions, then injecting it under the skin of the person being treated, or by peeling the scabs from the dried lesions and grinding them into a powder letting an uninfected person inhale it. Another method used was to take some scab powder in a small amount with a needle and inject it directly into a person's vein. Vaccines attempt to overcome disease by providing immunity to a person's body through immunization.¹⁴

This vaccine is given to a person through immunization. Immunization gives the body immunity against disease by putting something into the body so that the body is resistant to diseases that are epidemic or dangerous. Immunization comes from the word *immune*, which means insusceptible or resistant. Immunization against a disease will only provide immunity or resistance to that disease, so other immunizations are needed to avoid other diseases. The purpose of providing immunity from immunization is to reduce the number of sufferers of a disease that is very dangerous to health and

¹² Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), <https://lajnah.kemenag.go.id/unduh/category/3-terjemah-al-qur-an-tahun-2019>.

¹³ Genival Fernandes De Freitas, "Original Article Analysis of Ethical Issues : Criminal Acts in Nursing Practice," *Acta Paul Enferm* 34 (2021): 1–8, <https://doi.org/10.37689/acta-ape/2021AO00243>.

¹⁴ Inaya Hajj Hussein et al., "Vaccines Through Centuries: Major Cornerstones of Global Health," *Frontiers in Public Health* 3, no. November (2015): 1–16, <https://doi.org/10.3389/fpubh.2015.00269>.

can even cause death in sufferers. Some diseases that can be avoided by immunization are hepatitis B, measles, polio, diphtheria, tetanus, whooping cough, mumps, chickenpox, tuberculosis, and so on.

Vaccination is the administration of vaccines (antigens) that can stimulate the formation of immunity (antibodies), namely the immune system in the body. Vaccination is a very reliable primary prevention effort to prevent disease.¹⁵ The definition of a vaccine is explained in Regulation of the Minister of Health Number 12 of 2017 concerning the Implementation of Immunizations. Vaccines are biological products that contain antigens such as microorganisms that are dead, still alive but attenuated, still intact or parts thereof, and which have been processed. In addition, there are also microorganism toxins that have been processed into toxoids, proteins, and recombinants which are added with other substances, if given to someone, will cause active specific immunity against certain diseases.

This study employed descriptive qualitative research because it accommodated forms and ideas in the data processing. Descriptive research was a method used to describe existing phenomena in the present or past. This study used a comparative approach. A comparative approach was an approach taken to compare the laws of one country to other countries. W. Ewald (in *Critical Comparative Law*) explained that comparative law was essentially a philosophical activity. Comparative law was a comparative study regarding the intellectual conceptions behind the principal legal institutions of one or several foreign legal systems.

Criminal Sanctions for Counterfeiting and Distributing of Counterfeit Vaccines in Indonesian Criminal Law

As a rule of law to achieve general welfare, besides having to be oriented towards the goals achieved, every activity must also make the law that applies as a rule for the state, government, and social activities. In accordance with its nature and essence, the law plays an important role in regulating every legal relationship between individuals and individuals and society in various areas of life, including health.

The crime of counterfeiting contains an element of untruth or falsification of something (object), which looks from the outside as if it is true when it is contrary to the truth. The crime committed by the alleged perpetrators of counterfeiting and Distributing of counterfeit vaccines, which recently caused an uproar, not only violates Article 386 Paragraph 1 of the Criminal Code regarding acts of fraud and counterfeiting but also violates Law Number 36 of 2009 concerning Health because they have distributed vaccines that do not feel safe and quality. The perpetrators use anti-tetanus liquid mixed with intravenous fluids as the basis for fake vaccines. The two liquids are then put into a used bottle and the place where the fake vaccine is not feasible.

In presidential regulation number 14 of 2021 concerning amendments to presidential regulation number 99 of 2020 concerning procurement of vaccines and implementation of vaccinations in the framework of tackling the coronavirus disease 2019 (covid-19) pandemic,¹⁶ the Central Government

¹⁵ Inaya Hajj Hussein et al., "Vaccines Through Centuries: Major Cornerstones of Global Health," *Frontiers in Public Health* 3, no. November (2015): 1–16, <https://doi.org/10.3389/fpubh.2015.00269>.

¹⁶ Pemerintah RI, "Peraturan Presiden Nomor 14 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden Nomor 99 Tahun 2020 Tentang Pengadaan Vaksin Dan Pelaksanaan Vaksinasi Dalam Rangka Penanggulangan Pandemi Corona Virus Disease 2019 (Covid-19)," 2021.

applies strict sanctions to people who have been designated vaccine targets but still unwilling or refusing to be vaccinated. This is explained in Article 13 A paragraph (1) to paragraph (4).

The case of finding counterfeit vaccines is a serious problem in the health sector. The practice of producing, distributing, and using counterfeit vaccines by health workers has been carried out on a large scale, neatly, and for a long time. The practice of counterfeit vaccines has been going on from 2010 to 2016. This means thousands of counterfeit vaccines were produced, distributed, and used in healthcare facilities during that period.

The circulation of counterfeit vaccines on the market by business actors is very worrying.¹⁷ Lack of education about genuine vaccines also causes people to consume counterfeit vaccines. This is the result of their ignorance of distinguishing genuine vaccine products and counterfeit vaccine products. For the perpetrators of counterfeiting and distributing counterfeit vaccines, the lack of information about the consequences caused by the circulation of counterfeit vaccines and the sanctions they will receive if they distribute counterfeit vaccines also affect this action.

Hoax news circulating in various media on television and various social media platforms that spread deficiencies and negative effects for people who have carried out vaccinations has been widely circulated.¹⁸ The people's inaccuracy in filtering false information makes people afraid to vaccinate because of the vaccine's content. Therefore, at the end of 2021, the Indonesian government hooked various public figures from television media to influencers to carry out a campaign to stop vaccine hoaxes.

The public's distrust of the government has impacted the people's choice to make illegal vaccine certificates for administrative purposes or for everyday purposes that must use vaccine certificates.

Criminal Sanctions for Counterfeiting and Distributing of Counterfeit Vaccines in *Fiqh Jināyah*

Fiqh Jināyah consists of two words, namely *fiqh* and *jināyah*. The definition of *fiqh* in language comes from "*faqiha, yafqahu, fiqhan*," which means to understand and know. The definition of *fiqh* in terms put forward by Abdul Wahab Khallaf is a set of practical *syara'* laws taken from detailed arguments.¹⁹ As for *jināyah*, according to language, it is the name for the results of someone's bad deeds and what is earned. Meanwhile, according to the term *jināyah* put forward by Abdul Qadir Audah is a term for actions prohibited by *syara'*, whether these actions involve souls, property, and others.

Islamic criminal law is often referred to in *fiqh* as *jināyah* or *jarimah*.²⁰ Basically, the meaning of the term *jināyah* refers to the results of one's actions. Usually, this understanding is limited to prohibited acts. Among the *fuqaha'*, the word *jināyah* means forbidden actions according to *syara'*. An equivalent term to the term *jināyah* is *jarimah*, namely *syara'* prohibitions threatened by Allah with *had* or *ta'zir* punishment.²¹

¹⁷ Srivastava et al., "Toxin-Antitoxin Systems and Their Medical Applications: Current Status and Future Perspective."

¹⁸ Sander van der Linden, Jon Roozenbeek, and Josh Compton, "Inoculating Against Fake News About COVID-19," *Frontiers in Psychology* 11, no. October (2020): 1-7, <https://doi.org/10.3389/fpsyg.2020.566790>.

¹⁹ Abdul Wahab Khallaf, *Ilmu Ushul Al-Fiqh* (Daruttarats, 2010).

²⁰ Wahyuddin Naro et al., "Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia," *International Journal of Criminology and Sociology* 9 (2020): 572-86, <https://doi.org/https://doi.org/10.6000/1929-4409.2020.09.5>.

²¹ 'Abdul Qadir 'Audah, *Al-Tasyir' Al-Jinā'i Al-Islāmī; Muqāranan Bi Al-Qanūn Al-Wadh'ī*, II (Cairo: Maktabah al-Taufiqiyah, 2013).

Based on the description above, it can be explained that *jināyah* is all forbidden acts. A forbidden act is an act forbidden or prevented by *syara'*. If the act is carried out, it endangers religion, soul, mind, honor, and property.²² *Jarimah* is the prohibitions of *syara'*, which, if carried out, are threatened by Allah with a *hadd* or *ta'zir* punishment. The term *jarimah* is synonymous with the meaning referred to in positive law as a crime or violation. The point is in terms of criminal acts of theft, murder, and so on. In positive law, *jarimah* is termed delict or criminal act. In conclusion, they have similarities and differences etymologically. Both terms have a single meaning, have the same meaning, and are shown for actions with a negative connotation of wrong or sin. The difference lies in usage, speech direction, and sequence of the two words used.

In general, the purpose of Islamic law is the happiness of human life in this world and the hereafter by taking everything beneficial and preventing or rejecting harm, which is useful for life and life. In other words, Islamic law's purpose is to benefit human life, both spiritual and physical, individual and social. The benefit is not only for life in this world but also for eternal life in the hereafter. Abu Ishaq al-Shatibi (790/1388) formulates 5 objectives of Islamic law, namely maintaining religion, soul, mind, lineage, and property, which are later agreed upon by other Islamic legal scholars. The five objectives of Islamic law are called *al-maqāshid al-khamsah* or *al-maqāshid al-syāri'ah*.²³

The act of counterfeiting a vaccine is an act of lying because basically, in this act, there is a lie, namely by not providing true information/should be in the falsified vaccine, both the brand, vaccine bottle, contents, and place of manufacture.²⁴ In addition, counterfeiting is also included in fraud and deception. Islam prohibits people from deceiving and cheating in various ways, even in trading and all *muamalah* between humans. Fraud and deception is an act of wrongdoing, namely putting something out of place. In the context of *muamalah*, it is doing something that should not be done, forbidden, and leaving something that should be done.

In Islamic law, there is no specific and clear discussion regarding the criminal act of distributing counterfeit vaccines.²⁵ However, it does not mean that there are no provisions used as a basis for prohibiting this criminal act of counterfeiting. This is because Islamic law is a law built based on human understanding of the texts of the Qur'an and hadith to regulate human life that applies universally, relevant in every era and human space. Islamic criminal sanctions, formally and materially, contain values, rules, and sanctions related to *hudud*, *qisas-diyat*, and *ta'zir* crimes.²⁶ The concept of Islamic criminal sanctions can be a source of material for national criminal law in addition to western and customary law.²⁷ This considers that the problem of distributing counterfeit vaccines is a new problem, and there is no clear and concrete punishment. Therefore, for criminal acts or *jarimah* where the Al-Qur'an or hadith do not specify sanctions, they are categorized as criminal acts with *ta'zir* sanctions.²⁸

²² Etim E. Okon, "Hudud Punishments in Islamic Criminal Law," *European Scientific Journal* 10, no. 14 (2014): 227–38.

²³ Hamzah Hasan, "Criminology in Islam; between Human-Kind and Injustice," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 1 (2021): 61–75, <https://doi.org/10.24252/mh.v3i1.21238>.

²⁴ Sjaifurrachman Sjaifurrachman and Abshotil Fithry, "Pendampingan Pelaksanaan Pemberian Imunisasi Rubella Menurut Hukum Positif Dan Hukum Islam," *Jurnal ABDIRAJA* 3, no. 1 (2020): 22–24, <https://doi.org/10.24929/adr.v3i1.884>.

²⁵ Yan Mardian et al., "Sharia (Islamic Law) Perspectives of COVID-19 Vaccines," *Frontiers in Tropical Diseases* 2, no. December (2021): 1–8, <https://doi.org/10.3389/fitd.2021.788188>.

²⁶ Muhammad Arifin, "The Efforts of Islamic Criminal Law Integration into Indonesian Law Procedures," *Budapest International Research and Critics Institute Journal* 3, no. 2 (2020): 975–84, <https://doi.org/10.33258/birci.v3i2.925>.

²⁷ Abdul Syatar, "Relevansi antara pemidanaan indonesia dan sanksi pidana islam," *DIKTUM: Jurnal Syariah dan Hukum* 18 (2018): 118–134.

²⁸ M Ali Hasan, "Masail Fiqhiyah Al-Haditsah Pada Masalah-Masalah Kontemporer Hukum Islam," *Cet. Ketiga. Jakarta: PT. Raja Grafindo Persada*, 1998, 193.

The crime of distributing counterfeit vaccines is classified as *jarimah ta'zir*.²⁹ This is because the problem of distributing counterfeit vaccines is a new problem, so there is no clear and concrete punishment. Therefore, criminal acts or *jarimah* whose sanctions are not determined by the Al-Qur'an or hadith are categorized as crimes with *ta'zir* sanctions, namely punishments that have not been determined by *syara'* and are left entirely to the government to determine them.

Therefore, the types of *ta'zir* punishment for the criminal act of distributing counterfeit vaccines are:

a. Whipped or *Jild*

This is based on the actions of Caliph Umar Ibn al-Khattab, who whipped Mu'an Ibn Zaidah 100 times for the forgery of the baitul mal stamp.³⁰ Because of the similarity between the crime of stamp forgery and vaccine counterfeiting, the actions of Caliph Umar Ibn al-Khattab against Mu'an Ibn Zaidah are sufficient as a legal basis for the crime of distributing fake vaccines. As for the maximum amount of fines for the perpetrators of the criminal act of distributing counterfeit vaccines, it is left to the authorities to look at the level of danger of the counterfeit vaccines, such as causing more severe illness and death.

b. Indefinite Imprisonment Sentences

The indefinite imprisonment sentence until the convict repents to educate. This is almost the same as correctional institutions that apply remissions for convicts proven to have repented. According to scholars, a person is considered to repent if they show signs of improvement in their behavior. Because the perpetrators of the crime of distributing counterfeit vaccines are also very dangerous, the vaccines are made in inappropriate places. In addition, counterfeit vaccine contents do not contain the actual vaccine ingredients, and they sell and distribute to pharmacies and private hospitals for consumption by toddlers. That's the same as the perpetrator who plunges the toddler. Therefore, in this case, an indefinite imprisonment sentence is also appropriate for the perpetrators of distributing fake vaccines.

c. Fines Or Property Retrieval

The sanctions in the form of fines or property retrieval are threatened to *jarimah* related to properties or assets of value. The application of this fine sanction seems to be imposed on *jarimah*, who falsely gets wealth. Therefore, in this case, the perpetrators of the Distributing of counterfeit vaccines are also subject to fines or property retrieval because the perpetrators get property in a vanity way, namely by selling and distributing counterfeit vaccines by deceiving and lying to the public by not disclosing the true contents.

A Comparative Analysis of Criminal Sanctions for Counterfeiting and Distributing of Counterfeit Vaccines in Islamic Criminal Law and *Jināyah Fiqh*

Counterfeiting and distributing counterfeit vaccines are serious crimes that can have severe consequences for public health and safety. In Islamic criminal law and *Jināyah Fiqh*, these crimes are typically punished through criminal sanctions. In this comparative analysis, we will examine how these crimes were punished in Islamic criminal law and *fiqh jināyah*.

²⁹ Mardian et al., "Sharia (Islamic Law) Perspectives of COVID-19 Vaccines."

³⁰ Syariful Alam et al., "Islamic Criminal Law Study on The Seizure of Corruptor Assets as an Indonesian's Criminal Sanction in The Future," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 143-55, <https://doi.org/10.31958/juris.v21i2.6722>.

In Islamic criminal law, counterfeiting and distributing counterfeit vaccines are considered serious offenses that can harm individuals and society. These crimes fall under the category of *ta'zir* offenses, which means that the punishment is left to the discretion of the judge. The penalties for counterfeiting and distributing counterfeit vaccines in Islamic criminal law vary depending on the degree of crime and the harm done to society. The punishment can be a fine, imprisonment or even the death penalty. For example, if a counterfeit vaccine causes harm or death to a person, the penalty for administering it is death. On the other hand, if the perpetrators are caught carrying counterfeit vaccines but have not distributed them, the punishment can be lighter, such as fines or imprisonment.

In *fiqh jināyah*, counterfeiting and distributing counterfeit vaccines are also considered serious offenses. These crimes are typically punished through *hadd* or *qisas* offenses. *Hadd* offenses refer to crimes that have a fixed and specific punishment outlined in Islamic law. In the case of counterfeiting and distributing counterfeit vaccines, the punishment would typically be amputation of the offender's hand or death, depending on the severity of the crime. *Qisas* offenses, on the other hand, refer to crimes that involve the payment of compensation or retaliation. In the case of counterfeiting and distributing counterfeit vaccines, the offender may be required to compensate the victims for any harm caused by the counterfeit vaccines.

Based on the discussion above, there are differences and similarities regarding the distributing of counterfeit vaccines. Among these differences and similarities is the criminal act of distributing counterfeit vaccines between Law Number 36 of 2009 concerning Health and Islamic law, both criminal acts that threaten society. This is because the object that falsified is a vaccine that functions to provide immunity to infectious diseases.

In addition, the distributing of counterfeit vaccines is an act that violates the purpose of Islamic law to create benefits for all humankind and to distance and eliminate harm from them. Moreover, the victims of these counterfeit vaccines are generally toddlers and children who will become the next generation of the nation's health. This is one indicator of the level of human welfare, so it becomes a priority in the national development of a nation. Everyone has the right to health, and everyone has the same right to gain access to resources in the health sector, and the perpetrators of distributing counterfeit vaccines will receive punishment according to the actions they have taken.

From the discussion above, the similarities of Law Number 36 Concerning Health and Islamic law regarding the distributing of counterfeit vaccines are: 1) both acts violate the rules of Islamic law and health purposes, 2) both prohibit the act and 3) both receive punishment for the perpetrators of distributing of counterfeit vaccines. Meanwhile, the difference is about the punishment. According to Islamic law, the *ta'zir* punishment is in the form of whipped, indefinite imprisonment sentences, such as life imprisonment or until he repents, and fines or property retrieval.

Conclusion

In general, many laws and regulations regulate the use and distributing of vaccines in Indonesia, including Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases, Law No. 8 of 1999 concerning Consumer Protection, and Law No. 36 of 2009 concerning health. In addition to statutory regulations, several institutions have issued separate regulations governing the use and Distributing of vaccines through the Indonesian Ulema Council, with several fatwas regarding vaccines and a circular from

the National Agency of Drug and Food Control. The crime of Distributing of counterfeit vaccines carries a penalty outlined in Articles 196 and 197 of Law Number 36 of 2009 Concerning health, with a maximum imprisonment of 10 years and a maximum fine of IDR 1,000,000,000. In Article 197, the maximum sentence is 15 years in prison and a maximum fine of Rp. 1,500,000,000. counterfeiting and distributing counterfeit vaccines are considered serious crimes in both Indonesian positive law and Islamic law. The punishment for these crimes varies depending on the severity of the offense and the harm caused to society. In both systems of law, the punishment can range from fines and imprisonment to the death penalty. It is important to note that these punishments are intended to deter individuals from engaging in these crimes and protect public health and safety. The government is expected to strengthen regulations regarding penalties for counterfeiters and drug dealers who can damage the soul of the Indonesian nation.

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