

THE REVIEW OF ISLAMIC CRIMINAL LAW TOWARD CRIMINAL ACTION OF A SHARP WEAPON MISUSE

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Abstract

Carrying a sharp weapon is a criminal act which can cause harm to other people, both on property and even killing other people. In addition to the consequences, carrying a sharp weapon can also cause harm to the criminal himself. The sharp weapon misuse is actually not a new thing. It is a form of crime as stipulated in Article 2 Paragraph 1 of the Emergency Decree Number 12 year 1951. The objectives of this study were to find out how was the basis for judges' considerations in imposing criminal sanctions and the review of Islamic criminal law in adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg. The method used was the Normative legal research method, which was obtained from literature review (Library Research). The results of the study showed that before imposing a criminal decree, the judge first payed attention and considered the basic principles of justice, legal certainty, utility in imposing a sentence based on the crime committed by the defendant.

Keywords: Sharp Weapon; Criminal Acts; Islamic Criminal Law.

INTRODUCTION

Indonesia is an independent country and the Indonesian people apply Pancasila is a way of life and basic ideology without any exceptions at all in daily life. In the life situation of the Indonesian people conduct social interactions between human beings, of course, it will always based on a norm, rule or legal order existing in the middle of society. Norms, rules and legal order are needed by every human being to interact with others (Rahardjo, 2006).

In addition, these norms, rules or legal orders also surely require sanctions if they are violated. A legal sanction is needed in order to achieve certainty, justice and utility from the existence of these enforced rules. This is due to the fact that it is inevitable that each human being significantly has a tendency to

violate the existing norms, rules or legal orders due to uncontrollable desires. Based on Article 3 of the Constitution of the Republic of Indonesia 1945 states that, the State of Indonesia is a country based on law. Based on the article, it is clear that all country's activities will not be separated from laws and regulations, including the activities of administering justice in Indonesia.

Legal certainty and equality for everyone before the law is one of the principles of the rule of law itself. It can be concluded that the Indonesia is not based solely on power. Therefore all actions and authorities of the ruler or staff are also regulated by law, so the ruler's authority have certain limit. Law as a guide in social life to make security, order, justice, certainty in a country and also protection of human rights as well as



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media to resolve the possibility of conflicts between legal subjects in Indonesia (Hartono, 2019).

One of the important principles of a rule of law is the principle of equality before the law (Alwaton et al., 2022). This principle emphasizes that every citizen has the same position before the law with no exceptions. It means that in law enforcement all citizens have the same position. There is no term difference in the enforcement or even being untouchable by the law. Thus, anyone who violates the law, either king or ordinary people, must get the same sanction in the law. Therefore, the Indonesian people must comply with the law in all life activities.

The Criminal law has a function as an instrument to regulate social life and order in society, as well as providing protection for legal interest of a perpetrator. Therefore, if the implementation of criminal law rules is not carried out properly by legal official, the function of the law will not be achieved (Maghaz, 2019). Law enforcement officials are one of the law enforcement components whose duty is to apply the applicable legal rules, through the provision of fair services, protection to the public and witnesses, for the purposes of investigation, prosecution and during examinations at courts, as well as the application of criminal sanction as a law operationalization (*ius operatum*) related to law enforcement authority.

The crime of sharp weapon misuse has been stipulated in Article 2 Paragraph 1 Constitution Law No. 12 year 1951 which prohibits all forms of activity that are relevant to sharp weapon misuse starting from buying, selling to

ownership. However there are exceptions stipulated in Article 2 paragraph 2 Constitution Law No. 12 year 1951, that it is permissible to use sharp weapons if they are legal. The Emergency Decree No. 12 year 1951 is a rule relating to not justifying to obtain and use other items of sharp weapon or explosive, weapon for stabbing and so on (Fransiska S. Watak, 2018).

That what is threatened with punishment is not only people who use a sharp weapon to harm others, such as committing murder or assault. The act of keeping and carrying a sharp weapon is included as a criminal act (Marsya, 2016).

The law regulations governing the carrying of a sharp weapon are not only regulated in the Emergency Decree Number 12 year 1951, but the Government of Palembang has also included rules regarding the sharp weapon misuse in District Government Ordinance of Palembang Number 44 year 2002 concerning peace and order. Article 21. The article states, "Everyone is prohibited from carrying and or using a sharp weapon in public places, except with the permission of the Regional Chairman because of work."

Regulation regarding a sharp weapon until now still apply the Emergency Decree Number 12 year 1951. Because of this, regulation regarding a sharp weapon is very minimal. A small example is that people who are known to carry a sharp weapon will be immediately arrested. For instance, the case of carrying a sharp weapon of a person named Dedi Harmoko Bin Asnawi, 40 years old, from Palembang. Dedi Harmoko Bin Asnawi had to be arrested by the police because he was found to have a sharp weapon. As

a result of possession of a sharp weapon, the defendant was charged with Article 2 Paragraph (1) of the Emergency Decree Number 12 Year 1951, that is carrying a sharp weapon without permission. Then the suspect and evidence were taken to the police office Palembang. For his actions the defendant Dedi Harmoko Bin Asnawi was accused with the Emergency Decree Number 12 year 1951 with a penalty of 10 years in prison.

From the explanation above, it can be concluded that carrying a sharp weapon even as a precaution is a violation of Article 2 Paragraph (1) of the Emergency Decree Number 12 year 1951 on suspicion of carrying a stabbing weapon, with a maximum penalty of 10 years in prison. The perpetrator still violate the article even if he only kept or hid the sharp weapon. This action is a crime (Musonif, Mardani, Santoso, 2020).

The judge's duty and power must be actualized proportionally within the law enforcement framework, truth and justice according to laws and ethical codes and paying attention to the laws in society. Judge must always interact with people's sense of justice, by paying attention to the principle of equality before the law. The enormous judge's authority demands high responsibility, so that the court's decision was opened with the sentence "For the sake of justice based on Belief in the One and Only God" means that the obligation to uphold truth and justice must be responsible horizontally to all human beings and vertically to God Almighty." (Andriyani, 2019)

The judge in examining, listening and deciding a case, first of all, must use written law or statutory regulations, but if the statutory regulations are insufficient

or inappropriate with the problems in a case, then the judge will find the laws from other law sources such as jurisprudence, doctrine, treaties, customs, or unwritten law (Wildan, 2013).

It is the judge's task in court to decide the punishment to be given to the perpetrator who misuse a sharp weapon. As one of the law enforcement officers, judge is also authorized to determine a penalty for perpetrator who misuse a sharp weapon. Judge sometimes only give 1 or 2 years prison sentence. It is expected that this punishment will provide a deterrent effect for those who possess a sharp weapon without a permission (Syafiuddin, 2020).

The perpetrator of this crime must receive appropriate punishment/sanction for what he has committed, which the law enforcement officials or judges, have the authority to impose penalty or sanction. The focus of the discussion of this research was the basis for the judge's considerations in imposing criminal sanction on adjudication of District court of Palembang Number: 821/Pid.Sus/2020/PN.Plg regarding the Crime of a Sharp Weapon misuse and a review of Islamic Criminal Law toward the sanction given to perpetrator in the adjudication of District Court of Palembang Number: 821/Pid.Sus/2020/PN.Plg.

RESEARCH METHOD

The method used in this study was Normative Legal Research which was aimed at obtaining theoretical matters through library research (Marzuki, 2011). The type of data used was qualitative, while the source of data taken was secondary data obtained from data that had been processed from library

materials. Then this discussion was described in a deductive way of thinking, from general to specific questions.

RESULTS AND DISCUSSION

A. The Judge`s Basic Considerations in Imposing Criminal Sanction on the Adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg

A judge is judicial official who carry out constitutional mandates in terms of adjudicating, it is meant that it is a series of judicial processes carried out by a judge such as receiving, examining, and deciding cases based on procedural principles in court (free, honest with no one-sided, and does not compare litigants in court) based on the stages that have been determined according to laws and regulations (Margono, 2020).

With that, a judge as law and justice enforcer has the duty to examine so as to adjudicate every case handed to them, and play a role in reviewing, following, and exploring the legal values that develop and live in society.

A Judge has the authority to make a legal product through a decision that he gives binding legal force based on the provisions of the applicable regulations, where in criminal cases there is no escape from the negative method of proof (*negative wetterlijke*), which is basically that in determining something (both events and errors)) is seen as proven, on the other hand equipped with evidence based on statutory regulations, the Judge's conviction established based on good moral personality (Rifai, 2014).

Based on this, the judge has the authority to make a decision based on the applicable legal rules (juridical

considerations), not only on legal rules but the judge also makes a decision based on the judge's conscience (non-juridical considerations).

In the provisions of Article 197 Paragraph 1 letter d of the Criminal Procedure Code: "Consideration was compiled briefly regarding the facts and examination at court which became the legal basis for the decision, accompanied by incriminating and commutating matters for the defendant" (Hamzah, 2008).

In order to get a sense of justice in society, the Judge in his decision must look at three aspects. As stated by Sudikno Mertokusumo, in law enforcement efforts there are three aspects that must be present in decisions proportionally, including legal certainty (*Rechtssicherheit*), legal utility (*Zweckmassigkeit*), and justice (*Gerechtigkeit*). (Mertokusumo, 2009)

1. Juridical Consideration (Legal Certainty)

Juridical consideration is the judge's consideration based on juridical facts revealed in the court by a law that has been determined as a matter that must be included in the decision (Rusli, 2007). As for the strength of proof contained in the provisions of Article 183 of the Criminal Procedure Code, a judge may not impose a sentence on someone unless with at least two valid evidences he obtains conviction that a crime has actually occurred and the defendant is guilty for committing it.

Then related to valid evidence in proving a criminal case contained in the provisions of Article 184 Paragraph 1 of the Criminal Procedure Code successively:

- a. Witness testimony
- b. Expert statement
- c. Letter
- d. Instruction
- e. The defendant statement or something that is generally known so that it does not need to be proven. (Reksodiputro, 2007)

Seeing from the explanation about the judge's consideration above, therefore the writer will describe what are contained in the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg.

There are on juridical considerations, among others:

a. Indictment of the Public Prosecutor

The Public Prosecutor's Indictment is used by the judge as material for the court's consideration in making a decision. The formulation of the indictment is based on the results of the examination, and in the Decision register Number 821/Pid.Sus/2020/PN.Plg in the Public Prosecutor's indictment toward the defendant based on the indictment:

A person has been the one who committed a criminal act *"Without rights, brought into Indonesia, made, received, tried to obtain, surrendered or tried to surrender, controlled, carried, had supplies on him, or had in his possession, kept, transported, hidden, used or issued from Indonesia, a stabbing or stabbing weapon."* The action of the defendant as stipulated and subject to criminal penalty as in article 2 paragraph 1 Emergency Decree number 12 year 1951.

b. Criminal Prosecution

As in the indictment on adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg, that the Public

Prosecutor prosecuted the Defendant Dedi Harmoko Bin Asnawi. The Penal of Judges imposed a criminal sanction in the form of imprisonment for 2 (two) years, where according to the Public Prosecutor that the Defendant Dedi Harmoko Bin Asnawi "legally and convincingly guilty of committing a crime without the right to carry a stabbing weapon" as stipulated in Article 2 paragraph (1) of Law No.12/Drt/1951.

c. Witness Testimony

The provisions of Article 1 point 27 of the Criminal Procedure Code states: "Witness testimony is one of the pieces of evidence in a criminal case in the form of a witness testimony regarding a criminal event that he himself heard, saw and experienced by stating the reasons for his known." (Hamzah, 2008).

The witness testimony is conveyed during the trial in court under pledge. In this connection, witness testimony in the form of information obtained from other parties' testimony or are called *"testimonium de auditu"* and are not witnesses' testimony (Nurhaini, 2016). This means that when presenting their testimony at trial, witnesses must be based on the existing facts and what actually happened, whether they themselves heard, seen or experienced.

As in the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg, the Public Prosecutor had presented witnesses at the court under pledge as considerations for the Penal of Judges in proving their accusation, the point was explained as follows:

- 1) Witness **Johan Wahyudi Bin Somad** as a witness who is a police officer on

duty at the Police office of Palembang.

- 2) Witness **Apriansyah Bin Husin Rahman** was a witness as an employee of the National Land Agency.
- 3) Witness **Hodidah** as A de Charge witness
- 4) Witness **Siti Hawa** as A de Charge witness
- 5) Witness **Musi Raya** as A de Charge witness

All of the facts were presented by the witnesses, the defendant confirmed these during the court. Furthermore based on the provisions of Article 160 paragraph (1) letter c of the Criminal Procedure Code which states that "In the event that there are witnesses, both incriminating and commutating the defendant, contained in the case delegation letter or requested by the defendant or legal advisor or public prosecutor during the trial or before the decision is imposed, the chief judge at trial is obliged to hear the witness` testimony " and is guided by the rule of the Constitutional Court of the Republic of Indonesia No: 65/PUU-VIII/2010 dated 02 August 2011 concerning the expansion of the meaning of a witness which essentially states "a person who can provide information in a crime investigation, prosecution, and trial which he himself do not always know, see and experience", so the Defendant had presented several A de Charge witnesses to the trial including witnesses Hodidah, witness Siti Hawa, and witness Musi Raya. Witness A de Charge is a witness presented by the defendant in order to defend the accusation against him.

This is based on the provisions of Article 65 of the Criminal Procedure

Code, that is: "A suspect or defendant has the right to seek and present witnesses or someone with special expertise to provide favorable information for him"

In addition, the legal basis for witness A de Charge is also regulated in Article 116 Paragraph 3 of the Criminal Procedure Code which states:

"During the examination the suspect was asked whether he required witnesses that would incriminate him and if so, this would be noted in the minutes."

d. Defendant's Statement

The provisions of Article 189 paragraph 1 of the Criminal Procedure Code states:

"The defendant's statement is what the defendant stated in court about the actions he has committed or which he himself knew or experienced." (Hamzah, 2008)

In practice, the defendant's statement is sometimes expressed in the form of confession or rejection of the accusation from the public prosecutor as well as witnesses` testimony in part or in whole. Related to this, the defendant's statement is also part of the answer to the question posed, from the judge, the public prosecutor, or the legal advisor himself (Muhammad, 2017). That is, the defendant can justify or refute what he was accused in court, as well as the statements from the defendant as part of the answers of questions asked by the public prosecutor, judges and legal advisors during trials at court.

As in the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg, that the defendant **Dedi Harmoko Bin Asnawi** in the trial had explained as followed:

- The Defendant explained that he was in good physical and mental health,

could communicate well and had a good memory and was willing to be examined at this time and would give true information.

- The Defendant was asked for information that he had committed a criminal act without rights, imported into Indonesia, made, received, tried to obtain, surrendered or tried to hand over, controlled, carried, had stock on him or had in his possession, kept, transported, hidden, used or removed from Indonesia, a sharp weapon, or a stabbing weapon on Saturday 15 February 2020 at around 16:00 WIB or at least February 2020 at Jalan Maju Bersama Kel. Alang-alang Lebar kec. Alang-alang lebar, Palembang.
- That the defendant testified that when he was approached by witnesses Johan and Dirjo the defendant was walking with Azhari who at that time was carrying 1 (one) blade in the defendant's hand and after being interrogated by witnesses Johan and Dirjo then Azhari was arrested by Witnesses Johan Dirjo and Sugiantoro then the defendant was asked for information, then witness Johan asked the defendant Dedi and he said that he only brought a motorbike which was located about 10 (ten) meters away, then the witness and Dirjo invited the defendant Dedi to look at his motorbike so the witness saw 1 (one) blade and 1 (one) axe on the motorbike and then the witness immediately secured the defendant Azhari and the defendant Dedi which at that time the defendant Dedi admitted that the weapons were his.

Then the witness continued the raid again and the witness saw the defendant Tarmizi carrying 2 (two) blades wrapped in a sack so the witness immediately secured the three defendants along with evidence to the police office of Palembang for further follow up.

- The defendant testified that the defendant came there to carry out gardening activities and the defendant did not own land in that area, the defendant testified that the defendant understood that the land belonged to PT. TIMUR JAYA and the defendant did not have permission from PT. TIMUR JAYA to carry out gardening and planting activities.
- And the defendant testified that the defendant came to PT. TIMUR JAYA was not for a demonstration but in the context of gardening even though the defendant could not show evidence of ownership of the garden and did not receive permission from the land owner.

Regarding the defendant's statement before the trial, that the defendant confirmed what was said by the witnesses presented according to his known, also with the reasons, and the defendant regretted his actions and promised not to repeat it.

e. Evidence

Evidence is an object or item (tangible, movable or immovable) that can be safely used as evidence and its function to be shown to witnesses and the defendant before the trial as consideration by the Penal of Judges in order to increase their certainty in determining the guilt or

violation for the defendant (Effendi, 2015).

That means the evidence becomes something important in court because this can add certainty to the penal of judges in determining the guilt for the defendant in accordance with the penal of judges' consideration.

As in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg, that the evidences presented by the public prosecutor in court, among others:

- a) 1 (one) brown wooden-handled axe wrapped in a red shirt.
- b) 1 (one) brown wooden-handled blade with a brown wooden scabbard.
- c) 1 (one) unit of white Honda Beat motorcycle. No. Pol: BG 2907 ACE, Sin No.: JFZ1E-2669606, No. Ka: MH1JFZ121JK664363 with police number BG 6121 AAH attached.

Regarding the explanation above, that the evidence was presented at trial and had been legally confiscated which was shown to both the witnesses and the defendant, and these parties recognized and confirmed it. And this could strengthen the judge's certainty in considering the crime committed by the defendant.

Based on some of the descriptions of these juridical considerations, the writer presented that the basis for the judge's considerations in sentencing the defendant Dedi Harmoko Bin Asnawi in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg was in accordance with the Panel of Judges' juridical considerations which were obtained from the facts revealed during the trial process, through the public prosecutor's indictment, witnesses' testimony, defendant's statement,

evidence, and matters related to it such as the application of articles of the criminal law concerning the criminal act committed by the Defendant, the fulfillment of a criminal act element in the provisions of Article 2 paragraph (1) of the Emergency Decree Number 12 Year 1951, the Defendant had been legally and convincingly proven to have committed a criminal act.

2. Sociological Considerations (Utility)

The judge in making his decision must also pay attention to non-judicial considerations. The conditions included in non-judicial considerations were the reasons or the background for the crime to be committed, the impacts will be caused, the defendant's mental state, social and economic conditions and the defendant's family environment, as well as religious factors (Muhammad, 2017).

The judge's considerations based on sociological aspects/sides (utility) are considerations on cultural values in social life, because the community need a balance in society, with a disturbed balance it must be recovered (Mertokusumo, 2009).

Based on the discussion above, that in sociological considerations (utility) there are factors as the judge's judgment in imposing his decision as well as the existence of a balance or utility to the community in which their condition disturbed by a crime or criminal act, by giving a recovery after the incident.

As in the provisions of Article 197 paragraph (1) letter f which states:

"Articles of law regulations become the basis of giving sentence or action and articles of law regulations become the legal basis of decisions accompanied by

incriminating and commutating condition for the defendant." (Hamzah, 2008)

That means the judge in imposing a sentence must look at from the sociological side because to see the effectiveness of applying the rule of law he pays attention to the good and bad sides as well as the values in the defendant's self which become incriminating and commutating things for the Defendant.

As in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg, that the Penal of Judges in imposing the previous sentence would first pay attention to incriminating and commutating matters to the defendant Dedi Harmoko Bin Asnawi as follows:

The commutating matters:

- a. The defendant regretted his actions and promised not to repeat his actions;
- b. The defendant had never been convicted;
- c. The defendant had the breadwinner of the family;

The incriminating matters:

- a. The defendant's actions disturbed the community;
- b. The defendant was convoluted which hindered the rundown trial;

Based on the description above, as in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg, the criminal sanction in the form of imprisonment was imposed by the Penal of Judges on Defendant Dedi Harmoko Bin Asnawi for 1 (one) year 2 (two) months had been in accordance with the judge's considerations, because the Penal of Judges in this case had considered the sociological aspect, where it had a close

relationship with the defendant's conditions.

With that the Penal of Judges paid attention to incriminating and commutating matters as mentioned in the adjudication above, so that the Penal of Judges decided to impose a criminal sanction in the form of imprisonment for 1 (one) year and 2 (two) months to the defendant.

3. Philosophical Considerations (Justice)

The Philosophical considerations are judges' considerations on an ideal basis, in this case encourages law enforcement officials to always foster the spirit and contribution of service as law enforcers in creating nobility, truth and justice (Harahap, 2007). That means in the judge's philosophical considerations, this provides a lesson for the judge to be able to apply the values of truth and justice for the defendant and victims contained in his decision.

As in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg, looking at the incriminating and commutating matters, the Penal of Judges impose punishment to the Defendant Dedi Harmoko Bin Asnawi with a sentence of imprisonment for 1 (one) year 2 (two) months had been considered as an appropriate sanction for the defendant. In addition, the Penal of Judges must have also understood and considered the defendant's actions by taking into account the consequences of the losses caused by the defendant's actions so that the defendant Dedi Harmoko Bin Asnawi had been found guilty and legally against the law.

Based on the description explained above, the Penal of Judges decided to

impose sanctions on the Defendant Dedi Harmoko Bin Asnawi in the adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg having fulfilled all of the Judge's considerations, such as juridical considerations, sociological considerations, as well as philosophical considerations, in which the Penal of Judges had paid attention to the facts revealed in the trial process, accompanied by incriminating and commutating matters to the Defendant by confessing and regretting his actions, and looking at the truth and justice given to the defendant and the victim.

B. The Analysis of Islamic Criminal Law on the Sanctions Given to Perpetrator in the Adjudication of District Court Number 821/Pid.Sus/2020/PN.Plg

As the writer had described in the previous discussion, the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg, concerning the crime of a sharp weapon misuse, the Panel of Judges had imposed criminal sanctions in the form of imprisonment for 1 (one) year 2 (two months. As the writer explained in the previous chapter, in Islam the term punishment or criminal sanction is known as 'Uqubah'. 'Uqubah is interpreted as the suffering imposition on the crime perpetrators as a sanction for the actions he committed to other people or the sanction felt by the perpetrators as the impact of the crime of syara'. The outline of the forms of punishment ('Uqubah) are divided into four groups according to the crime (jarimah), first, in terms of the presence or absence of texts in the Al-Qur'an and Al-Hadith; secondly, from the point of view of the relationship between one punishment and others; third,

from the point of view of the rulers authority who imposed the sentence; and fourth, seen from the target side. The sharp weapon misuse by the defendant is a new problem, in this case the defendant committed a crime by carrying a sharp weapon and it could disturb the local community.

Surah Al-An'am Verse 151 states: Say, 'O Prophet,' "Come! Let me recite to you what your Lord has forbidden to you: do not associate others with Him 'in worship'. 'Do not fail to' honour your parents. Do not kill your children for fear of poverty. We provide for you and for them. Do not come near indecencies, openly or secretly. Do not take a 'human' life—made sacred by Allah—except with 'legal' right.¹ This is what He has commanded you, so perhaps you will understand.

In Islam society it takes individuals as a priority and because the interests of society are also as a priority, therefore any crime committed can disturb the peace and tranquility of society will be considered a crime against Allah. In that point, Islam commands its people to be benefit to others and not to be troublesome for human beings.

The offense regarding sharp weapon according to Islamic Criminal Law is a crime even though there is no text that regulates it in detail but this act disturbs public order and raises *suudzon* or prejudice to those who see it and it is considered *madharat* and prohibited by Islam, this is because *Jarimah ta'zir, ulil amri* has broad authority to determine a jarimah in accordance with the benefit and avoid *mudharat*. In *Jarimah ta'zir*, the Al-Qur'an and Al-Hadith do not specify in detail, both the form of the *jarimah* and

the punishment. Therefore the judge may give punishment to the perpetrators of *Jarimah* who do not contain rules in the text if the demand for benefit requires it, from here the rule is used:

"The law of *ta'zir* applies in accordance with the demands of benefit". The rule answers new forms of crime that there are no rules in the Al-Qur'an and Al-Hadith so that new forms of crime considered to disturb peace and public order can be prosecuted and sentenced to criminal penalties by referring to the *ulil amri* policy.

From the description of the *surah* above it can be related to the crime of carrying a sharp weapon that Allah forbids (committing) bad acts both visible and hidden. As in Islam, carrying a sharp weapon as long as it has a troubling effect, including having a sharp weapon is also a *jinayah* or *jarimah* because it causes disturbance in society, and also violates regulations made by the government. The sanction for the crime of carrying a sharp weapon is imposed by *Jarimah Ta'zir*.

Jarimah Ta'zir is a law of prohibition in which the criminal acts and punishments are not expressly specified in the Qur'an, but it is based on the judge or rulers wisdom so that the law is imposed on perpetrators have no *had and kafarat* (Darsi & Husairi, 2019). The legal basis for implying *Ta'zir* is found in the hadith of the Prophet Muhammad PBUH and his companions.

The hadith of the Prophet narrated by Aisha: "From Aisyah *Radliyallaahu 'anhu* that the Prophet *Shallallaahu 'alaihi wa Sallam* said: "Forgive the good people from making mistakes (unintentional mistakes), except for violating *had*."

Narrated by Ahmad, Abu Dawud, Nasa'i and Baihaqi. Ali *Radliyallaahu 'anhu* said " I do not carry out *had* to someone and then he dies and I grieve, except for drinkers of wine. Indeed, if he dies, I will pay the fine." (HR Bukhari)

The hadith above regulates the implementation of the *ta'zir* punishment which can vary in application, depending on the status of the perpetrator and other matters. But not more than *Had* sentence. The command "*Aqi-lu*" was shown to leaders or figures, because the implementation of *ta'zir* was given to them, in accordance with their power.

Jarimah Ta'zir is a *jarimah* subject to *ta'zir* sanctions (punishments), where the purpose of these sanctions is for prevention and education for the perpetrator so that he no longer commits similar crimes and Allah's regulations are not violated (Syarbaini, 2018). *Ta'zir* sanctions are sanctions that have not been determined by *syar'i* and are given entirely to *Ulil Amri* (Judge or ruler) in determining it (*ijtihad*), but *Ulil Amri* (Judge) in deciding the form and level of *ta'zir* sanctions always refers to the propositional guidelines because it relates to the public good, and in deciding the sentence there should be no doubt in it.

Basically, there are no provisions regarding the types of *jarimah ta'zir* sanctions because *jarimah* is related to developments in society and its benefits, and the benefits are continuously changing and developing. This is considered *maslahah* in one time, not necessarily considered beneficial in other times. Likewise, things that are seen as beneficial in certain places, are not necessarily seen as beneficial also in certain other places (Hasan & Ahmad,

2013). Therefore, in the implementation of this *ta'zir* sanction is different, both the position of the perpetrator or other things. As for the method of implementing *ta'zir* sanctions as explained in the Hadith of the Prophet Muhammad SAW as follows:

"From Aisha ra. That the Prophet Muhammad SAW said 'incriminate the punishment for those who have never committed a crime, except in *hudud jarimah*. [HR. Ahmad, Abu Dawud, Al-Nasa'I, and Al-Bayhaqi]. By giving power to *Ulil Amri* (Judge or Ruler) in deciding the form of *jarimah ta'zir* where they can freely regulate the government according to the benefit of their respective regions (Rofiq et al., 2021).

The grouping of *ta'zir* sanctions is broadly divided into four groups including: first, *ta'zir* sanction related to the body such as death sentences and binding punishments (flogging); second, *ta'zir* sanction related to a person's independence such as imprisonment and exile; third, *ta'zir* sanction related to assets such as property, confiscation of assets, and destruction of goods; fourth, other sanction determined by *Ulil Amri* for the benefit of the public.

Regarding the sanctions imposed on the defendant Dedi Harmoko Bin Asnawi in the case of the crime of a sharp weapon misuse, the District Court of Palembang sentenced him to 1 (one) year and 2 (two) months in prison with all the judge's considerations. This sanction was sufficient for the purpose of *ta'zir* law, giving deterrent effect to the defendant, the sanction was considered in accordance with the authority of the judge as *ulil amri* to determine the sentence.

Habit of carrying a sharp weapon needs serious action taken by law

enforcement officials by educating the public that carrying a sharp weapon is a crime related to law, so that later it is hoped that this will reduce the number of sharp weapon cases which are increasingly rise in society. And it also needed the judge's determination in imposing sanctions so that later carrying a sharp weapon can be prevented and the punishment can be used as a lesson for the perpetrator and others in accordance with the purpose of *ta'zir* sanction, that is to provide a deterrent effect (Agung, Nelson, 2022).

CONCLUSIONS

The basis for the judge's considerations in imposing criminal sanctions in the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg concerning the Sharp Weapon misuse had fulfilled all aspects of the judge's consideration, such as from a juridical, a sociological, and a philosophical aspects. As for the juridical aspect, it had been obtained based on the public prosecutor's indictment, explanations from the witnesses' testimony and the defendant statement, evidence, as well as the application of the articles in the law regulation related to the case committed by the defendant. Then from the sociological aspect, it was obtained by paying attention to incriminating and commutating matters relating to the conditions of the defendant. Meanwhile, from a philosophical aspect, the Judge had provided justice for the defendant by looking at commutating matters for the defendant so that the justice was not only felt by the victim but can also be by the defendant.

Thus, the defendant was sentenced to a criminal sanction by the Penal of Judges

of the District Court of Palembang with a sanction of 1 (one) year and 2 (two) months in prison. As for the review of the Islamic Criminal Law on the adjudication of District Court of Palembang Number 821/Pid.Sus/2020/PN.Plg concerning the crime of a Sharp Weapon misuse that in the Islamic Criminal Law rules this case was included in category of the *ta'zir jarimah* so that the application of sanctions is given to *Qadhi* (Judge).

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