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## An Actualization of Hifdz Al-Nafs Theory In Sentencing: A Philosophical Review of Prisoner's Rights to Healthcare at the Class Iib Detention Center in North Sinjai

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### Abstract

The fulfillment of convicts' rights in various aspects, particularly in terms of healthcare services, is still not optimal. This article aimed to identify the actualization of hifdz al-Nafdz's theories in granting prisoner's right to healthcare through an approach to the philosophical values of Islamic punishment and national law. Field research is research that raises data and problems in the field (research location). The sources of data obtained were primary and secondary data. This study employed qualitative research using a normative approach. The results of the study showed that textually, the implementation aligned with the hifdz al-Nafdz' mission in Maqashid Sharia. However, empirically, the implementation of hifdz al-Nafdz' in terms of health services has not shown perfect evidence. Islam placed great importance on the benefit aspect. Currently, the detention center accommodates 222 occupants, exceeding its maximum capacity of 100 occupants. Thus, the government should consider expanding the land area of detention centers and establishing polyclinics with additional healthcare personnel. Furthermore, appropriate treatment for detainees is necessary. Regarding law enforcement, the government has implemented regulations to ensure a balanced legal process and prevent any imbalances..

**Keywords:** Actualization; Hifdz Al-Nafs Theory; Sentencing; Philosophical Review; Right to Healthcare

## INTRODUCTION

Islam is a heavenly religion brought<sup>46</sup> by the prophet Muhammad SAW as the messenger of God on earth. Furthermore, it is emphasized that Islam is the only religion that gets legality from Allah.<sup>1</sup> Islam came with the spirit of renewal and improvement of nature globally, especially the improvement of human characters, morals, and behavior as the caliph of Allah on earth. Islam teaches humans to be responsive and caring towards fellow human beings and the environment (*hablun min al-nas*) and also to always connect themselves to Allah as proof of the obedience of servants (*makhluq*) to their God (*khaliq*). Humans, as creatures, are created by God in the most perfect form than other creatures.<sup>2</sup> This is as stated in the Qur'an: "Indeed, We created humans in the best form." In addition, the creation of humans has a mission of *ta'abbud* (serving oneself to Allah), and as a caliph on earth to uphold truth and justice. Therefore, humans or the children of Adam are glorified creatures. With that glory, Islam teaches humans everything that is for the benefit of humans themselves.

In general, Islam teaches humans to obtain happiness in life both in this world and in the hereafter by doing all things that are beneficial and staying away from all things that contain harm, namely all that is not useful for life and live. In other words, the purpose of Islamic law is the benefit of human life both spiritually and physically, individually and socially. Abu Ishaq al-Shatibi, as cited by Daud Ali formulated five objectives of Islamic law, namely preserving religion, soul, mind, offspring, and property. These five objectives in Islamic literature are called *al-maqasid al-khamsah* atau *al-maqasid al-shari'ah* (the five legal objectives).<sup>3</sup>

Islamic law is stipulated by Allah and His Messenger as a lawmaker (*al-syâri'*) to benefit human beings as a whole. This goal involves maintaining existence, developing quality and quantity, and material and spiritual. In Islamic legal wisdom, this is referred to as *maqâshid al-syari'ah*. Since its inception, especially during the Middle Ages, *maqâshid al-syari'ah* has been explored by Islamic law experts and continues to develop. In order to uphold *maqâshid al-syari'ah*, *ijtihad* is carried out from time to time and is developed through certain methods.<sup>4</sup> This obligation comes from the word "Ijab" or "Wujud" or (*al-*

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<sup>48</sup> hmat Hidayat, "Agama Dalam Perspektif Al-Qur'an," *Jurnal Ulunnuha* 8, no. 1 (July 2019): 127-41, <https://doi.org/10.15548/JU.V8I1.296>.

<sup>2</sup> Syamsul Rizal, "Melacak Terminologi Manusia Dalam Al-Qur'an," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 2, no. 2 (2017): 31-32, <https://doi.org/10.32505/AT-TIBYAN.V2I2.391>.

<sup>3</sup> Daud Ali Muhammad, *Hukum Islam: Pengantar Ilmu Hukum Dan Tata Hukum Islam Di Indonesia* (Jakarta: Grafindo, 2011).

<sup>4</sup> Achmad Musyahid Idrus, "KORELASI MAQÂSHID AL-SYARI'AH DENGAN METODE PENETAPAN HUKUM Achmad Musyahid Idrus," *Jurnal Hukum Diktum* 12, no. 1 (2014): 31-40.

*Wajib*) in Arabic, which linguistically denotes actions that are fixed, binding, necessary, and certain, in other words, actions that must be performed.<sup>5</sup>

Because humans are social creatures, Al-Qur'an also issues norms to regulate human social relations. These norms form the basis of the Shari'a, which is crucial for human life in both their transcendent relationships with God and their relationships with fellow members of society. Also, these legal norms will only be upheld if humans have good theological awareness and social awareness.<sup>6</sup> For Muslims, every right must be returned to its two sources of reference, namely Al-Qur'an, and Sunnah. Therefore, Human Rights (HR) finds a strong foundation in Islamic law.<sup>7</sup>

As included in the 1945 Constitution, it states that the State of Indonesia is based on law (*rechtstaat*), not based on mere power (*machtstaat*). As a law state, Indonesia has a series of legal regulations to protect the interests of society.<sup>8</sup> Because Indonesia is a constitutional state as stated in Article 1 paragraph (3) of the 1945 Constitution, every Indonesian citizen must be law-abiding in order to achieve the goals of the Unitary State of the Republic of Indonesia, which is to build a just and prosperous society based on the Five Principles. The Five Principles is a view of life, awareness and moral ideals, which include the psychological atmosphere and character of the people of the country, including those directly concerned. Additionally, it serves as a foundation on which to address legal issues that may arise in Indonesia and as a platform to assess the legitimacy of both philosophy and law.

In terms of law enforcement, the government has implemented regulations to ensure a balanced legal process and avoid legal imbalances. However, it cannot be denied that Indonesia is an archipelagic country consisting of thousands of islands so these geographical conditions will affect the legal order itself. Also, state officials who implement the law in Indonesia, most of them are not based on the law in Indonesia, but

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<sup>5</sup>Amzah Hasan, "Implementasi Nilai-Nilai Kewajiban Asasi Manusia; Telaah Hukum Pidana Islam," *Mazahibuna: Jurnal Perbandingan Mazhab* 1, no. 2 (2019): 92-118, <https://doi.org/10.24252/MH.29.2.11650>.

<sup>6</sup>Darsul S. Puyu, "Konsep Pidana Hudud Menurut Al-Quran Suatu Kajian Tafsir Tematik," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 1, no. 1 (June 2012): 132-48, <https://doi.org/10.24252/AD.V1i1.1468>.

<sup>7</sup>Marwan Fadhel Madjid, "The Overview of Islamic Law towards Female Prisoners In Prison System ( Case Study of Classroom IIA Watampone ) Bagi Umat Islam Setiap Hak Harus Dikembalikan Kepada Iqbal Sumber Rujukannya Yaitu Alquran Dan Sunnah . Jadi Hak Asasi Manusia ( HAM ) Menemukan," *Al-Qadau-Peradilan Dan Hukum Keluarga Islam* 5, no. 1 (2018): 107-31, <https://doi.org/https://doi.org/10.24252/al-qadau.v5i1.5671>.

<sup>8</sup>ASHAR SINILELE RISKAL ALFIANA, "KEDUDUKAN BARANG LELANG YANG DIGUNAKAN UNTUK MELAKUKAN TINDAK PIDANA PENCURIAN DALAM PERSPEKTIF HUKUM ISLAM," *Paryanto Dan Rosad* (2015) 5, no. 3 (2020): 248-53, <https://doi.org/https://doi.org/10.24252/iqtishaduna.v1i1.10944>.



most of them perform services in accordance with the customs that have become a culture in their respective agencies.

Therefore, the government must continue to carry out legal reforms in order to achieve more effective law enforcement. However, it cannot be denied that in the process of legal development in Indonesia, there are still many obstacles, such as the practice where the law only applies to a handful of powerful individuals. As a result, the public may develop a sense of distrust towards law enforcement officials as a result resulting in a violation of the law itself.

The definition of a crime in the Criminal Code (KUHP) is known as “*Strafbaarfeit*,” and in the literature on criminal law, the term “delict” is often used, while legislators formulate laws using the term “criminal act”.<sup>9</sup> The position of Islamic criminal law supports the existence of Islam in the midst of a pluralistic society in international relations. Islamic criminal law can be applied in people's lives, especially in countries where the population is predominantly Muslim or at least the legal material is part of Indonesia's national criminal law.<sup>10</sup>

Islamic law contains benefit in every command and prohibition. However, the prohibitions contained in the text of the Al-Qur'an and hadith should be abandoned and ignored normatively. In Indonesian criminal law, imprisonment is known as one of the most dominant punishments in the application of criminal sanctions.<sup>11</sup> The use of imprisonment as a means to punish perpetrators of criminal acts. The purposes of imprisonment are twofold: firstly, it serves as a means to impose a sense of suffering on the convict by depriving them of freedom of movement, and secondly, it aims to guide the convict towards repentance and provide education to enable their reintegration into a more religious and socially responsible community. In other words, the purpose of imprisonment is correctional.<sup>12</sup>

The term “criminal” is associated with notions of suffering, sorrow, education, balancing and so on.<sup>13</sup> Criminal law is different from other parts of law due to its special

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<sup>9</sup>Hasriani Hasir and Sohrah, “Tindakan Bullying Di Media Sosial; Komparasi Hukum Pidana Islam Dan Undang-Undang Nomor 19 Tahun 2016 Tentang ITE,” *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum* 9, no. 2020 (2021): 704–12, <https://doi.org/10.24252/shautuna.v2i3.21577>.

<sup>30</sup>Abdul Syatar, “RELEVANSI ANTARA PEMIDANAAN INDONESIA DAN SANKSI PIDANA ISLAM,” *DIKTUM: Jurnal Syariah Dan Hukum* 18 (2018): 118–34, <https://doi.org/10.35905/diktum.v16i1.525>.

<sup>11</sup>Muh Yusuf and Achmad Musyahid, “Penegakan Hukum Tindak Pidana Korupsi; Studi Komparatif Mazhab Al-Syafi'i Dan Hukum Positif Indonesia,” *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab Dan Hukum* 1, no. 1 (2021): 134–44, <https://doi.org/10.24252/shautu.v2i1.18366>.

<sup>12</sup>Lamintang dan Theo Lamintang, *Hukum Penitensier Indonesia, Delik-Delik Khusus Kejahatan Norma Kesatuan Dan Norma Kepatutan*, Sinar Grafika, 2009.

<sup>13</sup>E Y Kanter and SR Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Storia Grafika, 2002).

nature, particularly regarding the imposition of sanctions. Criminal sanctions are held to strengthen compliance with norms outside the criminal law.<sup>14</sup> In Criminal Law, there are two types of punishments contained in Article 10 of the Criminal Code, namely Principal Crime and Additional Crime. The main punishment or additional punishment can only be applied based on a court decision that has permanent legal force.

The focus of criminal sanctions is on behavior and acts of imposing suffering so that it is directed at efforts to assist for the perpetrators to change. Criminal sanctions emphasize the element of retaliation. Meanwhile, sanctions for actions originate from the basic idea of community protection, guidance, and treatment for convicts. A person can only be sentenced to a crime if it has been decided by a judge in court that the person has committed a crime by obtaining valid evidence from the court, then it can be sentenced to a crime. To obtain this conviction, procedural law is needed, which regulates the process of examining or testing evidence to declare someone guilty and violating the law.

The criminal justice system consists of several interconnected subsystems. These subsystems include investigations conducted by the police, prosecution by the prosecutor, trial examination by the court, and finally the implementation of crimes carried out by correctional institutions. However, now it's not only Correctional Institutions that can accommodate prisoners. Detention centers can also be used as prisoner shelters.

Based on Article 38 paragraph (1) jo, the Explanation of Government Regulation No. 27 concerning the Implementation of the Criminal Procedure Code, the Minister can designate certain prisons as detention centers. Then, with the Decree of the Minister of Justice No.M.04.UM.01.06 of 1983 concerning the Designation of Certain Correctional Institutions as State Detention Centers, Correctional Institutions can change their function to become Detention Centers, and vice versa. This is because the conditions in several Correctional Institutions exceed capacity. After all, inmates who receive treatment in Detention Centers, and change their status to become convicts should be transferred from the Detention Centers to serve their sentence in Correctional Institutions. However, many remained in the Detention Centers until the end of their sentences.

The designation of Detention Centers as Correctional Institutions is also carried out by Detention Centers in Sinjai Regency, especially the Class II B Detention Centers in North Sinjai. As a result, the functions carried out also become double, in addition to caring for prisoners at the Class IIB Detention Center in North Sinjai, it also fosters prisoners. The guidance of correctional inmates falls under the auspices of the minister and is carried out by correctional officers. The penal system, as governed by this law,

<sup>14</sup>Teguh Prasetyo, *Politik Hukum Pidana: Kajian Kebijakan Kriminalisasi Dan Dekriminalisasi*, 2005.

views convicts as human beings who make mistakes and must be guided to the right path. Therefore, convicts are referred to as prison-assisted citizens (WBP).

The need for fostering legal awareness, in which convicts will be given counseling directly related to the law, aims to achieve a high level of legal awareness as members of society. However, the only source of law formation as well as its binding power is the legal awareness of society. Legal awareness is the feeling of law and individual belief in society.<sup>15</sup> In terms of law enforcement, the government has regulated the law enforcement process in such a way as to avoid legal imbalances. In this case, the importance of this study is to be a reference and provide awareness in law enforcement in Indonesia.

## METHOD

This study employed field research or commonly known as Qualitative Field Research. Descriptive Qualitative Field Research<sup>16</sup> described the research as qualitative regarding the object discussed in accordance with the reality that existed in society. The sources of data in this study consisted of primary data and secondary data. The primary data sources were obtained directly at the research location through written questions using questionnaires or verbal using interview method with community members. The research came from writings or documents that discussed research topics. The authors used several methods to collect, including observation, documentation, and interviews. The research instrument was the author himself because the author played an important role in completing the research by acting as executor, planner, analyzing, and interpreting data so that the reporting of research results. As an instrument in the research, certainly, the author cannot be separated from the instruments used in this study, such as a list of questions asked by the interviewer to the interviewee. The data was processed by editing the data, classifying the data, and arranging it systematically. While the data were analyzed through non-statistical analysis, data presentation, and drawing conclusions.

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<sup>15</sup>Ahkam Jayadi, "MEMBUKA TABIR KESADARAN HUKUM," *Jurisprudentie : Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum* 4, no. 2 (December 2017): 11-23, <https://doi.org/10.24252/JURISPRUDENTIE.V4I2.4041>.

## RESULT AND DISCUSSION

### 1. The Fulfillment of Prisoner's Rights to Healthcare at the Class IIB Detention Center in North Sinjai concerning Government Regulation No. 32 of 1999 Article 16 Paragraph 1

Health is indeed a human right. It is considered as one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in the Five Principles, and the 1945 Constitution of the Republic of Indonesia.

Human Rights are rights derived from the dignity inherent in humans. These rights are fundamental, which is necessary so that humans can develop according to their abilities, aspirations, and dignity. Human Rights are also considered universal, which belong to all human beings without distinction based on nation, race, religion, or gender.<sup>16</sup>

Health plays an important role in increasing people's standard of living, so all countries try to provide the best possible health services. This health service means any effort carried out alone or jointly in an organization to maintain and improve health, prevent and treat disease, and restore the health of individuals, groups, or communities.<sup>18</sup>

Likewise, the health of convicts as citizens has the same rights as stated in Article 14 paragraph (1) letter (d) of Law No. 12 of 1995 concerning Corrections, which states that convicts have the right to receive proper health and food services.<sup>4</sup>

Regarding healthcare, the Fourth Amendment of the 1945 Constitution of the Republic of Indonesia, Article 34 Paragraph (3) mandates that "The state is responsible for the provision of proper health service facilities and public service facilities". The phrase "proper" can be interpreted that the state is not only responsible for providing health facilities with certain standards considered appropriate.<sup>17</sup>

The Class IIB Detention Center of North Sinjai has a capacity of 100 occupants and currently has 222 occupants (on Tuesday, September 6, 2022), at 13:30. Every day the number of prisoners can decrease and increase (Dynamic). The detention center is located on Teuku Umar Street No. 3, Binigere Village, North Sinjai District, Sinjai Regency.

The author conducted research in the form of interviews with prisoners and employees of the Class IIB Detention Center related to the fulfillment of the rights of health services to prisoners. Based on the results of interviews, the researcher found that the number of prisoners at the Class IIB Detention Center in Sinjai Regency had now over

<sup>16</sup>Miriam Budiardjo, <sup>56</sup>*Dasar-Dasar Ilmu Politik* (Gramedia pustaka utama, 2003).

<sup>17</sup>F. S. (FHERIYAL) ISRIAWATY, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Masyarakat Berdasarkan Undang Undang Dasar Negara Republik Indonesia Tahun 1945," *Legal Opinion* 3, no. 2 (2015): 145729.



capacity, with health workers consisting of 2 nurses, and 1 health counselor who guarded in Class II B Rutan Health Services Unit.<sup>18</sup>

Based on the Regulation of the Minister of Law and Human Rights Number M.HH.02.um.06.04 of 2011 concerning Guidelines for Health Services within the Ministry of Law and Human Rights, health workers should consist of medical personnel, nurses, lab analysts, pharmacist assistants, nutrition, sanitarian and psychologists whose numbers are adjusted to the conditions. However, medical personnel at the Class IIB Detention Center in Sinjai consisted of only 2 nurses and 1 health counselor. While Lab Analysts, Assistant Pharmacists, Associate Experts in Nutrition, Sanitarian, and Psychologist were not available. By looking at the conditions at the Class IIB Detention Center in Sinjai, the number of occupants was 222, and not in accordance with the Regulation of the Minister of Law and Human Rights Number M.HH.02.UM.06.04 of 2011 concerning Guidelines for Health Services within the Ministry of Law and Human Rights.

The excess capacity of capacity should not lead to the lack of fulfilling the right to get health services for prisoners, such as a lack of health workers. If the excess capacity cannot be resolved, health workers should be fulfilled the right to get health services for prisoners plus in accordance with the excess capacity in prisons.

In connection with the facilities and infrastructure found at the Class IIB Detention Center in North Sinjai, the room needs are provided with a health service/ polyclinic unit, so that prisoners can prevent their diseases, treatment, and health recovery. In addition, the available clinics are public service clinics, which are small buildings that have public service rooms, waiting rooms, and administrative rooms.<sup>19</sup>

Regarding the facilities and infrastructure at the Class IIB Detention Center in North Sinjai, it includes polyclinic infrastructure, such as water installations, air installations, evacuation facilities during riots, information systems in the form of computers, and waste installations. The infrastructure for the Health Services Unit must meet service standards, security, and safety as well as health services. The infrastructure must also be maintained and functioning properly.

Medical and non-medical devices available at the Class IIB Detention Center Health Service Unit in Sinjai are the examination of vital signs, minor sets, oxygen tubes, beds, blood tubes, tables, and chairs. According to the author, the medical and non-medical

<sup>18</sup>Wajidi Hasbi, "Kasubsi Pelayanan Tahanan Rumah Tahanan Kelas IIB Kabupaten Sinjai. Wawancara . Sinjai, 6 September 2022," 2022.

<sup>19</sup>Diana Panja Kini, "Petugas Kesehatan Tahanan Rumah Tahanan Kelas IIB Kabupaten Sinjai. Wawancara . Sinjai, 7 September 2022," 2022.

equipment contained in the service unit is incomplete, because the medical and non-medical devices should be minimal for health services for doctors who should have a detention center health service clinic, namely tables, ambulances, chairs, emergency, beds checking, hammer reflexes, lighting, sterile gloves, tensimeter, magnifying glass, stethoscope, ENT kit, thermometer, catheter/ mask, scales, wheelchairs, oxygen tubes, kugh (walking sticks), gloves, collar neck Waslap, Sterilizer, Sneellen Chart, Ischihara Chart, Minor Surgery and Physiotherapy Equipment (including infrared stretching tool).

Related to the completeness of incomplete facilities and infrastructure at the Class IIB Detention Center Health Service Unit, such as the absence of drug space, dental clinics, and laboratory rooms, prisoners' samples that must undergo blood, urine, or impurities under the Class IIB Detention Center of Sinjai to Balangnipa Sinjai Public Center.

Based on health service guidelines, a correctional institution should also provide drugs, laboratories, and dental clinics. For dental clinics, it should be provided because it is related to dental health services. The laboratory space should also be provided for urine/bloody blood examination, BTA/Sputum, Narcotics Test, and Rapid Test HIV.

Regarding health checks at the Class IIB Detention Center, the health check is carried out every day, but only for prisoners who have complaints. This health check is only done individually, not in mass. Thus, only prisoners who have complaints can go to polyclinics available in prisons. Polyclinic/Health Services Unit at the Class IIB Detention Center in Sinjai is open until the working hours are completed, where the health workers who are on guard in the polyclinic are 2 nurses and 1 health counselor. When an emergency occurs and no one is guarding the clinic, the prison employee will contact the health worker to come to prison.

Regarding routine health checks conducted at the Class IIB Detention Center Unit in Sinjai, 30 respondents said 1-7 times health checks were carried out in one year.

According to the Republic of Indonesia Government Regulation Number 32 of 1999 concerning Terms and Procedures for Implementing the Rights of Corrections, in Article 16 paragraph (1), it is regulated that "Health Examination is carried out at least 1 (one) time 1 (one) month and recorded on a health card." Health checking standards carried out in the Health Services Unit at the Class II B Detention Center in Sinjai were carried out on prisoners only 1-7 times a year.

The process of health checks or forms of health services at the Class II B Sinjai detention center consists of counseling (promotive), prevention (preventive), treatment (curative), and rehabilitation. Counseling methods are carried out individually or as a whole through health seminars and counseling through posters. With health counseling,

disease prevention efforts can be done such as the formation of health cadres, and the implementation of CT for infectious diseases.

The Class IIB Detention Center in Sinjai is still less effective. According to the health service guidelines, the initial screening should be carried out consisting of physical examinations, laboratories, x-rays (based on indications), periodic and continuous physical examination, as well as drug examinations and HIV according to indications that the inmates avoid diseases that could endanger their health.

Furthermore, the provision of curative health services or treatment at the Class II B Detention Center in Sinjai is conducted in accordance with the symptoms and medical history of the prisoners' diseases. If the examination by a general practitioner at the prison polyclinic indicates that the symptoms experienced by the inmates can still be addressed, the treatment is administered either through inpatient care at the polyclinic within the detention center or by providing appropriate medication for the specific disease they are suffering from.

The disease suffered by prisoners must be referred to the Public Health Center which has worked with detention centers such as the Balangnipa Public Health Center in Sinjai Regency. However, if the Public Health Center cannot handle it, then it is referred to the government sick forms, namely the Sinjai General Hospital. This referral process must go through prison procedures and rules. If a general practitioner has stated that prisoners cannot be treated in prison because of the inspection or drugs, the doctor made a recommendation for treatment outside the detention center. Then the Head of the Security Team examined the recommendation letter from the doctor and then made a permit for treatment outside the detention center. After examining and giving the initials of the treatment permit to the detention center, the head of the state detention center will examine the permit out of the detention center. If he agrees, then he will sign a permit out of the detention center, then the general affairs staff will give the letter number and stamp on the prisoner's permit for treatment out of the prison. However, if the Head of the State Detention Center refuses, then the permit to exit the detention center will be returned to the Head of Team Security.

The rehabilitative health service efforts or social rehabilitation carried out at the Class II B Detention Center in Sinjai is the therapeutic community method, which is a community therapy based on love and family spirit. This therapy is carried out in the

way fellow prisoners gather and conduct discussions or counseling about their problems, in that way, they can get a solution.<sup>20</sup>

According to Ms. Marliah Ninghsih, the drug supply in the detention center is only sufficient. The common diseases experienced by prisoners include ulcers, itching, allergies, fever, and symptoms of tuberculosis. However, based on an interview conducted on September 7, 2022, with one of the prisoners at the Class IIB Detention Center in Sinjai regarding the drug supply and provision, he revealed that there is a shortage of medication. Sometimes, the treatment provided to prisoners who complain of pain does not fully address their needs or align with their specific diseases, resulting in a delay in their recovery process.

Efforts to overcome and prevent infectious diseases, such as Covid-19, at the Class IIB Detention Center in Sinjai include conducting a rapid test/swab test on newly built residents, counseling about the dangers of Covid-19, the formation of peer support groups (fellow groups of sufferers), and Mass screening as an effort to overcome its prevention. In addition, efforts to prevent infectious diseases include counseling about Covid-19, HIV/AIDS, condoms, and bleaching services (such as cleaning a razor). Prisoners who suffer from tuberculosis will be taken to the Sinjai General Hospital.<sup>21</sup>

According to the author, efforts to overcome and prevent infectious diseases carried out by officers are still less effective. This is due to the lack of health workers in the Class II B Sinjai detention center, so there are no special doctors who handle prisoners with infectious diseases. Whereas prisoners who suffer from chronic diseases, and special diseases such as Covid-19, TB, HIV/AIDS, and other infectious diseases must get intensive health services, and be full of seriousness.

## **2. Hifdz al-Nafs Analysis of Prisoners' Healthcare at the Class IIB Penitentiary in North Sinjai**

Islam, as a religion of peace, is very concerned about the details of every human benefit. Among the five elements of sharia maqashid described, *Hifdz al-Nafs* or maintain the existence of the human soul into an interesting knot to be used as glasses in seeing phenomena or cases in terms of health services. Al-Qur'an has stated that killing an innocent human life is the same as killing all humanity, even whoever revives and maintains human existence, as well as maintaining the lives of all human beings.

From the perspective of the constitution in Indonesia related to health services, it has been explicitly confirmed in the 1945 Constitution after the Amendment and Special

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<sup>20</sup>Hasbi, "Kasubsi Pelayanan Tahanan Rumah Tahanan Kelas IIB Kabupaten Sinjai. Wawancara . Sinjai, 6 September 2022."

<sup>21</sup>Kini, "Petugas Kesehatan Tahanan Rumah Tahanan Kelas IIB Kabupaten Sinjai. Wawancara . Sinjai, 7 September 2022."



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Laws governing problems in the health sector, namely in Article 28H paragraph (1). It states that "Everyone has the right to live prosperous physically and mentally, reside, and get a good and healthy environment and is entitled to get health services."

To realize the mandate of the article, several laws were made specifically related to health services including Health Law No. 36 of 2009 as a renewal of the previous law that was considered outdated. There are also special laws about hospitals, doctors and dentists, and so on. Related to health services, Islam seems to have long given a signal for humanity to be glorified, and treated as well as possible. Allah SWT has firmly declared in Q.S al-Isra/17: 70:

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*"Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures."*<sup>22</sup>

After describing His gift while in the sea and on land, both obedient and ungodly, this verse explains the cause of the gift. Humans are unique creatures who have honor in their position as humans - whether they are religious or not. By swearing while establishing His statement with the word (قَدْ) qad, this verse states that we, God swore that in fact, we have glorified Adam's children and grandchildren with a good body shape, the ability to speak and think, and knowledge and we also give them freedom sort and choose.

And we transport them on the mainland and in the ocean with various means of transport that we created and subdue them, or that we are making them made. Thus, they can explore the earth and space that we all created for them. We also give them fortune from good according to their needs, more delicious and beneficial for the physical growth and development of their souls and we give them more about creatures from whom we have created with perfect advantages.<sup>23</sup>

We greet them from animals, with reason and creativity, so that they become responsible creatures. We are more obedient to them over angels because of human obedience through the struggle against demons and lust, while obedience to angels without challenges. The word *karramna* comes from the root of words composed of *kaf*, *ra'*, and *mim*, which contain the meaning of fame and privilege according to the object. There are differences between *Fadhhalna* and *Karramna*. The first is taken from the word *fadhlyakni* strengths. This refers to the "addition" of what had previously been owned equally by others. For example, sustenance is guaranteed and awarded by God to all beings. The advantage of sustenance to someone makes him have a fortune exceeding

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1 RI Kementerian Agama, "Al-Quran Dan Terjemahnya," Jakarta: PT. Hati Emas, 2014.

23 M Quraish Shihab and Tafsir Al-Misbah, *Pesan, Kesan Dan Keserasian Al-Qur'an*, Jakarta: Lentera Hati, 2002.

the fortune he gives to others, and this results in a difference between one person and another in the field of sustenance.

As for the second as mentioned above, *Karramna* is a gift in the form of inner features. In the context of this verse, God bestowed on humans of privileges that He did not give to others, and this makes humans noble and must be respected as human beings. His mercy for all humans was born together with his birth as a human without distinguishing one person from another. This reconciled the Prophet Muhammad with him.

Standing in honor of the body of a Jew who became a friend of the Prophet at that time, may God back him up and give him peace. Asking about his attitude towards him, the Prophet, SAW, replied: "Isn't the dead human?" The above verse does not explain the form of honor, glory, and privilege that God bestowed on Adam's children and grandchildren. This seems to imply that honor is a lot and not specifically for a certain race or generation, and is also not based on religion or descendants, but is given to all Adam's descendants. Thus, it is achieved by individuals and other individuals. What the author mentioned above is related to the contents of this goal. In QS. Al-Furqan/25: 44:

*"Or do you think that most of them listen or understand?1 They are only like cattle – no, more than that, they are astray from the 'Right' Way!"<sup>24</sup>*

This verse is one basis regarding the Islamic view of human rights. Humans - anyone - must be respected for their rights without differences. All have the right to life, the right to speak and issue opinions, the right to religion, the right to obtain a job and association, etc. which is covered by the Declaration of human rights.

However, it should be noted that the intended rights are the grace of God as understood from the word *karramna*/we glorify, and thus these rights must not conflict with God's rights and must always be in the corridor of His religious guidance.<sup>25</sup>

"Really, we have glorified the Bani Adam" as an indicator as well as a message for humans themselves to respect the human side of the Human Kudrat as God's creation that is created the most perfect compared to other creatures.<sup>26</sup> The breeding order must be realized according to Shari's will by paying attention to the goals and wisdom contained in various aspects of the existing commands and prohibitions.

*Hifdz al-Nafs* is one of the important points of the five aspects of sharia *maqashid*. This means maintaining human existence in all things worthy to be combined with the text of Article 28H paragraph (1) which mandates health services. *Hifdz al-Nafs* in health services

<sup>24</sup>Kementerian Agama, "Al-Quran Dan Terjemahnya."

<sup>25</sup>Shihab and Al-Misbah, *Pesan, Kesan Dan Keserasian Al-Qur'an*.

<sup>26</sup>Fathurrahman, "HIFZ AL NAFS DALAM PELAYANAN KESEHATAN: ANALISIS PERSPEKTIF MAQASID AL SHARI'AH DAN HUKUM POSITIF" (UIN Sunan Ampel Surabaya, 2016).

means giving good and serious attention and serious treatment from people who have expertise in the medical field to patients who need medical assistance because of the disease they suffered by paying attention to the human side of the patient.

If we pay attention to the contents of the text from Article 28H, in terms of text is commensurate with the mission of *Hifdz al-Nafs* in *Maqashid Syariah*. However, in terms of empirical, the implementation of *Hifdz al-Nafs* in the case of health services has not shown perfect evidence. As the intention of some Sharia Maqashid's rules that the author has explained, Islam through Sharia Maqashid prioritizes the problem of the benefit of *Mafsadat*. This also applies in terms of health services which means that every person or institution that has an obligation and authority to provide health services must look more at the needs of patients according to the level of emergency experienced and provide optimal treatment according to the doctor's ability level.

<sup>17</sup> Therefore, the author can conclude that *Hifdz al-Nafs* has not been implemented well in the field of health services in Indonesia, both by the government and by institutions that are health facilities according to the law.

Regarding the theory of *Hifdz al-Nafs* at the Detention Center in North Sinjai, the author concludes that the rights of health services in the detention center are still less effective. This is because there are still many rights of prisoners who have not been fulfilled in terms of several services according to the Republic of Indonesia Government Regulation Number 32 of 1999 concerning Terms and Procedures for Implementing the Rights of Corrections. Article 16 paragraph (1) is regulated that "a health check is carried out at least 1 (one) time 1 (one) month and recorded on a health card".

Health checking standards carried out in the Health Services Unit at the Class IIB Detention Center in Sinjai were only 1-7 times a year. In terms of eating at the Class IIB Detention Center in North Sinjai, it is very considered and inmates usually also manage their own food, where the food is given 3 times a day in seeing the ingredients of eating there, there are many gardens made by prisoners.

<sup>47</sup> *Hifdz al-Nafs* in Healthcare Perspective of Sharia and Positive Law in Indonesia. Maqashid Sharia, as a major frame of Islamic teachings, focuses on the side of the problem and *mafsadat* of a problem, including health services. From the perspective of *Sharia Maqashid*, the implementation of *Hifdz al-Nafs* has not reached the perfect point, It can be analyzed through several rules in the *maqashid al-Shari'ah* which have been described above.

## CONCLUSION

In terms of fulfilling prisoner's rights to healthcare at the Class IIB Detention Center in Sinjai Regency, it can be concluded that the provision of healthcare to prisoners, including promotion, prevention, cure, and rehabilitation, has not been implemented optimally. This is indicated by health services for prisoners not yet carried out in a scale, integrated, and continuous manner, which should meet the standard of healthcare standards set for detention centers, at least equivalent to those in the community. Considering the contents of Article 28H in terms of textual interpretation, it aligns with the mission of Hifdz al-Nafs in Sharia Maqashid. However, in terms of empirical, the implementation of Hifdz al-Nafs in terms of healthcare has not shown perfect evidence. As the author has explained, Islam, through Sharia Maqashid, prioritizes addressing the benefit and harms (Mafsadat). This also applies in terms of health services, which means that every person or institution responsible for providing health services should prioritize patients' needs based on the emergency experienced and provide optimal treatment according to the doctor's ability level.

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