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Ta'zir (Punishment) at Islamic Boarding Schools; Between Tradition, Conception, and Shadows of Human Rights Violations

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Abstract

This article examines the practice of Ta'zir, a form of discretionary punishment, within the context of Islamic boarding schools. Ta'zir holds a significant place in Islamic jurisprudence, allowing authorities to determine penalties for offenses not explicitly addressed in religious texts. However, the application of Ta'zir has raised concerns, particularly in the context of Islamic boarding schools, where traditional practices intersect with modern notions of human rights. Drawing upon a multi-disciplinary approach, this study delves into the historical, cultural, and religious aspects of Ta'zir, elucidating its evolution from its inception to its current manifestations within Islamic boarding schools. By analyzing primary sources, legal texts, and case studies, the article underscores the diverse interpretations of Ta'zir and its malleability in adapting to contemporary circumstances. Furthermore, the article critically evaluates the potential conflicts between the traditional practice of Ta'zir and international human rights standards. It examines instances where Ta'zir punishments might be perceived as infringing upon human dignity, bodily integrity, and freedom from cruel, inhuman, or degrading treatment. The study also explores the role of Islamic boarding schools in shaping and perpetuating these practices, considering the interplay between religious education, discipline, and the protection of children's rights. The findings of this research reveal a complex landscape where tradition clashes with modern sensibilities. The article advocates for a nuanced dialogue between religious scholars, educators, and human rights advocates to strike a balance between preserving cultural heritage and upholding universally recognized human rights. It highlights the importance of reinterpretation and contextualization of Ta'zir in line with the principles of justice, mercy, and human dignity as emphasized within Islamic teachings. In conclusion, this article contributes to the ongoing discourse on the compatibility of traditional Islamic practices with contemporary human rights frameworks. It calls for a thoughtful reevaluation of Ta'zir within Islamic boarding schools, promoting an inclusive approach that safeguards both religious heritage and fundamental human rights.

Keywords: Human Rights, Punishment (*Tazir*), Boarding Schools, Conception,

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Introduction

The pondok pesantren education system has become one of the most essential institutions in Muslim societies worldwide.¹ Pesantren not only functions as a place of religious education, but also as a place to maintain and continue the Islamic tradition.² In the context of pesantren education, the concept of ta'zir (discretionary punishment) has a significant role in maintaining discipline and order.³ Ta'zir refers to the punishment Islamic authorities give for offenses not explicitly regulated in religious texts. However, the practice of ta'zir in the context of pesantren education has also raised various debates and controversies. When traditional Islamic traditions and values intersect with modern human rights norms, questions arise about how ta'zir conforms to internationally recognized human rights standards.⁴ The practice of ta'zir in pesantren often faces criticism regarding violating human rights, such as human dignity, physical integrity, and protection from cruel treatment.

Therefore, this study examines three crucial issues in the educational process in Islamic boarding schools. The first issue is the tradition of punishment (ta'zīr), the second is the conception of punishment (ta'zīr), and the third is the issue of punishment (ta'zīr) associated with human rights violations (from now on abbreviated as human rights). This research is vital for several reasons. First, some time ago, Islamic boarding schools were in the spotlight and the public with the death of one of the students in several Islamic boarding schools. The most encouraging case is the death of one of the students from the Gontor boarding school, Ponorogo.⁵ Second, it must be recognized that the pesantren tradition still applies punishment (ta'zīr) in the context of its learning process. Punishment (ta'zīr) in pesantren is generally for education (li'tadiib).⁶ Third, punishment (ta'zīr) implemented in Islamic boarding schools can potentially cause human rights violations. In other words, boarding schools that apply punishment (ta'zīr) can potentially be charged with human rights laws.⁷

The first issue concerns the tradition of punishment (ta'zīr) in Islamic boarding schools. As the oldest educational institution in Indonesia, Islamic boarding schools have unique values in their daily lives. Both in the context of the educational process, the relationship between students-teachers/kiai, and other values. These traditions until now continue to be maintained and are often institutionalized in a system.⁸ Moreover, traditions that are considered reasonable by the pesantren

¹ Azyumardi Azra, "Genealogy of Indonesian Islamic Education: Roles in the Modernization of Muslim Society," *Heritage of Nusantara: International Journal of Religious Literature and Heritage* 4, no. 1 (July 8, 2015): 85–114, <https://doi.org/10.31291/hn.v4i1.63>.

² Didin Nurul Rosidin, "Pesantren and Modernity in Indonesia : Ma'had Aly of Kuningan," *Hunafa : Jurnal Studia Islamika* 9, no. 2 (2012): 219–44.

³ M. Sugeng Sholehuddin et al., "Ta'zir At Islamic Boarding Schools: Insight From Islamic Education Values," *Emergency Remote Teaching in Quarantine Time. Views of Primary Education Teachers* 6 7 (2021): 70.

⁴ Hanafiah Hanafiah, Arin Tentrem Mawati, and Opan Arifudin, "Implementation Of Character Strengthening In Boarding School Students," *International Journal of Education and Digital Learning (IJEDL)* 1, no. 2 (December 31, 2022): 49–54, <https://doi.org/10.47353/ijedl.v1i2.10>.

⁵ Zainab Ompu Jainah et al., "Kajian Pasal 351-356 KUHP Mengenai Tindak Pidana Penganiayaan Dalam Kasus Penganiayaan Oleh Anak Dibawah Umur Di Pondok Pesantren Gontor," *Jurnal Ilmu Hukum Prima* 5, no. 2 (December 30, 2022): 100–108.

⁶ Siti Mumun Muniroh, "Character Education for Children in Islamic Boarding Schools: Psychological Perspective," *Jurnal Penelitian*, October 25, 2021, 145–58, <https://doi.org/10.28918/jupe.v18i2.4442>.

⁷ "The Application of Shari'ah Principles of Ta'zir in Malaysian Common Law: A Maqasid-Based Proposal | ICR Journal," September 29, 2020, <https://icrjournal.org/index.php/icr/article/view/283>.

⁸Zamakhsyari Dhofier, "The Pesantren Tradition: A Study of the Role of the Kyai in the Maintenance of the Traditional Ideology of Islam in Java" (Ph.D., Ann Arbor, United States, 1980), <https://www.proquest.com/docview/2606943780/abstract/EF8595772D2843D9PQ/30>.

will be maintained. The jargon "*al Muhafadu 'alal Qadiimi Shālib wal Akhdu bil Jadiidil Ashlah*" is felt in this context. Although actually, the pesantren is more about "*al Muhafadu 'alal Qadiim*" than "*al Jaddu bil Jadiidi Ashlah*." One of the things that is maintained, maintained, and even institutionalized is the tradition of punishment (ta'zīr) itself.

The tradition of punishment (ta'zīr) in Islamic boarding schools was originally not something written, let alone institutionalized. In the context of the oldest boarding schools in Indonesia, both traditional and modern boarding schools, the tradition of punishment (ta'zīr), in the opinion of researchers, was born along with the culture that developed in the boarding school.⁹ Because the kiai in the past, when building pesantren, never thought of formalistic rules. Kiai used to build pesantren with the nature of mukhlīs and with total submission to Allah SWT. The process of everything goes naturally. In developing the boarding school, the Kiai did not develop a strategic plan (rastra), vision-mission, or other written concepts, as modern educational institutions did.

If there are students who violate; usually Kiai himself will punish the students. Generally, by looking very unique. For example, the case of a student violation at Pondok Pesantren Lirboyo, Kota, Kediri, around 1960. The story is that some students go outside the boarding school every night to see art performances in the city. At that time it was still quiet and there was no electricity. Early in the morning, the santri usually returned to the boarding school. KH Marzuki Dahlan, the caretaker of the Lirboyo Islamic Boarding School at that time, knew about the student's offense after studying the movements of the offending students, KH. Marzuki Dahlan finally put the writing under the Mosque drum, because the offending students usually sleep under the drum when returning to the hut. Surprisingly, the student who returned late at night after a night out from the hut was shocked when he woke up. He found an inscription on a piece of paper attached to the end of the Beduk. The writing reads "*Kula mboten remen santri ingken mijos*". After that incident, the offending student finally stopped and regretted his actions.¹⁰

The second issue relates to the concept of punishment (ta'zīr) in Islamic boarding schools. The concept of punishment (ta'zīr) is an integral part of the educational process in pesantren. In general, in Islamic boarding schools, the term ta'zīr is used to refer to punishment. The choice of the word ta'zīr to refer to punishment in pesantren is more because pesantren teach more fiqhiyah aspects. Ta'zīr itself is a fiqh term. However, the implementation of punishment (ta'zīr) in pesantren, besides using fiqh standards, also cannot be separated from the elements of Sufism. In some Islamic boarding schools, when santri violates, which is considered severe violations, the administrators who will impose a punishment (ta'zīr) first visit the masyāikh. After getting the blessing and direction from the masyāikh, only the administrator appointed as the punisher will take the punishment (ta'zīr) step.¹¹

The third issue concerns implementing punishment (ta'zīr) in Islamic boarding schools from a human rights perspective. In the context of the Indonesian nation, child protection is the main thing concerning human rights. The 1945 Constitution, as Indonesia's highest hierarchy of legislation, has mentioned protection from violence. Article 28B paragraph (2).¹² Furthermore,

⁹ Peter L. Berger, *Langit Suci: Agama Sebagai Realitas Sosial* (Jakarta: LP3ES, 1999).

¹⁰ Kadi Kadi, "Kesinambungan Dan Perubahan Tradisi Salaf Dalam Sistem Pendidikan Pondok Pesantren Lirboyo Kediri," *Islamica: Jurnal Studi Keislaman* 12, no. 1 (September 4, 2017): 117–41, <https://doi.org/10.15642/islamica.2017.12.1.22-46>.

¹¹ Dihyatur Masqon, "Dynamic of Pondok Pesantren as Indigenous Islamic Education Centre In Indonesia," *Tsaqafah* 7, no. 1 (2011): 155–68.

¹² Susani Triwahyuningsih, "Perlindungan Dan Penegakan Hak Asasi Manusia (HAM) Di Indonesia," *Legal Standing: Jurnal Ilmu Hukum* 2, no. 2 (October 23, 2018): 113–21, <https://doi.org/10.24269/ls.v2i2.1242>.

Law No. 39/1999 on Human Rights states: Article 58 paragraph (1).¹³ Article 28 B Paragraph (2) states that every child has the right to protection from violence and discrimination. It is also supported in article 58, paragraph (1), which states that "every child has the right to protection from all forms of physical or mental violence ..." These two articles are explicitly about child protection, including in this case in educational institutions. More specifically, it also means that every child/student studying at the boarding school must receive protection from all forms of physical or mental violence while under the supervision of the Ustadz or Kiai.

It is understood from the articles above that in educational institutions, including boarding schools, santri children must receive protection from acts of violence. Problems will arise when students violate the rules. How is the authority of the teacher/ustadz/kiai to carry out physical punishment (ta'zīr) aimed at educating (li'atdiib)? What limits can punishment (ta'zīr) be implemented in Islamic educational institutions? What kind of punishment can be considered "violence," both physical and mental? Furthermore, there are many other questions.

This research aims to provide a starting point on the discourse of punishment (ta'zīr) that runs even as a modified tradition. Even punishment (ta'zīr) is modified and institutionalized into a 'law' product in Islamic boarding schools. In fact, in some pesantren, the institutionalized punishment (ta'zīr) is considered 'sacred' because it is the result of the istikharah of the founder of the pesantren. However, for the issues raised in this research to be focused and directed, this research is limited to several main things. In the concept of punishment (ta'zīr) in the context of the discussion in this research, researchers examine a lot of authoritative sources used in Islamic boarding schools (yellow Islamic classic books) but more on fiqhiyah. Because talking about the concept of punishment (ta'zīr) will discuss the form of punishment (ta'zīr), limits, and other fiqhiyah rules, in other words, researchers do not examine this aspect of the concept of punishment (ta'zīr) from the psychological side as an application.

Regarding punishment (ta'zīr) concerning human rights, researchers limit human rights as a perspective. It means that the portraits of the implementation of punishment (ta'zīr) that have occurred in Islamic boarding schools (researchers have taken a lot from other people's research) will be seen from the perspective of human rights. So a theoretical discussion will be formed between field research related to implementing punishment (ta'zīr) in Islamic boarding schools from the perspective of human rights itself.

The debate around human rights violations is becoming increasingly complex in the context of the relationship between pesantren and ta'zir. Along with developing a global society that is increasingly aware of individual rights, it is necessary to conduct an in-depth evaluation of ta'zir practices in pesantren to remain relevant in a modern context that respects human rights. Against this background, this scientific article aims to contribute to the ongoing discussion on harmonizing Islamic traditions and human rights standards in pesantren education. Through this research, a deeper understanding of how ta'zir can be re-understood and contextualized to follow religious values and globally recognized human rights principles will emerge.

¹³ Intan Pelangi, "Perlindungan Terhadap Para Pencari Suaka Berdasarkan Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 4, no. 1 (2017): 143–60.

Method

This study uses a literature research method with a qualitative approach to investigate the concept of ta'zir in the context of pesantren education.¹⁴ Reference collection was done through careful selection of relevant primary and secondary sources. Primary references include the book of *Ihya' Ulum al-Din*,¹⁵ *Tarbiyat al-Aulad fil Islam*,¹⁶ and *Nihayat al-Zain*.¹⁷ Meanwhile, secondary references were obtained through online journals that are relevant to the research topic. After collecting the references, data analysis was conducted using the following steps:

1. Symbolic Analysis: This stage involves reading the text symbolically to identify texts related to ta'zir in various sources. The researcher conducted a search through various sections such as chapters, sub-chapters, and sub-chapters related to punishment (ta'zir).¹⁸
2. Semantic Analysis: The next stage is semantic analysis after the texts related to ta'zir are identified through symbolic analysis. Semantic analysis was conducted to deepen it more substantially. The researcher sorted out the texts related to ta'zir and re-transcribed them directly or indirectly.¹⁹

This research method allows researchers to better understand the concept of ta'zir in the context of pesantren. With a qualitative approach and a more focused analysis, this research can provide a more accurate insight into the views and practices of ta'zir in the pesantren education environment.

Result and Discussion

Tradition of Punishment (Ta'zir) in Islamic Boarding Schools

Fiqh books, such as Sheikh Nawawi al Bantani, define ta'zir as a punishment for committing a sin for which there is no *hadd* and expiation according to the general level.²⁰ In line with Sheikh Nawawi al Bantani, Imam Mawardi also defines punishment (ta'zir) with a relatively similar understanding.²¹ This definition also seems to be quoted by Abdullah Nasih Ulwan, a popular educational figure whose work "*Tarbiyatul Aulaad Fi al Islaam*" is used as a reference for research on education.²² From this fiqh definition, it means that punishment (ta'zir) is a punishment given to someone for committing an offense (maksiat) where the offense is still under had. In the context of education in pesantren, it means that punishment (ta'zir) is a punishment given to students who violate boarding school regulations, and these violations are still related to normative actions, not significant crimes. Because if the violation is already related to major crimes, in general, the pesantren will expel the party who committed the offense.

The tradition of punishment (ta'zir) practiced in old Islamic boarding schools, in general, has been going on for a long time. Because pesantren consider punishment (ta'zir) as an inseparable part of education. Some research on punishment (ta'zir) in pesantren, such as research on Lailatus

¹⁴ Mestika Zed, *Metode Penelitian Kepustakaan* (Yayasan Pustaka Obor Indonesia, 2008).

¹⁵ Che Zarrina Saari, "Al-Ghazalis Views on the Heart, the Spirit and the Soul: A Comparison Between *Ihya' Ulum Al-Din* and *Al-Risalah Al-Laduniyyah*," *Jurnal Usuluddin* 7 (June 30, 1998): 193–208.

¹⁶ Muhammad Nasih Ulwan, *Tarbiyatul Aulad Fi al Islam* (Beirut: Darus Salam, n.d.).

¹⁷ Muhammad Nawawi, *Nihayat Al-Zain Fi Irsad al-Mubtadin* (Surabaya: Haromain, n.d.).

¹⁸ Hikmah Hikmah, "Analisis Wacana; Interaksionisme Simbolik," *El-Hikam* 10, no. 1 (2017): 134–63.

¹⁹ Abdul Chaer and Liliana Muliastuti, "Hakikat Semantik," *Rineka Cipta*, 2009.

²⁰ Nawawi, *Nihayat Al-Zain Fi Irsad al-Mubtadin*.

²¹ Muhammad al Mawardi, *Ahkamul Sultaniyah* (Beirut: Dar al Fikr, n.d.), 488.

²² Muhammad Nasih Ulwan, *Tarbiyatul Aulaad Fi al Islaam* (Beirut: Darus Salam, n.d.), 756.

Saidah²³, Abdurahman²⁴, Zaenal Arifin and Moh. Turmudi.²⁵ Explicitly punishment (ta'zīr) in pesantren had become a kind of culture but never mentioned when the tradition of punishment (ta'zīr) existed. However, as mentioned earlier, the researcher believes that the tradition of punishment (ta'zīr) in Islamic boarding schools goes hand in hand with the history of establishing the Islamic boarding school itself. It is supported by the fact that Islamic boarding schools consider punishment (ta'zīr) as an inseparable part of education.

The tradition of punishment (ta'zīr) that applies in Islamic boarding schools differs from one another, both the form of punishment (ta'zīr) and its implementation. The forms of punishment (ta'zīr) that are usually carried out are reprimand and advice, educational punishment and administrative punishment, social punishment, material punishment, and physical punishment.²⁶ In addition, there are also punishments in the form of baldness, push-ups, and other physical punishments.²⁷ These punishments depend on the culture of the pesantren.

Conception of Punishment (Ta'zīr) in Islamic Boarding Schools

Islamic boarding schools, as a place of *tafaqub fiddin* with yellowclassical books as the primary source of learning, of course, in the conception of punishment (ta'zīr), also always refer to the source that is considered the most authoritative. In this case, it seems that the conception of punishment (ta'zīr) in Islamic boarding schools refers to the book *al-Tasrī' al-Janāni Fi al-Islām* by Ali al Jumuah, *Quratul Ain* by Ismail Zain, *Ihya ulumuddin Kaya al Ghazali* and *Adabul alim wal mutalim* by KH. Hasyim Asyari. Ali al Jumuah, for example, argues that there are three components of the student being subject to punishment (ta'zīr). First, the student commits a mistake with a Shari'ah order, secondly commits a mistake prohibiting Shari'ah, and third a mistake related to *mashlahal-'ammah*.²⁸ This shows that the punishment (ta'zīr) carried out must indeed be a mistake by the santri, not based on revenge or emotion alone.

Furthermore, al Ghazali also recommends that punishment (ta'zīr) must be in accordance with social conditions, there is a maximum limit, and most importantly if the provision of punishment (ta'zīr) "light category" has caused a deterrent effect, then the provision of punishment (ta'zīr) "heavy category" should not be done. Imam al Ghazali's view shows that punishment (ta'zīr) in the sense of giving physical punishment must be really careful and it is the last resort after several efforts have been made. In fact, al Ghazali still gave the message "in accordance with social conditions". This means that if the tradition does not apply corporal punishment, then corporal punishment should not be carried out. The statement of al Ghazali is reinforced by other Shafiyah scholars who said that it is permissible to carry out punishment (ta'zīr) based on goodness. If, according to the muazzar (teacher), the implementation of ta'zīr brings maslahah, then the

²³ Lailatus Saidah and Departemen Antropologi, "Tradisi Ta'ziran Di Pondok Pesantren Raudlatul Muta'allimin Desa Datinawong, Kecamatan Babat, Kabupaten Lamongan-Jawa Timur" (AntroUnaidotNet, 2016), 321.

²⁴ Abdurahman Abdurahman, "Budaya Disiplin Dan Ta'zir Santri Di Pondok Pesantren," *Al-Riyayah: Jurnal Kependidikan* 10, no. 1 (April 2, 2018): 29–57, <https://doi.org/10.47945/al-riwayah.v10i1.143>.

²⁵ Zaenal Arifin and Moh. Turmudi, "Character of Education in Pesantren Perspective," *Jurnal Pemikiran Keislaman* 30, no. 2 (July 8, 2019): 335–48, <https://doi.org/10.33367/tribakti.v30i2.823>.

²⁶ Muhammad Anas Ma'arif and Ari Kartiko, "Fenomenologi Hukuman di Pesantren : Analisis Tata Tertib Santri Pondok Pesantren Daruttaqwa Gresik," *Nadwa: Jurnal Pendidikan Islam* 12, no. 1 (June 22, 2018): 188–200, <https://doi.org/10.21580/nw.2018.12.1.1862>.

²⁷ Asep Rahmatullah, Segaf Baharun, and Akhmad Fauzi Hamzah, "تطبيقات التعزير في المدرسة الهدابية للمبتدئين للمعهد الإسلامي" "ليربيو و علاقتها حول إدراك مواقف العنف تجاه الطلاب" *Jurnal Pendidikan Islam* 11, no. 2 (November 6, 2021): 21–34, <https://doi.org/10.38073/jpi.v11i2.616>.

²⁸ Ali al Jumuah, *Tasyri' al-Janāni Fi al-Islaām* (Beirut: Dār al Fikr, tt), 135.

implementation of punishment (ta'zīr) may be carried out.²⁹ This also means that the consideration of harm becomes the main thing in the decision-making process of punishment (ta'zīr).

If indeed punishment (ta'zīr) must be given in the form of beating, the scholars gave conditions, namely: said that the punishment should not use harmful tools, does not feel deterrent if it is just scary, and gives a deterrent effect. In addition, other scholars also said that if the punishment (ta'zīr) is in the form of beating, then it is required: it has become a tradition of punishment, not painful (ghairu mubarrah), not on the face or vital parts of the body, not to break the bones.³⁰ The scholars' explanations make it very clear that even though Islamic boarding schools apply punishment (ta'zīr) in their educational process, they must be careful because some rules and limits must be implemented. This information also indicates that implementing punishment in Islamic boarding schools concerning educational processes has Sharia legitimacy.

Implementation of Punishment (Ta'zīr) from the Human Rights Perspective

As mentioned at the beginning of this paper, child protection is very important and is related to human rights. In Article 28B Paragraph (2),³¹ Article 58 of Law No. 39 on Human Rights (1),³² article of 66 (1).³³ Even MPR Decree No. XVII/MP/1998 on Human Rights after detailing several human rights, which among others, Article 37 states that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive laws are human rights that cannot be reduced under any circumstances (non-derogable), furthermore in Article 40 determines that vulnerable groups of society, such as children and people experiencing poverty, are entitled to more protection of their human rights.³⁴ The above articles in the Constitution, Human Rights Law and MPR Decree explicitly mention the protection of children from violence. This means that violence in any form should not occur.

Children's rights in their position as students about human rights are stated in various laws. First of all, Law No. 20/2003 on the National Education System, which states in Article 3 that national education functions to develop the ability and shape the character and civilization of a dignified nation in order to educate the nation's life, aims to develop the potential of students to become human beings who believe and are devoted to God Almighty, have a noble character, are healthy, knowledgeable, capable, creative, independent, and become democratic and responsible citizens.³⁵ To achieve these functions and objectives, one of the principles of education, according to Article 4 paragraph (1) of the National Education System Law, is that education is organized in

²⁹ Ismail Zain, *Quratal 'Ain* (Surabaya: Maktabah al Hidayah, n.d.), 96.

³⁰ al Jumuah, *Tasyri' al-Janani Fi al-Islam*, 69.

³¹ Ahmad Hambali, "Penyelesaian Pelanggaran Berat HAM Masa Lalu sebagai Pelaksanaan Pasal 28I ayat (2) UUD NRI Tahun 1945," *Hasanuddin Law Review* 1, no. 2 (August 26, 2015): 266–81, <https://doi.org/10.20956/halrev.v1i2.83>.

³² Belinda Gunawan, "Analisis Yuridis Pendidikan Jarak Jauh Dalam Perspektif Hak Asasi Manusia Dalam Undang-Undang Dasar NRI 1945 Pada Masa Pandemi Covid-19 Di Indonesia," *Jurnal HAM* 11, no. 3 (2020): 387–404.

³³ Tengku Azhari et al., "Analisis Yuridis Terhadap Putusan Mahkamah Konstitusi No.16/PUUXVIII/2020 Dalam Perkara Pengajuan Yudicial Review Pasal 66 Ayat 1 Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undangundang Nomor 30 Tahun 2004 Tentang Jabatan Notaris," *Wahana Inovasi : Jurnal Penelitian dan Pengabdian Masyarakat UISU* 11, no. 1 (July 5, 2022): 127–38.

³⁴ Ateng Sudibyo and Eki Kiyamudin, "Perlindungan Hukum Terhadap Guru Dalam Melaksanakan Tugas Keprofesionalannya Dikaitkan Dengan Punishment Dalam Mendisiplinkan Siswa," *Journal Presumption of Law* 1, no. 2 (October 31, 2019), <https://doi.org/10.31949/jpl.v1i2.89>.

³⁵ Eni Irawati and Weppy Susetyo, "Implementasi Undang-Undang Nomor 20 Tahun 2003 Tentang Sistem Pendidikan Nasional Di Blitar," *Jurnal Supremasi*, March 10, 2017, 3–3, <https://doi.org/10.35457/supremasi.v7i1.374>.

a democratic and equitable, and non-discriminatory manner by upholding human rights, religious values, cultural values, and national diversity. This principle of organizing education mentions human rights as something that needs to be upheld. This article confirms that human rights must also guide the national education system.³⁶

Therefore, not a few also strictly prohibit the use of punishment (ta'zīr) with violence in Islamic boarding schools because it has the potential to violate human rights.³⁷ However, the question here is what form of punishment (ta'zīr) violence is considered to violate human rights? To what extent is the teacher's authority in relation to the process of educating children allowed? What impact occurs if educational institutions are not allowed to use physical punishment (ta'zīr)? What is the mentality of students when they violate the rules and are only reprimanded? Of course, these studies need to continue.

Only a few things are taken into consideration why punishment (ta'zīr) in Islamic boarding schools can still be carried out even though there is a Human Rights Law that could potentially ensnare the teacher. In other words, implementing punishment (ta'zīr) has several things to consider. First, the pesantren community must realize that punishment (ta'zīr) is only a method of various methods concerning education. Second, if carrying out punishment (ta'zīr) is necessary, then mashlahat considerations are always prioritized. Third, punishment (ta'zīr) must be carried out with small things first, such as reprimands, unflattering facial expressions, and other verbals. If this reprimand has been effective, it is not permissible to carry out harsh punishment (ta'zīr) again. Fourth, if physical punishment (ta'zīr) is required, then it should not be to the point of injuring; it should not be on the face and physical parts that are harmful (vital) and should not be harmful (ghairu mubararah).³⁸

Suppose Islamic boarding schools apply punishment (ta'zīr) with a foundation that consistently refers to scholars in the yellow book. In that case, there will be no human rights violations, as often alleged. Because the state also still provides opportunities for teachers to carry out disciplinary actions in the form of the use of physical punishment (ta'zīr) as in the Supreme Court (MA) of the Republic of Indonesia, which until now still recognizes the right to educate/discipline in the form of the teacher's right to give physical punishment (ta'zīr). Of course, any physical punishment (ta'zīr) must also adjust to social conditions and rules made by scholars for educational and benefit purposes.

Discussion

All large Islamic boarding schools spread across the country still consider that punishment (ta'zīr) in Islamic boarding schools is an integral part of education. Because punishment (ta'zīr) also gets legitimacy from the Qur'an and al-Hadith.³⁹ Although not the core of education, punishment (ta'zīr) is essential to the educational process. Moreover, boarding schools with

³⁶ Nurchaliq Majid, "Analisis Kriminologi Terhadap Kekerasan Anak Di Lingkungan Pesantren Perspektif Hukum Islam," *Jurnal Risalah Addariyah: Studi Ilmu-Ilmu Keislaman, Pendidikan & Sosial Kemasyarakatan* 8, no. 1 (October 2, 2022), <http://e-journal.staisddimangkoso.ac.id/index.php/risalah-addariyah/article/view/19>.

³⁷ Laila Ngindana Zulfa, "PESANTREN DAN PELANGGARAN HAM (Studi Analisa Tentang Ta'zir Dalam Pesantren Salafy)," *Jurnal PROGRESS: Wahana Kreativitas Dan Intelektualitas* 8, no. 1 (2020): 120.

³⁸ Muhammad Anas Ma'arif, "Hukuman (Punishment) Dalam Perspektif Pendidikan Di Pesantren," *Ta'allum: Jurnal Pendidikan Islam* 5, no. 1 (June 1, 2017): 1–20, <https://doi.org/10.21274/taalum.2017.5.1.1-20>.

³⁹ Julianda Ady Saputra, Muh Nur Rochim Maksum, and Mohamad Ali, "The Theory of Punishment According to the Qur'an and Its Implications for Education" (International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022), Atlantis Press, 2022), 319–26, <https://doi.org/10.2991/assehr.k.220708.040>.

thousands of students with various characters, cultural backgrounds, traditional backgrounds, and family backgrounds with different purposes for boarding; some are aimed at seeking knowledge, some are because their parents at home are unable to take care of them because they are naughty, etc., so they are handed over to boarding schools. The hope is that after returning from the pesantren, they can become good children according to their parent's expectations.

Some educational institutions and parents still consider punishment (ta'zīr) an integral part of education. Such as research conducted by Jitka Jakešová and Silvie Slezáková,⁴⁰ Stan Emil Costică,⁴¹ Jun Qian.⁴² Of course, some studies come to negative conclusions about punishment (ta'zīr) applied to children, such as Nyan Linn's study,⁴³ Deepak Kumar,⁴⁴ and Andrea Baroncelli.⁴⁵ The differences between researchers in the world are natural. There are many factors that influence research. However, in the Indonesian context, many parents still entrust their children's education to Islamic boarding schools. Although times have evolved and educational options are increasingly varied, many parents still consider boarding schools to be an adequate place to shape their children's character and religion.⁴⁶

Thus pesantren plays a vital role in educating the younger generation. Pesantren has a comprehensive approach to education, covering various aspects of life, from religious understanding, prayer worship, and formal education, to skills and character development. Thousands of students living in pesantren are given a holistic education with the hope that they will become individuals who are noble, knowledgeable, and contribute positively to society.⁴⁷ However, as is the case anywhere, not all santri in pesantren are always obedient to the rules set. They are individuals who have diverse backgrounds, beliefs, and views. In the face of this variation, pesantren must find effective ways to maintain discipline and shape character, including using punishment (ta'zīr) as an educational tool. It is important to note that applying punishment (ta'zīr) in pesantren is not unilateral or sudden. It is part of a complex and planned educational process.⁴⁸

⁴⁰ Jitka Jakešová and Silvie Slezáková, "Rewards and Punishments in the Education of Preschool Children," *Procedia - Social and Behavioral Sciences*, Future Academy Multidisciplinary Conference "ICEEPSY & CPSYC & icPSIRS & BE-ci" 13–17 October 2015 Istanbul, 217 (February 5, 2016): 322–28, <https://doi.org/10.1016/j.sbspro.2016.02.095>.

⁴¹ Stan Emil Costică, "About Rules, Punishments and Rewards in Education," *Procedia - Social and Behavioral Sciences*, International Conference on Education & Educational Psychology 2013 (ICEEPSY 2013), 112 (February 7, 2014): 1160–66, <https://doi.org/10.1016/j.sbspro.2014.01.1280>.

⁴² Yuanru Wang et al., "The Relationship between Effort-Reward Imbalance for Learning and Academic Burnout in Junior High School: A Moderated Mediation Model," *Behavioral Sciences* 13, no. 1 (2023), <https://doi.org/10.3390/bs13010028>.

⁴³ Nyan Linn, Kraiwuth Kallawicha, and Montakarn Chuemchit, "The Use of Corporal Punishment against Children in Myanmar: An Analysis of Data from the 2015–2016 Myanmar Demographic and Health Survey," *Child Abuse & Neglect* 131 (September 1, 2022): 105692, <https://doi.org/10.1016/j.chab.2022.105692>.

⁴⁴ Deepak Kumar et al., "Corporal Punishment and Praise in Indian Schools: Caste-Based Heterogeneity on Children's Cognitive Skills," *International Journal of Educational Development* 89 (March 1, 2022): 102554, <https://doi.org/10.1016/j.ijedudev.2022.102554>.

⁴⁵ Andrea Baroncelli, Carolina Facci, and Enrica Ciucci, "Sensitivity to Teachers' Punishment and Social Affiliation with Teachers: Unique and Interactive Effects to Callous-Unemotional Traits among Preadolescents," *Journal of Research in Personality* 99 (August 1, 2022): 104247, <https://doi.org/10.1016/j.jrp.2022.104247>.

⁴⁶ Syaiful Syaiful, "Preferensi Orang Tua Dalam Memilih Pondok Pesantren Sebagai Tempat Pendidikan Bagi Anak," *Jurnal Konseling Pendidikan Islam* 1, no. 2 (2020): 118–28.

⁴⁷ Ahmad Shofiyuddin Ichsan, "Konstruksi Pendidikan Relasi Kiai Dan Santri Di Pondok Pesantren Lintang Songo Piyungan Yogyakarta: (Sebuah Pendekatan Multidisipliner)," *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 11, no. 1 (September 20, 2019): 199–221, <https://doi.org/10.30739/darussalam.v11i1.458>.

⁴⁸ Ummi Sa'adah, "Hukuman Dan Implikasinya Terhadap Pembentukan Kedisiplinan Santri Di Pondok Pesantren," *PEDAGOGIK: Jurnal Pendidikan* 4, no. 1 (2017).

Before applying punishment, pesantren usually have to take a series of actions, such as giving warnings, giving advice, and providing opportunities for santri to improve their behavior. Understanding the offense's background and context is also required before punishment is imposed.⁴⁹ With this approach, the application of punishment (ta'zīr) in pesantren upholds educational values that understand individual complexity and provide opportunities for improvement. Thus, applying punishment (ta'zīr) in pesantren is not merely a spontaneous action but is the last step in an educational process to form good character and awareness of responsibility. It reflects pesantren's commitment to creating a holistic educational environment, which teaches religious knowledge and helps santri become responsible and ethical individuals.

Several considerations support the application of punishment (ta'zīr) in pesantren, despite the potential conflict with the Human Rights Law that may lead to legal consequences for the teachers involved. In other words, pesantren consider several vital factors in carrying out punishment (ta'zīr). First, the pesantren community needs to realize that punishment (ta'zīr) is just one of the various methods involved in the educational process. Second, if punishment (ta'zīr) must be applied, then consideration of the benefit must always be a priority. Third, applying punishment (ta'zīr) starts with lighter measures, such as reprimands, inappropriate facial expressions, and other verbal communication. If these measures are compelling enough, harsher measures should not be continued. Fourth, in cases where physical action is required as punishment (ta'zīr), it must be guaranteed that the action does not result in injury, especially to the face and vital body parts, and does not cause serious harm (*ghairu mubararakah*).

Suppose the boarding school consistently implements punishment (ta'zīr) based on the guidelines outlined by the ulama in the yellow book. The possibility of often-raised human rights violations will not be realized in that case. In the legal context in Indonesia, the space for teachers or educators to carry out disciplinary actions through physical punishment (ta'zīr) is still accepted, according to the recognition of the Supreme Court of the Republic of Indonesia.⁵⁰ However, it is essential to remember that the application of punishment (ta'zīr) in this physical form must always be adjusted to the existing social conditions and the guidelines produced by scholars in various yellow books that are accepted among pesantren.

Physical punishment (ta'zīr), like other forms of discipline, must be regulated and directed wisely. Teachers' use of physical punishment should be done responsibly, considering sensitive points such as not injuring, avoiding vital areas such as the face, and avoiding severe risks. The importance of applying punishment (ta'zīr) wisely lies in understanding that it aims to create a safe and educational environment that respects every individual's human rights. In this view, punishment (ta'zīr) has a role in shaping character and ethics and directing santri towards benefit and positive development. Therefore, the quality of guidance from scholars and a good understanding from educators are essential to ensure that the application of punishment (ta'zīr) remains by religious values, human rights principles, and holistic educational goals.

⁴⁹ Said Alwi and Aina Salsabila, "Pengaruh Reward Dan Punishment Terhadap Motivasi Siswa Dalam Muhadatsah Yaumiyah Di Pondok Pesantren Modern Tgk. Chiek Oemar Diyan Aceh Besar," *LISANUNA: Jurnal Ilmu Bahasa Arab dan Pembelajarannya* 9, no. 1 (April 11, 2020): 60–77, <https://doi.org/10.22373/ls.v9i1.6733>.

⁵⁰ Rusmilawati Windari, "Penggunaan Hukum Disiplin (Corporal Punishment) Pada Anak Di Lingkungan Sekolah Dalam Perspektif Hukum Pidana Di Indonesia," *Jurnal Hukum PRIORIS* 4, no. 3 (2015): 303–28, <https://doi.org/10.25105/prio.v4i3.388>.

Conclusion

The Finding of this study is that implementing punishment (ta'zīr) in Islamic boarding schools is an element that is inevitably involved in the educational process. Punishment (ta'zīr) has an essential place in the pesantren education tradition. However, it must be recognized that other alternatives regarding the use of punishment (ta'zīr) in physical form must be considered wisely. The principles that need to be followed in the application of punishment (ta'zīr) in Islamic boarding schools include: first, punishment (ta'zīr) should start with lighter measures such as reprimands; second, if physical punishment (ta'zīr) is necessary, limits must be respected, including not being applied to the face, vital body areas, or seriously harmful actions (ghairu mubarrarah). It is important to remember that the concept of human rights has a supervisory role so that the application of punishment (ta'zīr) remains in line with human values.

Nonetheless, in Indonesia, the Supreme Court still recognizes that teachers have the authority to administer physical punishment (ta'zīr) as part of an educational action. In order to maintain a balance between traditional values and human rights principles, pesantren need to continue to consider and reflect on the educational approach taken. This effort needs to be done by considering the guidelines of scholars, applicable laws, and educational goals that focus on the benefit and character development of santri. Thus, implementing punishment (ta'zīr) in Islamic boarding schools can remain relevant and provide optimal benefits in shaping the character and progress of students.

The findings of this research reveal a complex landscape where tradition clashes with modern sensibilities. The article advocates for a nuanced dialogue between religious scholars, educators, and human rights advocates to strike a balance between preserving cultural heritage and upholding universally recognized human rights. It highlights the importance of reinterpretation and contextualization of Ta'zir in line with the principles of justice, mercy, and human dignity as emphasized within Islamic teachings. In conclusion, this article contributes to the ongoing discourse on the compatibility of traditional Islamic practices with contemporary human rights frameworks. It calls for a thoughtful reevaluation of Ta'zir within Islamic boarding schools, promoting an inclusive approach that safeguards both religious heritage and fundamental human rights.

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