

## **Criminal Law Policy Against Perpetrators of Hoarding of Basic Commodities from the Perspective of Indonesian Legislation and Islamic Law**

**Padri Zelvian<sup>1</sup> Ruslan Abd Gani<sup>2</sup> Rahmi Hidayati<sup>3</sup> Abdul Halim<sup>4</sup> Ahmad Syukri<sup>5</sup>**

Pascasarjana UIN Sulthan Thaha Saifuddin, Jambi<sup>1</sup>

Fakultas Syariah, UIN Sulthan Thaha Saifuddin, Jambi<sup>2,3,5</sup>

Fakultas Ushuluddin dan Studi Agama, UIN Sulthan Thaha Saifuddin, Jambi<sup>4</sup>

Email: [abdulhalim@uinjambi.ac.id](mailto:abdulhalim@uinjambi.ac.id)<sup>4</sup> [ahmadsyukriss@uinjambi.ac.id](mailto:ahmadsyukriss@uinjambi.ac.id)<sup>5</sup>

### **Abstract**

This study examines the legal policy regarding criminal sanctions against perpetrators of staple food hoarding in Indonesia, viewed from the perspective of national legislation and Islamic law. Staple food hoarding—defined as the act of storing goods in unreasonable quantities to create artificial scarcity and profit from price surges—is a serious threat to public welfare and market stability. In the Indonesian legal context, hoarding is regulated under Law Number 7 of 2014 on Trade, the Criminal Code (KUHP), and supporting regulations, which impose criminal sanctions in the form of imprisonment and substantial fines. However, the enforcement of these sanctions faces practical challenges in terms of monitoring, proving intent, and preventing repeat violations. From the Islamic legal perspective, hoarding, known as ihtikār, is explicitly prohibited as it violates the principles of justice and public interest (maslahah). The Prophet Muhammad condemned hoarding, and Islamic jurisprudence empowers authorities to impose discretionary punishments (ta'zīr) to prevent social harm. The findings indicate a significant convergence between the objectives of national and Islamic law in protecting economic justice and consumer rights, though their normative foundations and enforcement mechanisms differ. This paper concludes that an integrative approach—combining formal criminal law enforcement with the ethical and moral values of Islam—can enhance the effectiveness of anti-hoarding policies. Recommendations include stronger market supervision, public education on ethical business conduct, collaboration with religious institutions, and consistent law enforcement.

**Keywords:** Hoarding, Staple Food, Criminal Law, Islamic Law, Policy, Trade, Ihtikār

### **Abstrak**

Penelitian ini mengkaji kebijakan hukum pidana terhadap pelaku penimbunan bahan pokok dalam perspektif hukum positif di Indonesia dan hukum Islam. Penimbunan bahan pokok—yakni tindakan menyimpan barang kebutuhan pokok dalam jumlah besar secara tidak wajar dengan tujuan memperoleh keuntungan saat terjadi kelangkaan—merupakan bentuk praktik ekonomi yang merugikan masyarakat luas serta dapat mengganggu stabilitas pasar dan ketersediaan barang. Secara normatif, Indonesia telah mengatur penimbunan dalam berbagai regulasi, terutama Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan, KUHP, dan peraturan pelaksanaannya, yang menetapkan sanksi pidana berupa penjara dan denda hingga miliaran rupiah. Namun, efektivitas implementasinya masih menghadapi tantangan, seperti lemahnya pengawasan distribusi dan kesulitan pembuktian unsur kesengajaan. Sementara itu, dalam hukum Islam, praktik penimbunan dikenal dengan istilah ihtikār, dan dilarang keras karena bertentangan dengan prinsip keadilan dan kemaslahatan umum. Hukum Islam tidak menetapkan sanksi tetap, tetapi memberikan wewenang kepada negara untuk menjatuhkan sanksi ta'zīr sesuai tingkat pelanggaran. Studi ini menemukan bahwa baik hukum nasional maupun hukum Islam memiliki titik temu dalam tujuan perlindungan terhadap masyarakat dari praktik penimbunan. Penelitian ini merekomendasikan pendekatan integratif, yaitu penggabungan antara penegakan hukum pidana dan penguatan nilai-nilai etika Islam, demi meningkatkan efektivitas pencegahan penimbunan bahan pokok secara sistematis dan berkelanjutan.

**Kata Kunci:** Penimbunan, Bahan Pokok, Hukum Pidana, Hukum Islam, Kebijakan, Ihtikār



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## INTRODUCTION

Food is one of the primary (main) needs of humans, so a shortage of it will cause suffering. This can be seen in news reports broadcast on various mass media, where a lack of food (food and drink) results in suffering, such as malnutrition in children. Furthermore, without food or drink for a certain period of time, humans will die.<sup>1</sup> General Provisions Article 1 number 1 of Law Number 18 of 2012 concerning Food defines that: Food is anything that comes from biological sources of agricultural, plantation, forestry, fishery, livestock, aquatic and water products, whether processed or unprocessed, which is intended as food or drink for human consumption, including food additives, food raw materials and other materials used in the process of preparing, processing and/or making food or drink..<sup>2</sup> Article 27 paragraph (2) of the 1945 Constitution states that every citizen has the right to a life that is decent for humanity..<sup>3</sup> To obtain a decent life for humanity, it is necessary to provide healthy and nutritious food in sufficient quantities and of good quality..<sup>4</sup> Food shortages can occur for various reasons. One is natural, such as crop failure due to adverse weather conditions such as drought or flooding. Drought also makes it difficult to obtain drinking water. Other causes are not natural but rather human-caused. At certain times, such as nearing holidays or during events expected to lead to food shortages, traders may hoard food, reducing its circulation and increasing its price..<sup>5</sup> This hoarding is deeply disturbing to the Indonesian public, with some unscrupulous individuals exploiting the situation for personal gain. The hoarding perpetrated by these individuals results in losses for the public and consumers due to price manipulation. Consumer rights that are neglected as a result of hoarding include the right to choose goods and/or services and to obtain them according to the exchange rate, conditions, and guarantees promised. Consumers are faced with difficult choices, as the availability of essential goods, especially basic necessities, in the market becomes limited, and if they wish to obtain them, they must pay relatively higher prices..<sup>6</sup> So far, regulations governing the hoarding of staple foods have been deemed weak. The government also appears to have difficulty identifying violations in this regard. As evidence, there is currently no regulation specifically prohibiting or even criminalizing the hoarding of food commodities. The last regulation concerning general hoarding of goods is the Republic of Indonesia Emergency Law No. 17 of 1951 concerning Hoarding of Goods..<sup>7</sup>

Law Number 7 of 2014 concerning Trade states regarding hoarding as follows: Article 25 paragraph (1) The Government and Regional Governments control the availability of basic necessities and/or important goods throughout the territory of the Unitary State of the Republic of Indonesia in sufficient quantities, good quality, and affordable prices; Article 26 paragraph (1) In certain conditions that may disrupt national trade activities, the Government is obliged to guarantee the supply and price stabilization of basic necessities and important goods; Article 29 paragraph (1) Business actors are prohibited from storing basic necessities and/or important goods in certain quantities and for certain periods when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods; Article 29 paragraph (2) Business actors may store basic necessities and/or important goods in certain quantities and for certain periods if they are used as raw materials or auxiliary materials in the production process or as a stock of goods to be distributed. Article 107 states that business actors who store

<sup>1</sup>Lisi Natalia Wawolangi, "Penimbunan Pangan Pokok Sebagai Tindak Pidana Menurut Pasal 133 Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan", *Lex Crimen*, Vol. VII/No. 1, (Jan-Mar 2018), 112.

<sup>2</sup>Pasal 1 angka 1 Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan

<sup>3</sup>Undang-Undang Dasar 1945

<sup>4</sup>Ibrahim Nainggolan, "Tanggung Jawab Pidana Bagi Pelaku Usaha Yang Menggunakan Bahan Tambahan Pangan (BTP) Berbahaya Pada Produk Pangan", *Jurnal EduTech*, Vol. 4 No. 2, (September 2018), 81.

<sup>5</sup>Lisi Natalia Wawolangi, "Penimbunan Pangan", 112.

<sup>6</sup>La Ode Yogi Pradana, dkk., "Perlindungan Hukum Bagi Konsumen Terhadap Perbuatan Penimbunan Minyak Goreng", *Jurnal Lex Suprema*, Volume 4 Nomor II, (September 2022), 1112.

<sup>7</sup><http://www.hukumonline.com/penimbun-sembako-diusulkan-dihukum-berat>, diakses pada tanggal 16 Februari 2022

basic necessities and/or important goods in certain quantities and at certain times when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of goods trade as referred to in Article 29 paragraph (1) shall be punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 50,000,000,000.00 (fifty billion rupiah).<sup>8</sup>

Then Presidential Regulation Number 71 of 2015 concerning the Determination and Storage of Basic Necessities and Important Goods explains the stockpiling of basic necessities as follows: Article 1 paragraph (1) Basic Necessities are goods that concern the livelihoods of many people with a high scale of fulfillment of needs and are a supporting factor for community welfare; Article 1 paragraph (3) Availability of Goods is the level of sufficiency of Basic Necessities and Important Goods according to the level of consumption required by the community in a certain time, with good quality and affordable prices throughout the territory of the Unitary State of the Republic of Indonesia; Article 5 paragraph (1) In certain conditions that can disrupt national trade activities, the Central Government is obliged to guarantee the supply and stabilization of prices of Basic Necessities and Important Goods; Article 11 paragraph (1) In the event of a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods, Basic Necessities and/or Important Goods are prohibited from being stored in warehouses in certain quantities and for a certain time; Article 11 paragraph (2) A certain amount as referred to in paragraph (1) is an amount beyond reasonable limits that exceeds the stock or current supply of goods, to meet the market for a maximum period of 3 (three) months, based on average sales records per month under normal conditions; and Article 11 paragraph (3) Business Actors may store Basic Necessities and/or Important Goods in certain quantities and for a certain period of time if they are used as raw materials or auxiliary materials in the production process or as a stock of Goods to be distributed.<sup>9</sup>

Hoarding of goods or in Arabic known as ihtikâr, is a quite serious economic problem, not least in Islam, which normatively predicts this, but also in non-Islam. Before discussing this further, it would be good if we reflect again on the content of the Letter of Yusuf starting from verses 46 to 48 as follows: "(After the servant met Yusuf he exclaimed): "Yusuf, O very trustworthy person, explain to us about the seven fat cows which were eaten by the seven thin cows and the seven green ears (of wheat) and the other (seven) dry ones so that I can return to those people, so that they know it." Yusuf said: "So that you plant for seven years (for a long time) as usual; So whatever you reap you should leave the grain except a little for you to eat. Then after that will come seven very difficult years, which will use up everything you saved to face them (difficult years), except for the little (seed of wheat) you saved."<sup>10</sup> The content of the verses above shows how much the Prophet Yusuf was very concerned about what would happen to the Egyptian people if they did not immediately take preventive action to prevent this disaster.<sup>11</sup> Therefore, he advised them to plant as much wheat as possible and set aside a large portion to be used as a national food reserve. This action, according to the Prophet Joseph, was very appropriate, so that the misery that would befall them would be avoided. The government must act swiftly to address the hoarding of essential goods. One way to do this is by taking preventative measures, namely balancing production with demand. Increased public consumption to meet needs and long-term supplies is not in line with the availability of goods needed by the public. Goods needed by the public can be obtained in markets through a buying and selling process. Increased public consumption results in necessities becoming scarce,

<sup>8</sup>Undang-Undang (UU) Nomor 7 Tahun 2014 Tentang Perdagangan

<sup>9</sup>Peraturan Presiden Nomor 71 tahun 2015 tentang Penetapan dan Penyimpanan Barang Kebutuhan Pokok dan Barang Penting

<sup>10</sup>Q.S. Yusuf: 46-48.

<sup>11</sup>Yusuf's considerations were based on the request of the Egyptian King al-Rayyah al-Wahid (his prime minister was named Al-Aziz) to interpret his dream. See Al-Syawkânî, *Fath al-Qadir al-Jami' Baina Fannai al-Riwayah wa al-Dirayah min 'Ilmi al-Tafsir*. Beirut: Dar al-Fikr, 1425 H-1426 H/2005 M), 30-31.

quickly running out, or even disappearing. The scarcity of necessities in markets causes public panic. Public panic in obtaining necessities affects the buying and selling process in markets.<sup>12</sup>

The latest cases of large-scale food hoarding in Indonesia include the National Police's Food Task Force (Satgas) handling 15 cases of food hoarding from January 1 to March 27, 2020. The Central Java Regional Police (Polda Jateng) had two cases, the Central Kalimantan Regional Police (Polda Kalteng) had two cases, the South Kalimantan Regional Police (Polda Kalsel) had seven cases, and the West Sulawesi Regional Police had four cases. The Food Task Force is enforcing the law against parties manipulating the stock and price of packaged cooking oil, Minyakita. This effort was made following numerous complaints from the public regarding the scarcity of Minyakita. Alleged hoarding has just been uncovered in Central Java Province. The Food Task Force of the Directorate of Special Criminal Investigation of the Central Java Regional Police took action against a shop suspected of hoarding and selling Minyakita above the highest retail price (HET). In this law enforcement, the Central Java Regional Police Food Task Force confiscated 17.5 tons of Minyakita totaling 19,548 liters from the TJ Shop in the Weleri Market Complex, Weleri District, Kendal Regency, Central Java.<sup>13</sup> As a result, the prices of goods needed by the public in the markets have fluctuated, or prices have risen. We can see this rapid increase in demand for goods, coupled with a shortage of goods available in the markets. Price increases have occurred frequently and repeatedly every year.<sup>14</sup> Islam is a complete and universal teaching, regulating all human activities so that in carrying out their activities in accordance with the rules established by Islam, Islam teaches about the concept of seeking halal and good sustenance related to product goods, services and the process of its activities. The meaning of *thayyib* has an understanding that includes all good values to become added value in order to obtain Allah's pleasure, therefore, every business actor, especially Muslims, is obliged to understand the concept of business in Islam (*amanah*, *tabligh* and *fathanak*) by prioritizing fairness, transparency, and consumer and service oriented, explaining their activities.

Therefore, due to the incident carried out by the perpetrators of hoarding who committed this act of fraud, they committed unfair actions against other people and harmed the state while carrying out their work, as Allah says in QS Al-Hajj verse 25. This verse was initially a threat to the Quraish infidels. They did not want to believe the call brought by the apostle, in fact they obstructed it. They ruled in Makkah society. Meanwhile, the Grand Mosque as the center of worship is located there. They once prevented the Prophet Muhammad from worshiping Allah, clean from other intentions.<sup>15</sup> Hoarding is considered an injustice and falls within the threat of this verse. This kind of action shows the existence of *ananiyah* (self-interested) motivation, without regard for the disaster and harm that will befall many people, as long as he can make a large profit in that way. This harm will be even more severe if the trader is the only person selling the goods, or there has been an agreement among a group of traders selling the goods to hide or hoard them, so that the public's needs increase, then they raise prices arbitrarily. Practices like this are a capitalist system that rests on two main pillars: namely Usury and Hoarding.<sup>16</sup> Increased public demand and limited stocks are used as an excuse for raising prices. Therefore, the government, through the Ministry of Trade and its staff (related agencies), must be vigilant (not suspicious) about hoarding staple foods. In this regard, Law Number 7 of 2014 concerning Trade has been challenged in the Constitutional Court. Through a press release, Jakarta, October 31, 2022 – The Constitutional Court (MK) will soon hold a ruling hearing for case number 51/PUU-XX/2022 concerning the Judicial Review of Law Number 7 of 2014

<sup>12</sup><http://www.pendidikanekonomi.com/cara-menangani-kenaikan-harga-barang.html>, diakses tanggal 16 Februari 2022

<sup>13</sup><https://www.republika.id/posts/37369/satgas-pangan-jateng-tindak-penimbun-minyakita>, 09 Feb 2023, 17:20 WIB

<sup>14</sup>Mulyana, "Penegakan Hukum, 1062.

<sup>15</sup>Abdul Malik Abdul Karim Amrullah, *Tafsir Al-Azhar* (Jakarta: Pustaka Nasional, 2003), Jilid 6, 4686-4687.

<sup>16</sup>Yusuf Al-Qardhawi, *Fatwa-Fatwa Kontemporer* (Jakarta: Gema Insani Press, 1995), Jilid 2, 615-616.



concerning Trade (the Trade Law), Monday (31/10) at 10:00 a.m. WIB. On the same occasion, the Constitutional Court will pronounce its ruling on twelve other cases. The petition was filed by Muhammad Hasan Basri. In his application, the applicant describes himself as a lalapan/pecel lele trader who questions the following norm: Article 29 Paragraph (1) of Law 7/2014 Business actors are prohibited from storing basic necessities and/or important goods in certain quantities and for certain periods when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods.

The applicant stated his belief that the shortage of basic commodities and the high prices for months were partly due to hoarding by businesses and their distribution networks. According to the applicant, this is inseparable from the constitutional framework governing the storage of basic necessities. The applicant also believes that the scarcity and high price of oil are related to weak law enforcement regarding these matters. The Chief of the Indonesian National Police has issued a Decree Number MAK/01/VIII/2015 concerning the Prohibition of Hoarding or Storing Food and Staple Goods. There are two main things that traders are prohibited from doing, namely first, business actors are prohibited from hoarding or storing more than the maximum amount permitted or beyond reasonable limits, with the intention of making a profit so that staple goods become expensive or soar; and second, business actors are also prohibited from storing staple goods or important goods in certain amounts or for a certain time during times of scarcity of goods, price fluctuations, or obstacles to trade traffic.<sup>17</sup> As the front line, the public plays a significant role in overseeing the mechanisms that occur in the field, in the event of violations. This is in accordance with Law Number 7 of 2014 concerning Trade, which regulates hoarding of basic necessities and/or essential goods. Goods themselves are defined as any object, whether tangible or intangible, movable or immovable, whether consumable or non-consumable, that can be traded, used, utilized, or utilized by consumers or business actors. Goods in this law are broadly defined, governing goods as a whole. This also includes basic necessities and essential goods, each of which has its own specific category.

In line with the need for legal certainty regarding the criminal act of hoarding basic necessities and/or essential goods, Indonesia has enacted Law Number 7 of 2014 concerning Trade. This law is the latest law to replace the *Bedriifsreg-lementerings Ordonnantie 1934*, *Staatsblad 1938 Number 86*, which have been revoked and declared invalid. The provisions of this law will not be able to be implemented properly without the participation of the community as a preventive action against the crime of hoarding.<sup>18</sup> However, in its implementation, law enforcement against the criminal act of hoarding or storing staple foods in excess of the maximum amount as referred to in Article 53 of the Food Law and Article 29 paragraph (1) of the Trade Law cannot be implemented effectively because: First, if referring to Article 53 of the Food Law, food business actors are prohibited from hoarding or storing staple foods exceeding the maximum amount referred to in Article 52. As for the provisions of Article 52, in terms of food trade, the Government determines the mechanisms, procedures, and maximum amount of staple food storage by food business actors which are regulated by or based on Government Regulations. Then further delegation of Article 52 paragraph (2) of the Food Law is regulated in Article 64, Article 65, Article 66, and Article 67 of Government Regulation Number 17 of 2015 concerning Food Security (PP Food Security), which in essence regulates the mechanisms, procedures, and maximum amount of staple food storage by business actors regulated by the ministerial regulations that organize government affairs in the trade sector. However, on the other hand, the regulation of the Minister of Trade in question has not yet been issued, so that

<sup>17</sup>Zaqui Rahman, "Problematika Penegakan Hukum Terhadap Pelaku Tindak Pidana Penimbunan Pangan", *Jurnal RechtsVinding Online*, 2015, hlm. 2.

<sup>18</sup>Yusep Mulyana, *Op. Cit.*, hlm. 1062-1063.

the implementation of Article 53 in conjunction with Article 133 of the Food Law cannot yet be carried out because further regulations regarding the technical mechanisms, procedures and maximum amount of staple food storage by actors which should be regulated in the technical regulation of the Minister of Trade have not yet been issued.

Second, the provisions of Article 29 (1) of the Trade Law state that business actors are prohibited from storing basic necessities and/or important goods in certain quantities and for certain periods when there is a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods. Then Article 29 (3) of the Trade Law mandates further provisions regarding the storage of basic necessities and/or important goods to be regulated by or based on a presidential regulation, which is implemented in Presidential Regulation Number 71 of 2015 concerning the Determination and Storage of Basic Necessities and Important Goods (Presidential Decree on Determination and Storage of Basic Necessities and Important Goods), where Article 11 states that in the event of a shortage of goods, price fluctuations, and/or obstacles to the flow of trade in goods, basic necessities and/or important goods are prohibited from being stored in warehouses in certain quantities and for certain periods beyond reasonable limits that exceed the stock or current inventory of goods, to meet the market for a maximum of 3 (three) months, based on RechtsVinding Online's records of average monthly sales under normal conditions. The provisions in Article 11 paragraph (2) which provide a maximum time limit of 3 (three) months for storing basic necessities and/or important goods have in fact given rise to problems in law enforcement.

Due to conditions in the field, storing basic necessities and/or essential goods "before" the 3 (three) month period has apparently caused a shortage of supplies of basic necessities and/or essential goods, so that in the context of hoarding cases such as the one above, law enforcement cannot apply Article 29 paragraph (1) in conjunction with Article 107 of the Trade Law, because the elements regulated in the technical regulations, namely Article 11 paragraph (2) of the Presidential Decree on the Determination and Storage of Basic Necessities and Essential Goods, have not been fulfilled even though the real consequences of such actions have been felt. The perpetrators of the crime of hoarding goods are so detrimental to the state economy, there must be firm action from law enforcement officials and the government is obliged to immediately investigate cases of hoarding goods by issuing preventive policies against criminal acts of hoarding basic necessities and/or essential goods, which result in instability in the state economy.

## **Theoretical Basis**

### **The Policy Theory**

Policy is understood as a set of plans containing political goals and as a manifestation of thoughtful judgment.<sup>19</sup> In terminology, public policy is understood through various opinions expressed by various parties. Thomas R. Dye states that public policy is what the government does or does not do to address the problems faced by its citizens.<sup>20</sup> Meanwhile, Harold Laswell and Abraham Kaplan define public policy as a program that is designed with a series of specific goals, values and practices.<sup>21</sup> Steven A. Peterson defines public policy simply by considering it as actions taken by the government to address various problems.<sup>22</sup> Therefore, Riant Nugroho defines public policy as every decision made by the state, as a strategy to realize the goals of the

<sup>19</sup> HM, Pahrudin (2023). *Anatomi Kebijakan Publik*. Jakarta: Kencana Prenada Media Group.

<sup>20</sup> HM, Pahrudin & Darminto, Citra (2021). 'The impact of local government policies on people's welfare in the regional autonomy era: A case study of Jambi City, Indonesia'. *Kasetsart Journal of Social Sciences* 42 (2021) 732–737. <https://doi.org/10.34044/j.kjss.2021.42.4.04>.

<sup>21</sup> *Ibid*-

<sup>22</sup> *Ibid*-

state.<sup>23</sup> Riant Nugroho further said that the best public policy is an initiative that can motivate people to build their own competition, not the opposite, plunging people into a pattern of dependency.<sup>24</sup> This definition incorporates strategic aspects as a key component of public policy. The emergence of strategy in this definition implies that a policy encompasses the political preferences of the actors involved, and is not only positive but also negative, implying acceptance of one and rejection of another.

### **Criminal Law Policy Theory**

Criminal law policy is a direct translation of the term "penal policy," but sometimes the term "penal policy" is also translated as "criminal law politics." The term "penal policy" has the same meaning as "criminal law policy" and "strafrechtspolitiek," so both terms are also translated as "criminal law politics" or "criminal law policy." However, as explained previously, the term "policy" is derived from the English term "policy" or "politiek" in Dutch.<sup>25</sup> Thus, the term criminal law policy can also be referred to as criminal law politics, defined as a rational effort to combat crime by using criminal law means. The definition of criminal law policy or criminal law politics can be viewed from the perspective of legal politics and criminal politics.<sup>26</sup> In addition, Marc Ancel provides a definition of penal policy, which is termed as criminal law policy, as a science and art that aims to enable positive legal regulations to be formulated better, namely positive legal regulations (the positive rules) and also to the organizers or implementers of court decisions.<sup>27</sup> Criminal law policy is synonymous with legal politics. Legal politics is essentially state policy, through authorized bodies, to establish desired regulations that are expected to be used to express the values inherent in society and to achieve desired goals.<sup>28</sup> Criminal law policy (penal policy) is a legislative policy that examines, plans, and creates legal products through a drafting process, resulting in legal policies that are accepted by society. Applicable laws and regulations have functions that can express values and instrumental functions.<sup>29</sup>

Based on these two functions, the criminal law formulation policy should be implemented through several operational/functional stages of criminal law, consisting of: a. Formulation/legislative policy, namely the formulation/drafting of criminal law. b. Applicative/judicial policy, namely the application of criminal law. c. Administrative/executive policy, namely the implementation stage of criminal law.<sup>30</sup> Thus, the formulation/legislative policy is one of three stages in the criminal law policy process, as explained previously, and is the substance/main focus of the following chapter. Therefore, the essence of criminal law formulation policy is the comprehensive and total process of criminal law enforcement. These three stages are expected to form a coherent chain, ensuring that the functionalization/operationalization of criminal law is fundamental to realizing social policy, fostering social welfare, and protecting the community. In the field of criminal law, efforts to implement criminal law policy mean efforts to formulate and realize criminal legislation in accordance with conditions and situations at a certain time and in the future. The formation of laws is a social and political process that has important meaning and broad influence, because it will shape and regulate or control society.<sup>31</sup> The scope of criminal law needs to be explained because

<sup>23</sup> Nugroho, Riant (2018). *Public Policy*. Jakarta: Elex Media Komputindo.

<sup>24</sup> *Ibid*.

<sup>25</sup> Barda Nawawi Arif, *Bunga Rampai Kebijakan Hukum Pidana, Cet. 2*, Citra Aditya Bakti, Bandung, 2002, hlm. 26.

<sup>26</sup> John Kenedi, *Kebijakan Hukum Pidana dalam Sistem Penegakan Hukum di Indonesia*, Pustaka Pelajar & IAIN Bengkulu, Yogyakarta, 2017, hlm. 59.

<sup>27</sup> Barda Nawawi Aief, *Op. Cit.*, hlm. 28.

<sup>28</sup> John Kenedi, *Op. Cit.*, hlm. 16.

<sup>29</sup> Muladi, *Kapita Selekta Hukum Sistem Peradilan Pidana*, Badan Penerbit Universitas Diponegoro, Semarang, 2002, hlm. 13.

<sup>30</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, PT. Citra Aditya, Bandung, 2001, hlm. 75.

<sup>31</sup> Soedarto, *Hukum Pidana dan Perkembangan Masyarakat, Kajian Terhadap Pembaharuan Hukum Pidana*, Sinar Baru, Bandung, 1983, hlm. 94.

before knowing the direction of criminal law policy in dealing with crime, it is necessary to know, among other things, its scope, then its criminal law policy. What is referred to as policy in relation to legal politics, in essence, legal politics is the policy of the state through authorized bodies to establish the desired regulations that are expected to be used to express what is contained in society and to achieve what it aspires to. Criminal law policy is essentially the totality of regulations that determine what actions are prohibited and constitute crimes, as well as the sanctions imposed on perpetrators, with the aim of preventing crime. In theory, many doctrines have been put forward by experts regarding the definition of criminal law policy. Criminal law policy is also part of criminal policy or politics. Regarding criminal policy, Hoefnagels stated: "Criminal law policy is the science of crime prevention; criminal policy is the rational organization of social reactions to crime; crime also manifests as a science and as an application. Legislative policy and law enforcement are now part of social policy."<sup>32</sup>

Policy efforts to create good criminal law regulations are essentially inseparable from the goal of crime prevention. Thus, the application of criminal law is more measurable when justice for the community is more felt, because the administration and implementation of justice will adhere to better guidelines. Viewed from the perspective of criminal policy or criminal politics, it can be said that criminal law policy is identical to the concept of crime prevention policy through criminal law, so that efforts are needed to realize good regulations in accordance with the conditions and situations that exist at present and in the future, as well as state policy through authorized bodies to formulate and establish the desired regulations and even estimated that can be used to express what is contained in society in order to achieve what is aspired to. In other words, the goal to be achieved by criminal law policy is good criminal legislation. From the perspective of criminal law policy, crime prevention can be carried out using approaches including: Penal approach (Criminal Law), meaning the application of criminal law or criminal law application, namely if a child commits a crime, there are procedures for handling it until the imposition of sanctions in the form of criminal penalties and/or actions. Efforts to overcome crime through penal means are more focused on the repressive nature, namely in the form of oppression, eradication, suppression after the crime has occurred. Non-penal approach (non-criminal law), namely efforts in the form of guidance, and/or other non-formal educational efforts. The non-penal approach is more focused on the preventive nature in the form of prevention, deterrence, control before the crime occurs, considering that efforts to overcome crime through non-penal means are more of a preventative measure for the occurrence of criminal acts, so the main target is to address the conducive factors that cause crime. These conducive factors focus on social issues that directly or indirectly can give rise to or foster crime. Therefore, from a macro and global perspective on criminal policy, non-penal efforts play a key and strategic role in addressing the causes and conditions that give rise to crime. An integrated approach combines penal and non-penal approaches. Addressing juvenile crime using a criminal approach is justified because, considering the causes of children committing crimes, the problem is more likely caused by psychological developmental factors and environmental or sociological factors. An integrated approach is a rational approach, which respects both the principle of legality and utility.<sup>33</sup>

### **Criminal Act**

The definition of a criminal act in the Criminal Code (KUHP) is known as *Strafbaarfeit* and in the literature on criminal law often uses the term *delik*, while the legislators formulate a law

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<sup>32</sup>John Kenedi, *Op. Cit.*, hlm. 60.

<sup>33</sup>Jacob Hattu, "Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan Anak", *Jurnal Sasi*, Vol. 20 No. 2. Bulan Juli - Desember 2014, hlm. 48.



using the term criminal event or criminal act or criminal act. Criminal act is a term that contains a basic understanding in legal science, as a term formed with awareness in giving certain characteristics to criminal law events. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined to be able to separate it from the terms used in everyday life in society. According to Soerjono Soekanto, there are factors that can influence and have meaning, so that law enforcement can have positive and negative impacts that lie in the content of these factors. Disruptions to law enforcement occur when there is a mismatch between values, rules, and behavioral patterns (trinity). If there is a mismatch between paired values and manifested in conflicting rules, and undirected behavioral patterns that can disrupt peaceful social interactions, then law enforcement cannot be realized. This means that law enforcement will not run as it should or will be disrupted in its journey and enforcement. The main problem of law enforcement lies in the factors that influence it. These factors are: first, legal factors, second, law enforcement factors, third, facilities or infrastructure factors, fourth, community factors, and fifth, cultural factors.<sup>34</sup>

First, the legal factor itself. The law in question is a statute (UU) or written regulation that applies generally and is made by the government. The legal factor in question stems from the law itself, which is problematic. Law enforcement originating from the law is caused by a). failure to follow the principles of its validity, b). the absence of implementing regulations that are essential to implement the law, c). unclear meaning of words in the law, which will result in confusion in its interpretation and application. Furthermore, there is unclear wording used in the formulation of certain articles. This is caused by the use of words whose meanings can be interpreted very broadly. This consequence is that regulations containing articles with words that can be interpreted broadly (multi-interpreted) and cause confusion in their interpretation or application, ultimately leading to conflict. This means that legal factors, namely regulations with unclear wording in the formulation of articles, have been proven to affect law enforcement in disputes in Indonesia. The problem arose because even though the law had been passed and was in effect, but up to a certain time limit, implementing regulations had not been made as mandated by the law, so that as a result several articles of the law could not be implemented. For example, one of the company's obligations to carry out Corporate Social Responsibility (CSR) is regulated in Article 74 paragraph (3) of Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) which stipulates that: "Further provisions regarding social and environmental responsibility are regulated by Government Regulation." However, until now the Government Regulation has not been made or issued by the Government. The absence of a Government Regulation will have an impact on the inability to implement the order to carry out Corporate Social Responsibility (CSR). This also means that there is no obligation for companies to do so, because they do not know how CSR should be implemented and carried out, until the Government Regulation is issued.

Another problem that often arises in the law is the ambiguity of the words used in the formulation of certain articles. This is likely due to the use of words whose meaning can be interpreted very broadly, or for example due to an inaccurate foreign language translation. This ambiguity of meaning can be found, for example, in Article 8 paragraph (1) of Law No. 9 of 1960 concerning the Basics of Health, which states that: "The government shall endeavor to provide treatment and care for the people throughout Indonesia evenly, so that every sick person can receive treatment and care at the lowest possible cost." The question regarding this provision is what is actually meant by "the lowest possible cost?". The exact value of this light penalty is also not explained in the explanatory provisions of the law. This is what makes the meaning of

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<sup>34</sup> *Ibid.*

the words unclear in the law, resulting in confusion in its interpretation and application in practice. This situation creates a dilemma that makes it difficult for law enforcers to enforce the provisions stipulated in the law. The negative impact of this is that the law only regulates, but is not enforced. What causes this is the law itself. It regulates, but it doesn't implement and stops on its own. Second, the law enforcement factor. Law enforcement refers to those directly or indirectly involved in law enforcement, including the police, prosecutors, judges, the Corruption Eradication Commission (KPK), legal advisors (advocates), and correctional officers. Each law enforcement profession has its own authority and task power. Judges play a crucial role when it comes to making decisions and carrying out their duties. Judges are independent. The other law enforcement agencies' role is to convince and explain to the judge the legal issues involved, thereby ensuring the judge's confidence in making a fair and wise decision. However, the problem is not that simple. In reality, law enforcement is not operating within the correct framework, resulting in technical operational constraints within each law enforcement agency. The causes include, first, the low quality of judges, prosecutors, police, and advocates; Second, the disregard for the principle of the right man in the right place; Third, their low commitment to law enforcement; Fourth, the absence of an integrated, good, and modern law enforcement mechanism; Fifth, the strong influence and intervention of politics and power into the world of *caturwangsa*, especially in the police, prosecutors, and the judiciary; Finally, the strong accusations of corruption and organized crime among law enforcement officers, with accusations of a judicial mafia. The practice of law enforcement is increasingly difficult due to the weak coordination among law enforcement officers, both at the theoretical and rule levels, as well as at the operational level. In fact, legal coordination is one of the important factors for legal empowerment for the community. Based on this poor coordination between law enforcement officers, the desire to realize an integrated legal approach to justice (integrated justice system) has echoed. In such a situation, law enforcement officers are unable to implement the law as mandated by the law, which will have a negative impact on law enforcement.

Third, the factor of facilities and infrastructure. Without adequate infrastructure and support, it is difficult for law enforcement to proceed effectively, including highly educated and skilled personnel, good organization, adequate equipment, sufficient finances, and so on. If these requirements are not met, law enforcement will struggle to achieve its goals. Highly educated personnel here are defined as competent and qualified law enforcers, who are able to serve and protect the community in accordance with their respective duties and fields. The recruitment process for law enforcement officers actually meets the requirements, producing, for example, police officers with excellent public service skills. However, in reality, this recruitment process is often marred by bribery or a small number of applicants for law enforcement positions. Therefore, the quality of these law enforcement officers is questionable, and many do not meet the established standards. As a result, the number of law enforcers tends to be smaller than the population, which continues to grow, making law enforcement officers unable to optimally carry out their duties as a means of law enforcement. Furthermore, court management factors contribute to the difficulty of law enforcement in the field. For example, these factors hinder the lengthy judicial process, specifically appeals and cassation: excessive number of cases, incomplete files, complex cases, lack of communication between court institutions, inadequate facilities, and the additional duties of judges, further complicating law enforcement. Obstacles to case resolution are not solely due to the large number of cases that must be resolved immediately, while the time available to try and resolve them is limited. Simply increasing the number of judges to resolve cases will have a minimal impact, especially in the long term. Therefore, it is important to consider not only the costs incurred when obstacles arise in case

resolution, but also the costs that must be incurred if those obstacles are eliminated, ensuring maximum benefit to justice seekers. Mastery of specific areas related to technology is also a major challenge, necessitating the availability of facilities and infrastructure in the field of internet-based crime. For this reason, the ability to master renewable technology facilities is an obligation that cannot be rejected, the means and infrastructure for that purpose.

Fourth, societal factors. From a social and cultural perspective, Indonesia is a diverse society with numerous ethnic groups and diverse cultures. Law enforcers must understand the social stratification or social stratification that exists within a given environment, along with the status/position and role structures that exist. Every social stratification has its foundations. Another important thing to know and understand is the social institutions that exist and are highly valued by the majority of the community. Knowing and understanding these factors will make it easier for law enforcers to identify the values, norms, or rules that apply within that environment. Broadly speaking, Indonesian society is divided into two: the upper class (the rich) and the lower class (the poor). Law enforcement between the two also differs significantly in its resolution. This is due to distinct differences in mindset and knowledge. For lower-class individuals, their desire or adherence to the law is very unlikely, or they are unwilling to comply with the established laws. This is due to their limited knowledge and education, and their inability to recognize the penalties that will be imposed if violated (blue collar crime). Meanwhile, people in the upper classes tend to follow existing laws and regulations because they are more knowledgeable about them and understand the penalties. This tends to be more orderly. In this upper class, if a crime occurs, it can be considered a white collar crime (for self-interest). As society in Indonesia ages, the number of poor people is increasing. Therefore, from a societal perspective, the problem of crime and law enforcement lies within this stratum. Each social stratification has its own foundations, and this can be addressed in various ways, including providing legal education to people who may not fully understand the law, making it easier for them to identify the values and norms that apply in their environment.

Fifth, cultural factors. According to Soerjono Soekanto, culture plays a crucial role for humans and society, namely, regulating how people should act, behave, and determine their attitudes when interacting with others. Essentially, culture encompasses the values underlying applicable laws, which are abstract concepts of what is considered good (and therefore adhered to) and what is considered bad (and therefore avoided). Cultural factors are actually similar to societal factors, but the cultural factor places greater emphasis on the value system within society. Within societal factors, it is argued that the level of societal compliance with societal rules remains low. This is due to the culture of compromise that often prevails in Indonesian society. In reality, there is a tendency for societal culture to deviate from prevailing rules. These five factors are closely related to each other, because they are the essence of law enforcement, and are also a benchmark for the effectiveness of law enforcement.

### **Hoarding of Staple Food Ingredients**

Hoarding is the process, method, act of hoarding, collecting (goods). A place to hoard wealth, collecting as much property as possible for personal needs and family life, without considering the fate of others. The law states that hoarding is the activity of hoarding goods, especially basic goods and important goods, in certain quantities and at certain times.<sup>35</sup> Basic Needs are human needs that must be met immediately to ensure survival. Article 1, number 1 of Presidential Regulation of the Republic of Indonesia Number 71 of 2015 concerning the Determination and Storage of Basic Necessities and Important Goods states: "Basic Necessities are goods that concern the livelihoods of many people with a high level of fulfillment of needs

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<sup>35</sup> Pasal 29 Undang-Undang Republik Indonesia Nomor 7 Tahun 2014 Tentang Perdagangan

and are a supporting factor for community welfare."<sup>36</sup> The explanation of Article 1 number 1 of Presidential Regulation of the Republic of Indonesia Number 71 of 2015 concerning the Determination and Storage of Staple Goods and Essential Goods above is very clear regarding the definition of staple goods. The types of staple goods are also regulated in Article 2 number 6 of Presidential Regulation of the Republic of Indonesia Number 71 of 2015 concerning the Determination and Storage of Staple Goods and Essential Goods. The Central Government Determines the types of Staple Goods and/or Essential Goods as follows: Types of Staple Goods consist of Staple Goods from agriculture; a) Rice; b) Soybeans raw materials for tofu and tempeh; c) Chili; d) Shallots, Staple Goods from industry; a) Sugar; b) Cooking oil; c) Wheat flour, and Staple Goods from livestock and fisheries; a) Beef; b) Broiler Chicken; c) Broiler Chicken Eggs; d) Fresh fish, namely milkfish, mackerel and skipjack/tuna/skipjack; Types of Important Goods consist of seeds, namely rice, corn and soybean seeds, fertilizer, 3 (three) kilogram LPG gas, plywood, cement, construction steel and light steel.<sup>37</sup>

Continuing with Article 2, number 6 of Presidential Regulation of the Republic of Indonesia Number 71 of 2015 concerning the Determination and Storage of Basic Necessities and Important Goods, this Article contains an explanation of the types of basic necessities. A business actor is any individual or business entity, whether in the form of a legal entity or not, established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through an agreement, conducting business activities in various economic sectors.<sup>38</sup> Explanation of the Law: business actors included in this definition are companies, corporations, State-Owned Enterprises, cooperatives, importers, traders, distributors, and others. With the enactment of Law No. 8 of 1999, every business actor, whether principal, agent, distributor, dealer, and retailer who sells goods and services directly or through intermediary traders to consumers is responsible for the quality of the goods and services and losses suffered by consumers, as long as the goods do not experience changes. Article 24 of the Consumer Protection Law states: 1) Other business actors selling goods and/services to other business actors are responsible for claims for compensation and/or consumer lawsuits if: a) Other business actors sell to consumers without making any changes to the goods/services. b) Other business actors, in the sales transaction, are not aware of any changes in the goods and/or services made by the business actor or do not comply with the sample, quality, and composition. 2) Business actors as referred to in paragraph (1) are released from responsibility for claims for compensation and/or consumer lawsuits if another business actor who purchases goods and/or services resells them to consumers by making changes to the goods and/or services.<sup>39</sup>

## **Law of Islam**

Ridwan Halim in his book *Introduction to Indonesian Legal System*, law is a set of regulations, both written and unwritten, which are basically valid and recognized by people as regulations that must be obeyed in human life.<sup>40</sup> Islamic law has unique characteristics that distinguish it from other legal systems in the world. This distinction stems from the fact that Islamic law originates from Allah SWT, not from human creation, which is subject to individual interests and desires. One characteristic of Islamic law is that it reduces the burden of law,

<sup>36</sup>Pasal 1 angka 1 Peraturan Presiden Republik Indonesia Nomor 71 tahun 2015 tentang Penetapan dan Penyimpanan Barang Kebutuhan Pokok dan Barang Penting

<sup>37</sup>Pasal 2 angka (6) Peraturan Presiden Republik Indonesia Nomor 71 Tahun 2015 Tentang Penetapan Dan Penyimpanan Barang Kebutuhan Pokok dan Barang Penting.

<sup>38</sup>AZ. Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar*, Diadit Media, Yogyakarta, 2001, hlm. 17.

<sup>39</sup> Pasal 24 Undang-Undang Perlindungan Konsumen

<sup>40</sup>Sri Wijayati, *Ilmu Hukum*, (Surabaya: UIN Sunan Ampel Surabaya, 2015), hlm. 310



allowing humans to implement it, enabling them to achieve happiness in their lives.<sup>41</sup> Islamic law is law that originates from the provisions of Allah and the Prophet Muhammad which are stated in the Koran and Hadith.<sup>42</sup> It is from these two references that *ijtihad* and research into Islamic law emerge and develop according to the conditions prevailing at the time the *ijtihad* is conducted. This is where logic can be applied to the law. This logic is not baseless or based on other sources, but must refer back to the Quran and Hadith. *Sharia* refers to all religious regulations established by Allah for the Muslim community, both from the Quran and the *Sunnah* of the Prophet Muhammad (peace be upon him), whether in the form of words, deeds, or *takrir* (determination or recognition). Islamic law addresses many aspects of Muslim life. This aims to provide legal certainty in living and living in accordance with Islamic teachings. In today's context, people fulfill their daily needs through various professions and types of work, such as trading, farming, and so on.

## **METHOD**

This research is descriptive and analytical, describing the problems and facts that occurred based on positive legal norms, namely the laws related to this research. The normative legal approach uses positive legal norms related to criminal law policies against perpetrators of hoarding staple foods from the perspective of Indonesian laws and regulations. Data analysis was conducted qualitatively, meaning without the use of numbers and statistical formulas. The types of data required in this study are primary data, obtained in the field, and secondary data, obtained through library research. However, this study primarily focuses on secondary data due to its normative nature, while primary data is used as support to sharpen the analysis. The data sources used consist of primary and secondary sources. Secondary data is obtained through primary materials, namely applicable laws and regulations in Indonesia. Secondary legal materials used include expert opinions, scientific works, articles, papers, and research results. Primary data is obtained through interviews with law enforcement officials, in this case judges as holders of judicial power who hold the authority to impose penalties on perpetrators of the crime of hoarding staple foods. The data collection used is: Literature Study and Document Study, namely reviewing primary legal materials and secondary legal materials related to criminal law policies against perpetrators of hoarding of staple foodstuffs from the perspective of laws and regulations in Indonesia. Data analysis is carried out descriptively and perspective, namely trying to provide existing data and assess it then analyze existing problems related to criminal law policies against perpetrators of hoarding of staple foodstuffs from the perspective of laws and regulations in Indonesia and provide contributions in the form of solutions to overcome these problems.

## **RESULT AND DISCUSSION**

### **Understanding and Urgency of the Problem of Stockpiling of Basic Materials**

Hoarding of staple goods is the act of storing large quantities of essential goods in an unreasonable manner and outside of customary distribution patterns with the aim of gaining higher profits during times of scarcity or price spikes. This practice is detrimental to the wider community, especially consumers from lower economic classes, and can disrupt the country's economic and social stability. In economic law, hoarding falls into the category of speculative activity that undermines market mechanisms by creating artificial scarcity that is not based on the laws of pure supply and demand. In Indonesia, this practice tends to increase around major events such as Ramadan, Eid al-Fitr, Christmas, and New Year, when demand for staple goods

<sup>41</sup>Abdul Manan, *Reformasi Hukum Islam di Indonesia*, (Jakarta: PT. RajaGrafindo Persada, 2006), hal. 94.

<sup>42</sup>Mohammad Daud Ali, *Hukum Islam*, (Jakarta: Rajawali Press, 1998), hal. 235.

increases sharply. Therefore, addressing this practice is urgent and requires a firm and comprehensive legal approach.

### **Positive Legal Review in Indonesia**

The primary legal basis governing hoarding in Indonesia is Law Number 7 of 2014 concerning Trade, specifically Article 107, which states: "Business actors who store basic necessities and/or essential goods in certain quantities and for a certain period of time during times of scarcity, price fluctuations, and/or obstructions to the flow of goods shall be subject to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 50,000,000,000.00 (fifty billion rupiah)."<sup>43</sup> This law grants the government the authority to regulate and oversee the distribution of basic necessities to prevent hoarding that harms the public. Furthermore, the Ministry of Trade has established a list of staple goods that are prohibited from being hoarded, such as rice, sugar, cooking oil, meat, and so on. The implementing regulation of the Trade Law, Minister of Trade Regulation No. 20 of 2021 concerning the Determination of Basic Necessities and Essential Goods, contains a list of goods that, if hoarded, can be subject to legal sanctions. The government reserves the right to take administrative and even criminal action if businesses violate these provisions.<sup>44</sup> In addition to the Trade Law, the Criminal Code (KUHP) also contains provisions that indirectly apply to hoarding cases, namely Article 107 concerning speculation. This article prohibits acts that cause unreasonable price increases for personal gain.<sup>45</sup> In addition, Law Number 8 of 1999 concerning Consumer Protection provides legal protection for consumers from fraudulent business practices, including hoarding of goods which results in scarcity and price increases.<sup>46</sup> Criminal penalties for hoarding are quite severe, both in terms of fines and imprisonment. However, the effectiveness of their enforcement is often questioned. One challenge is the difficulty of proving the perpetrator's motives and intentions in storing goods—whether it is purely part of a business distribution or intended for speculation. Furthermore, limited government oversight capacity at the regional level also poses a serious obstacle to controlling the distribution of goods.<sup>47</sup> Several cases of hoarding of staple foodstuffs in Indonesia over the past decade demonstrate weak state control over the distribution of essential goods. For example, in the case of cooking oil hoarding in early 2022, thousands of tons of cooking oil were discovered in various large warehouses, while market shortages and sharp price spikes occurred.<sup>48</sup> Similarly, in 2018, cases of rice hoarding were discovered in West Java and Jakarta, causing price fluctuations for consumers. This case demonstrated gaps in oversight and weak law enforcement. Although the government has confiscated and revoked business licenses, the perpetrators have not yet fully deterred them.<sup>49</sup>

### **Islamic Law Perspective on Hoarding (Ihtikār)**

In Islamic law, hoarding is known as ihtikār, which is the act of storing basic goods when people need them most with the aim of raising prices and making excessive profits. Scholars agree that ihtikār is forbidden because it causes harm to many people and violates the principle of social justice. The Prophet Muhammad (peace be upon him) said: "Whoever hoards food (ihtikār) is a sinner." (Narrated by Muslim).<sup>50</sup> Ihtikār falls into the category of major sins because it harms the public interest and is contrary to the principles of fair and balanced Islamic

<sup>43</sup> Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan, Pasal 107

<sup>44</sup> Permendag No. 20 Tahun 2021 tentang Penetapan Barang Kebutuhan Pokok dan Barang Penting

<sup>45</sup> KUHP, Pasal 107

<sup>46</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen

<sup>47</sup> Mertokusumo, Sudikno. (2014). *Penemuan Hukum*. Yogyakarta: Liberty

<sup>48</sup> Kementerian Perdagangan RI. (2022). *Laporan Pengawasan Distribusi Minyak Goreng*

<sup>49</sup> Komisi Pengawas Persaingan Usaha (KPPU). (2022). *Laporan Dugaan Penimbunan Beras dan Minyak*

<sup>50</sup> Muslim bin Hajjaj. *Sahih Muslim*, No. 1605.

economic distribution. The prohibition of ihtikār stems from the values in the Qur'an, including: "And do not consume some of your wealth by others in false ways..." (QS. Al-Baqarah: 188).<sup>51</sup> This principle emphasizes the prohibition of manipulating the market for personal gain in unfair ways. The Shafi'i and Hanbali schools state that ihtikār is absolutely haram if it causes harm to society.<sup>52</sup> The Hanafi and Maliki schools also forbid ihtikār under certain conditions, especially when it concerns staple foods.<sup>53</sup> Contemporary scholars such as Yusuf al-Qaradawi also refer to ihtikār as actions that are contrary to maqāṣid al-sharī'ah, namely maintaining public benefit and preventing social damage.<sup>54</sup> Islamic law does not prescribe fixed hudud sanctions for perpetrators of ihtikār, but rather leaves this to government policy (ta'zir). In this context, the state or judge has the authority to impose penalties commensurate with the severity of the violation and the extent of the harm caused, such as: Fines; Orders to sell goods at normal prices; Confiscation; and Imprisonment (if endangering the public). Ta'zir sanctions are flexible and aim to safeguard the public interest and prevent further harm.<sup>55</sup>

### Comparison between National Law and Islamic Law

Aspect	National Law	Islamic Law
Legal basis	Trade Law, KUHP, Consumer Law	The Qur'an, Hadith, and Ijtihad of the Ulama
Focus	Legal formal & administrative	Moral, spiritual, and social
Types of Sanctions	Imprisonment, penalty, administrative	Ta'zir (fines, confiscation, orders to sell)
Goal	Market stability and consumer protection	Justice, public welfare, prohibition of injustice
Implementor	The state through law enforcement agencies	Islamic government (judge/sultan)

These two legal systems have common ground in terms of their objectives to protect the interests of society and prevent the exploitation of basic human needs. However, there are differences in the legal basis, focus of enforcement, types of sanctions, and policy implementation. From a legal basis perspective, national law is grounded in Law No. 7 of 2014 on Trade, the Criminal Code (KUHP), and the Consumer Protection Law. Meanwhile, Islamic law bases its prohibition on hoarding on primary normative sources such as the Qur'an, the Prophet's hadith, and the ijtihad of scholars. The difference in approach is evident in the focus of the handling. National law is legal, formal, and administrative in nature, placing greater emphasis on procedural aspects and compliance with state regulations. In contrast, Islamic law views hoarding from a moral, spiritual, and social perspective, with an emphasis on justice, solidarity, and ethical business practices. In terms of the type of sanctions, national law stipulates criminal penalties in the form of imprisonment, fines, and/or administrative sanctions. This is intended to deter perpetrators and protect market stability. Meanwhile, Islamic law does not recognize fixed penalties (*hudud*) for hoarding, but rather allows authorities to impose *ta'zīr* penalties, such as orders to sell goods at fair prices, confiscation, and fines. These penalties are flexible and aim to maintain the public interest (*maslahah 'āmmah*). In terms of objectives, national law emphasizes market stability and consumer protection as part of the national economic system. Meanwhile, Islamic law targets the achievement of social justice, balanced distribution, and the prevention of economic injustice.

<sup>51</sup> Departemen Agama RI. (2005). *Al-Qur'an dan Terjemahannya*. Jakarta: Lajnah Pentashihan Mushaf.

<sup>52</sup> Al-Nawawi. (2004). *Al-Minhaj Syarah Sahih Muslim*, Beirut: Dar al-Fikr.

<sup>53</sup> Az-Zuhaili, Wahbah. (2006). *Fiqh Islami wa Adillatuhu*, Damaskus: Dar al-Fikr.

<sup>54</sup> Al-Qaradawi, Yusuf. (1995). *Halal dan Haram dalam Islam*. Jakarta: Pustaka Al-Kautsar.

<sup>55</sup> Ali, Zainuddin. (2010). *Hukum Pidana Islam*. Jakarta: Sinar Grafika.

This shows that although the forms of sanctions and mechanisms differ, both contain values that protect the interests of society at large.

The parties responsible for implementing these policies also differ. In national law, enforcement is carried out by state law enforcement agencies such as the police, prosecutors, and courts. Meanwhile, in the Islamic legal system, sanctions are enforced by the Islamic government or legitimate authorities, such as judges or sultans, based on considerations of public interest and the principle of justice. Thus, both national law and Islamic law have their own ways of regulating and punishing hoarders of basic commodities. This comparison shows that the integration of normative, moral, and legal approaches is very possible to achieve a criminal justice system that is more just, humane, and effective in protecting the basic needs of society. Both have the same goal, which is to protect society from harmful practices. However, Islamic law emphasizes ethical values and social morals, while positive law prioritizes legal and formal aspects.<sup>56</sup> To develop effective criminal law policies to address hoarding, it is necessary to integrate positive law approaches with Islamic values. This integrative strategy can be implemented through education on Islamic economics and Islamic business ethics for business actors; collaboration between the Ministry of Trade and the Indonesian Ulema Council (MUI) for anti-hoarding campaigns; and a restorative justice approach that prioritizes the recovery and empowerment of affected communities. By integrating Islamic morality into criminal policy, the state not only punishes perpetrators but also builds a legal culture based on justice and social awareness.<sup>57</sup>

## CONCLUSION

Positive law in Indonesia has provided a strong basis for prosecuting perpetrators of hoarding of basic commodities through Law No. 7 of 2014 on Trade, the Criminal Code, and other implementing regulations. The sanctions stipulated include imprisonment of up to 5 years and fines of up to IDR. 50 billion, demonstrating how seriously the state views this offense. However, the effectiveness of enforcing these penalties still faces challenges in terms of law enforcement, distribution oversight, and proving the speculative intent of business actors. Islamic law views hoarding (*ihtikār*) as a prohibited act because it morally and socially harms the broader community. Evidence from the Qur'an and hadith explicitly rejects the practice of hoarding because it contradicts the principles of justice and equitable distribution. Islam encourages the government or authorities (judges, sultans) to impose *ta'zir* sanctions according to the level of damage caused, with flexibility that takes into account the public interest. There is a strong common ground between positive law and Islamic law in terms of rejecting the hoarding of basic commodities. Both agree that such actions constitute exploitation of the suffering of the people. However, the Islamic legal approach is more rooted in moral values, social ethics, and spirituality, while positive law tends to emphasize legal-formal and administrative aspects. The application of criminal law policies that are only repressive is not effective enough in eradicating the hoarding of basic commodities. An integrative approach is needed that combines law enforcement, moral education for business actors, and the involvement of religious institutions in voicing the prohibition of *ihtikār* more broadly to the public.

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