

Reconstructing the Meaning of Justice in the Practice of Ta'zir: The Perspective of Equality Before the Law at Miftakhurrosyidin Islamic Boarding School

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Received: Mei 2026

Revised: June-21-06-2026

Accepted: June 27-06-2026

KEYWORDS

Reconstructing, Equality Before the Law, Ta'zir, Justice

ABSTRACT

Indonesia, as a rule-of-law state, is obligated to uphold the principle of equality before the law, as enshrined in Article 27 paragraph (1) of the 1945 Constitution. This study seeks to examine the construction of ta'zir practices at Pondok Pesantren Miftakhurrosyidin Temanggung and to critically analyze how the principle of equality before the law is interpreted and implemented within these practices. Employing a qualitative approach, this research is conducted in a natural setting to obtain a comprehensive and in-depth understanding of the mechanisms underlying the implementation of ta'zir. As a field study, data are gathered through direct observation and engagement with the lived practices in the pesantren, particularly concerning the application of legal equality in disciplinary measures. The findings indicate that the imposition of ta'zir follows an internal adjudicative process informed by a conception of justice aligned with Aristotelian thought, which emphasizes proportionality rather than rigid uniformity. In this framework, justice is realized through the allocation of rights and sanctions in accordance with the specific context and social roles of individuals, allowing for both equal and differentiated treatment where appropriate.

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Introduction

The Constitution of Indonesia stipulates that the country is a state based on the rule of law. As such, law plays a fundamental role in the life of the nation and the state. This is affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which implies that law must occupy a central position in all aspects of individual as well as national and state life (Kusumaatmadja, 1975:27). Law should serve as the supreme guiding force in the dynamics of state governance, rather than politics or economics. Therefore, the commonly used English expression to describe the principle of a state governed by law is “the rule of law, not of man.” Governance should be based on law as a system, not on individuals who merely act as

instruments within a system that governs them.

The concept of the rule of law comprises several key components. Julius Stahl identified four essential elements: the protection of human rights, the separation of powers, governance based on law, and administrative courts. A.V. Dicey, meanwhile, formulated three characteristics of the rule of law: (1) the supremacy of law, (2) equality before the law, and (3) due process of law (A.V. Dicey, 1952). Furthermore, the International Commission of Jurists expanded these principles by emphasizing the importance of an independent and impartial judiciary.

Within the Islamic education system, Islamic boarding schools (*pondok pesantren*) play a significant role as institutions that not only transmit religious knowledge but also shape the character and behavior of students (*santri*) through moral and spiritual guidance. One form of such guidance is the imposition of sanctions or punishments (*ta'zir*) for disciplinary violations. In the *pesantren* context, *ta'zir* refers to a type of punishment not explicitly prescribed in the Qur'an or Hadith, thereby allowing flexibility in its application. It is a sanction imposed by the *kiai* or *pesantren* authorities on students who violate established rules and regulations. The purpose of such sanctions is not only preventive (to deter violations), but also repressive (to create a deterrent effect), curative (to improve the offender's behavior), and educative (to guide individuals toward a better way of life).

However, in practice, the implementation of *ta'zir* often raises issues, particularly concerning the principles of justice and equality. Differences in treatment are sometimes observed, especially between students who have close relationships with administrators and those who do not. This raises critical questions about the extent to which the principle of equality before the law is upheld within the internal disciplinary system of *pesantren*. Moreover, due to the discretionary nature of *ta'zir*, which is determined by authoritative figures within the *pesantren*, there is potential for abuse of power and the imposition of disproportionate sanctions. On the other hand, *pesantren* possess autonomy in managing and guiding their students based on Islamic values and deeply rooted traditions. Therefore, this study is important to examine how universal principles of justice can be harmonized with the local wisdom of *pesantren* (Dakir and Harles, 2020, 495–517).

Pondok Pesantren Miftakhurrosyidin Cekelan, Madureso, Temanggung is one such institution that implements a *ta'zir* system to support student discipline. There are two main categories of regulations that underpin this system. The first is educational *ta'zir*, which supports discipline in the *diniyah* curriculum, *mujahadah* schedules, and congregational prayers. The second is security-related regulations, which maintain order and primarily address issues related to *shari'ah* and social conduct (*mu'amalah*), such as theft (*sariqah*),

leaving the dormitory without permission, inappropriate interactions between male and female students, and other violations of pesantren rules.

The dynamics of law enforcement within Pondok Pesantren Miftakhurrosyidin Putri inevitably involve challenges related to key legal principles such as the supremacy of law, equality before the law, and justice. Within the social structure of the pesantren, a form of stratification has emerged, consisting of the curriculum class (lower stratum) and the manba'dahum class (upper stratum). This social stratification raises concerns about the potential emergence of inequality in the practice of justice, and even in the application of the principle of equality before the law.

Method

This study employs a qualitative approach with a field research design to examine the implementation of ta'zir and the principle of equality before the law at Pondok Pesantren Miftakhurrosyidin Temanggung. The research is conducted in a natural setting to capture the actual practices, norms, and dynamics of disciplinary enforcement within the pesantren. Data were collected through in-depth interviews with key informants, including kiai, administrators, and students (santri), as well as through direct observation of disciplinary processes and document analysis of institutional regulations related to ta'zir. The data were analyzed using an interactive model consisting of data reduction, data display, and conclusion drawing. To ensure validity and reliability, methodological triangulation was applied by comparing findings from different data sources and techniques. The analysis is guided by the theoretical framework of the rule of law, particularly the principle of equality before the law, and enriched by Aristotelian concepts of proportional justice.

Results and Discussion

Definition of the Principle of Equality Before the Law

The principle of equality before the law is closely aligned with the egalitarian teachings of Islamic law, as reflected in the Qur'an, Surah Al-Hujurat verse 13: *"O mankind, indeed We have created you from a male and a female and made you into nations and tribes so that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous among you. Indeed, Allah is All-Knowing and All-Aware"* (Ministry of Religious Affairs, 2019).

In line with this, Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states: “All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.”

This article affirms the principle of equality before the law, meaning that all citizens have equal status and rights within the legal framework. In the context of the Constitution, this principle represents an inseparable link between rights and obligations that must function according to their respective positions. It implies that every citizen must be treated fairly by law enforcement officials and the government. Furthermore, from a constitutional law perspective, all state institutions—especially law enforcement bodies bear a constitutional obligation to uphold and realize justice in the exercise of their duties and authority. Justice is not merely an ethical principle but also a constitutional mandate inherent in state functions; therefore, its implementation must be reflected in non-discriminatory law enforcement practices and public services grounded in the principle of equality before the law.

In addition to being enshrined in the Constitution, the principle of equality before the law is also reflected in statutory regulations. Article 4 paragraph (1) of the Law on Judicial Power states that courts adjudicate according to the law without discrimination (Khalid, A., 2014, 6). However, the implementation of this principle may vary depending on context and social dynamics. In practice, justice does not always manifest in equal proportions. These differences may arise due to social stratification within society, where the existence of social classes can influence how the law is applied.

In reality, the application of law may expand or contract depending on prevailing policies and social conditions. It is often observed that the lower a person's social status, the more legal rules they must comply with, as they are more directly regulated by legal mechanisms. Conversely, individuals with higher social status—who possess greater power, wealth, authority, and prestige—tend to be subject to fewer regulatory constraints. This is because social forces within society often function as instruments to achieve certain legal objectives (Mustarin, B., 2021, 126–128).

Definition of Ta'zir

Ta'zir is derived from the Arabic root *'azzara-yu'azziru-ta'ziran*, which etymologically means to educate or to discipline. In its linguistic sense, *ta'zir* refers to an act of giving instruction or reprimand. Terminologically, according to Muhammad Abu Zahrah, *ta'zir* is a form of punishment (*uqubah*) imposed by an authority with the aim of preventing harm and deterring the emergence of crime within society. In other words, *ta'zir* constitutes an educative sanction characterized by flexibility, as it is not explicitly defined in the Qur'an or Hadith but is left to the discretion of the authority to safeguard public welfare (Syarbaini, A., 2023, 37–39).

Ta'zir represents a category of punishment in Islamic criminal law that is not specifically prescribed in the Qur'an or Hadith. It is applied to acts that violate the rights of God (*ḥaqq Allāh*) as well as the rights of individuals (*ḥaqq al-ibād*), with the primary objective of deterring offenders and preventing future violations. Due to its non-textual nature, the determination of the type and form of *ta'zir* punishment is entrusted to the discretion of the ruler or judge, taking into account public interest (*maṣlahah*) and prevailing social conditions.

In practice, not all forms of *ta'zir* punishment applied in the past remain relevant in the modern era. For instance, sanctions such as flogging or crucifixion are now widely considered incompatible with contemporary humanitarian principles due to their severity. However, with regard to capital punishment within the framework of *ta'zir*, some scholars permit its application provided it serves to maintain public order and protect the general welfare, and is based on objective and just legal considerations.

In general, the type of punishment imposed for *jarimah ta'zir* must correspond to the nature and severity of the offense in order to ensure proportionality. Determining an appropriate and effective punishment requires consideration of several key elements: retribution for the offense committed, rehabilitation of the offender to prevent recidivism, and protection of victims as well as society at large. Thus, the primary objective of *ta'zir* is not merely to create a deterrent effect, but also to establish justice and social order (Halil Husairi, 2018, 60).

Functions of Ta'zir

In line with the general functions of law, *ta'zir* serves several important roles, as follows (Syarbaini, A. 2023, 37-40):

1. Upholding justice: *Ta'zir* ensures that offenders receive fair punishment proportionate to the severity of their violations.
2. Educating the offender (*tadrīb*): The imposition of *ta'zir* aims to provide moral and behavioral correction so that the offender does not repeat the wrongdoing and is encouraged to improve.
3. Promoting public welfare (*maṣlaḥah*): By enforcing appropriate sanctions, *ta'zir* contributes to maintaining social order and collective well-being.
4. Protecting human rights within an Islamic framework: *Ta'zir* is applied with the principle of non-destructiveness, emphasizing education and the protection of fundamental human rights in accordance with Islamic teachings.
5. Serving preventive and repressive functions: *Ta'zir* acts both to prevent future offenses and to deter wrongdoing through sanctions such as corporal punishment, fines, or other disciplinary measures.
6. Providing rehabilitative and educational measures: Beyond punishment, *ta'zir* is intended to offer guidance and reform, enabling offenders to improve themselves both spiritually and socially.

Analysis

The Concept of Ta'zir Applied at Pondok Pesantren Miftakhurrosyidin Temanggung

The concept of *ta'zir* implemented in Islamic boarding schools (*pondok pesantren*) refers to a form of sanction or punishment imposed on students (*santri*) who violate institutional rules, with the aim of educating, instilling discipline, and preventing repeated misconduct (Saidah, 2016, 321). *Ta'zir* has become a deeply rooted tradition within pesantren and continues to be maintained as an integral part of the educational system to preserve order and shape students' moral character.

In practice, the implementation of *ta'zir* is carried out in stages by the pesantren authorities, beginning with guidance from administrators and *ustādhah* (female teachers),

and potentially culminating in a decision by the *kiai*. The forms of punishment vary, including writing Qur'anic verses, memorizing *nazm* (didactic poems), receiving advice, cleaning pesantren facilities, or paying fines (Aji Saputro, 2020, 1–72). Although *ta'zir* is sometimes viewed negatively by some students or their guardians—due to feelings of shame or fear—its primary objective is to create a deterrent effect, foster awareness of wrongdoing, and prevent its recurrence, thereby ensuring a conducive and orderly educational environment (Roudhotul, 2022, 1–22).

Overall, *ta'zir* in pesantren functions as a method of moral education and disciplinary development, while also serving to uphold justice, promote public welfare, and introduce students to legal reasoning and procedural frameworks. The existence of two distinct judicial mechanisms—namely, the “Kurikulum” (curriculum-level students) and “Manba'dahum” (advanced-level students) systems—at Pondok Pesantren Miftakhurrosyidin Putri aims to ensure more precise, efficient, and fair handling of cases based on differences in subject and legal context. This differentiation reflects the broader concept of specialized adjudication, where specific forums are established to handle particular types of cases with tailored procedures (Marzuki, 2017). The presence of these two judicial structures arises from the need to address diverse cases according to varying characteristics, backgrounds, and social roles within the pesantren community. This system resonates with Aristotle's theory of justice, which distinguishes between two forms:

Distributive Justice

Distributive justice concerns the allocation of resources, honor, and social benefits proportionally based on individual contribution, capacity, or need. Aristotle emphasized that distribution should not be strictly equal, but rather proportionate to each individual's role and merit within society. This principle recognizes differences in individual capacities and positions, suggesting that fairness lies in proportional, not uniform, distribution. Those who contribute more significantly or hold greater responsibility are entitled to receive a corresponding share (Salman and Arrie, 2024, 49).

Corrective Justice

Corrective justice focuses on rectifying imbalances or injustices, particularly in interpersonal relations such as legal violations or transactions. Its principle is to ensure equal treatment regardless of status or merit—for example, imposing proportionate punishment on offenders without discrimination. In general, Aristotle viewed justice as the allocation of rights proportionally rather than as absolute equality. Thus, justice may be achieved either through equal treatment or differentiated treatment, depending on context and social roles (Pratama, 2023, 1–12).

Analysis of the Implementation of the Principle of Equality Before the Law in Ta'zir Practices

The principle of *equality before the law* is a fundamental concept in modern legal systems, asserting that all individuals have equal standing before the law. It emphasizes that no legal distinction should be made based on social status, economic background, position, or personal identity. In other words, every individual is entitled to equal legal protection and is subject to the same legal standards in a fair and non-discriminatory manner. This principle is particularly relevant in analyzing *ta'zir* practices within pesantren, including at Pondok Pesantren Miftakhurrosyidin Putri.

In practice, the *ta'zir* system in this pesantren operates through multiple adjudicative processes, such as disciplinary proceedings managed by the security division and those administered by the educational division. This structure parallels the existence of different judicial institutions in Indonesia, each functioning according to its specific competence and jurisdiction (Suryana et al., 2019). Importantly, these distinctions are not based on social status, wealth, or class, but rather on legal standing and the nature of the case.

Such a system can be understood as an implementation of the principle of equality before the law within a functional and specialized legal framework. The differentiation of judicial mechanisms aims to ensure effectiveness and substantive justice, rather than to create inequality. The separation is grounded in function, type of case, and legal status, not in social hierarchy. Key elements in the realization of this principle include: equal opportunity

for all individuals to defend themselves, fair and impartial legal procedures, and the absence of discriminatory treatment based on social status.

The practice of *ta'zir* at Pondok Pesantren Miftakhurrosyidin Putri is implemented as part of a broader system of character education and moral development. While grounded in principles of justice, it also incorporates educational, preventive, and corrective dimensions. The implementation of equality before the law is reflected in several aspects:

Equal and consistent application of sanctions

All students who commit violations are subject to sanctions according to the category of the offense, without distinction based on background, age, family status, or proximity to pesantren authorities. For example, violations such as returning late to the dormitory receive the same sanction for both junior and senior students.

1. Transparency and fairness in the *ta'zir* process
Before imposing sanctions, pesantren authorities conduct examinations and clarifications, including hearing statements from relevant parties. This reflects recognition of the students' right to defend themselves, in line with the principle of legal equality.
2. Collective participation in rule enforcement
Rules and sanctions are formulated and disseminated to all students from the beginning of their residency in the pesantren. This ensures that students understand the consequences of violations and fosters legal awareness and a sense of justice.

Despite these efforts, challenges remain, particularly regarding subjective perceptions of fairness and objectivity in sanctioning. Therefore, continuous evaluation and training for pesantren administrators are necessary to ensure that the values of justice and the principle of equality before the law are consistently upheld.

Conclusion

Overall, *ta'zir* in Islamic boarding schools (*pondok pesantren*) functions as an integral method of education and disciplinary formation, while also serving to uphold justice, promote public welfare (*maṣlaḥah*), and introduce students to legal theory and procedural frameworks. The practice of *ta'zir* at Pondok Pesantren Miftakhurrosyidin Putri, which involves two distinct adjudicative mechanisms—namely, the “Kurikulum” (curriculum-level students) and “Manba‘dahum” (advanced-level students) systems—aims to ensure more precise, efficient, and fair case handling in accordance with the type of case and the legal subject involved. This arrangement enables the judicial system within the pesantren to operate professionally and in line with the legal needs of a pluralistic community. In addition, specialized forums are established to address particular cases with distinct procedural approaches.

The existence of these two types of adjudication reflects the need to manage diverse legal issues based on differences in characteristics, backgrounds, and interests shaped by social stratification within the pesantren community. This practice aligns with Aristotle’s theory of justice, which conceives justice as the proportional allocation of rights rather than absolute equality. Accordingly, justice can be achieved either by treating individuals equally or differently, depending on their context and roles within society.

Indirectly, the *ta'zir* system at Pondok Pesantren Miftakhurrosyidin is processed through various adjudicative channels according to their respective functions, such as those handled by the security division and the educational division. This structure parallels the differentiation of judicial institutions in Indonesia based on function and competence. Importantly, these distinctions are not grounded in social status, wealth, or class, but rather in legal standing and the nature of the case. Such an arrangement represents an implementation of the principle of *equality before the law* within a framework of legal specialization and functional differentiation, aimed at ensuring effectiveness and substantive justice rather than reinforcing social hierarchy.

Key elements in the application of this principle include equal access to defense for all individuals, fair and impartial legal procedures, and the absence of discriminatory treatment based on social status. In this regard, the practice of *ta'zir* at Pondok Pesantren Miftakhurrosyidin Putri is embedded within a broader system of character education and moral development for students.

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