



## Punishment for Bipolar Offenders: Legal Perspectives from Islamic Criminal Law and Article 44 of the Indonesian Criminal Code

**R. Arif Muljohadi**

STAI Syaichona Moh. Cholil Bangkalan, Indonesia

[arifdyfaz31@gmail.com](mailto:arifdyfaz31@gmail.com)

### Article Info

#### Article history:

Received 23-01-2025

Revised 08-02-2025

Accepted 17-02-2025

#### Keyword:

Bipolar Disorder; Islamic Criminal Law; Indonesian Criminal Code (KUHP); Mental Health; Criminal Justice.

### ABSTRACT

This research aims to analyze the legal perspectives on individuals suffering from bipolar disorder, both within the context of Islamic criminal law and based on Article 44 of the Indonesian Criminal Code (KUHP). Bipolar disorder is a mental condition that affects a person's emotional stability, and the question that arises is whether individuals with this disorder should be subjected to the same punishment as other criminal offenders or if special considerations should be given. The research methodology involves the examination of Islamic law literature, criminal law, and case studies to illustrate how Islamic criminal law and Article 44 of the KUHP deal with cases involving bipolar individuals. From the perspective of Islamic criminal law, this research reveals that there are differing opinions among scholars on how punishment should be applied to individuals with mental disorders. Some scholars argue that they should be subject to punishment like any other individuals, while others propose a more lenient approach that takes into consideration the mental health condition of the offender. On the other hand, Article 44 of the Indonesian Criminal Code provides a legal basis for the judiciary to consider the mental health condition of the offender when imposing a sentence. However, the implementation of this article often lacks consistency and requires further attention in determining a fair punishment for individuals with bipolar disorder. The findings of this research will provide a better understanding of how Islamic criminal law and Article 44 of the Criminal Code address the challenges that arise when punishing criminal offenders with bipolar disorder. This research may also offer a more holistic perspective on how the law can better handle cases involving individuals with mental disorders within the context of criminal justice.



©2024 Authors. Published by PT Mukhlisina Revolution Center.. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (<https://creativecommons.org/licenses/by/4.0/>)

### INTRODUCTION

Discussing the issue of punishment for criminal offenders, various factors must be considered, including the mental health condition of the perpetrator. One of the mental disorders that is often the subject of debate in the legal system is bipolar disorder, also known as bipolar affective disorder or bipolar disorder (Moeljatno 2008, 11) Bipolar disorder is a mental health disorder characterized by extreme fluctuations between periods of mania, which include increased energy, activity levels, and feelings of euphoria, and periods of severe depression, which include feelings of sadness, hopelessness, and lack of interest in daily activities (Kanter and Sianturi, 2002). This disorder can affect an individual's ability to control their behavior, including the possibility of engaging in criminal acts.

Review from a legal perspective, the question that arises is how to deal with the case of criminal offenders who also suffer from bipolar disorder (Marpaung 2006, 13) Should the punishment imposed on them be the same as that of a criminal offender without mental disorder, or is it necessary to consider factors such as their mental health condition?

This research will try to answer this question by focusing on two main aspects, namely Islamic criminal law and Article 44 of the Indonesian Criminal Code (KUHP) (Meljatno 1984, 56). In the context of Islamic criminal law, there are various views of scholars on how punishment should be applied to individuals with bipolar disorder. Some scholars may argue that the punishment should remain the same, while others may consider the mental health condition factor in the imposition of the punishment (Maslim 2013)

From another perspective, Article 44 of the Indonesian Criminal Code provides a legal basis for the court to consider the mental health condition of the perpetrator in imposing punishment. However, in practice, the implementation of this Article is often inconsistent and requires a deeper understanding of how Indonesian criminal law treats bipolar offenders (Fajar and Ahmad 2010, 54)

There are several strong academic reasons to research this title, "Punishment for Bipolar Offenders in the Perspective of Islamic Criminal Law and Article 44 of the Criminal Code": First, Social and Humanitarian Significance: Bipolar disorder is a significant mental health problem, and perpetrators of criminal acts who suffer from this disorder are part of a vulnerable population. This research provides a better understanding of how the legal system handles them, which directly impacts social justice and humanity. Second, Relevance to Law and Ethics: This research involves critical legal and ethical considerations. Exploring how Islamic criminal law and national laws, such as Article 44 of the Criminal Code, deal with perpetrators of crimes with bipolar disorder helps us understand whether the punishment given is following the principles of fair and ethical law (Sudarto 1990, 31).

Third, Contribution to Academic Knowledge: This research will make a contribution to the legal and mental health literature, filling in any knowledge gaps that may exist in this regard. This is an opportunity to develop a deeper understanding of how the law faces the complex challenges involving mental disorders in the context of criminal acts.

Fourth, Policy Implications: The results of this study have the potential to influence legal policies and the criminal justice system, especially in terms of assessing and imposing punishment on perpetrators of crimes with bipolar disorder. This could provide the basis for a better policy change in the treatment of individuals with mental health disorders in the justice system. Fifth, the Importance of a Holistic Approach: This study attempts to combine the perspectives of Islamic criminal law and Indonesian national law, which reflects the importance of a holistic approach in understanding and resolving complex legal issues.

In order to better understand and improve the legal system in dealing with criminal offenders who suffer from bipolar disorder, this research is an important step in exploring critical issues related to mental health and criminal law. Thus, this background highlights the importance of this study in exploring the legal view of bipolar offenders in the context of Islamic criminal law and national legislation, as well as efforts to understand whether there are special considerations to be given to individuals suffering from bipolar disorder when they become involved in criminal acts.

Based on the above background, several problems that must be answered in this study can be formulated, namely; First, what is the legal view of perpetrators of criminal acts who suffer from bipolar disorder from the perspective of Islamic criminal law? Second, how does Article 44 of the Indonesian Criminal Code (KUHP) affect the imposition of punishment for perpetrators of crimes with bipolar disorder? Third, are there differences in approaches between Islamic criminal law and Article 44 of the Criminal Code in dealing with cases of bipolar offenders, and if so, what are the implications for legal justice and the treatment of individuals with mental health disorders in the criminal justice system?

## **RESEARCH METHODS**

This research is a normative legal research using the Research Method Library Research (Khatibah 2011). Research Methods Library Research for the topic "Punishment for Bipolar

Offenders in the Perspective of Islamic Criminal Law and Article 44 of the Criminal Code" can involve the following steps: First, Collection of Reading Materials: The first step is to collect reading materials relevant to the research topic. This includes Islamic legal literature, criminal law literature, related laws and regulations, textbooks, journal articles, theses, and other official documents related to punishment for offenders with bipolar disorder (Sari and Asmendri 2020).

Second, Source Selection: Next, select the most relevant and authoritative sources. Make sure these sources have accurate and in-depth information about punishment for bipolar offenders in the context of Islamic criminal law and Article 44 of the Criminal Code. Third, Source Analysis: After gathering sources, conduct an in-depth analysis of the existing material. Identify different arguments, approaches, and views in the literature related to punishment for bipolar offenders (Zed 2008, 17).

Fourth, Perspective Comparison: Compare the perspective found in the Islamic criminal law literature with the perspective found in the literature on Article 44 of the Criminal Code. Identify the similarities, differences, and arguments that may arise in these two perspectives. Fifth, Case Studies: In addition to the literature, also consider relevant case studies involving criminal offenders with bipolar disorder. These case studies can provide a concrete picture of how the law is applied in real-life situations (Danandjaja 2014, 57).

Sixth, Synthesis of Findings: After gathering and analyzing all relevant information, synthesize the findings. Identify trends, general views, and key arguments in the literature and case studies. Seventh, Discussion, and Conclusion: Finally, discuss the findings in the context of a comparison between the perspective of Islamic criminal law and Article 44 of the Criminal Code. Conclude how these two perspectives can affect punishment for bipolar offenders and what their implications are for legal justice (Afifuddin and Saebani 2012, 21)

By using this library research method, you will be able to explore different legal views on punishment for bipolar offenders from the perspective of Islamic criminal law and Article 44 of the Criminal Code, as well as gain a deeper understanding of the complexity of this issue in the context of law and mental health.

## **RESULTS AND DISCUSSION**

### **Laws for Bipolar Sufferers**

Penalties for offenders who suffer from bipolar disorder can vary depending on the prevailing legal system and the specific factors in each case (Jiwo 2012, 53) Bipolar disorder is a mental health condition that can drastically affect a person's behavior and decisions, which in turn can affect how the legal system handles them (Sugandhi 1980, 17) Here are some approaches that may be applied in punishing criminal offenders who suffer from bipolar disorder:

- a) Treatment and Rehabilitation: How the legal system tends to approach bipolar offenders with a rehabilitation and medical care approach. They may find it important to treat the bipolar disorder before or during the sentence. This can involve psychiatric treatment, counseling, or therapies specifically designed to address mental health issues (Prasetyo 2013)
- b) Mental Health Considerations: In some jurisdictions, some laws or regulations allow courts to consider the mental health condition of the offender when making decisions about punishment. This may result in lighter or alternative punishments, such as supervision or rehabilitation orders, designed to improve the mental well-being of the offender (Chazawi 2013)
- c) Reduced Sentence: In some cases, the court may decide to reduce the sentence of a perpetrator who suffers from bipolar disorder. This may be based on evidence that bipolar disorder affects the ability of the perpetrator to control their behavior and that their actions are not entirely intentional (Marzuki 2005)
- d) Early Screening: In some justice systems, there are early screening mechanisms designed to identify offenders who may have mental health disorders, including bipolar. Offenders

identified through this mechanism may be directed to mental health care pathways rather than directly to the penal system.

- e) Conventional Approach: In some jurisdictions, bipolar offenders may be subject to the same penalties as other offenders, depending on the seriousness of their actions and under applicable criminal law (Adang 2008)

It is important to remember that the punishment approach to bipolar offenders can vary significantly from one country to country or jurisdiction to another. The main goal in such cases is to strike a balance between legal accountability and considering the mental health condition of the perpetrator so that the punishment given is fair and appropriate to the individual's situation.

### **Law for Bipolar Offenders: Perspectives of Islamic Criminal Law and Article 44 of the Criminal Code**

Punishment for perpetrators of bipolar crimes in the perspective of Islamic criminal law and Article 44 of the Indonesian Criminal Code (KUHP) can differ in their approach and implementation. Here is a general view of these two perspectives:

#### **Islamic Criminal Law Perspectives:**

In Islamic criminal law, there are some different opinions on how perpetrators of criminal acts who suffer from bipolar disorder should be punished. This reflects the diversity of approaches and interpretations in the context of Islamic law. Some scholars and legal observers think as follows (Herman et al. 2022):

- a) Accountability Approach: Some scholars argue that perpetrators of criminal acts, including those suffering from bipolar disorder, remain responsible for their actions before Islamic law. They emphasized the concept of individual accountability in Islam, which places everyone as a subject of law who must be punished if they break the law.
- b) The Necessity of Treatment Approach: There is also a view that prioritizes the aspects of treatment and recovery for bipolar offenders. Some scholars argue that if there is strong evidence that the perpetrator of a criminal offense has bipolar disorder that affects their behavior, then it is necessary to carry out medical evaluation and treatment as part of the punishment or as an alternative to the punishment (Amrani and Ali 2015)
- c) Possible Approach to Sentence Reduction: Some scholars propose that in the case of bipolar offenders, the court may consider a reduction in sentence. It is based on the understanding that mental health conditions can affect the ability of the perpetrator to control their behavior (Tyas and Lukitasari 2017)

#### **Article 44 of the Indonesian Criminal Code:**

- a) Article 44 of the Indonesian Criminal Code provides a legal basis for the court to consider the mental health condition of the perpetrator in imposing the punishment. However, the implementation of this Article is often the subject of debate (Rafky 2023). Some aspects related to Article 44 of the Criminal Code are:
- b) Recognition of Mental Health Conditions: Article 44 recognizes the importance of the mental health condition of the offender as a factor that can affect the punishment. The court may decide to reduce the sentence or consider alternatives such as medical treatment or rehabilitation (Ottmans and Emery 2013, 38)
- c) Inconsistent Implementation: Unfortunately, the implementation of Article 44 of the Criminal Code is still often inconsistent in various courts. This can result in large variations in the way bisexual offenders are treated by the criminal justice system (Jiwo 2020)
- d) The Importance of Professional Evaluation: In order to properly apply Article 44 of the Criminal Code, it is important to have a professional evaluation conducted by competent medical personnel or psychiatrists to assess whether the perpetrator of the crime is really suffering from bipolar disorder and whether the condition affects their criminal behavior (Fachrozy and Panjaitan 2023)

From both the perspective of Islamic criminal law and Article 44 of the Indonesian Criminal Code, it is important to find a balance between legal accountability, protection for perpetrators suffering from bipolar disorder, and justice in the punishment given. This represents a complex challenge in handling cases involving mental disorders in the criminal justice system (Fithriyah and Margono 2020)

## CONCLUSION

This study underscores the complexity of punishing bipolar offenders under Islamic and Indonesian criminal law. Islamic scholars exhibit diverse views, ranging from full accountability to mitigated punishment based on mental health. Article 44 of the KUHP provides a legal basis for adjusting sentences, though inconsistent application remains a concern. Future legal reforms should focus on standardizing the treatment of mentally ill offenders, ensuring fairness, and enhancing judicial consistency through professional psychiatric evaluations.

From the perspective of Islamic criminal law, there are various views of scholars. Some scholars advocate full accountability for perpetrators of crimes, including those suffering from bipolar disorder, while others propose a more lenient approach taking into account the mental health condition of the perpetrators. This reflects the diversity of interpretations of Islamic law and the understanding of individual responsibility in the law.

On the other hand, Article 44 of the Indonesian Criminal Code provides a legal basis for the court to consider the mental health condition of the perpetrator in imposing the punishment. However, the implementation of this Article is still often inconsistent across courts, and there needs to be more attention to how the evaluation and decision-making process is conducted.

In conclusion, the handling of punishment for perpetrators of bipolar crimes is a complex problem and requires a careful and holistic approach. It is important to understand that individuals suffering from bipolar disorder have unique mental health challenges, and their handling of punishment should reflect an understanding of the condition. A more consistent implementation of Article 44 of the Criminal Code and a more sensitive approach in Islamic criminal law can help ensure that the punishment provided is fair and appropriate to the individual situation concerned. In addition, the important role of professional evaluation by medical personnel or psychiatrists must be strengthened to ensure fairness in the imposition of punishment.

## CONFLICT OF INTEREST

The authors declares that there is no conflict of interest.

## REFERENCES

- Adami Chazawi. 2013. *Criminal Law Lessons: Part 2*. Jakarta: Jakarta : PT RajaGrafindo Persada.
- Afifuddin and Beni Ahmad Saebani. 2012. *Qualitative Research Methods*. Bandung: CV. Pustaka Setia.
- Danandjaja. 2014. *Literature Research Methods*. Jakarta: Indonesian Anthropology.
- Dicky Fachrozy and Budi Sastra Panjaitan. 2023. "Criminal Liability for Perpetrators of Bipolar Disease in the Dissemination of Pornography Crimes." *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 5 (1): 637–48. <https://doi.org/10.37680/almanhaj.v5i1.2592>.
- Hanafi Amrani and Mahrus Ali. 2015. *Criminal Liability System: Development and Application*. Jakarta: PT. RajaGrafindo Persada.
- Herman, Oheo Kaimuddin Haris, Handrawan, Sabrina Hidayat, Sahrina Safiuddin, and Cucu Sutarwan. 2022. "Criminal Liability of Bipolar Disorder Reviewed from the Perspective of

- Criminal Psychology." *Halu Oleo Legal Research* 4 (2): 276–87. <https://journal.uho.ac.id/index.php/holresch/>.
- Izzatul Fithriyah and Hendy M. Margono. 2020. "A Literature Review of Bipolar Affective Disorder Manic Episodes with Psychotic Symptoms Focusing on Management." *Journal Unair* 4 (3): 1–10.
- Kanter, E.Y and Sianturi, S.R. 2002. *Principles of Criminal Law in Indonesia and Its Application*. Jakarta: Stora Grafika.
- Khatibah. 2011. "Literature Research." *Iqra': Journal of Library and Information*, 01, 5: 36–39.
- Laden Marpaung. 2006. *Principles, Theories, and Practices of Criminal Law*. Jakarta: Sinar Grafika.
- Meljatno. 1984. *Principles of Criminal Law*. Jakarta: Bina Aksara.
- Moeljatno. 2008. *Principles of Criminal Law*. Jakarta: Rineka Cipta.
- Muhammad Dwi Rafky. 2023. "Criminal Liability for Perpetrators of Persecution of Persons with Dissociative Identity Disorder." *UNJA: Journal of Legal Studies* 1 (1): 307–26.
- Mukti Fajar and Yulianto Ahmad. 2010. *Dualism of Normative and Empirical Legal Research*. Yogyakarta: Student Library.
- Peter Mahmud Marzuki. 2005. *Legal Research*. Jakarta: Prenada Media Group.
- R. Sugandhi. 1980. *Criminal Code of the Criminal Code*. Surabaya: National Enterprise.
- Rusdi Maslim. 2013. *Pocket Book of Mental Disorder Diagnosis; Brief references from PPDGJIII and DSM-5*. Second printing. Jakarta: Psychiatric Science Section, Faculty of Medicine Atma Jaya.
- Sari, Milya, and Asmendri Asmendri. 2020. "Library Research in Science Education Research." *Natural Science* 6 (1): 41–53. <https://doi.org/10.15548/nsc.v6i1.1555>.
- Srikandi Wahyuning Tyas and Diana Lukitasari. 2017. "Criminal Liability of Bipolar Disorder Sufferers (Study of the Malang District Court Decision Number.190/Pid.B/2013/PN. MLG)." *RECIDIVE* 6 (1): 123–41. <https://jurnal.uns.ac.id/recidive/article/download/47723/29685>.
- Sudarto. 1990. *Criminal Law I*. Second Edition. Semarang: Sudarto Foundation d/a Faculty of Law Undip.
- Teguh Prasetyo. 2013. *Criminalization in Criminal Law*. Third Printing. Bandung: Nusa Media.
- Thomas F. Ottmans and Robert E. Emery. 2013. *Abnormal Psychology*. Yogyakarta: Student Library.
- Tirto Jiwo. 2012. *Bipolar Disorder: A Guide for Sufferers, Family, and Close Friends*. Purworejo: Tirto Jiwo (Center for Rehabilitation and Training of People with Mental Disorders).
- . 2020. *Center for Rehabilitation and Training for People with Mental Disorders*. Central Java: CV. Sinar Jaya.
- Yesmil Anwar and Adang. 2008. *Introduction to Legal Sociology*. Jakarta: Grasindo.
- Zed, Mestika. 2008. *Literature Research Methods*. 2nd. Jakarta: Indonesian Torch Foundation.