

Closing Regulatory Gaps in New Psychoactive Substance Control: A Sadd al-Dhari'ah-Based Comparative Analysis of Indonesia, Malaysia, and Turkiye

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Abstract

The rapid emergence of New Psychoactive Substances (NPS) has created regulatory gaps because modifications to their chemical structures enable new substances to circulate before they are formally classified as prohibited drugs. This study examines how sadd al-dhariah can be operationalized as a preventive framework for addressing regulatory gaps in NPS control in Indonesia without undermining the principle of legality. It employs doctrinal legal research using statutory, conceptual, and comparative approaches. Primary and secondary legal materials concerning NPS regulation in Indonesia, Malaysia, and Turkey were examined through legal interpretation and comparative analysis. The analysis shows that Indonesia's substance-by-substance scheduling mechanism has not adequately responded to the rapid development of NPS, thereby limiting law enforcement against substances not yet included in official schedules. Malaysia similarly relies primarily on periodic scheduling, whereas Turkey combines individual scheduling with generic definitions based on chemical structures. These comparative findings provide relevant lessons for developing a more adaptive regulatory mechanism in Indonesia. From the perspective of sadd al-dhariah, controlling precursor materials, production, digital promotion, and distribution constitutes a legitimate preventive measure to protect human intellect and life. However, preventive regulation must be supported by scientific precision, procedural accountability, proportionality, and

safeguards against overcriminalization. This study concludes that sadd al-dhariah can support adaptive NPS control when implemented through measurable chemical definitions, forensic verification, an early warning system, transparent classification procedures, and judicial oversight. It contributes a preventive legal framework that integrates Islamic legal reasoning with legal certainty and regulatory responsiveness.

Keywords: sadd al-dhariah; regulatory gaps; new psychoactive substances; drug control; Indonesia

Introduction

The rapid emergence of New Psychoactive Substances (NPS) has created an urgent challenge for drug control systems that depend on the individual classification of prohibited substances. NPS are generally developed by modifying the chemical structures of existing substances to produce similar psychoactive effects while temporarily avoiding established legal classifications. In Indonesia, this development has created a regulatory gap because newly identified substances cannot immediately be prosecuted under narcotics legislation before they are formally included in the official schedules.¹ The National Narcotics Agency reported that, by 2024, 1,261 types of NPS had been identified globally, 172 of which had been detected in Indonesia, while 167 had been regulated through the Minister of Health Regulation Number 30 of 2023.² These figures indicate that the development of NPS continues to move faster than the regulatory mechanism used to classify them. Consequently, the problem of NPS is not limited to its harmful effects on public health but also concerns the capacity of the legal system to respond to rapidly changing substances without violating the principle of legality.³

Previous studies on NPS and their legal control can be divided into three principal tendencies.⁴ The first group examines the pharmacological characteristics, health risks, and social consequences of emerging psychoactive substances, demonstrating their harmful effects on the human nervous system

¹ Mahmud Mulyadi, "DYNAMICS OF NARCOTICS LAW ENFORCEMENT AND THE PRINCIPLE OF LEGALITY IN THE BLUE SAPPHIRE CASE," 2026.

² "Permenkes No. 30 Tahun 2023," accessed Agustus 4, 2026, https://peraturan.bpk.go.id/Details/275562/permenkes-no-30-tahun-2023?utm_source=chatgpt.com.

³ Nigel Stobbs and Richard Posner, "DEFINING AND DESCRIBING WHAT WE DO: DOCTRINAL LEGAL RESEARCH" 11, no. 1988 (1992).

⁴ Amy Peacock et al., "New Psychoactive Substances: Challenges for Drug Surveillance, Control, and Public Health Responses," *The Lancet* 394, no. 10209 (November 2, 2019): 1668–84, [https://doi.org/10.1016/S0140-6736\(19\)32231-7](https://doi.org/10.1016/S0140-6736(19)32231-7).

and their potential to cause dependence and mental disorders.⁵ The second group focuses on regulatory gaps and criminal law responses, showing that the substance-by-substance classification system frequently leaves newly modified compounds outside the scope of narcotics legislation. The third group examines *sadd al-dhariah* as an Islamic legal principle for preventing actions or means that are likely to produce harm.⁶ However, these fields of study have generally developed separately. Studies on NPS regulation rarely integrate Islamic preventive legal reasoning, while studies on *sadd al-dhariah* tend to remain conceptual and have not translated the principle into a measurable regulatory mechanism. Limited attention has also been paid to how comparative regulatory experiences can help Indonesia reconcile rapid preventive intervention with legal certainty.

This study aims to examine how *sadd al-dhariah* can be operationalized as a preventive framework for addressing regulatory gaps in the control of NPS in Indonesia. It specifically addresses two questions: how does Indonesia's existing classification mechanism create regulatory gaps in responding to newly emerging substances, and how can *sadd al-dhariah* support a more adaptive regulatory framework without undermining the principle of legality? To answer these questions, the study compares the Indonesian regulatory framework with those of Malaysia and Turkey. Malaysia is relevant because it continues to rely primarily on periodic scheduling under its drug and poisons legislation, while Turkey provides a different model by combining individual scheduling with generic definitions based on chemical structures. The comparison is intended to identify legal mechanisms that may be adapted to Indonesia's institutional and constitutional context rather than simply transplanting foreign regulation.

This article argues that *sadd al-dhariah* can provide a normative foundation for adaptive NPS control, but it cannot be used to justify vague, excessive, or unlimited criminalization. Its preventive orientation requires the state to close the means leading to harm through the control of precursor materials, production, promotion, and distribution before their consequences become widespread. Nevertheless, such prevention remains compatible with the principle of legality only when it is implemented through measurable chemical definitions, forensic verification, transparent classification procedures, an early warning system, proportional sanctions, and judicial oversight. Based on this argument, the article contributes an adaptive NPS control framework that connects Islamic preventive legal reasoning with contemporary regulatory

⁵ Ni Made Leni et al., "Mengenal New Psychoactive Substances (NPS): Sebuah Tinjauan Pustaka," *Intisari Sains Medis* 12, no. 1 (April 30, 2021): 275–84, <https://doi.org/10.15562/ISM.V12I1.929>.

⁶ Muhammad Nazir Alias et al., "The Position of Maqasid Al-Shariah within Islamic Legal Sources: A Comprehensive Analysis," *Samarah* 9, no. 2 (2025): 937–64, <https://doi.org/10.22373/q4byre51>.

mechanisms. Rather than treating *sadd al-dhariah* merely as a justification for prohibition, this study positions it as a framework for designing preventive regulation that is scientifically verifiable, institutionally accountable, and consistent with legal certainty.⁷

The unit of analysis in this study is the legal mechanism used to control New Psychoactive Substances in Indonesia, particularly the classification of prohibited substances, regulatory responses to newly identified compounds, and the application of the principle of legality. The study also examines the concept of *sadd al-dhariah* as an Islamic legal framework for preventing the means that lead to harm. Malaysia and Turkey are included as comparative jurisdictions. Malaysia was selected because its regulatory framework primarily relies on periodic substance scheduling, which shares characteristics with the Indonesian system. Turkey was selected because it combines individual scheduling with generic definitions based on chemical structures. These jurisdictions provide relevant comparative cases for identifying regulatory alternatives that may be adapted to the Indonesian legal system.

This study employs doctrinal legal research using statutory, conceptual, and comparative approaches. The statutory approach is used to examine the legal authority, procedures, and limitations governing NPS classification in the three jurisdictions. The conceptual approach analyzes *sadd al-dhariah*, the principle of legality, legal certainty, proportionality, and the objectives of protecting human intellect and life. The comparative approach identifies similarities and differences in the regulatory mechanisms adopted by Indonesia, Malaysia, and Turkey. A doctrinal design was selected because the primary problem examined in this study concerns regulatory structures, normative inconsistencies, and the construction of a preventive legal framework rather than the attitudes or behavior of individual actors.

The legal materials consist of primary and secondary materials. Primary legal materials include Indonesian Law Number 35 of 2009 concerning Narcotics, regulations of the Minister of Health concerning narcotics classification, and other regulations governing the identification and control of psychoactive substances. The comparative materials include the Malaysian Dangerous Drugs Act 1952, the Poisons Act 1952, the Poisons Regulations 1952, the Poisons (Psychotropic Substances) Regulations 1989, Turkish Law Number 2313 concerning the Control of Narcotic Drugs, relevant scheduling regulations, and applicable criminal law provisions. International conventions, UNODC reports, and official documents issued by national drug control and health authorities are also used. Secondary materials include peer-reviewed

⁷ Ida Musofiana, Rizki Adi Pinandito, Noor Lailatul Izza, and Ahmed Kheir Osman, "Digital Incest Narratives and Child Protection: Addressing Regulatory Gaps through Legal and Islamic Normative Reconstruction," *JURIS (Jurnal Ilmiah Syariah)* 25, no. 1 (2026): 167–183, <https://doi.org/10.31958/juris.v25i1.16555>.

journal articles, books, legal commentaries, and authoritative Islamic legal literature discussing sadd al-dhariah, maqasid al-sharia, intoxicating substances, criminal policy, and the principle of legality.

Legal materials were collected through a structured desk review. The collection process involved identifying legislation and official documents concerning NPS, tracing amendments to prohibited-substance schedules, and selecting scholarly publications relevant to the research questions. Materials were included when they addressed at least one of the following issues: the definition and development of NPS, substance-classification procedures, generic or individual scheduling, regulatory delays, forensic identification, the principle of legality, or preventive reasoning based on sadd al-dhariah. Materials that did not directly address NPS regulation, preventive drug control, or the relevant Islamic legal concepts were excluded. The selected materials were subsequently classified according to jurisdiction, type of legal instrument, classification mechanism, institutional authority, evidentiary requirements, and legal safeguards.

The materials were analyzed through legal interpretation, comparative analysis, and normative legal construction.⁸ The analysis was conducted in five stages. First, the Indonesian regulatory framework was examined to identify the sources and consequences of regulatory delay. Second, the Malaysian and Turkish frameworks were compared using common indicators, including legal definitions, scheduling authorities, classification procedures, scientific evidence, enforcement consequences, and review mechanisms. Third, the pathways facilitating NPS circulation were evaluated through sadd al-dhariah by considering the probability, severity, and proximity of harm. Fourth, the proposed preventive measures were assessed against the principles of legality, legal certainty, proportionality, due process, and protection against overcriminalization. Finally, the findings were synthesized to formulate an adaptive NPS control framework for Indonesia that integrates preventive Islamic legal reasoning, forensic verification, transparent procedures, an early warning system, and judicial oversight.

Discussion

Criminal Policy for New Types of Drug Abusers

Criminal law policy is a part of legislative policy with a more specific scope.⁹ Criminal law policy is often referred to as criminal law politics, penal policy, criminal law policy, or strafrechtspolitik. A. Mulder defines

⁸ Yevhen Leheza, "Interpretation of Regulatory and Legal Acts in Contemporary Contexts: Foreign Experience, Comparative Perspectives, and Pathways for Regulatory Reform," *Nusantara: Journal of Law Studies* 5, no. 1 (2025): 129–42.

⁹ Levin Benyamin, "CRIMINAL LAW EXCEPTIONALISM," *Virginia Law Review* 108 (2022), <https://www.jstor.org/stable/27219957>.

strafrechtspolitiek as a policy line that directs the determination of the extent to which existing criminal provisions need to be amended and updated, the steps that can be taken to prevent criminal acts, and how the processes of investigation, prosecution, trial, and the implementation of criminal penalties should be carried out.¹⁰ In line with the ideas of Marc Ancel and A. Mulder, Sudarto explains that penal policy can be understood as an effort to form and implement criminal legislation that is in line with the conditions of society at a certain time, while also being relevant to future needs. Sudarto also emphasizes that implementing criminal law policy is essentially an act of selecting regulatory alternatives to produce the best criminal legislation, namely one that is able to meet the demands of justice while being effective and beneficial in practice.¹¹

Criminal policy using Penal means trying to overcome crime by using criminal law (emphasizing the repressive nature) which is carried out through the criminal justice system, will come into contact with criminalization measures.¹² The law enforcement carried out by the government in dealing with new types of narcotics crimes from a penal policy perspective is by registering new types of narcotics (NPS) in the Narcotics Law which classifies narcotics into Groups I, II, III.¹³ The types of narcotics that are the object of control in practice are described through an appendix whose updates are carried out by the government through the authorized ministries, especially the Ministry of Health.¹⁴ The latest developments indicate an update to the classification of narcotics through the Regulation of the Minister of Health of the Republic of Indonesia Number 7 of 2025 concerning Changes to the Classification of Narcotics, which shows that the narcotics control system in Indonesia is highly dependent on a mechanism for updating the list to determine whether a substance can be treated as a prohibited narcotic.¹⁵ Meanwhile, from a non-penal

¹⁰ Sri Delyanti et al., "Analisa Yuridis Bagi Pelaku Narkotika Yang Jenis Narkobanya Tidak Terdaftar Dalam Undang-Undang Narkotika," *Mahadi: Indonesia Journal of Law* 1, no. 1 (2022): 112–24, <https://doi.org/10.32734/mah.v1i1.8318>.

¹¹ Atikah Mardhiya Rohmy, Setiyono, and Arini Indah Nihayaty, "KEBIJAKAN PIDANA TINDAKAN KEBIRI KIMIA PELAKU KEJAHATAN SEKSUAL BERULANG PADA ANAK DI INDONESIA" 32, no. 3 (2021): 167–86, <https://doi.org/10.56013/rechtens.v11i2.1361>.

¹² Randy Pradityo, "Relasi Kebijakan Kriminal Dan Hak Asasi Manusia Dalam Upaya Penanggulangan Kejahatan," *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* 2, no. 4 (2024): Hlm. 62–74.

¹³ Wibi Aryandaru Jatmiko and Aryo Fadlian, "Pemberian Rehabilitasi Untuk Pecandu Narkotika Golongan I Jenis Metametamina Dengan Jumlah Narkotika Yang Relatif Sedikit" 8, no. 20 (2022): 6–14, <https://doi.org/10.5281/zenodo.7229362>.

¹⁴ Fikri Rahmadi and Toni Triyanto, "The Role of the Police in Combating the Criminal Act of Theft with Justice-Based Aggregation," *Ratio Legis Journal* 4, no. 4 (2025): 3568–3579, <https://jurnal.unissula.ac.id/index.php/rlj/article/view/49558>.

¹⁵ Arie Kartika et al., "Responsiveness of Criminal Law Policy towards the Use of Medical Cannabis in the Perspective of Health Services: A Case Study in Indonesia," February 28, 2025, 539–50, https://doi.org/10.2991/978-2-38476-366-5_51.

policy perspective, namely through national, regional, and international cooperation in the form of bilateral, multilateral, and extradition in the framework of implementing the United Nations Convention against Transnational Organized Crime (UNTOC) and for law enforcement officers routinely conducting technical training activities abroad.¹⁶

The regulation of NPS to be included in the narcotics category in the appendix to Law Number 35 of 2009 must go through a process involving the Ministry of Agriculture, the Food and Drug Authority (BPOM), and experts from academic and clinical circles. This process requires time, costs, and adequate resources because scientific testing is needed to determine its composition, effects, and level of danger. In practice, the assessment of a single type of NPS can take a long time, resulting in a frequent discrepancy between the number of NPS identified in the field and the number of NPS successfully incorporated into regulations.¹⁷

The regulatory delay is further exacerbated by the fact that determining the status of NPS as narcotics or psychotropic substances requires cross-agency coordination and complex scientific evidence. Consequently, policies often arrive after NPS cases and circulation have already developed. This situation presents a dilemma: on the one hand, the government must be careful not to incorrectly designate a substance's status without strong scientific evidence. On the other hand, NPS development is moving rapidly, modifying its molecular structure to avoid legal entanglements, leaving law enforcement officials lagging behind innovations in circulating substances.¹⁸

Indonesia adheres to the principle of legality in its law enforcement practices, whereby a person can only be punished if their actions have been previously regulated by applicable criminal laws.¹⁹²⁰ The principle of legality

¹⁶ Bambang Tri Bawono and Gunarto Gunarto, "The Law Enforcement Against Narcotics Criminal Actions Who Should Be on Rehabilitation," *Jurnal Pembaharuan Hukum* 9, no. 1 (2022): 79–91, <https://doi.org/10.26532/jph.v9i1.20536>.

¹⁷ Muhamad Satria Khoirullah and Rugun Romaida Hutabarat, "Kebijakan Penanggulangan Narkotika Oleh Badan Narkotika Nasional Ditinjau Dari Undang-Undang Narkotika," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 4 (2025): 897–911, <https://doi.org/10.24269/ls.v9i4.11927>.

¹⁸ Gusti Mulyadi, Anis Mashdurohatun, Eko Soponyono, and H. M. Ercham Amin, "Model of Narcotics Criminal Investigation Authority between BNN and Police of the Republic of Indonesia Based on Justice Value," *Scholars International Journal of Law, Crime and Justice* 6, no. 8 (2023): 424–437, <https://doi.org/10.36348/sijlcj.2023.v06i08.006>.

¹⁹ Andhika Yuli Rimbawan, "Harmonization of Judicial Decisions: Analysis of Compliance with Jurisprudence and Application of the Principle of Legality in Special Criminal Cases," *Journal Critical Legal System* 1, no. 1 (2026): 21–42, <https://researchlegalsystem.com/index.php/rlsi>.

²⁰ Fikriya Anika Fitri et al., "Tinjauan Teoritis Tentang Asas Legalitas Dalam Hukum Pidana Indonesia," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 2 (2024): 202–9, <https://doi.org/10.71153/jimmi.v1i2.134>.

functions as a guarantee of protection so that law enforcement officers do not act arbitrarily, while also ensuring that the formulation of criminal offenses must be written, not retroactive, and may not be expanded through analogical interpretation which has the potential to eliminate legal certainty.²¹ Therefore, when NPS are not yet listed in Law No. 35 of 2009 or the Ministry of Health's classification regulations, law enforcement faces obstacles where NPS-related actions are difficult to prosecute as narcotics crimes because the substance object is not yet recognized on the prohibited list. This is what makes the regulatory gap a driving factor for the proliferation of NPS, because perpetrators can take advantage of the time lag in regulatory updates to distribute substances whose effects can be even more dangerous than conventional narcotics. Therefore, policy strengthening is needed through updating the framework of Law No. 35 of 2009, especially regarding the definition and control mechanisms of NPS that are more adaptive, so that the circulation of NPS does not continue to be outside the reach of criminal law and does not create unclear norms in its application.²²

The Concept of Sadd Al-Dzari'Ah Theory in the Regulation of New Psychoactive Substances in Indonesia

Sadd al-dzari'ah (traditional Islamic law) is included as a method of *ijtihad* in *ushul fiqh* (Islamic jurisprudence), because when the two words are combined, they achieve a clear meaning in the discovery and determination of law. Linguistically, *sadd* is derived from *sadda-yasuddu-saddan*, meaning to close, block, and occupy. While *al-dzari'ah* is the synonym of *al-dzari'i*, meaning a path or intermediary to achieve a goal or action.

Explanation of the origins of the term *al-dzari'ah* demonstrates why this concept is powerful in interpreting the phenomenon of means to an effect. The word *al-dzari'ah* was originally used for camels used by Arabs in hunting, where the hunter would take cover beside the camel to approach the prey, then shoot an arrow when close. Therefore, according to Ibn al-'Arabi, the term was then used as a metaphor for anything that brings something closer to something else.

Amir Syarifuddin said that *sadd* means to close, namely to close off the occurrence of damage (*mafsadat*), while *al-dzari'ah* is linguistically الوسيلة التي

²¹ Icha Sri Herlina and Happy Yulia Anggraeni, "Harmonisasi Asas Legalitas Formal Dengan Pengakuan Hukum Yang Hidup Di Masyarakat (Living Law) Dalam Kitab Undang-Undang Hukum Pidana Nasional," *Renang Rencang: Jurnal Hukum Lex Generalis* 6, no. 7 (2025): 1–16, <https://doi.org/10.56370/jhlg.v6i7.2078>.

²² Andri Winjaya Laksana, Hendro Widodo, Moh Aris Siswanto, H. D. Djunaedi, and Setiawan Widiyoko, "Criticism of Legal Protection for Victims of Drug Abuse: The Disharmony in Legal Substance Regulation," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 93–109, <https://doi.org/10.22219/ljih.v33i1.36680>.

الذريعة (a path that leads to something, good or bad).²³ This meaning is interpreted as something that leads to something that is forbidden, while Ibn Qayyim views it as anything that is an intermediary and a path to something.²⁴

Muhammad Abū Zahrah emphasized the key principle that: *الذريعة معناها الوسيلة... فالطريق الى الحرام حرام والطريق الى المباح وما لا يؤدي الواجب إلا به فهو واجب*. This formulation places the legal status of *wasilah* (religious means) in line with its purpose: the path to the forbidden becomes forbidden, the path to the permissible becomes permissible, and even the means necessary for the obligatory act also become obligatory.²⁵

Al-Qaraḥi defines it as cutting off the path to corruption (*mafsadat*) as a way to avoid corruption.²⁶ Al-Syawkani emphasizes matters that are initially permissible but will lead to prohibited acts (*al-mahzur*), and Al-Shatibi emphasizes rejecting something permissible (*jaiz*) so that it does not lead to prohibited acts (*mamnu'*).²⁷ Because of this relationship, the principle is emphasized: *فوسيلة املقصود اتبعة للمقصود* (*wasilah mengikuti tujuan*). Apart from that, *al-dzar'ah* is also mapped into four categories: (1) definitely brings *mafsadah*; (2) strong suspicion of carrying *mafsadah*; (3) less likely to carry *mafsadah*; (4) ordinary assumptions (not strong conjectures) carry meanings that in the last category of scholars have different opinions.²⁸

²³ Hendri Hermawan Adinugraha and Ade Yusuf Mujaddid, "Contextualization of The Istiṣhāb Wa Sadd Al-Zar'ah Towards Islamic Economic Practices in Indonesia" 14, no. 2 (2021).

²⁴ Haris Muslim, "Pemikiran Ibnu Qayyim Al-Jauziyah (w 751 H/1350 M) Tentang Perubahan Fatwa Dan Relevansinya Dengan Penerapan Hukum Islam Di Indonesia," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 18, no. 02 (2020).

²⁵ Siti Nurjanah, Siti Zulaikha, and Agus Hermanto, "REINTERPRETING MUHAMMAD ABU ZAHRAH'S THOUGHT IN THE CONTEXT OF CONTEMPORARY ISLAMIC LAW Hendriyanto1," *Jurnal Pranata Hukum* 20, no. 2 (2025): 181–94.

²⁶ Khairin Ahmad, Safruddin Edi Wibowo, and Mursalim Mursalim, "Analysis of Sheikh Yusuf Al-Qardhawī's View on Ikhtilat from the Perspective of Sadd Al-Zar'ah," *The Eastasouth Journal of Social Science and Humanities* 3, no. 01 (2025): 138–51, <https://doi.org/10.58812/esssh.v3i01.700>.

²⁷ Ishfaq Amin Parrey, "The Interplay of Ijtihād and Maqāsid Al-Sharī'ah in Pre-Modern Legal Thought: Examining the Contributions of Al-Ghazali and Al-Shatibi," *Hamdard Islamicus* 47, no. 2 (2024): 37–59, <https://doi.org/10.57144/hi.v47i2.894>.

²⁸ Abdul Halim Ibrahim and Muhammad Safwan Harun, "Applying the Concepts of Benefit and Harm in Malaysian Bioethical Discourse: Analysis of Malaysian Fatwa," *Journal of*

The postulate of sadd al-dzari'ah is related to maintaining benefits and at the same time avoiding evil (mafsadah). Like the rules of fiqh:

درء المفساد أول من جلب المصاح

“Rejecting evil (mafsadah) is prioritized over achieving good (maslahah)”

This principle is a fundamental principle that encompasses all the derivative issues, and various other principles also rely on it. Therefore, sadd al-dzari'ah can also be based on it. This is understandable, because sadd al-dzari'ah contains elements of mafsadah that must be avoided. However, scholars differ on whether sadd al-dzari'ah can be used as evidence in Islamic law (istinbath).²⁹ The opinion of Malikiyah and Hanabilah scholars that sadd al-dzari'ah can be used as evidence is based on the statement of Allah in Surah al-An'am: 108, which reads:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ ۚ كَذَلِكَ زَيْنًا لِكُلِّ أُمَّةٍ
عَمَلُهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

Do not insult those they worship besides Allah, lest they insult Allah in excess without knowledge. Thus, We have made every people consider their deeds good. Then to their Lord is their return, and He will inform them of what they used to do.

The verse above shows that cursing God or the deities of other religions is a sin that will give rise to a prohibited mafsadah, namely cursing God. According to the psychological theory of defense mechanisms, a person whose God is reviled will likely retaliate by cursing the God believed in by the person who previously insulted him.³⁰ Therefore, before this reciprocal cursing occurs, the prohibition on cursing the Gods of other religions is a preventative measure. The use of sadd al-dzari'ah as a method of legal exploration is certainly inseparable from increasingly drastic social changes. These changes demand that Muslims be wise. The legal products enacted should not focus solely on legal

Bioethical Inquiry 21, no. 3 (September 1, 2024): 401–14, <https://doi.org/10.1007/S11673-024-10345-Z/METRICS>.

²⁹ Parrey, “The Interplay of Ijtihād and Maqāsid Al-Sharī‘Ah in Pre-Modern Legal Thought: Examining the Contributions of Al-Ghazali and Al-Shatibi.”

³⁰ Beata Pastwa-Wojciechowska, Iwona Grzegorzewska, and Mirella Wojciechowska, “The Role of Religious Values and Beliefs in Shaping Mental Health and Disorders,” *Religions* 12, no. 10 (2021): 1–18, <https://doi.org/10.3390/rel12100840>.

formalities, but should also consider anticipating the impacts of such actions to achieve the true goals of Sharia.³¹

In accordance with the explanation of sadd al-dzari'ah, when linked to the circulation of New Psychoactive Substances (NPS), it is clear that the circulation of NPS is a prohibited act, and its means of attaining it must be strictly controlled to eliminate any opportunities.³² In this regard, sadd al-dzari'ah operates as a preventive principle, but to block the pathways that lead to harmful consequences such as intoxication. The problem of NPS is evident in the distribution patterns that exploit loopholes and camouflage, where NPS are marketed as safe or legal products, disguised in various forms, and then distributed through difficult-to-trace networks. The prohibition here aims to facilitate access to NPS through various means, from production and supply, distribution, to promotion, which ultimately lead to mental and spiritual damage, so this pathway must be prevented from the outset.

Although al-dzari'ah is lower in level than the act it serves as, the implementation or prohibition of a means depends on the degree of virtue of the act it serves. In the NPS issue, means such as the provision of precursor materials, distribution channels, and marketing patterns appear to be less lenient compared to the consequences of intoxication, dependency, and social damage. However, this is precisely where sadd al-dzari'ah demands the closure of access to prevent mafsadah from being realized.

Although discussions on fath al-dzari'ah have not received much attention among usul fiqh scholars, fath al-dzari'ah is merely an extension of the concept of sadd al-dzari'ah. Sadd al-dzari'ah itself is not agreed upon by all scholars as a method of legal istinbat. For some, particularly among Shafi'i scholars, the issue of sadd al-dzari'ah and fath al-dzari'ah falls under the heading of implementing principles, and strengthening the prevention of NPS is also in line with the prohibition of alcohol as a basis for protecting the mind, as stipulated in the Qur'an in Surah al-Mā'idah : 90-91.

"Anything that is not fully obligatory except by its existence is obligatory." This principle also relates to the issue of the preamble (preface) of a task. This is one factor that leads to differences of opinion among scholars regarding the position of sadd al-dzari'ah and fath al-dzari'ah in positioning preventive measures as part of the obligation to safeguard public welfare."

³¹ Rukhul Amin, "Sadd Al-Dzari'ah: Korelasi Dan Penerapannya dalam Hukum Ekonomi Syariah," *Jurnal Justisia Ekonomika: Magister Hukum Ekonomi Syariah*, 4, no. 2 (2020): 1–10, <https://doi.org/10.30651/justeko.v4i2.6856>.

³² Sheretta T. Butler-Barnes et al., "Religiosity and Coping: Racial Stigma and Psychological Well-Being among African American Girls," *Journal of Religion and Health* 2018 57:5 57, no. 5 (June 2, 2018): 1980–95, <https://doi.org/10.1007/S10943-018-0644-9>.

Despite these differences of opinion, both theories represent a form of prevention to prevent the circulation of NPS as early as possible. Therefore, what is meant by al-dzarī'ah by Mālikī and Hanbalī scholars, apparently for Syāfiī scholars is simply muqaddimah. Meanwhile, Jumhur ulama is of the opinion that muqaddimah must be carried out by the muqaddimah, even though there is no separate argument for that, because if it is not mandatory to carry out muqaddimah, of course you can leave the obligatory syar'i actions which depend on the muqaddimah and in the context of the NPS, abandoning the prevention of means will open up a wider space for mafsadah.

Regulation of New Psychoactive Substances in Malaysia and Turkey

Malaysia regulates narcotic drugs and psychotropic substances under two main frameworks.³³ The Dangerous Drugs Act 1952 still regulates most narcotics (e.g., morphine, heroin, amphetamines), while the Poisons Act 1952 covers "poisons and psychotropic substances." Specific psychotropic substances are listed in the appendix to the Poisons (Psychotropic Substances) Regulations 1989.³⁴ For example, kratom extract is explicitly classified under the Poisons Act Schedule. This amnesty, or amendment to the law, allows Malaysia to add new substances to the schedule. Recently, the Malaysian Parliament passed the Poisons Amendment Bill 2025 to strengthen enforcement: expanding enforcement powers to all levels of police and other officers, not just pharmacists and police officers, and regulating enforcement of hazardous substances, including those found in e-cigarettes. This signals the Malaysian government's intention to close loopholes through broader enforcement, without changing the definition of substances.³⁵

Malaysia does not actually have the term "NPS" in its law; everything is managed as "poisons/psychotropic substances" regulated under the schedules. For example, new substances tested by the National Agency of Drug and Food Control (NPRA) can be added to Schedule III of the Poisons Act, thus being treated like registered psychotropic substances.³⁶ Therefore, Malaysia relies more on additional scheduling mechanisms than on a new law specifically for NPS.

³³ Lay Peng Lim and Mohammad Firdaus Bin Abdul Aziz, "The Issues and Challenges of Addressing the Importation of Unregistered Pharmaceutical Products in Malaysia," *Journal of Pharmaceutical Policy and Practice* 18, no. 1 (2025): 1–23, <https://doi.org/10.1080/20523211.2025.2523939>.

³⁴ Dunita Nabila et al., "Thailand-Malaysia Border: A Strategic Route for Illicit Drug Trade From the Golden Triangle," *Asian Journal of Environment* 9, no. 1 (2025): 59–76.

³⁵ Samihah Khalil Halim and Rusniah Ahmad, "School of Law, College of Law, Government and International Studies, Universiti Utara Malaysia" 10, no. July (2019): 45–77.

³⁶ Johari Ab Latiff, Syahrizal Abbas, and Muhammad Siddiq Armia, "A Study on Halal Certification Procedure: Progressive Transition Towards Halal Pharmaceutical Products in Malaysia and Indonesia," *Selected Proceedings from the 1st International Conference on Contemporary Islamic Studies (ICIS 2021)*, 2022, 3–12, https://doi.org/10.1007/978-981-19-2390-6_1.

Scheduling is slow, requiring legislative or administrative processes (health advocacy with the KDN). Malaysian data shows an increase in the incidence of new types of methamphetamine and kratom-related NPS.³⁷ Malaysia has even recorded dozens of new substances on the domestic market (e.g., fentanyl analogues, herbal mixes), but only a dozen have been regulated. Malaysia's enforcement effectiveness is relatively high; arrests of NPS suspects are intensifying, supported by research collaborations between the police (PDRM) and academics (UKM) to identify NPS active ingredients as a basis for regulatory reform.³⁸

Meanwhile, in Turkey, narcotics regulations are regulated by Law No. 2313 concerning narcotics control. Since 2011, Turkey has periodically amended the Council of Ministers' Decree to add NPS to the prohibited list.³⁹ The UNODC reports that since 2011, Turkey has included hundreds of NPSs under the Karar (Official Gazette) regulations. By February 2015, 340 NPS compounds had been controlled, and in 2016, several new benzodiazepines were added. This demonstrates the Turkish model: accommodating new substances by listing them individually. However, in January 2015, Turkey made a regulatory leap by introducing "generic definitions" into its narcotics law. This means that new groups of compounds are defined based on their chemical structure (e.g., all synthetic derivatives), eliminating the need to adjust the list each time an analog appears. This change allows Turkey to automatically include certain NPS groups as prohibited substances.

The definition of NPSs in Turkey is regulated through the Narcotics Law and subsequent amendments, not through a new, specific drug law. Turkey's Hakimil (criminal rights) is strictly enforced: Law No. 2313, along with the Criminal Code (KUHP), prohibits the production, distribution, and import of any substance without a permit.⁴⁰ Traffickers can be sentenced to 5–20 years in prison (up to 25 years in cases of death or serious offenses). Monitoring and enforcement are carried out by the anti-narcotics police, the Directorate General

³⁷ Jack E. Henningfield et al., "Kratom Safety and Toxicology in the Public Health Context: Research Needs to Better Inform Regulation," *Frontiers in Pharmacology* 15, no. June (2024): 1–17, <https://doi.org/10.3389/fphar.2024.1403140>.

³⁸ Fahmi Hassan and Rosdi Md Zin, "Medical Cannabis Regulation in East and Southeast Asia: A Scoping Review and Policy Insights for Malaysia," *Journal of Pharmacy* 5, no. 2 (2025): 316–29, <https://doi.org/10.31436/jop.v5i2.398>.

³⁹ Arslan Z, Dogan N, and Turkmen Z, "The 'Amount' Criterion In The Determination Of Personal Possession Offenses Involving The Four Most Common Drugs In Türkiye's Supreme Court," *Medicine, Science and the Law*, 2025, 1–11, <https://doi.org/10.1177/00258024251363069>.

⁴⁰ Zeynep Arslan, Nisan Dogan, and Zeynep Turkmen, "The 'Amount' Criterion in the Determination of Personal Possession Offenses Involving the Four Most Common Drugs in Türkiye's Supreme Court," *Medicine, Science and the Law* 66, no. 3 (July 1, 2026): 216–24, <https://doi.org/10.1177/00258024251363069;WGROU:STRING:PUBLICATION>.

of Customs and Excise, and the Ministry of Health (for drug distribution). Like other OECD countries, Turkey adheres to UN Conventions and EU regulations (although not yet a member of the EU), and supports tightening through Council of Ministers decisions.

Table 1
Comparison of NPS Regulations in Indonesia, Malaysia, and Turkey

Aspect	Indonesia	Malaysia	Turkiye
Legislation	Law No. 35/2009 (Narcotics) plus Government Regulation 40/2013, Minister of Health Regulation 41/2017 (reclassification of narcotics); Penal Code.	Poisons Act 1952 (Act 366) and Poisons (Psychotropic) Regulations 1989; Dangerous Drugs Act 1952 (Act 234); juvenile endangerment. Amended: Poisons (Amendment) Act 2025 (expanding enforcement powers).	Law No. 2313/1991 (Anti-Narcotics) as the main law; repeatedly amended through Presidential Regulations/Presidential Decrees (e.g. 2011/1310, 2012/2861, 2014/6800) adding new substances.
Definition of NPS	Not specifically defined; only referred to as "new narcotics" in the SDB Law (Article 1 paragraph 1 of PP 2/2022) without specific criteria; included in the Classification if stipulated through a Ministerial Regulation or new PP.	There is no separate definition of NPS in the Act; all substances are regulated as "poisons/psychotropic substances" if they are listed in the Poisons/ABD Schedule. The amendments were made by adding psychotropic substances to the schedule (including zenkon and synthetic compounds) as stated in the 2025 amendments.	NPS are new psychotropic substances not listed in the convention; they are regulated through the Narcotics Act. Since 2015, the NPS group has been treated with a generic definition ("anyone of this chemical class").
Sentencing	Very serious: production/immediate possession (e.g., marijuana, heroin Class I) is punishable by death or 20–25 years; personal abuse can be rehabilitated (Law 35/2009) or (newly) a misdemeanor. The Criminal Code also regulates additional penalties (Articles 106–107).	Quite severe: The 1952 DDA imposed life imprisonment/imprisonment (20–30 years each) for trafficking Class I narcotics; the 1952 Poisons Act imposed a prison sentence of up to 20 years for those who misuse psychotropic substances without a permit. The latest bill strengthens enforcement but does not change the penalties.	Very harsh: The Turkish Penal Code provides for 5–20 years in prison for serious drug trafficking; production/stockpiling can reach 25 years. Additional NPS are subject to the same penalties as regular narcotics. There is no mandatory rehabilitation option except under special regulations.

Addition of NPS Substances	Based on the Minister of Health Regulation (number of categories I–III). Adding new substances requires changes by issuing a new Minister of Health Regulation.	Adding psychotropics through amendments to the Poisons Act schedule by the Ministry of Health and the Royal Malaysian Police (the DDA covers narcotics Classes I–III). For example, ND NPS (say, JWH) was included in the Poisons Act by a Ministerial Decree. There is no generic mechanism currently; only piecemeal additions.	Scheduling of new substances was previously ad-hoc through Presidential Decrees (Karar) whenever a new NPS emerged.
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Looking at the regulations from Malaysia and Turkey regarding the handling of NPS, the Turkish Regulation can be implemented in Indonesia. Turkish practice shows that the addition of NPS to the scope of Law No. 2313 is done repeatedly through published decisions of the Council of Ministers, for example, the wave of adding tens to hundreds of NPS in several decisions in 2014, so that the law does not completely rely on a lengthy process for each substance. In fact, the generic approach has also been proven to make some NPS can be covered automatically when detected, which is policy-aligned with Indonesia's needs to face the NPS regulatory lag, so that the country does not continue to be in a lagging position because perpetrators actually modify chemical structures to avoid being listed. The adoption of this model can be positioned as a form of sadd al-dzarī'ah at the regulatory level: closing the gap that has been a means for the circulation of NPS, while still being able to maintain the principle of legality as long as the definition is formulated specifically, measurably, and can be forensically tested in the appendix/provisions that are clearly mandated by the law.

Sadd al-Dhariah as an Adaptive Framework for Closing NPS Regulatory Gaps

The comparison of Indonesia, Malaysia, and Turkey demonstrates that the central challenge in controlling New Psychoactive Substances is not simply the absence of criminal sanctions, but the temporal gap between the identification of a harmful substance and its formal inclusion in a legally binding schedule. Indonesia and Malaysia primarily depend on the periodic addition of individual substances to their respective regulatory schedules. This mechanism provides a relatively clear legal basis because every prohibited substance can be identified by name. Nevertheless, its dependence on scientific assessment, administrative coordination, and regulatory amendment means that the law frequently responds only after a new compound has entered the illicit market. Turkey addresses this problem differently by combining individual scheduling with generic definitions based on chemical structures. This approach does not

eliminate the need for scientific assessment, but it potentially reduces the opportunity for producers to evade regulation through minor molecular modifications. Therefore, the comparison indicates that regulatory responsiveness depends not only on the severity of punishment but also on the capacity of the classification system to anticipate changes in the chemical composition of NPS.

From the perspective of *sadd al-dhariah*, regulatory delay can be understood as a pathway that indirectly facilitates the continued circulation of harmful substances.⁴¹ The immediate object of prevention is not merely the consumption of NPS but the broader chain of activities that makes such consumption possible. This chain includes access to precursor materials, modification of chemical structures, production, packaging, digital promotion, distribution, and the representation of unclassified substances as legal or safe. Although some activities in this chain may not independently cause intoxication, they function as means that create a strong probability of harm to human intellect and life. *Sadd al-dhariah* therefore shifts the focus of regulation from responding to harmful consequences after they occur to identifying and controlling the means through which those consequences become possible.⁴² In this sense, its relevance to NPS control lies in its capacity to provide a structured rationale for preventive intervention rather than merely restating the prohibition of intoxicating substances.

However, *sadd al-dhariah* cannot be used as an unrestricted justification for expanding criminal liability.⁴³ The possibility that an action may lead to harm is insufficient unless the anticipated harm is probable, serious, and supported by reliable evidence. This limitation is particularly important in criminal law because vague classifications may violate the principle of legality and expose individuals to punishment for substances whose legal status cannot reasonably be determined. Accordingly, the application of *sadd al-dhariah* to NPS regulation must distinguish between remote possibilities and scientifically established risks. Preventive intervention is more strongly justified when a substance has a chemical structure, pharmacological effect, or pattern of misuse that

⁴¹ Hermawan Adinugraha and Yusuf Mujaddid, "Contextualization of The *Istiṣḥāb Wa Sadd Al-Ẓarīʿah* Towards Islamic Economic Practices in Indonesia."

⁴² Alias et al., "The Position of *Maqasid Al-Shariah* within Islamic Legal Sources: A Comprehensive Analysis."

⁴³ Fajar Rachmadhani, Mualimin Mochammad Sahid, and Muchammad Ichsan, "The Use of *Sadd Al-Dhari'ah* in Contemporary Family Law in Indonesia: Concept and Practice," *Malaysian Journal of Syariah and Law* 12 (2024), <https://access.heinonline.com/HOL/Page?handle=hein.journals/mlsnjl12&id=206&div=&collection=>.

demonstrates a close connection to an already prohibited compound.⁴⁴ This evidentiary threshold ensures that *sadd al-dhariah* operates as a proportional method of preventing harm rather than as a basis for arbitrary or excessive criminalization.⁴⁵

The comparative findings suggest that Indonesia should not simply reproduce the Turkish generic scheduling model. Legal transplantation without institutional adjustment could create broad definitions that are difficult for law enforcement officers, forensic laboratories, courts, and the public to interpret consistently. Instead, generic definitions should be formulated through measurable chemical criteria and accompanied by official explanatory schedules. Before a newly detected substance falls within a generic category, its classification should be supported by accredited forensic examination and an assessment of its psychoactive effects and potential harm. Temporary scheduling may be employed when credible evidence indicates an urgent public health risk, but such a decision should have a limited duration and be subject to further scientific review. Through these safeguards, the regulatory system can respond more rapidly to emerging compounds while preserving the requirements that criminal rules be written, accessible, predictable, and non-retroactive.

An adaptive NPS control framework based on *sadd al-dhariah* should therefore contain several connected mechanisms. First, an integrated early warning system should connect information from law enforcement agencies, customs authorities, health institutions, forensic laboratories, universities, and digital monitoring units. Second, a rapid scientific assessment procedure should evaluate the chemical composition, pharmacological effects, patterns of misuse, and severity of potential harm. Third, temporary scheduling should permit limited preventive control while a comprehensive assessment is completed. Fourth, generic definitions should be used selectively for groups of compounds whose structural characteristics can be determined with sufficient scientific precision. Fifth, final classification decisions should be published transparently and reviewed periodically in response to scientific developments. Finally, individuals affected by classification and enforcement decisions should have access to administrative objection and judicial review. These mechanisms translate *sadd al-dhariah* into an operational regulatory framework rather than leaving it as an abstract moral principle.

⁴⁴ David Nutt et al., "Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse," *Lancet* 369, no. 9566 (2007): 1047–53, [https://doi.org/10.1016/S0140-6736\(07\)60464-4](https://doi.org/10.1016/S0140-6736(07)60464-4).

⁴⁵ Arif Setiawan and Arpangi Arpangi, "Legal Analysis of Judicial Discretion in Deviation of Special Minimum Sentence Imposition in Narcotics Criminal Cases from the Perspective of Justice (Case Study of Supreme Court Decision Number 1306 K/Pid.Sus/2025)," *Ratio Legis Journal* 5, no. 1 (2026): 65–80, <https://doi.org/10.30659/rlj.5.1.65-80>.

This framework demonstrates that preventive Islamic legal reasoning and the principle of legality are not necessarily contradictory.⁴⁶ Sadd al-dhariah supplies the normative orientation to prevent pathways leading to substantial harm, while the principle of legality determines the procedural and substantive limits of state intervention.⁴⁷ Their integration requires scientific verification, precise legal formulation, proportionality, transparency, and institutional accountability. The scholarly significance of this construction lies in repositioning sadd al-dhariah from a doctrine used only to justify prohibition into an evaluative framework for designing contemporary regulation. In the context of NPS, the doctrine identifies which pathways should be controlled, while legality determines how those controls must be formulated and enforced. Consequently, Indonesia can develop a more responsive NPS control system without sacrificing legal certainty or allowing prevention to become a justification for overcriminalization.⁴⁸

Conclusion

This study finds that the principal weakness of NPS control in Indonesia does not merely lie in the absence of criminal sanctions, but in the dependence of law enforcement on a substance-by-substance scheduling mechanism that responds more slowly than the development of modified psychoactive compounds. The comparison demonstrates that Malaysia experiences a similar limitation because it primarily relies on periodic additions to its substance schedules, while Turkey offers a more responsive alternative by combining individual scheduling with generic definitions based on chemical structures. However, the Turkish approach cannot be transferred directly into the Indonesian legal system without scientific, procedural, and constitutional adjustments. The most important finding is that regulatory responsiveness and legal certainty should not be treated as opposing objectives. Both can be reconciled through scientifically measurable classifications, forensic verification, transparent procedures, and mechanisms for administrative and judicial review.

The scholarly contribution of this study lies in repositioning sadd al-dhariah from a general justification for prohibiting intoxicating substances into an operational framework for designing preventive regulation. Sadd al-dhariah does not merely determine whether NPS are prohibited but also identifies the

⁴⁶ Ahmad, Safruddin Edi Wibowo, and Mursalim, "Analysis of Sheikh Yusuf Al-Qardhawi's View on Ikhtilat from the Perspective of Sadd Al-Zari'ah."

⁴⁷ Wardatun Nabilah et al., "Between Protection and Permissiveness: A Fiqh Siyasa Reexamination of Marriage Dispensation in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (June 29, 2025): 137–51, <https://doi.org/10.31958/JURIS.V24I1.11882>.

⁴⁸ Indriana Masru'iyati Salma Izzah, "Digital Acceleration in the Justice System: Weighing Effectiveness and Challenges E-Court in Indonesia," *Journal Critical Legal System* 1, no. 1 (2026), <https://researchlegalsystem.com/index.php/rlsi/article/view/3>.

pathways that facilitate their circulation, including precursor supply, chemical modification, production, digital promotion, and distribution. The closure of these pathways supports the protection of intellect and life, but preventive measures must remain proportionate to the probability and severity of the anticipated harm. Based on this construction, Indonesia should develop an adaptive NPS control mechanism combining generic chemical definitions, temporary scheduling, forensic risk assessment, an integrated early warning system, transparent classification procedures, periodic regulatory review, and judicial oversight. This framework enables preventive Islamic legal reasoning to operate consistently with the principle of legality, due process, and protection against overcriminalization.

This study is limited by its doctrinal design and its reliance on legislation, official documents, and scholarly literature. It does not empirically measure the duration of the classification process, the effectiveness of law enforcement, the accuracy of forensic identification, or the experiences of institutions responsible for NPS control in the three jurisdictions. Therefore, the conclusion that particular regulatory mechanisms are more responsive should be understood as a normative assessment rather than proof of their empirical effectiveness. Future research should involve interviews with regulators, forensic laboratory personnel, law enforcement officers, health authorities, and judicial actors. It should also examine decided cases and administrative data to evaluate whether generic or temporary scheduling can accelerate NPS control without producing legal uncertainty or disproportionate criminalization. Such empirical research would test and refine the adaptive framework proposed in this study.

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