

Pesantren and Takzir in Indonesia: Lawrence Friedman's Legal System Perspective

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Abstract:

This article explains the legal system existing in the Pesantren, particularly in the term of takzir called perceived as non-human punishment contradictory with human rights. This research took place in Pondok Pesantren Edi Mancoro (PPEM) Salatiga with inclusive and tolerant characters, and voicing religious moderation. PPEM has had alumni becoming national figures. This study employed Lawrence Friedman's legal system theory requiring the functioning of law in three components: legal structure, legal substance, and legal culture. This research employed qualitative method with data source obtained from field work study with depth interview technique and descriptive interpretive analysis. The result of research showed that Pesantren Edi Mancoro has legal system component as required by Friedman. In the context of takzir, there is a shift in the takzir (punishment) application method to evidently undisciplined students or those committing crime. Takzir contributes to creating personality (noble character) of santri in undertaking life post-pesantren. Takzir actually has educative values not contradictory with human rights. So, takzir in pesantren fulfills all components of legal system suggested by Friedman. Out of the three components, legal culture is the basic components of takzir functioning in pesantren, either internal or external legal culture.

Key Words: *Edi Mancoro, Lawrence Friedman, Human Rights, Pesantren, Takzir.*

INTRODUCTION

Pondok pesantren is a unique Islamic education institution distributed throughout Archipelago area (Zuhriy, 2011: 287-310; Gamal Abdul Nasir Zakaria, 2010: 45-52). Its existence is believed to be oldest education institution in Indonesia and inseparable from Islam proselytizing history in Indonesia (Srimulyani, 2007: 85-99). *Pondok pesantren* has contributed to Indonesia's statehood history since pre-colonial, colonial and independence eras (Dhofier, 2019: 170).

Currently, *pondok pesantren* keeps existing amid modern education current and considered as more advanced and having promising projection for its students' future (Ibrahim, 2014: 253-263). *Pondok Pesantren* is often stigmatized as traditionalistic, outdated, and anti modernity, and even it is accused to be the nest of terrorist and radicalism (Lukens-Bull, 2008: 1-15). It worsens negative perception on *pesantren*. This accusation is labeled to *pesantren* because many *santris* engaged in terroristic action. Whereas, it is not true entirely (Woodward, Rohmaniyah, Amin, & Coleman, 2010: 28-50; Phol, 2006: 389-409). The case cannot be used as a means of justifying and generalizing all *pondok pesantrens* existing in Indonesia (Hamdi, Carnegie, & Smith, 2015: 692-710).

Negative stigma is also addressed in *pesantren's* education process and method in learning process and daily life of *santris*. For example, non-interactive learning method and *santris* (addressing for students) become "good listeners" only. *Santris* are considered as receiving doctrine from *kyai*, *ustadz*, or other *pesantren* instructors without critical thinking space. It is this that, according to some people, makes *santris* "blind *taqlid*" (Lukens-Bull, 2010: 1-24) and needs transformation in education method (Suradi, 2018: 27-38).

Education in *pesantren* (particularly *pesantren salaf*) contains sanction or punishment called *takzir* concept (Amri, Tahir, & Ahmad, 2017: 125-132). This *takzir* has negative stigma. Punishment (*takzir*) on undisciplined *santris* or those breaking the rule is considered as inhumane. Many *pesantrens* are reported applying *takzir* (*punishment*) to its *santris* by cleaning tub, toilet, and gutter, being bathed with dirty water, being shaved until bald, embarrassed and paraded around, and etc. That is why education observers criticizes the punishment (*takzir*) as breaking human rights (M. A. Ma'arif, 2017: 1-20).

Departing from the prejudices aforementioned, this research is important to clarify, to give other perspective and to understand *verstehen* (*takzir*) occurring in *pesantren*. This study focuses on *takzir* implemented in Pondok Pesantren Edi Mancoro (PPEM) located in Semarang Regency, Central Java. PPEM was selected because *pesantren* has typical characteristics as *pesantren* for college students and still imposing *takzir* to its *santris* evidently undisciplined or committing crime (*jarimah*). Another its unique characteristic is that PPEM is known to be inclusive, tolerant (Masroer, 2018: 1-24) and focusing on religious moderation (S. Ma'arif, 2014: 198-209) but still imposing *takzir*, in addition many alumni of PPEM have become national figures (leaders).

Etymologically, *takzir* means preventing or declining (Hamid, Mohamed, Pauzai, & Syed Nong, 2015: 27-38). Generally, it can be defined as punishment over crime or *jarimah* (Santoso, 2012: 123-148; Huda & Ispriyarso, 2019: 147-167). The term *takzir* in *pesantren* world is defined as education method in the form of punishment for *santris* breaking order or regulation existing in a *pesantren*. It is commonly the form of punishment specified by the caretaker, administrator, or *waliyul amri* (*legal structure*) existing in *pesantren* (Widayatullah, 1907: 66-77). Some researches have been conducted on *takzir* in *pondok pesantren* (Arifin and Zaini, 2017: 812-823; Hamid et.al, 2015: 27-38; Amri et al, 2017: 125-132). The factor distinguishing this study from previous studies is the use of law science perspective referring to Lawrence Friedman's legal system requiring the functioning of law within community in the presence of legal structure, legal substance, and legal culture elements. So, this position of research refers to Friedman's legal system theory to see the effectiveness of legal functioning and important measures to do in constructing legal system in *pondok pesantren*, particularly in *takzir* application.

This study addresses the research questions: how is the legal system in PPEM? How is the application of *takzir*? And what is the benefit of *takzir* to *santris*? The method

employed in this study was qualitative one with field work research by conducting observation, in-depth interview, and descriptive interpretative analysis technique. The informant of research includes Muhammad Hanif (Gus Hanif, 35 years) serving as caretaker of PPEM, Ahmad Sukri (23 years) as *lurah pondok* (head of *pondok*), Andi Saputra (21 years) as santri and security bureau coordinator of PPEM all at once, Damar Safera (21 year), Mawadah Ani Fitria (23 year), Zulfa Rofiah (22 year), the three of which are female santris of PPEM who have been imposed with *takzir*, and Moh Hafidz (42 years) as a santri PPEM during 1991-2002 period.

DISCUSSION

Profile of *Pesantren Edi Mancoro*

Pondok Pesantren Edi Mancoro (PPEM) is located on the southwest of Salatiga City. Administratively, PPEM belongs to Bandungan Hamlet, Gedangan Village, Tuntang Sub District, Semarang Regency. PPEM has been established since 1984 by Mahfud Ridwan (Zuhdi, 2019: 39) and affiliated ideologically with Nahdlatul Ulama (NU) (Hanif, 2020). Because PPEM is affiliated with NU, it follows *ablussunnah wal jamaah* religious thought, by studying classical Islam Holy Book or *turats* as its scholarship references (Huda, Yusriyadi, & Thohir, 2020: 1579-1595).

Mahfud Ridwan is a *kyai* coming from Pulutan Village, Salatiga City, Central Java. Born in 1941, Mahfud has Islamic education background since his early age. His parent is one of Nahdlatul Ulama (NU) leaders in Salatiga City. On secondary education level, Mahfud had *nyantri* (learnt) from Syeh Yasin in Makkah City, Saudi Arabia, and then continued his study in Bagdad University. It was in Bagdad that Mahfud become Abdurrahman Wahid (Gus Dur) and Mustofa Bisri (Gus Mus)'s best friend. Having come back from Bagdad in 1970, Mahfud married a woman named Nafisah, the daughter of Muhammad Soleh, a *kyai* residing in Bandungan Hamlet, Gedangan Village, Semarang Regency. It was in Gedangan that Mahfud started the establishment of PPEM (Hanif, 2020).

Originally, Mahfud Ridwan originally constructed a building near his house intended to be discussion and training and education rooms for his colleagues. Mahfud Ridwan's colleagues often conducting discussion come from such groups as academician, politician, NGO (Non-Governmental Organization) activist, and (college) students. Students often engaged in discussion and training in Gedangan are those coming from *Universitas Kristen Satya Wacana* or Satya Wacana Christian University (UKSW) of Salatiga and *Institut Agama Islam Negeri* or State Islam Religion Institute (IAIN) of Salatiga. Mahfud's colleague in those discussions was, among others, Matori Abdul Djalil later becoming the Republic of Indonesia's Minister of Defense in Gus Dur's reign (Hanif, 2020). The discussion community then transformed into *Yayasan Desaku Maju* or My Advanced Village Foundation (YDM), officially established on December 26, 1989. This YDM was the embryo of PPEM establishment (Hanif, 2020).

Since its official establishment in 1984, PPEM has evolved continuously. Santris attending *pengajian* (Quran Study) were categorized by Mahfud into two: those staying in *pondok* (called *santri mukim*) and those attending the study but not staying in *pondok* or called *santri kalong*. In addition to being *kyai* in PPEM, Mahfud was also a lecturer in IAIN Salatiga and had ever been the Rector of Universitas Nahdlatul Ulama or Nahdlatul Ulama University (UNU) of Surakarta. It was his contact with students that made PPEM the *pondok pesantren* the majority santris of which are students. Some santris of PPEM now

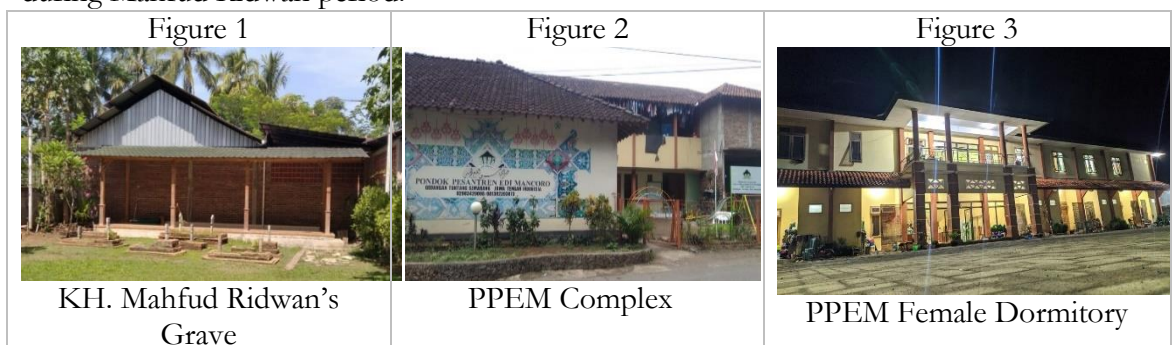
become local and national figures, such as Miftahuddin having ever been the Second deputy of Rector of IAIN Salatiga, Ahmad Bahrudin now still active as Director of *Sekolah Alternatif Qaryah Thayyibah* or *Qaryah Thayyibah* Alternative School of Salatiga (Shofwan & Kuntoro, 2014: 50-62), and Muhammad Hanif Dhakiri ever been the RI's Minister of Manpower during 2014-2019 (Wardiah & Subandi, 2018: 195-205; Hanif, 2020). This interaction with many classes of society makes PPEM a moderate pesantren.

Religious tolerance and moderation movement performed by PPEM includes being coordinator of *Pesantren for Peace* and coordinator of *Forum Agamawan Muda Lintas Iman* or Cross-Creed Young Religionist Forum (KITA FAMILI). PPEM have also ever welcomed *live in* guests from many religions who want to study Islam education in pesantren, e.g. from Sekolah Tinggi Filsafat or Philosophical College (STF) of Driyarkara Jakarta and Faculty of Theology of UKSW Salatiga (Hanif, 2020). In the term of facilities and infrastructures, PPEM currently has a 3500 squared meter-wide land with *ikrar wakaf* deed (Hanif, 2020). It also has managed such institution units as: Kindergarten, Elementary School, *Madrosatul Qur'an* (Qur'an Shool), Santri Cooperative, *Lembaga Amil Zakat Infak Sedekah* and *Wakaf* or an Institution Managing *Zakat Infak Sedekah and Wakaf*, Hajj Counseling Group (Hanif, 2020).

Mahfud Ridwan passed away on May 27, 2017 and was buried in PPEM complex. Since then, the caretaking leadership of PPEM was continued by his fourth son, Muhammad Hanif, or called Gus Hanif (Sukri, 2020). Moh Hafidz said:

"... For more than ten years (1991-2002) I became a santri of Kyai Mahfud, he scolded me. When some santris broke the rule, he never scolded them. Even for the severe infringement, he had never been angry or expelled santris from pondok. He punished santris by loving them rather than punishing them physically or expelling them from pondok. That is Kyai Mahfud's uniqueness (Hafidz, 2020).

Pondok Pesantren Edi Mancoro (PPEM) has been 35 years old. During Mahfud's leadership era, there was no *takzīr* imposed to santris because it prioritized humanistic approach. Humanistic approach in education is conducted by paying attention to and loving students/santris who breaking the rule, rather than punishing them (O'Banion, 1978: 21-27), in this case imposing *takzīr* or expelling them from pesantren. In its development, there is a dynamic in the term of *takzīr* because the development of situation in relation to the implementation of *pesantren* activity programs. It indicates that there is a shift from *takzīr* method implemented under Mahfud Ridwan's to the one under Muhammad Hanif's leadership. Under Hanif's leadership, PPEM currently has 321 *santri mukim* (Sukri, 2020). This large number of santris needs treatment different from that during Mahfud Ridwan period.



Legal System in PPEM

PPEM santri have obligation of implementing *ngaji* (studies) and programs established by caretaker and administrator. Damar Safera said:

“.....in Edi Mancoro all santri should attend sholat berjamaah subuh (*Subuh pray in congregation*) in mosque (in *pondok complex*), then santri study *Tafsir al-Jalalayn* (on Tuesday-Thursday) or study *Al-Qur'an* (on Saturday-Monday), or study *Quran* themselves on Friday after Subuh in their own rooms or in Kyai Mahjud's grave. Thereafter, it is their free time, because many santri study in college as well. After ashar until around maghrib, santri study kitab kuning or yellow book (*Riyadus Sholihin*). Later, they attend *sholat maghrib* in congregation in *masjid* (mosque), and then study *Quran* until Isya. After Isya, they study the book again until 09.00 p.m.”(Safera, 2020)

PPEM is a small community undertaking daily activities and each of santri has various needs. Referring to a book entitled “*Memahami Kebudayaan*” by Mudjahirin Thohir, saying that human beings have a need for *keadaban* (politeness) in the attempt of maintaining regularity and orderliness in a construction of community (Thohir, 2007: 4). This need for politeness requires legal system, so does that in *pondok pesantren* community. Managing the daily life of hundreds *santri* of course need law and rules in order to create orderliness, discipline, and politeness, in addition to achieve the well-functioning of education system.

The unavailability of law or regulation in *pesantren* community will make life in *pesantren* disorganized and vulnerable to many infringement and disorder. The absence of law will make the system within society *bellum omnium contra omnes* as suggested by Thomas Hobbes (Schmitt, Schwab, & Strong, 2008: 31), in which people will be motivated to follow their lust and egoism. Therefore, Hobbes confirms that the main function of law is to be security order and orderliness (Tanya, 2013: 61).

Law is one of important aspects existing within society for the sake of orderliness and justice, in this case *pesantren* community. Law also functions as the safeguard of rule order in daily life behavior. Law is one of norms living within society, in addition to religion, moral, and politeness norms. Legal norm is a provision and a guideline about something to do and not to do, and has compelling characteristic based on the legality of legislation authority owner (Mertokusumo, 2005: 15-16). Society community, including *pesantren*, of course, has goal to be achieved in developing law. No rule of law is made without goal (objective). Esmi Warassih, citing Gustav Radbruch, combines three legal objective theories (standard priority theories). The objectives of law are: *firstly*, to realize justice; *secondly*, to realize utility; and *thirdly*, to realize law certainty (Warassih, 2005: 24-25).

Pondok pesantren community in the attempt of implementing justice, utility, and law certainty needs legal system enacted. Lawrence Friedman requires the presence of legal system in three components for the functioning of law within society community: *legal structure*, *legal substance*, and *legal culture*(Friedman, 2018: 15-18;Nawawi Arif, 2017: 63-64).

Legal Structure in PPEM

PPEM's caretaker is the supreme leader and the one responsible for all *pesantren*-related activities (Sukri, 2020). The administrators of *pondok* consult with and report *pesantren* activities to the caretaker periodically, at least once a month or more intensely in crucial things. The structure below it is administrator consisting of administrator head or called “*lurah pondok*”. The duty of *lurah pondok* is to be manager and coordinator in the implementation of all *pesantren*-related activities (Sukri, 2020). *Lurah pondok*'s work is helped

by secretary in the term of administrative jobs, treasurer in the term of financial management, and bureaus in their own divisions (Saputra, 2020; Sukri, 2020). Caretaker and administrator have big authority in *pesantren's* performance policies.

This leadership establishment at santri level benefits senior santris in learning legal drafting. They can also learn to be responsible, to be disciplined, and to discipline others, and to treat all santris fairly or not-discriminatively. In this case, administrator should obligatorily apply the principle of equality before the law (Winter, 2015: 741-756). Administrator is prohibited from doing unfair action in imposing *takzīr* due to resentment or dislike against santris accidentally breaking the law.

Law needs authority producing laws or rules to be applied to a societal community (Friedman, 2018: 15). In the context of PPEM, legal structure in charge of producing rules is senior santris, either male or female selected or elected to be administrators. Administrators serve to develop rules to be applied and enacted to all PPEM santris. Rules of law developed and approved by administrators will be proposed to PPEM's caretaker to be approved. This approval of rule can be interpreted as the form of legality principle in law containing law certainty or often called *law legality principle* (Braithwaite, 2002: 47-82). So, the legal structure element has been fulfilled by PPEM with authority of drafting, organizing, developing, and ratifying the regulation to be complied with all members of *pesantren* community. The ratification of rule is contained in the legal substance later.

Legal substance in PPEM

Legal substance can be defined the need for rule product containing what is allowed or what is not allowed to do to the societal community (Friedman, 2018), in this case, PPEM. The regulation contains santris' obligation, prohibition, and licensing procedure to santris leaving the activities in PPEM. The obligation of santris includes: attending studies and activities as scheduled, doing sholat subuh and maghrib in congregation in *masjid*, doing pilgrimage to *masyayib's* grave on Friday, maintaining PPEM's reputation, maintaining *pesantren's* orderliness and cleanliness and interacting well with the society (Saputra, 2020).

The regulations also prohibit all santris from damaging PPEM's facilities, stealing or *ghosob* (or borrowing without permission), dating, washing clothes in *pondok's* bathroom, and bringing motorcycle for those having not stayed yet in PPEM for two years. They are also prohibited from making noise, making the citizens restless by means of taking a bath, sleeping, or entrusting their motorcycle in their houses surrounding PPEM, smoking for male santris below 18 years age, and washing motor using *pondok* facility water. Despite some prohibitions mentioned in written rule, they are still simple and unsystematic in nature, different from the legislation developed by Local Government (Local Regulation) or state-produced law. There is neither private nor public law categorization. The regulation developed does not contain the form of punishment to undisciplined santris or those breaking the rule, just like in Penal Code (*Kitab Undang-Undang Hukum Pidana or KUHP*). Every infringement committed by santris will be discussed in administrator meeting to determine the authentication process and the *takzīr* form.

The form of *takzīr* having been applied in PPEM includes: reading Qur'an in the grave (Saputra, 2020), reading *dzība* before the caretaker's house at 00.00 o'clock (Fitria, 2020), reduction of holiday quota permission, cleaning PPEM environment (Rofiah, 2020), paying fine by buying book to be donated to PPEM's library as *infaq* (Safera, 2020), "being displayed" before male-female santris during Quran study (*pengajian*) bringing label "*saya*

mbedal (I played truant)” written on a piece of paper posted on breast, thereby making them shy and expectedly not repeating it (Fitria, 2020). From this, it can be seen that the punishment imposed contains educative values to santris. *Takzir* punishment is also adjusted with the severity of infringement done.

The form of *takzir* in PPEM is adjusted with the severity and the frequency of infringement, in criminal law it is called recidivist. Meanwhile, the santris imposed with *takzir* not undertaking their punishment, the punishment will be increased. Santris doing the infringement repeatedly can be reprimanded, and if they ignore it, they will be expelled (Saputra, 2020). The administrators have never forwarded the infringement committed by santris to the state law enforcers, either police or attorney. It is because *takzir* in *pesantren* is more persuasive in nature and containing educative values (Zalidj, 2011). The regulation existing in PPEM accommodates santris’ need and remains to be in the frame of orderliness, security, and learning effectiveness in PPEM. Von Savigny calls it *volkgeist* (Rai, 2012: 1-8), meaning that the law should be adjusted with the spirit (soul) of community as the subject of law. Satjipto Rahardjo (2009: 68) calls it the law for human, rather than law for the law itself.

Legal Culture in PPEM

The law should be obeyed and implemented, meaning that the law or rule made and established becomes a culture of societal community (Friedman, 2018: 15). Although the written rule in legal substance of PPEM is simple, but only few santris break it (Saputra, 2020). It indicates that law can work effectively in *pesantren* community. Friedman divides this legal culture into two: internal (apparatus or law enforcer) and external (community) legal cultures (Friedman, 1975: 15).

Firstly, internal legal culture (apparatus), in this case the administrator of PPEM should obligatorily obey all regulations. Senior santris are required to be the good role model (*uswah*) to other santris (Alam, 2016: 124-131). There is no tolerance to administrator but on the caretaker’s direct permission. Administrator apparatuses in PPEM are senior santris selected due to their proven capacity and credibility during being santris in PPEM (Safera, 2020). Administrator apparatuses committing undisciplined action will be discussed internally by administrators and then the first reprimand will be given orally, and if they repeat it, the second reprimand will be given in written manner. If the third infringement is still committed, the administrators will consult with the caretaker to decide the form of punishment or the expulsion from PPEM (Saputra, 2020). The infringement committed by members of administrator will be imposed with severed *takzir*, because the administrators should be good role model to other santris, rather than otherwise (Sukri, 2020). Therefore, internal legal culture is important to take into account in PPEM.

Secondly, external legal culture, in this case santri community in PPEM has motivation to obey the regulations specified by administrators. Santris imposed with *takzir* will feel shy. Ani Fitria said:

“... as long as being santris here, I had ever been imposed with takzir. I had it around September 2019, because I went home without permission letter. So, the administrator equated it with truancy from pondok (mbedal). Actually, I was actually punished along with some of my friends, but in its implementation, the punishment should be done alone. I was punished to read 1 juz (one juz) of Quran in the pondok’s yard at 00.000. It was not so terrifying but so embarrassing because at that time some male santris must pass through the yard to do night picket” (Fitria, 2020).

Santris' legal culture in obeying the regulation results from their spirit in *tabarukan* and *tholabul ilmi* in PPEM. In registration process to be santris in PPEM, the parents of prospect santris are obliged to see caretakers and "hand over" their children to acquire religion education in PPEM. It means that during in *pesantren*, the parent of children (santris) is PPEM's caretaker, and because the caretaker is considered as the parent, any policy made by caretaker should be obeyed by santris. If santris break it, they should receive punishment (*takzîr*) over their infringement. Ani Fitria said:

"I think, takzîr should remain to be applied, because in the presence of takzîr, santri/santrivati will take some measures carefully and it can practice discipline and mentality. As long as the takzîr is still compatible to what we do or proportionate (just), it is legal. I think takzîr is beneficial to santris" (Fitria, 2020)

Basic lesson given to new santris in PPEM (and majority other *pesantren*) is *adab al-ta'lim wa al-muta'alim* book study, *turat* book explaining the procedure for the santris in the process of acquiring knowledge (*tholabul ilmi*) (Susanto, 2011). Santris' proper behavior (*adab*) in acquiring knowledge as mentioned the *kitab* (book) consists of four requirements to acquire knowledge: *dbukain wa kbirsin wa istibarin wa bulghotin wa irsyadi ustadzî wa tuuli zamaani*, meaning that to acquire knowledge, santris should be smart, diligent, persistent, patient, having enough cost, teacher guidance, and relatively long time (Hidayah, 2019: 1-15).

So in santris' perception, any decisions made by administrator and caretaker related to the infringement committed are parts of learning process. Takzîr is conceived as the form of *ke-ta'dzim-an* (submission) to caretaker and the awareness of the importance of knowledge-acquiring process. It makes *takzîr* a fair and beneficial punishment to santris, either in *pesantren* or later within society. Thus, legal culture in *pesantren* is the one in the attempt of acquiring knowledge for santris in the term of scholarship, discipline, and learning to obey the law prevailing and enacted, because essentially law gives utilities to santris.

CONCLUSION

Takzîr can be applied to a *pesantren* community by adjusting it with the condition of individual *pesantren*. *Takzîr* method and implementation in one *pesantren* can be different those in another. *Takzîr* is the form of legal culture compatible to and adjusted with soul (*volkegeist*) and legal culture of *pesantren* community. *Takzîr* method in PPEM shifted from Kyai Mahfud Ridwan to Gus Hanif's caretaking. In Kyai Mahfud Ridwan's era *takzîr* was implemented using humanistic and affection approach, while in Gus Hanif's era, *takzîr* is applied firmly as the form of learning to santris. Another important point is that *takzîr* contributes to create personality (noble character), discipline and carefulness among santris, thereby benefiting their post-*pesantren* life. *Takzîr* actually has educative values and is not in contradiction with human rights.

PPEM has legal system components as required by Friedman, including legal structure, legal substance and legal culture, despite their simplicity and unsystematic nature. So, *takzîr* in *pesantren* fulfills all components of legal system as suggested by Friedman. Out of those three components, legal culture is the main component of *takzîr* functioning in *pesantren*, including internal and external legal culture.

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