

**The Death Penalty from the Perspective of Criminal Law
and Islamic Law: A Comparative Study in Indonesia**

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Abstract: This study aims to analyze the application of the death penalty from the perspective of Indonesian criminal law and Islamic law. The study was conducted to identify common ground and principal differences between the two in upholding justice and protecting human values. The method used was normative legal research with a statutory and conceptual approach, sourced from primary, secondary, and tertiary legal sources through literature review. The results indicate that in Indonesian criminal law, the application of the death penalty is intended for crimes deemed beyond the bounds of humanity, such as drug abuse, terrorism, premeditated murder, and serious assault resulting in a cruel death. Meanwhile, in Islamic law, the death penalty (qisash) is imposed on perpetrators of intentional murder, adultery (muhsan), robbery (hirabah), rebellion (bughat), and apostasy. Islamic Sharia places the death penalty as an instrument of justice aimed at preserving life, social order, and human dignity. This study recommends that the implementation of the death penalty in Indonesia be accompanied by a clear time limit at each stage of the legal process to avoid legal uncertainty. In addition, interpretation of Islamic legal texts needs to be done contextually so that they are relevant to the development of modern legal systems and human values.

Keywords: Death Penalty, Indonesian Positive Law, Islamic Law.

A. INTRODUCTION

Islamic law and Indonesian criminal law have different yet interrelated views on the existence of the death penalty as a form of sanction for serious crimes. From an Islamic perspective, the prohibition on killing without just cause is affirmed in the Qur'an, Surah Al-Isra', verse 33: "And do not kill anyone whom Allah has forbidden (killing), except for a just cause. Whoever is killed unjustly, indeed, We have given his guardian power, but let him not overstep the bounds in killing. Indeed, he is a man of help." [1]

This verse emphasizes that human life has a sacred value that cannot be removed except for a legally valid reason, such as in the implementation of qisas (retribution). Islam views the death penalty not as an act of cruelty, but as an instrument of justice to maintain order, uphold rights, and protect human life from injustice. Meanwhile, in the context of Indonesian positive law, the death penalty remains a continually debated issue, particularly in relation to the principles of Human Rights (HAM). As a member of the United Nations (UN), Indonesia has recognized the 1948 Universal Declaration of Human Rights (UDHR), which affirms that everyone has the right to life, liberty, and security of person (Article 3 of the UDHR). Indonesia has also ratified the International Covenant on Civil and Political Rights (ICCPR) through Law Number 12 of 2005 and the

International Covenant on Economic, Social and Cultural Rights (ICESCR) through Law Number 11 of 2005. These ratifications demonstrate Indonesia's commitment to protecting the right to life, although in practice, the implementation of these human rights principles still faces various challenges. [2]

Under national law, the right to life is expressly guaranteed in Law Number 39 of 1999 concerning Human Rights, specifically Article 4, which states that the right to life is a fundamental human right that cannot be derogated under any circumstances. However, the Indonesian legal system still recognizes the death penalty as a legitimate criminal sanction. Under the new Criminal Code (KUHP), as stipulated in Law Number 1 of 2023, the death penalty is categorized as a special punishment and is threatened as an alternative. This punishment is also regulated in various special laws, such as Law Number 35 of 2009 concerning Narcotics, which stipulates the death penalty for perpetrators of certain narcotics crimes.[3]

The application of the death penalty in Indonesia is often based on the grounds of its deterrent effect and protection of society from extraordinary crimes such as terrorism, narcotics, and premeditated murder. However, its implementation remains controversial because it is considered contrary to the principle of respect for human rights. From a moral and ethical perspective, the death penalty is considered to diminish human dignity by terminating all inherent individual rights of the convict. Therefore, the state must be able to balance the interests of justice, legal certainty, and protection of the right to life. [4]

From an Islamic legal perspective, the death penalty has strong theological legitimacy. The implementation of qisas (retribution) in cases of intentional murder, hudud (punishment) in cases of adultery (muhshan), hirabah (armed robbery), rebellion (bughat), and apostasy are forms of law enforcement aimed at safeguarding the public interest (maslahah al-'ammah). However, its implementation is always accompanied by the principle of prudence and the opportunity for forgiveness, demonstrating that Islam places substantive justice above merely retributive aspects. [5]

In the context of Indonesian positive law, which is also based on respect for human rights, the debate over the death penalty has become increasingly complex. On the one hand, the state has an obligation to protect society from serious crimes; on the other, the state is also obligated to guarantee the right to life for every citizen. This situation raises philosophical, juridical, and sociological questions about the extent to which the death penalty can be maintained within Indonesia's modern and democratic legal system, and how Islamic law views this.

Against this background, this study examines "A Comparative Study of the Death Penalty in Criminal Law and Islamic Law in Indonesia." This study aims to analyze the application of the death penalty under Indonesian criminal law and Islamic law, and to identify fundamental similarities and differences between the two in efforts to uphold justice and protect humanity.

B. METHOD

This research uses a normative or doctrinal legal research type that focuses on the study of positive legal norms, legal principles, and doctrines that have developed in legal science [6]. This approach was chosen because the research aims to examine in depth the application of the death penalty from the perspective of positive criminal law and Islamic law in Indonesia. In this context, law is understood as a set of norms that live and apply in society and serve as the basis for determining the validity and justice of a criminal policy. This normative legal research is descriptive-analytical, namely systematically and comprehensively describing the legal phenomena studied, then analyzing them critically to find points of similarity and difference between the concept of the death penalty in positive criminal law and Islamic law. Through this approach, the research is expected to provide an objective and argumentative picture of the philosophical, juridical, and moral foundations of the application of the death penalty. The data sources used are entirely secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include provisions of laws and regulations governing the death penalty in Indonesia as well as sources of Islamic law such as the Qur'an, Hadith, and relevant fiqh rules. Secondary legal materials include scientific literature, legal textbooks, legal journals, previous research results, and the views of legal experts discussing the issue of the death penalty. Meanwhile, tertiary legal materials are used to provide additional explanations through legal dictionaries, encyclopedias, and other supporting sources. The data collection technique is carried out through library research, namely searching for various reading sources relevant to the research theme, including books, scientific articles, research results, laws and regulations, and court decisions related to the death penalty. The collected data are then analyzed qualitatively normatively with an emphasis on the interpretation of legal norms and principles of justice that underlie the application of the death penalty in both legal systems. The analysis is conducted in depth to find rational and contextual legal arguments, thus producing accurate conclusions that are in accordance with the research objectives.

C. DISCUSSION

1. Implementation of the Death Penalty in Criminal Law in Indonesia

Criminal law is essentially a set of legal norms containing prohibitions and orders established by the competent authority, accompanied by the threat of sanctions for any violators. The application of criminal sanctions aims to protect individual rights, prevent crime, and maintain order and peace in society and the state. Criminal sanctions can take the form of physical or psychological suffering, deprivation of liberty, or even death, namely the death penalty. [7]

The death penalty is the most severe form of punishment (ultimate punishment) recognized in the Indonesian criminal law system. This punishment is seen as the most extreme repressive means imposed by the state against perpetrators of crimes

deemed particularly serious and endangering the public interest. In the author's perspective, the death penalty should only be imposed on perpetrators of serious violations that cause significant losses to the state, threaten public safety, or damage the future of the nation's future generations. Therefore, the implementation of the death penalty must be carefully placed within a legal framework that upholds the values of humanity and substantive justice.

The death penalty has an exceptional character, meaning it can only be imposed if the perpetrator's actions have exceeded the limits of humanity and have had widespread social impacts. Judges as executors of judicial power must use the death penalty as the *ultimum remedium*—that is, the last resort after other forms of punishment are deemed inadequate to uphold justice and protect society. [8]

Historically, the concept of the death penalty is not new to the Indonesian legal system. The practice of capital punishment has been known since the time of the Nusantara kingdoms, where the punishment was usually imposed for crimes deemed to threaten the stability of the kingdom, such as treason, murder, or serious moral violations. Over time, the Indonesian national legal system has maintained the death penalty as one of the principal types of punishment, as stipulated in Article 10 of the Criminal Code (KUHP).

Along with the development of the human rights paradigm, the application of the death penalty has generated considerable debate. Some believe that the death penalty violates the constitutionally guaranteed and non-derogable right to life, a right that cannot be reduced under any circumstances. Meanwhile, others argue that the death penalty remains necessary as a legal instrument to provide a deterrent effect against perpetrators of extraordinary crimes such as terrorism, drug trafficking, and premeditated murder. [9]

The application of the death penalty by a judge to a perpetrator of a crime indicates that the judge has deprived a person of the right to life. In the context of Human Rights (HAM), the right to life is a non-derogable right, meaning that this right cannot be reduced in any form and the state has an obligation to protect it. Other rights that are equal to the right to life include the right not to be tortured, the right to freedom of opinion and belief, the right to religion, the right to be free from slavery, the right to be recognized as an individual before the law, and the right not to be subjected to retroactive punishment. [10] In this case, according to the author, Human Rights Limit the Death Penalty. Within the framework of Human Rights (HAM), the right to life is a non-derogable right, meaning this right must be protected without exception in any form, and the state is responsible for protecting it. Other rights equivalent to the right to life include the right to be free from torture, the right to express opinions and beliefs, the right to religion, the right to be free from slavery, the right to be recognized as an individual before the law, and the right not to be subjected to retrospective punishment. The death penalty is a serious violation of Human Rights because it involves a person's life. Although regulated by law, its application continues to generate controversy and pros and cons. Therefore, strict caution is needed in its application, taking into account the principles of justice and Human Rights (HAM) stipulated in the law.[2]

The death penalty functions as a penal tool in handling crime, with the aim of providing a deterrent effect on the public and on those convicted, so that they do not re-commit crimes (reducing the possibility of repeating crimes). The focus of the

death penalty is repressive action against perpetrators of crimes. In addition to using penal tools, efforts to handle crime can also be achieved through non-penal means. These means are more sociological and require a longer time, because their implementation is continuous and focuses on the preventive aspect of crime before it occurs. [11]

In Indonesia's criminal justice system, the death penalty serves as a last resort, protecting the public from serious crimes and creating a deterrent effect, deterring them from committing serious crimes punishable by the death penalty. The death penalty is the harshest form of punishment and is regulated in Article 10 of the Old Criminal Code (KUHP), or Law Number 1 of 1946. The death penalty can only be imposed after all other legal actions, such as cassation, appeals, and clemency, have been exhausted and have yielded no results. [12]

Article 64 of the New Criminal Code, or Law Number 1 of 2023, states that the criminal system comprises principal penalties, additional penalties, and special penalties for certain crimes according to law. Article 67 states that these special penalties involve the death penalty, which is always applied as an alternative. Article 98 explains that the death penalty is intended to prevent crime and protect the public. Article 99 states that the death penalty can only be implemented after the convict's request for clemency has been rejected by the President. Article 100 of the Rules stipulates that a judge who imposes a death sentence must grant a 10-year probationary period. During this period, an assessment will be made of the defendant's level of remorse, desire to improve, and involvement in the crime. If the defendant demonstrates deep remorse and an intention to improve during the probationary period, the death sentence may be commuted to life imprisonment based on a Presidential decree based on the considerations of the Supreme Court. However, if the defendant does not demonstrate remorse or perform good deeds during the probationary period, the death sentence will remain in effect as the final punishment, and its implementation will be ordered by the Attorney General. This approach reflects an effort to provide an opportunity for the defendant to demonstrate self-improvement, while maintaining the death penalty as a last resort. [13]

In the New Criminal Code, the articles governing crimes punishable by death include various serious crimes that threaten state security, humanity, and public safety. The provisions in the New Criminal Code that regulate crimes punishable by death include various serious crimes, such as treason with the intent to kill or deprive the President of his liberty (Article 191), treason to separate territory from the Unitary State of the Republic of Indonesia (Article 192), treason for the benefit of a foreign party (Article 212 paragraph (3)), premeditated murder (Article 459), and theft resulting in serious injury or death (Article 479 paragraph (4)). In addition, the death penalty is also applied to violence against aviation safety (Article 588 paragraph (2)), genocide (Article 598), crimes against humanity (Article 599), terrorism (Article 600), and serious narcotics crimes (Article 610 paragraph (2) letters a and b). [14]

The death penalty, as stipulated in the New Criminal Code, applies to crimes deemed extremely serious and having a serious impact on national security, human life, and public safety. This regulation reflects the state's commitment to addressing serious crimes with the strictest sanctions, while still allowing for special considerations in

its implementation, as stipulated in the review mechanism through pardons and probation.

The ten-year probation period for certain crimes punishable by death can be considered complex and create legal uncertainty. However, this probationary period aims to ensure that decisions regarding the death penalty are made with the utmost care. Probation or a conditional death penalty sanction provides time for the defendant to demonstrate remorse and self-improvement, thus providing a basis for mitigating or avoiding judicial errors in decision-making.

According to the author, this approach reflects an effort to balance justice and prudence, by allowing room for the possibility of change in the defendant before the death penalty is actually carried out. Although it may create uncertainty, this step is considered necessary to minimize the risk of an inappropriate or unfair execution. In Indonesia, which still refers to the Criminal Code (KUHP) drafted by the Dutch government since January 1, 1918, Article 10 continues to list the death penalty as one of the main types of punishment. This contrasts with the Netherlands, which abolished the death penalty in 1870. This decision was not followed by Indonesia, given the country's unique circumstances that require the use of the death penalty for serious crimes. The application of the death penalty in Indonesia's positive legal system is regulated in the Indonesian Criminal Code (KUHP), as outlined in the following articles:[14]

1. Treason aimed at assassinating the President or Vice President is regulated in Article 104 of the Criminal Code (KUHP).
2. Relations with foreign countries that result in war are regulated in Article 111 Paragraph (2) of the Criminal Code (KUHP).
3. Treason involving providing information to the enemy during wartime is regulated in Article 124 Paragraph (3) of the Criminal Code (KUHP).
4. Premeditated murder is regulated in Article 340 of the Criminal Code (KUHP).
5. Premeditated murder of the leader of a friendly country is regulated in Article 140 Paragraph (3) of the Criminal Code (KUHP).
6. Theft with violence committed by a group can result in serious injury or even death, as regulated in Article 365 Paragraph (4) of the Criminal Code (KUHP).
7. Extortion committed by a group with violence can result in serious injury or even death, as regulated in Article 365 Paragraph (2) of the Criminal Code (KUHP).
8. Piracy at sea resulting in death is regulated in Article 444 of the Criminal Code.
9. Crimes involving aviation and aviation equipment are regulated in Article 479 K paragraph (2) and Article 479 O paragraph (2) of the Criminal Code.

The new Criminal Code (KUHP), as stipulated in Law Number 1 of 2023, will be implemented three years after its enactment, namely in 2026. This regulation stipulates the death penalty as a last resort to prevent crime and protect the public. The new KUHP significantly differs from the old KUHP, where the death penalty is now an alternative measure as a final step in imposing criminal sanctions. This is stipulated in Article 98 of Law Number 1 of 2023 concerning the KUHP, which

states that the death penalty is an alternative measure to prevent crime and protect the public. Furthermore, under Article 99 of Law Number 1 of 2023, the death penalty can be implemented if the convict's request for clemency is rejected by the President. The death penalty is an alternative measure as a last resort. The application of the death penalty in this law is regulated in Articles 100 and 101, which read as follows.[14]

1. The judge shall impose the death penalty with a probationary period of 10 (ten) years, taking into account: a. The defendant's remorse and hope for improvement; or b. The defendant's role in the crime; c. The existence of mitigating circumstances.
2. The death penalty with a probationary period as referred to in paragraph (1) must be stated in the court decision.
3. The 10 (ten) year probationary period shall commence one day after the court decision becomes legally binding.
4. If the convict demonstrates commendable behavior and actions during the probationary period as referred to in paragraph (1), the death penalty may be commuted to life imprisonment by Presidential Decree after consideration by the Supreme Court.

If the convict fails to demonstrate commendable behavior and actions during the probationary period as referred to in paragraph (1) and shows no hope for improvement, the death penalty may be carried out upon the order of the Attorney General. Making the death penalty an alternative punishment is an inappropriate compromise. Indonesia still requires the death penalty as its principal punishment. Unlike the United States, which places a strong emphasis on individual rights, Indonesia is a country based on mutual cooperation, prioritizing the rights of the many over individual rights. Even though the perpetrator has shown commendable attitudes and actions, he has taken away the human rights of many people, a probation period of ten years will not be enough to atone for all the sins the perpetrator has committed and cannot heal the grief of those closest to him left behind by the victim. Moreover, the Indonesian court system has several levels, including the District Court, the High Court, and the Supreme Court. So when the District Court has sentenced the prisoner to death which has permanent legal force, the prisoner can still appeal to the High Court, if the High Court still upholds the death sentence, the prisoner can then file an appeal to the Supreme Court, and if the Supreme Court still upholds the death sentence, the prisoner's last resort is an extraordinary legal remedy, namely a judicial review and a request for clemency to the President.

There are several supporting reasons why Indonesia must continue to implement the death penalty. First, the implementation of the death penalty can be seen as a guarantee of legal certainty, where its existence is expected to instill fear in individuals planning to commit criminal acts, thus preventing those intentions. This has the potential to reduce the crime rate and, in turn, protect more individuals' rights to life. Second, the death penalty is not given indiscriminately, but rather specifically aimed at perpetrators of serious crimes (extraordinary crimes), indicating that their actions reflect a very dangerous nature. Therefore, to reduce

this threat, the death penalty is considered a necessary measure. Third, the death penalty serves as a last resort in the justice system. Indonesia upholds the individual's right to life and not to be tortured, as stated in Articles 2 and 4 of Law Number 39 of 1999 concerning Human Rights. By continuing to implement the death penalty, the Indonesian government has taken away an individual's right to life. However, Indonesia is not a country of individuals but rather a country of mutual cooperation; the right to life of many people is more important than that of just one individual. Furthermore, the death penalty is only intended for those who commit extraordinary crimes. This argument is reinforced by Articles 73 and 74 of Law Number 39 of 1999 concerning Human Rights, which essentially state that a person's human rights are limited by the human rights of others and by applicable laws. The death penalty should not be interpreted as justifying the reduction, destruction, or elimination of human rights. The limitations imposed by the law are solely to guarantee the human rights of others, morality, public order, and the interests of the nation. Dalam konteks praktik hukuman mati di Indonesia, pelaksanaan hukuman mati tidak selalu dapat dipastikan meskipun putusan pidana mati telah ditetapkan oleh hakim secara final. Proses eksekusi hukuman mati bergantung pada upaya hukum luar biasa, seperti peninjauan kembali dan grasi, yang harus dilalui oleh terpidana. Durasi untuk mengajukan permohonan hingga keputusan dari Mahkamah Agung dan Presiden dapat berlangsung cukup lama. Terdapat kasus di mana terpidana mati harus menunggu hingga 20 tahun sebelum dieksekusi, seperti yang dialami oleh Sumiarsih dan Sugeng. Selama periode menunggu yang tidak menentu ini, terpidana mati mengalami penderitaan psikologis yang signifikan. Meskipun hukuman mati diakui secara legal oleh negara, proses ini justru menambah beban psikologis bagi terpidana. Dalam hal ini, terjadi victimisasi struktural yang dilakukan oleh negara terhadap warganya.

Referring to this concept, the application of the death penalty to perpetrators of crimes must take into account the following criteria for the crime committed: [13]

- a) Transcending the limits of humanity
- b) Harming and threatening many people
- c) Destroying the nation's future generations
- d) Destroying the nation's civilization
- e) Destroying the order of the earth
- f) Detrimental to and destroying the country's economy

Application of the Death Penalty in Islamic Law in Indonesia: According to Abdul Qadir Audah, punishment is retribution for violations of Islamic law, established for the benefit of society. The principal punishment taught in the Islamic criminal law system, according to the majority of scholars, is Qisas, a punishment commensurate with the perpetrator's actions. For example, a murderer must be killed, even if not with the same weapon or instrument. In other words, a murderer is killed if he kills, and a wound is inflicted if he injures or removes a limb.

This Qisas punishment is based on the Quranic verse in Surah Al-Baqarah: 178-179, which states that a person who commits murder must be punished with Qisas, a similar punishment, namely the death penalty. The Qisas punishment is intended

to create equality between the strong and the weak, and between the numerous and the few. This verse also understands that the death penalty can be waived if the guardian (family) of the murdered forgives the perpetrator. In such circumstances, the murderer is obliged to provide compensation (diyat) to the family of the murdered person for the amount determined by fiqh law, this is the legal basis regarding murder, of course all of this is carried out by the judge's decision.[5] According to the author, qishash is carrying out the same act of retaliation. However, if the person who kills them gets forgiveness from the heirs of the murdered person, that is by paying a reasonable diat (compensation). Payment is requested well, for example by not forcing the person who killed, and the person who killed should pay it well, for example by not delaying it.

The Islamic perspective regarding the death penalty has been practiced since the time when the Prophet Muhammad sallallaahu 'Alaihi Wassallam lived, which in this term is called qishash. Syarat diberlakukannya hukuman mati (qishash) sebagai berikut:[15]

- a) The perpetrator must be a mukallaf (a person who is of legal age and sane).
- b) The murder was committed intentionally.
- c) There is no doubt that the murder was intentional.
- d) The perpetrator acted voluntarily, without coercion from others. Some acts punishable by death (qisas) according to Islamic law include:
 - a). Murder that is threatened with the death penalty (qishash) is premeditated murder and terrorism, this qishash is carried out by a judge and not by an individual, in the Qur'an, Al-Isra verse (33) which means: "And do not kill a soul that Allah has forbidden (killing), except for a just (reason) and whoever is killed unjustly, then indeed We have given power to his heirs, but let not the heirs exceed the limits in killing". According to Ibn Katsir in the explanation of the verse above, that it is forbidden to kill a soul without a reason justified by the sharia, and the power of the heirs to choose the punishment for the killer, if he wishes he can be sentenced to death, can also be forgiven by paying diyat, and can even forgive without ransom.
 - b) Adultery in this case, the perpetrator of adultery, whether a man or a woman who is married (muhson), must be lashed one hundred times and stoned to death. In fact, the perpetrator can be directly sentenced to death by stoning without first being lashed one hundred times according to some scholars. This sanction has been confirmed in the Qur'an, an-Nur verse (2), "The woman who commits adultery and the man who commits adultery, lash each one of them with one hundred lashes, and let not pity for them prevent you from (practicing) the religion of Allah, if you believe in Allah and the Last Day, and let (the

implementation of) their punishment be witnessed by a group of believers."

- c) Robbery or thug (hirabah) is an act of seizing other people's property, creating chaos, bloodshed or terror, robbing honor, seizing order and creating chaos on earth, then the punishment is the death penalty. Regarding the sanctions for perpetrators of the crime of robbery or thug (hirabah), it is emphasized in Q.S. al-Maidah verse (33): "Indeed, the recompense of those who wage war against Allah and His Messenger and make mischief on earth is only that they be killed or crucified, or their hands and feet be cut off in reciprocity, or exiled from the land (where they live), that is (as) a humiliation for them in this world, and in the hereafter they will have a great torment", this is carried out to impose punishment on a perpetrator who really deserves to receive punishment for the actions he has done. This Surah and the previous letters show that Allah SWT has determined that the death penalty is an appropriate punishment for the crime of murder because of the severity of the consequences of the murder. There are several conditions for qishosh to be implemented, namely:
- a. The perpetrator must be a mukallaf (a Muslim who is of legal age and of sound mind).
 - b. The murder was committed intentionally.
 - c. The element of intent in the murder is beyond doubt.
 - d. The perpetrator committed the murder voluntarily, without coercion from others.

Islamic criminal law, as a legal system, encompasses three aspects of study: criminal acts (Rukn Al-Amali), criminal responsibility (Rukn Al-Madi), and punishment or punishment (Rukn Al-Syar'i). These three aspects must be understood simultaneously to illustrate Islamic criminal law as a universal legal system. Islamic criminal law is often understood solely from the perspective of punishments (uqubat), such as the death penalty, amputation of hands, stoning (throwing of the convicted person to death), and flogging (beating with a rattan cane). This gives the impression of cruelty and barbarism, reminiscent of classical Arab times. Few Islamic criminal law studies address how crimes under Islamic law, such as murder, can be subject to the punishment of qisas (retribution). Not every murder is necessarily repaid with murder, nor is every theft punishable by amputation.

Qisas, for example, retribution for murder with murder, can be upheld if the elements of a crime and criminal responsibility are met. Only intentional murder (Al-Qatlual Amd) can be subject to qishosh (reciprocal murder). This is only true if the family or heirs do not grant forgiveness (ma'fu). If forgiveness is granted by the family, the qishosh punishment cannot be carried out. Likewise, the element of criminal responsibility, qishosh, is implemented when the murder is committed voluntarily without any premeditation from another party. What is interesting

about this crime of murder is that *ma'fu* (forgiveness) is not recognized in the conventional legal system. As an ordinary crime, murder is still processed as a crime of murder. A crucial issue in grounding the law

A significant issue in Islamic criminal law is the continued use of Arabic terminology and Arabic backgrounds, thus making Islamic criminal law only appropriate within the Arabic context. In Islamic legal philosophy, Islamic law is essentially universal and applicable in all places and places (*Shalihun Likulli Zamanin Wa Makanin*). Islamic law is not a stagnant law. Its uniqueness stems from its foundation in the Qur'an (*sharia*). These Qur'anic legal texts were then interpreted by jurists into Islamic law, including Islamic criminal law. Indeed, Islamic law has evolved from the time of the Companions to the present day, adapting to the cultural context and social system. Therefore, the actual manifestation of Islamic law is not uniform; differences in place and time significantly influence the performance of Islamic law.

The essence of the application of the death penalty in Islamic law is to realize the welfare of the people in upholding *amar ma'ruf nahi mungkar* which scope emphasizes more on protecting the safety of individuals and society in order to avoid crimes that endanger the joints of human life, therefore as a country with a majority Muslim population, and the largest in the world, it is undeniable that the application of the death penalty is still applied in Indonesia for the crime of murder and other serious crimes that threaten the lives and souls of humanity and disrupt public order and state stability. The concept of the application of the death penalty in Islam, there are still limitations and also detailed provisions for people who will get the death penalty, so that a person should not be punished carelessly with the death penalty, because regarding the issue of the death penalty, in Islam adheres to the principles of justice, legal certainty and also the principle of benefit, therefore in Islamic law, the death penalty can be dropped and replaced with payment of compensation to the victim's family with an alternative if the victim's family has forgiven the perpetrator of the murder and carried out in public.

According to the author, in this case, murder, as a criminal offense, can be changed to a civil offense. The penalty is no longer death, but rather payment of *diyat* (compensation). Thus, the opportunity for forgiveness from the victim's family opens up the opportunity for the penalty to be changed from death (*qisas*) to compensation or restitution (*diyat*),²⁹ as emphasized in the Quran, Surah al-Baqarah, verse (178):

Meaning: "O you who believe! Retribution is prescribed for you for those who are killed: free for free, slave for slave, and female for female. So whoever receives forgiveness from his brother, let him follow suit in a way that is good, and let him repay (*diyat*) to the forgiver in a way that is good. That is a concession from your Lord and a mercy. Whoever exceeds the limit after that, for him there will be a painful punishment."

In Islamic criminal law, this is known as "*jarimah*." *Jarimah* is committing any act that deviates from truth, justice, and the straight path (religion). Therefore, *jarimah* is committing a forbidden act that is punishable, or abandoning an ordered act, if *ditinggalkan mendapat hukuman* . banyak pula ulama yang menyebut "*Jarimah*"

ini dengan lafaz “Jinayah”, jinayah adalah perbuatan yang dilarang oleh syara’ baik mengenai jiwa, harta dan lainnya

Meanwhile, according to Jinayah, it is the name for actions that are forbidden by the syara', whether the actions involve life, property or other than life and property. However, the ulama use this jarimah for acts involving "hudud and qisas" crimes.

If we look at it in terms of punishment, it is like what Abdul Qadir Audah put forward, namely: Jarimah Al-hudud, yaitu tindak pidana yang kadar hukumannya telah ditentukan oleh Allah SWT:

- a) Al-Qishas and Diyat crimes, namely criminal acts that are subject to Qishas and Diyat sanctions. Qishas and Diyat are punishments that have a predetermined penalty, but are the rights of individuals, meaning that the punishment is determined because it only has one predetermined had (punishment). As an individual right, if the individual who is harmed by this crime wants forgiveness, it is his right and can be accepted and justified legally, so that the had punishment is lost because of the forgiveness. However, the takzir punishment remains imposed.
- b) Jarimah takzir, namely criminal acts whose law is not prescribed by the syara with certain punishments. As stated by Mahmud Syaltut regarding the punishment of takzir in hudud crimes, these are: Committing zina, qadzaf (accusing of committing adultery, theft, drunkenness, khirabah (robbery), and apostasy, albaghy (rebellion). The types of crimes of qishas are murder, athraf crimes and bodily harm. Lawmakers do not formulate legal provisions of the Shari'a without any purpose. Rather, there are certain broad objectives. With Thus, to understand the importance of a provision, it is necessary to know what the purpose of the provision is. According to A. Hanafi, the purpose of the law is to prevent and teach and educate. The meaning of prevention is to restrain the perpetrator from repeating the act of jihad or from continuing to do it.
 - a. Ensuring the security of life's necessities is the primary objective of sharia. These are essential aspects of human life and cannot be separated. If these needs are not met, chaos and disorder will ensue. These five primary necessities in Islamic law are called Al-Maqasid Al-Syari'ah Al-Khamsah (the objectives of Sharia): preserving religion, preserving the soul, preserving offspring, preserving reason, and preserving wealth.
 - b. Ensuring secondary needs. This concerns matters essential to the provision of various facilities for the population and easing their hard work and burden of responsibility. In other words, these needs consist of things that remove hardships from society and make life easier for them.
- c) The third aim of Islamic legislation is to make improvements, namely to make things that can beautify social life and make humans able to act and deal with life's affairs better.

According to the author, the death penalty is left to the authorities to determine, as long as it does not conflict with the interests of society and does not conflict with the provisions of Islamic law and general principles.

D. CONCLUSION

The imposition of the death penalty on criminals in Indonesia must be carried out selectively and proportionally, taking into account the seriousness of the crime committed. The death penalty should only be imposed for crimes that have exceeded the limits of humanity, pose a threat to the safety of many people, damage the nation's generation, disrupt the social and moral order of society, and cause significant losses to the stability of the state and the national economy. These crimes include, among others, the crime of narcotics and psychotropic abuse, terrorism, premeditated murder, and serious assault committed by cruel and inhumane means. From an Islamic legal perspective, the death penalty is applied to certain crimes such as intentional murder with a deadly weapon, adultery (*zina muhsan*), robbery (*hirabah*), rebellion against legitimate authority, and apostasy (*riddah*). The basic principle of the application of the death penalty in Islam is not merely to provide retribution, but to maintain the welfare and order of society. Islamic law places human life as something of great value, so the implementation of the death penalty (*qisash*) is intended to maintain the dignity, honor, and safety of other human lives. Thus, under both Indonesian positive law and Islamic law, the death penalty essentially serves the same purpose: to protect society and uphold substantive justice. However, its implementation must adhere to the principles of humanity, prudence, and ensure the protection of human rights to prevent abuse of authority and violations of an individual's right to life.

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