

IMPLEMENTATION OF THE APPLICABILITY OF THE DEATH PENALTY IN INDONESIA THROUGH A REVIEW OF PANCASILA-BASED ISLAMIC LAW

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ABSTRACT

Islamic law provides a sense of justice including in the threat of sanctions for crimes committed, Islamic law places punishments commensurate with the crimes so as to create a sense of deterrent effect for perpetrators and society. Including the death penalty. This paper raises two issues that will be discussed, namely: How is the contribution of Islamic law in determining death penalty laws in Indonesia and how is the legal politics of death penalty provisions applicable in Indonesia based on Pancasila? The Normative Juridical Approach is used as the writing technique of this research. This study aims to conduct legal research using library materials, secondary data, and original data as additional data. From the discussion of this paper, it can be concluded that the existence of Islamic law, especially regarding the death penalty in Indonesia, has a very strong contribution to punishment in general in Indonesia. Because Islamic law, especially in the case of the death penalty, determines the appropriate punishment for the perpetrator, and because of the legal politics of the death penalty, which is understood as the direction of legal policy regarding the death penalty, this includes the state. policies on how the death penalty is carried out and how it should be carried out.

KEYWORDS Islamic law; death penalty; Pancasila



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INTRODUCTION

Indonesia's majority of citizens are followers of Islam. Islam for its adherents is a direction of view of life both in this world and in the hereafter which is guided by all the teachings or instructions from Allah SWT.

Islamic law, called *Sharia*, is complied with by all behavior in all areas of human activity and is a component of the legal system of all countries where Muslims make up the majority of the population. Therefore, most Indonesians, who are Muslim, have the right to learn more about Islamic law, especially its criminal law (Santoso & Wahid, 2000).

The founding fathers of the Indonesian state declared that it would be a 'state of law' (*rechtsstaat*), not a 'state of power' (*machtsstaat*). As a result, laws must be used as regulations to deal with, prevent and overcome problems that arise in the administration of society, the state, and the state (Riyadi & Abdi, 2007).

Islamic criminal law has substantial problems with the rule of law itself, as extreme Islamic movements actively want to restore Islamic *Sharia law*, especially the death penalty, especially in Indonesia (Asnawi, 2012).

In applying Islamic law, of course, it cannot be separated from the changes that occur and may be needed because of considerations of benefit and in accordance with the progress of human civilization, science, and technology. Because the development of these advances raises new problems in social life. These problems did not exist at the time of the Prophet Muhammad SAW. In other words, the development and progress of human life as happened in this millennium requires answers or solutions from the perspective of *Sharia* (Islamic law). In this regard, a number of changes need to be made (Azhary, 2015).

Islamic law also contains a term for the death penalty called *Qishaash*. Surah Al-Baqarah verses 178 and 179, which are translated as follows, present an Islamic perspective on the death penalty. Verse 178: "O you who believe, it is your duty to practice *Qishaash* between women and women, freemen with freemen, and *Sahaya* slaves with *Sahaya* servants. Therefore, whomever you pardon must be executed; Let the forgiver follow in good deeds, and let the forgiven give *diyah* to the forgiver in good deeds (too). This is a favor upon you and a concession made by your Lord. Every additional offender will suffer immense suffering." Verse 179: "O wise people, there is (guarantee) survival in the law of *Qishaash* so that you are just."

The Islamic legal term " *Qishash* " refers to the execution of a murderer. However, this law does not need to be followed; In other words, it can be annulled if the victim's heirs agree to pay the murderer a *diyah* in exchange for their pardon. If the killer is released from the *Qishash* punishment by the victim's heirs, the *Diyah* is a check agreed upon by both parties or determined by the judge (Saleh, 1987).

In Indonesia, there are many criminal laws or other laws that strictly regulate criminal activities (*lex specialis*) as well as general criminal laws (*lex generalis*) and what is called the Criminal Code that regulates the death penalty (Purba & Sulistyawati, 2020). The death penalty is one of the main offenses listed in Article 10 of the Criminal Code, which defines it. Article 104, Article 111 paragraph (2),

Article 124 paragraph (3), Article 140 paragraph (3), Article 340, Article 365 paragraph (4), Article 368, Article 444, Article 479 paragraph (2), and Article 479 paragraph (2) of the Criminal Code regulates acts or actions that carry the death penalty.

For civilized nations, the use of the death penalty in Indonesia has generated fierce debate and prolonged polemic. This is based on the justification that the implementation of the death penalty is not in accordance with the concept of the Pancasila state, which consistently supports a just understanding of humanity. However, in practice, Indonesia continues to apply the death penalty in a number of active criminal cases, contrary to logic and reason (Abdullah, 2009).

In the embodiment and implementation of capital punishment in Indonesia, if one looks at the contribution of thought from Islamic teachings or Sharia, this is the theme of this paper with the title Contribution of Islamic Law to the Applicability of Death Penalty Law in Indonesia in a Review of Its Implementation framed by Pancasila.

This writing is based on the formulation of the problem that will be raised and presented in scientific writing in order to focus on the study in this paper so that it can be used as reading material for science, especially knowledge about the contribution of Islamic law to the enactment of death penalty law in Indonesia. The problem is How does Islamic law contribute to the determination of the death penalty in Indonesia? And how does the legal politics of the death penalty provisions apply in Indonesia based on Pancasila?

RESEARCH METHOD

A normative Juridical writing process is used in writing this research. Using secondary and primary materials from sources such as libraries and archives, the aim of this research is to conduct legal research. It focuses on how Islamic law influences Indonesia's current death penalty law and how it is implemented using the Pancasila system.

RESULT AND DISCUSSION

Contribution of Islamic Law to Death Penalty Law in Indonesia

Sharia, known as Islamic criminal law (*fiqh jinayah*), offers benefits to human existence in this world and the hereafter. The relevant sections of Islamic law, or *Sharia*, contain fundamental obligations that everyone must uphold. The basic principle of Islamic law, according to which Allah is the exclusive owner of all rights, both one's own and those of others. Everyone has to carry out God's orders because they are just doers. One must obey Allah's commands for the good of oneself and others (Ali, 2023).

Jarimah hudud, *Qishaashs/diyat*, and *takzir* are three types of *jarimah* that are recognized by *jinayah fiqh*. The *Rajain* punishment for adulterers who have a family is a sanction in the Qur'anic chapter on obligations, according to *Jarimah Hudud*. In the same vein, *Qishaash jarimah* is also explicitly permitted in the

Qur'an; If someone kills someone intentionally, they are subject to *Qishaash* (death penalty), and the last jarimah is *takzir*. Beliefs that are not specifically listed as sanctions in *the hadith* or *texts* of the Qur'an are subject to *takzir*. *Takzir* punishment is given to the perpetrator or other people as a deterrent from committing the same offense again. Thus, the term "*uquhah mukhayyarah*" (choice of punishment) is used to describe this punishment. A judge is given the freedom to choose the type of *takzir punishment* that will be applied to the perpetrator in the *takzir sentence*. Islamic criminal penalties have some general guidelines, including the fact that punishment is only meted out to the perpetrator and that wrongdoing can be lethal or intentional. Third, if a crime is proven to have been committed, punishment is given. And finally, be careful about sentencing when there is still uncertainty and insufficient evidence (Irfan, 2011).

In Islam, criminal behavior is described as one that violates Sharia prohibitions and is subject to punishment under the law of boundaries, which already carries a text, or under the law of ta'zir, which does not carry a text. Finger killing can also be viewed as a Sharia violation that occurs as a result of a violation of the law of limitation or ta'zir, whether it was preceded by factors of premeditated and intentional killing. The definition of murder can also be understood as a crime against commemoration, carrying the penalty of Qishash, because intentional killing committed in violation of had or ta'zir law is punishable by death. According to academics, murder is a human activity that takes lives. Murder is another person's act of depriving, torturing, or taking the life of another person. According to Islamic jurisprudence, Qishash, which is described in the Al-Qur'an Al-Baqarah verse 178, is the main punishment for intentional killing.

In the hadiths, the term "qiyas" is referred to as "qawad," which means "for example, like" (al-mumatsilah). The main goal of Sharia is to ensure that all criminals who kill or abuse victims suffer the same punishment. In other words, qiyas means that the perpetrator of the action will be compensated according to what he has done. Abdul Qadir Audah defines qiyas as balancing or exacting revenge on criminals by acting in the opposite way to what they have done (Mustofa & Saebani, 2013).

The fact that this punishment symbolizes justice makes it the greatest. Rewards are awarded to offenders in direct proportion to the harm they cause. When the perpetrator considers the same consequences that will befall him as a result of this punishment, he will be discouraged from repeating the same behavior (Mustofa & Saebani, 2013).

Islam institutes the death penalty as retaliation for crimes against society as a warning to others and a deterrent to other killings (Prakoso & Nurwachid, 2004).

Islamic law divides killings into two categories: justified killings and justified killings against the law.

- 1) Killing by right means killing unlawfully, such as using an executioner or killing an apostate.
- 2) Prohibited killing is killing without consent will be punished. Three types of forbidden killings are distinguished: intentional (*amd*), semi-intentional (*syibhu amd*), and unintentional (*khata'*) (Audah & Al-Tasyri' Al-Jina'I, 2007).

Islamic Shari'a in the provisions and rules for the death penalty against a perpetrator of a crime, is also applied in Indonesia. In Indonesia, there is a strong emphasis on justice and personal accountability for crimes committed by others.

The state in this case formulates a rule regarding the death penalty in its national legal system based on the customs, traditions, and historical background of its people. Thus, instead of directing society, the law is meant to regulate its affairs. That is why law cannot keep pace with social change because it is a product of society and not the other way around (Santoso & Wahid, 2000).

Islamic culture in the life of Indonesian people has been inherent from ancient times since Islamic teachings entered the territory of Indonesia. The teachings of Islamic law in the Qur'an and Hadith are guided by the provisions of life for Muslim society.

Even in imposing sanctions, the Indonesian people, who are predominantly Muslim, comply with the sanctions rules in Islamic law. Judgment in Islam is guided by orders from Allah SWT. Islamic law is an inherent rule and gives a sense of justice.

It is this sense of justice in Islamic rules that is guided as a benchmark for Indonesia to guide in imposing sanctions for any violations that occur. It consists of those who have committed certain crimes in Indonesia that receive the death penalty.

Even though Indonesia is not a religious country, Indonesia recognizes the death penalty as Islamic law teaches. In Islam, criminal retaliation is recognized with recompense in kind for the actions committed. Like an act that causes a person's death, the death penalty is also for the perpetrator.

The death penalty is confirmed in various prescribed punishments in Islam, including *Qishaashsh* and *hudud*, as mentioned above.

The general assumption is that since these sentences are not commuted or amended in any way, they will in effect receive the death penalty. There are strong arguments in favor of this choice, such as the fact that punishment is seen as the most serious offense in Islam and is related to the rights of Allah SWT and humans (Baderin, 2003).

In general, Islam strongly protects everyone's right to life, but in some circumstances, *Sharia* allows restrictions on this protection, including by enforcing the death penalty. Although Islamic law upholds the death penalty as a punishment, according to William A. Schabas' research, Islamic countries do not directly link punishment with Islamic law (Dissent & Disarray, 2020).

Abdul Qadir Audah asserted that Islamic *Sharia* prescribes penalties for those who commit crimes that are meant to prevent people from engaging in similar acts, either by engaging in prohibited behavior or disobeying orders. Islam holds that imposing prohibitions and commandments on people without also punishing those who break them is not enough to make them obey the law and that this is how people will be made to do so. Therefore, the criminal penalties imposed aim to prevent crime, damage the environment, keep people away from things that are harmful to them, or persuade people to act in ways that are considered beneficial to them. Audah went on to say that in general, the imposition of prohibitions and sanctions

was not carried out solely in accordance with the Shari'a but rather for the survival of society and upholding the benefits of continuing that life (Audah, 2009).

From this point on, the punishments prescribed by Islam are much the same as criminal law in general - at least in use today - which are intended to function as a means of crime prevention, retribution, rehabilitation, and remediation, with the ultimate goal of protecting society by rendering criminals incapable of committing crimes. Further crimes. In addition, as is the case with murder, theft, adultery, and other criminal acts, this penalty rule is closely related to restitution for damages resulting from these actions. The form of religious law from Allah SWT, namely Islamic law has aspects that are directly proportional between a person and God side by side with the impact for rewards and punishments in the hereafter. Islamic criminal law differs from other types of criminal law in this way. This is the link between illegal behavior and Islamic penal law provisions for *hudud* or *kafarat* (Peters, 2006).

It is clear from these punishments that Islamic laws regarding murder, adultery with a spouse (Bhushan), robbery (*hirabah*), rebellion, and apostasy all include the death penalty. Similar to what is stated above, the main purpose of this penalty is to protect the interests of society, which includes human and religious freedom. As a result, the use of the death penalty is permitted within the bounds of *Sharia* to protect the larger interest. The importance of the death penalty for deadly crimes is demonstrated by the reasons for this. For example, jurists claim that the death penalty, which incidentally kills the perpetrator, is necessary to prevent future crimes of homicide (Samsudin, 2016).

From the description above, it can be concluded that Indonesian general punishment is significantly influenced by the existence of Islamic law, especially with regard to the death penalty. Because Islamic law, especially on capital punishment, describes an appropriate punishment for the perpetrators. Although in Indonesia it does not suddenly fully adopt the methods of capital punishment in Islamic law into the Indonesian national law.

In Indonesia, the types of serious crimes that carry the death penalty are regulated in the Criminal Code and in the Special Criminal Law, including (Purba & Sulistyawati, 2020):

- 1) Criminal Code Article 104: Makar kills the head of state; Article 111; Article 140; premeditated murder; Article (3): kill heads of friendly countries; Article 340; Theft by violence by two or more associates at night resulting in a person being seriously injured or killed; Article 365; and Article 444: Piracy at sea, on the beach, on the coast, and sometimes in the air.
- 2) UU no. 12 of 1951 concerning Firearms Article 1 paragraph (1).
- 3) Article 2 of Presidential Decree Number 5 of 1959, concerning the Authority of the Attorney General's Office, increases the prospect of punishment for crimes that endanger the implementation of food, clothing, and equipment. Articles (1) and (2) government regulations Number 21 of 1959 concerning Increasing Fear of Punishment for Economic Crimes.
- 4) Articles 13(1) and (2) of Law Number 11/PNPS/1963 concerning Eradication of Subversion Activities, as well as Article 1(1).

- 5) Article 23 Law no. 31/PNPS/1964 concerning Basic Provisions for Atomic Energy.
- 6) Article 59 of Law Number 5 of 1997 concerning Psychotropics, paragraph (2).
- 7) Article 80 paragraphs (1), (2), and (3) of Law Number 22 of 1997 concerning Narcotics and Article 82 paragraphs (1), (2), and (3).
- 8) Article 2 of Law Number 31 of 1999 concerning the prohibition of corruption, or (2) Law Number 20 of 2001 which prohibits corruption.
- 9) Articles 6, 8, 9, 10, 15, and 16 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism.

It is very important that certain horrific crimes are expressly prohibited by Indonesian law i.e. criminal law is part of public law, in the public interest or the greater public interest. Criminal law is intended to maintain order and social security.

To legitimize the use of the death penalty in Indonesia, the Indonesian Ulema Council (MUI) issued Fatwa Number 10/MUNAS VII/MUI/14/2005 concerning the State Legality of Imposing the Death Penalty in Certain Crimes. A fatwa states that " The death penalty is applied in cases of *Hudud*, *Qishash* , and *Ta'zir* (crime), which are recognized in Islam." The state has the possibility of imposing the death penalty for some crimes. According to an Islamic perspective, there should only be two reasons why a person loses his life:

- 1) Because of God's will
- 2) Consequences of law enforcement (execution of the Judge's decision) (Purba & Sulistyawati, 2020).

Legal Politics of Death Penalty Provisions in Indonesia Based on Pancasila

The nation's values, state goals, legal principles and standards of justice are set forth in the Preamble to the 1945 NKRI Constitution. In order to work in accordance with these values and maximize the political potential for national growth, national legal politics must be able to support and complement all elements of the national legal system (Mahfud, 2010).

There is no guarantee that the policy will be successfully implemented just because it has been proposed for selection by *policymakers*. Whether at the institutional, organizational, or individual level, various factors can influence how well a policy is implemented. Program implementation includes critical efforts by policymakers to persuade implementing bureaucrats to accept the provision of services and control the behavior of the target population (Subarsono, 2012). This has the goal of linking it to assistance and pressure that must be handled by the political system through various kinds of decisions and services by the government to the community in order to be able to offer welfare to the people. According to this point of view, the performance of the political system is measured by how well it can benefit the people (Aziz & Hidayat, 2016).

In accordance with its criminal law and political ideals, Indonesia will continue to apply the death penalty. Many of the laws and regulations governing the application of the death penalty for crimes can be used to demonstrate this. The death penalty was then still a form of punishment in the revised draft Criminal Code (Kania, 2014).

The legal policy direction (*legal policy*) of the death penalty, including state policies regarding how laws have been made and how they should be made, is referred to as the political ideals of the death penalty law. Discussions about the death penalty are very important because they often arise in connection with human rights issues. Those who disagree with the death penalty violate their right to life in a number of ways (Hanafi, 1990).

A country's national legal politics determines whether the death penalty is applied. Pancasila is recognized based on the preamble of the 1945 Constitution as a model of legal politics as well as the foundation of the daily life of the Indonesian people, posthumans is a useful approach for the development and enforcement of the law, in addition to being an effort to apply the law as a process of achieving the ideals of the nation and state. We are intrinsically connected as one nation (Mahfud, 2010).

Another argument in favor of the death penalty is the idea of preventing demands or reactions from the society that cannot be reciprocated, irrational, emotional, or uncontrollable. In other words, the legal provisions for capital punishment are meant to act as a conduit for public sentiment and demands. The lack of the death penalty in law does not necessarily mean that it is not practiced in society. Therefore, it is deemed prudent for the death penalty to remain an option under the law to avoid racial feelings of personal or communal reprisal. Now that it is a legal sentence, the judge must apply the death penalty with greater discretion and according to controlled/rational factors. When not prohibited by law, the death penalty is also intended to protect the perpetrator from arbitrary and emotional retaliation by the victim or society (Tangkau, 2011).

In his comments on the death penalty, Arief Bernard Sidharta said:

- 1) According to the Pancasila way of life, everything in the cosmos was perfectly related when it was first created by an almighty God. Nothing in the cosmos is independent of how it fits together with everything else in the universe;
- 2) Since God created man, man's ultimate goal in life is to return to God, who created him in the first place. Every human being is born with a mind and conscience that enables them to distinguish between good and evil, justice and injustice, humanity and inhumanity, need and uselessness, what one can and cannot do, and what is possible and impossible to do. As a result, every human individual is free to choose the action he will take and the kind of life he wants to lead. As a result, we are all responsible for the actions we have taken and plan to take. Human dignity is based on the existence of reason and conscience;
- 3) It has been argued that social interaction is where human existence is codified as a whole. Consequently, togetherness, or society, is where the administration of human life or the process of self-realization of each person takes place. Humans need predictability, structure, and things that can take precedence in being together in order to manifest themselves organically;
- 4) The need for family law is driven by the nature of connectedness with other people;
- 5) The purpose of legislation based on Pancasila is to protect society both passively and actively because upholding human dignity is essential to maintaining order. By definition passive, this entails taking action to stop arbitrary behavior and

violations of rights. In its active form, this requires initiatives to promote compassionate social norms and motivate people to truly understand who they are. Upholding and advancing human ethics and high moral standards based on True Divinity is one of the goals of law;

- 6) Criminal sanctions are a type of legal punishment; They are specific measures that may or may not be used against a person in response to his or her actions if they meet the criteria established by criminal law. When specific requirements are met, an act is generally an act that directly insults human dignity or endangers the survival of human civilization. Criminal punishment, often known as punishment, refers to the imposition of pain or other things that are considered unpleasant (harmful) on the affected person. An individual is responsible when the state creates difficulties for them;
- 7) Criminal consequences must first take the form of a clear declaration of how society views the actions of the accused — that they were wrong, violate the dignity of others, and endanger the viability of a dynamic human society — before they can be held accountable. Second, the application of criminal consequences must act as a deterrent to stop people from participating in unwanted activities that can lead to such sanctions. Third, sanctions for violations must be designed to encourage the perpetrator to uphold his moral principles to control unwanted tendencies. The first and third requirements mentioned above for criminal punishment are not met by the death penalty as a form of punishment. Therefore, the only purpose of the death penalty is to prevent other people from committing crimes for which they will face the death penalty. Essentially, the death penalty reduces man to nothing more than a means to an end unrelated to those he disapproves of. This shows how the instant death penalty contradicts the idea and purpose of basic law, which is to uphold the dignity of the individual human being and society. In essence, it can be said that the death penalty is not in accordance with the conception of Pancasila (Family) (Poernomo, 1982).

Indonesia still upholds the death penalty as a matter of positive law. Given that the aim is to project its efficacy as a means of deterrence and suppression, the application of the death penalty as a criminal punishment begins with this observation. This must be emphasized because it must be determined whether the death penalty should be used or not before determining whether the death penalty can have an impact on the purpose of the sentence, namely to reduce crime. Therefore, the point of view regarding the death penalty in Pancasila must be reaffirmed. Leading the aspirations of the state is Belief in the One and Only God. Confession of belief in God Almighty serves as the main cause. This is referred to as wishes in Islamic law, which does not conflict with Islamic doctrine or condone the death penalty in Catholicism or Protestantism. Humanitarian precepts are a key component in putting Indonesia's socialist society into practice, and the death penalty can be used as a drastic instrument to stop behavior that goes beyond what is morally acceptable to carry out the principles of a socialist society. State Precepts. Our country is one country. It was stated that Indonesia, which consisted of various ethnic groups whose borders were defined in the Proclamation of Indonesian Independence on August 17, 1945, was one that could not be divided into the

Bhineka Tunggal Ika pattern. A widely held belief system (democracy). In Indonesian democracy, which combines political democracy and economic democracy, the people build a just government that is governed responsibly and to the best of their ability to avoid conflict with the people, who believe that the death penalty in the Criminal Code is not an instrument of democratic oppression and the death penalty in the Criminal Code is not a tool to destroy dictatorships. The principle of social justice. All Indonesian people can feel justice that is spread evenly in all areas of life, including social and cultural. A just and successful society is one that is happy for everyone and free from oppression, exploitation, and other forms of social injustice (Hamzah, 1984).

The death penalty is still required by the Indonesian state for those who have committed serious violations, including genocide and crimes against humanity, drug dealers, major criminals, and terrorists. However, the method of carrying out death sentences needs to be changed to reduce the pain experienced by criminals, because it is like using painless injections (Ahmad, 2008).

CONCLUSION

Laws that originate from and are a component of Islam are known as Islamic law. Al-Qur'an, Sunnah or Hadith, and Ijtihad are the three main sources of Islamic law. The formation of Islamic law, especially with regard to the death penalty in Indonesia, has a very significant influence on punishment in general in that country. Islamic law, particularly when it comes to the death penalty, determines the appropriate punishment for the offender. Although Indonesia did not immediately fully incorporate the Islamic legal method of capital punishment into its domestic legal system. This serves to prevent larger crimes and prevent others from committing crimes by making death threats.

The purpose of this crime is to deter future offenders and crimes. In the history of criminal law, serious crimes and the death penalty have been two related aspects of this issue. Indonesia's Criminal Code, which carries the death penalty for capital offenses, demonstrates this. The Pancasila perspective on the death penalty, which derives primarily from the five precepts, justifies the execution of criminals. For the State of Indonesia, the death penalty is still required for those who have committed serious crimes, including genocide and crimes against humanity, drug dealers, major criminals, and terrorists. The politics of death penalty law refers to the direction of death penalty law policy, including state policy regarding the formulation of death penalty laws and the formulation of death penalty laws.

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