



Capital Punishment: Islamic Criminal Law Perspective

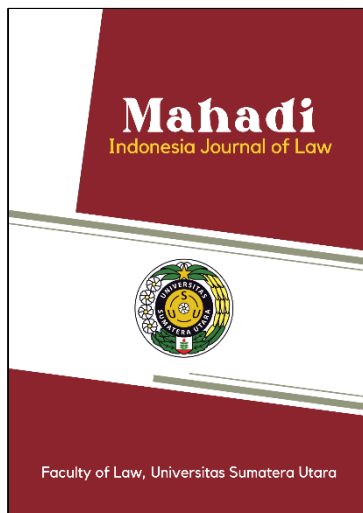
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Abstract: This paper delves into the multifaceted dimensions of capital punishment within Islamic criminal law, examining its application and underlying objectives. The study revolves around two primary objects: the application of capital punishment and the objectives of implementing the death penalty. By exploring these dimensions, this paper seeks to elucidate the intricate interplay between justice, societal well-being, and legal philosophy within Islamic jurisprudence. The first object addresses the legal framework and ethical considerations surrounding the practice of capital punishment. Drawing from both retributive and consequentialist theories, the analysis illuminates the dual nature of Islamic jurisprudence in its pursuit of fairness and societal harmony. The second object investigates the objectives underpinning the death penalty's application. Rooted in the concepts of benefits (*maslahah*) and justice, Islamic legal thought underscores the balanced amalgamation of individual rights and collective welfare. In conclusion, this paper underscores the significance of collaborative efforts among legal scholars, policymakers, and communities to ensure a just and nuanced application of capital punishment. Through comprehensive engagement, Islamic societies can advance a holistic approach to punishment that aligns with the ethos of justice and societal well-being.

Keywords: : Capital Punishment, Islamic Criminal Law

INTRODUCTION

Criminal law serves as the arbiter of consequences for every transgression against established laws. These consequences are, at their core, the intentional augmentation of hardship. It is this deliberate augmentation of suffering that fundamentally sets criminal law apart from other legal frameworks. According to Satochid Kartanegara, punishment within the realm of criminal law is an expression of suffering or torment meant to be imposed upon those who breach norms stipulated by criminal statutes. Such breaches constitute offenses or violations of legal norms, which in turn are safeguarded by the tenets of criminal law. The protected legal interests encompass the sanctity of life (*leven*), bodily integrity (*lyf*), personal honor (*eer*), moral values (*zede*), individual liberty (*persoonlyke vryheid*), and material wealth (*vermogen*).

Lacey, as referenced by Jonathan Herring, underscores the absence of a universally defined concept of punishment. According to Lacey, punishment must encapsulate certain elements: it must evoke discomfort, be authorized by the state, apply to those who infringe upon the law, not exist solely to redress victims, and carry a sense of reprimand for the actions of the accused. The inaugural tenet of Pancasila, "Belief in the One and Only God," speaks to Indonesia's identity as a nation driven by faith. The incorporation of this foundational belief

into the preface and core of the 1945 Constitution signifies the conviction of the Constitution's architects and the nation's forefathers in Indonesia's devotion to a singular deity.

Article 29 of the 1945 Constitution establishes that the state's foundation rests upon faith in the One and Only God, granting the freedom to embrace religion and engage in worship according to individual beliefs. This state also recognizes that these religious practices are fundamental human rights. According to Mohammad Daud Ali, the development of national law in a predominantly Islamic nation necessitates a genuine acknowledgment of religious legal principles, requiring astute insight and prudence. Ismail Saleh, a former Minister of Justice as referenced by Mohammad Daud Ali, acknowledges the undeniable reality that a significant portion of Indonesia's populace adheres to Islam. Islam encompasses Islamic law, comprising matters of faith (*akidah*) and matters of transactions (*muamalah*). Islamic law plays an indispensable role in shaping and upholding social order within the Muslim community, influencing every facet of their lives. Hence, the optimal path forward lies in the scholarly transformation of Islamic legal norms into national law, ensuring alignment with Pancasila, the 1945 Constitution, and the specific legal needs of the Muslim population.

The intimate bond between religion and law, particularly in the context of criminal law reform, can also be contemplated from philosophical, political, and legal standpoints. From a philosophical and political perspective, this connection is rooted in Pancasila, a cornerstone that legal scholars regard as the fount of all jurisprudential principles. Religion assumes a pivotal position within Pancasila, encapsulating principles that prioritize the role of faith and the belief in the One and Only God. Consequently, the importance of religion cannot be understated in the endeavor to reform national criminal law. Legally speaking, the status of religion within the legal context and the intimate link between the two is enshrined within Article 29 of the 1945 Constitution.

The first tenet of Pancasila, "Belief in the One and Only God," signifies Indonesia's character as a nation of faith. This sentiment is further reinforced in Article 29, Paragraph (1) of the 1945 Constitution, which establishes the state's foundation on the belief in the One and Only God, manifesting the nation's devotion to the divine. Article 28E of the 1945 Constitution also acknowledges that embracing religion and worshiping according to personal faith constitutes an essential human right. As a fundamental human entitlement, the state assures the freedom to embrace religion and practice worship aligned with individual beliefs, as stipulated in Article 29, Paragraph (2) of the 1945 Constitution.

Therefore, the focal inquiries addressed in this paper are: (1) How is the concept of capital punishment applied within the framework of Islamic criminal law? and (2) What underlying intentions drive the utilization of capital punishment within Islamic criminal law? Meanwhile, the objectives pursued through this composition are: (1) To gain insight into the practical execution of capital punishment within the realm of Islamic criminal law; and (2) To discern the fundamental purposes that underlie the adoption of capital punishment in accordance with the principles of Islamic criminal law.

METHOD

This study adopts a normative legal research design, characterized by the analysis of secondary data and literature review. According to Ranuhandoko as referred to by Mukti Fajar N.D. and Yulianto Achmad, the normative legal research approach revolves around exploring legal issues as normative systems that offer prescriptive justifications for legal events. This approach places a paramount emphasis on the normative framework, which is essentially a system of principles and regulations. The statute approach is the guiding methodology for this research. Given the normative nature of the inquiry, the statute approach is deemed fitting due to its alignment with the research's focus on legal rules and regulations. The statute approach allows for a comprehensive examination of pertinent legal sources, ensuring a thorough analysis

rooted in legal provisions. This research primarily relies on secondary data. Secondary data are drawn from an array of literary resources, encompassing legal literature, legislative provisions, and related doctrines. The legal material used in this study encompasses primary legal documents, secondary legal sources, and tertiary legal sources. The data collection method employed is a literature review or library research. The primary aim of this method is to provide a theoretical foundation for addressing the research questions. A literature review assists in identifying existing scholarly perspectives and solutions, guiding the research endeavor toward a coherent and informed analysis. The data obtained in this study undergo qualitative-descriptive analysis. Within the context of normative legal research, this involves systematically organizing written legal sources. The process entails the selection of secondary legal materials, their classification based on legal categories, and the systematic arrangement of research findings to establish logical connections and relationships between different legal resources. This approach facilitates the development of a comprehensive overview that synthesizes the research outcomes.

ANALYSIS AND DISCUSSION

APPLICATION OF CAPITAL PUNISHMENT IN ISLAMIC CRIMINAL LAW

Segmentation of Criminal Offenses in Islamic Jurisprudence

The realm of criminal sanctions (*'uqubah*) in Islamic jurisprudence centers on the study of *fiqh jinayat*—a branch devoted to the legal intricacies of forbidden acts (*jarimah*) and their corresponding penalties (*'uqubah*) inferred from detailed scriptural evidence. This classification is pivotal as it forms the basis for understanding the application of capital punishment in Islamic criminal law.

Hudud Offenses: An Insight

According to Sayyid Sabiq, within the context of *sharī'ah*, *hudud*, which embodies divine decrees for the preservation of Allah's rights, constitutes a focal point. These punishments, characterized as Allah's prerogatives, serve to realize societal welfare and maintain public order. The term "*hudud*" derives from its preventive nature, curbing the relapse of individuals into predetermined sinful conduct. The application of *hudud* pertains directly to the offenses themselves.

Hudud crimes encompass criminal actions that carry the threat of *hudud* punishments. *Hudud* penalties are predefined sanctions in terms of both nature and severity, regarded as within the jurisdiction of Allah. There are seven distinct categories of *hudud* offenses, namely: (1) *Zina*, referring to engaging in sexual relations devoid of legitimate grounds; (2) *Qazaf*, encompassing the wrongful accusation of an individual committing adultery; (3) *Ingesting Intoxicating Substances*; (4) *Theft*; (5) *Hirabah*, involving acts of robbery or deliberate disturbance of public security; (6) *Murtad*, encompassing the renunciation of Islam; and (7) *Bughat*, characterizing acts of rebellion.

Capital punishment, corporal amputation, and flogging (*'uqubah*) form the triad of penalties afflicting individuals convicted of *hudud* offenses. According to Abdul Qadir 'Audah, the enforcement of *hudud* penalties underscores Islam's commitment to safeguarding the community from criminal transgressions, even at the potential expense of the offender's welfare. This reflects the comprehensive approach of Islamic law to uphold justice and maintain the social fabric.

Qisas and Diyat: Navigating Individual Rights

Qisas and *diyat* constitute criminal acts subject to retribution and blood money penalties, respectively. Their enforcement hinges upon the individual's status and is characterized by predetermined quantities. The spectrum of *qisas* and *diyat* encompasses five categories of

offenses, including intentional homicide, akin to a delicate balance between justice and proportionality. This array of penalties highlights Islam's emphasis on ensuring accountability while considering the specific circumstances of each case.

Ta'zir: The Discretionary Dimension

Ta'zir offenses are those amenable to discretionary penalties, as Islam refrains from prescribing fixed punishments. Instead, it provides a range of sanctions spanning from lenient to severe, allowing rulers or authorities the latitude to determine ta'zir offenses while empowering judges to select pertinent penalties in accordance with the circumstances. This discretionary approach underscores the adaptability of Islamic law to evolving societal contexts.

The 'uqubah—criminal punishment, or "nestapa," is a retaliatory measure dispensed intentionally by a judge upon an individual found guilty of a criminal act. 'Uqubah aims to protect the public welfare by upholding sharī'ah principles and furthering societal good. As Mudzakir elucidates, Islamic teachings guide actions—including executions—to align with noble intentions and honorable methodologies. For instance, the use of firearms in executions conforms to Islamic guidelines when it is proven to cause minimal suffering.

Diverse execution methods—stoning, crucifixion, or decapitation—underscore hudud's potency across various criminal contexts. Be it apostasy (*murtad*), rebellion (*bughat*), or certain forms of robbery (*hirabah*), these punishments symbolize the gravity of crimes against the communal moral fabric.

Zina

Unlawful sexual intercourse (*zina*) represents one such offense, and capital punishment is meted out to married perpetrators (*muhsan*). Execution by stoning, a punitive rite, symbolizes the sanctity of marriage and underscores Islam's emphasis on marital fidelity and the preservation of societal virtues. This application of capital punishment reflects the broader objective of upholding ethical values within society.

Hirabah

Perpetrators of hirabah, involving acts of robbery or disruption of public security, face severe penalties such as death, crucifixion, amputation of limbs, and banishment. Disagreement arises over the sequence of capital punishment and crucifixion – some advocate crucifixion preceding execution, while others favor the reverse. The imposition of the capital punishment, the gravest punishment, aims to neutralize the threat posed by the criminal act. Scholars, including Ibn Rushd, concur that hirabah punishments encompass both divine and human rights, including death, crucifixion, amputation, and banishment, aligning with Allah's injunctions in Surah Al-Maidah, verse 33.

Murtad

A person is classified as an apostate if they abandon the faith of Islam. If they persist in their refusal to return to the Islamic faith, the prescribed penalty is execution by means of a sword. One essential criterion for legitimate retribution (*qisas*) is to minimize the suffering of the condemned and to facilitate their passing with the least distress. According to the Encyclopedia of Islamic Law, apostasy (*ar-riddah*) encompasses a return from Islam to disbelief, encompassing intent, speech, or deeds, whether in jest, enmity, or genuine conviction. Abu Bakr Jabir Al-Jazairi asserts that for those found guilty of apostasy and who remain unyielding, the punishment entails execution by sword. Should an alternative method that rapidly ends life with less agony be available, it is permissible to utilize such a method, like the guillotine or electric chair, sparing the condemned prolonged suffering. However, it's important

to ensure the method adheres to Islamic principles. The core principle dictates that an apostate should only face the capital punishment if they refuse the opportunity to repent.

Some scholars emphasize that seeking repentance is obligatory, as endorsed by Imam Malik and the Zaidi Shia, with strong support in the Shafi'i and Hanbali schools of thought. Abdul Qadir Audah's contribution in the Encyclopedia of Islamic Criminal Law highlights death as the principal penalty for apostasy, categorized under hudud punishments, and applicable universally regardless of gender or age. M. Hasbi Ash Shiddieqy underscores that execution is reserved for apostates who actively oppose Islam or disrupt the community post-apostasy, aiming to sow doubt about the faith. Tengku M. Hasbi Ash Shiddieqy contends that an apostate subject to execution is one who challenges the faith rather than the apostasy itself, emphasizing the distinction between apostasy and defiance.

Bughat

The offense of "bughat" involves rebelling against a lawful and authoritative government or engaging in subversion. This revolt is carried out by ignoring established regulations and employing organized force for unjustifiable motives. Etymologically, "al-baghyu" signifies an illicit demand pursued through deceitful and oppressive methods. Within Islamic criminal law, "al-baghyu" represents a challenge to legitimate and sovereign governance.

Amir Syarifuddin, terms these rebels "al-baghyi," pluralized as "al-bughat." Abdullah bin Abdurrahman Al Bassam defines "al-baghyu" as actions involving cruelty, oppression, and distortion of truth, referring to individuals who commit unjust and malevolent acts, breaking allegiance with a leader and plotting against them. If rebels gain control over a region and possess armed strength, the government's initial step is to encourage compliance with existing rules and legitimate leadership. Should these efforts meet armed resistance, the government has the right to counteract.

Intentional Homicide

In Islamic jurisprudence, apart from methods like stoning and crucifixion, the application of the capital punishment typically involves beheading with a sword, as seen in the execution of qisas punishments. As described by Abdul Qadir Audah in the Encyclopedia of Islamic Criminal Law, the execution of qisas punishments shares basic procedural principles with other criminal penalties, necessitating compliance with the ruling authority. When carrying out qisas against a perpetrator, the choice of tools must be appropriate, sharp, and free from toxicity. This consideration aims to ensure that the execution process does not cause undue suffering, aligning with the principle that qisas punishments should avoid unnecessary pain and facilitate the swift and humane termination of the condemned person's life.

Intentional killing pertains to cases where a perpetrator purposefully takes another person's life. In such instances, a fundamental punitive measure is the application of qisas, which entails proportionate retaliation corresponding to the act committed. Within the realm of deliberate killings, where a life has been unlawfully taken, the qisas punishment also involves the loss of the perpetrator's life through capital punishment. However, should legitimate legal grounds hinder the execution of the qisas penalty, an alternative course may involve diyat (compensation paid to the victim's family) alongside the potential imposition of discretionary punishment (ta'zir) upon endorsement by the state's judicial authorities.

THE OBJECTIVES OF APPLYING THE CAPITAL PUNISHMENT IN ISLAMIC CRIMINAL LAW

The primary purpose of Islamic jurisprudence is to establish benefits (maslahah). "Maslahat," as defined by the Kamus Besar Bahasa Indonesia, refers to outcomes that yield good, safety, and utility. The prevailing viewpoint among scholars is that the laws of Allah SWT inherently entail benefits for humanity, thus prompting their legislative enactment. Al-

Syathibi's insights in Hamka Haq underline that absolute *maslahah* is instrumental due to its role in achieving salvation and well-being, both in the worldly realm and the hereafter. This is particularly pertinent in essential matters, which encompass five crucial aspects: safeguarding religion, life, intellect, lineage, and property. Scholars of Islamic jurisprudence unanimously concur that the essence of Islamic law is to safeguard these priorities, ranked by their respective significance. Complementing this, Hasballah Thaib introduces two additional objectives proposed by Ibn 'Asyur, extending the aims of Islamic law to encompass maintaining public order and preserving the environment. Consequently, this amalgamation, when aligned with Al-Syathibi's theory, extends the objectives of Islamic law to seven distinct spheres.

Jonathan Herring outlines three theories concerning the rationale behind punitive measures: (1) the consequentialist theory, asserting that beneficial consequences validate punishment; (2) the non-consequentialist theory, positing that punishment can be justified beyond its outcomes; and (3) the mixed theory, as Herbert Hart's influential mixed theory synthesizes a retributivist perspective, addressing who should be subject to punishment, and a consequentialist viewpoint, determining how punitive measures should be executed. Hart underscores that only those deserving of punishment should face sanctions, but the mode of punishment should be tailored to the consequentialist objectives of deterrence, incapacitation, or reform.

Islamic society is committed to safeguarding human freedoms, dignity, honor, and property rights according to the principles of Sharia law, guided by divine direction. Consequently, punitive actions are not predicated solely on suspicion, premises are not invaded arbitrarily, individuals are not pursued without due cause, and loss of life occurs only in alignment with the principles of *qisas*. In a similar vein, property is not forfeited arbitrarily due to theft or robbery, but rather as a result of *hadd* punishments. The imposition of *hudud* penalties serves as a means of rehabilitating transgressors, aligning with the prescribed criminal sanctions delineated in the Qur'an and Sunnah. These penalties are meant to equate the severity of the act committed, a prerequisite that must be acknowledged by the transgressor before reintegration into society can be achieved.

CONCLUSION

In conclusion, this paper has explored two pivotal aspects surrounding the application of capital punishment within Islamic criminal law. Firstly, the examination of the application of capital punishment underscores its role as a legal measure rooted in the pursuit of justice and societal well-being. The dual emphasis on retribution and consequentialism underscores the holistic nature of Islamic jurisprudence, enabling the equitable treatment of offenders while ensuring the broader welfare of society. Secondly, the inquiry into the objectives of applying the capital punishment sheds light on the intertwined goals of benefits (*maslahah*) and justice. Islamic jurisprudence seeks to harmonize individual and communal interests, emphasizing not only the rectification of wrongful actions but also the enhancement of the common good. The dynamic interaction between these objectives shapes the intricate fabric of Islamic legal thought. Considering the dual objects of this paper, the following recommendations emerge. First, in terms of the application of capital punishment, legal scholars, policymakers, and practitioners should collaborate to ensure a nuanced and just implementation process. By integrating both the retributive and consequentialist aspects, they can enhance the moral and societal dimensions of the capital punishment. Public discourse and education can further illuminate the multifaceted nature of this practice, fostering greater understanding and acceptance. Turning to the objectives of applying the capital punishment, stakeholders should advocate for the incorporation of these principles into legal and policy frameworks. By recognizing the significance of benefits and justice, societies can establish a more holistic and comprehensive approach to punishment. Continual scholarly engagement, coupled with

community involvement, can refine the understanding of these objectives in contemporary contexts. In sum, addressing both the application and objectives of capital punishment in Islamic criminal law requires a multidimensional perspective. This paper underscores the need for ongoing dialogue and collaboration among diverse stakeholders to achieve a balanced and well-informed approach. Such endeavors hold the potential to cultivate a legal system that upholds justice while prioritizing societal well-being within the framework of Islamic jurisprudence.

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