



The Death Penalty in Extraordinary Crimes: A Study on Killing Deception (*Qatl al-Ghīlah*)

Gunaldi Ahmad

Universitas Cendekia Abditama Indonesia

gunaldi.ahmad@uinjkt.ac.id

M. Atho Mudzhar

Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia

atho.mudzhar48@gmail.com

Maskur Rosyid

Universitas Islam Negeri Walisongo Semarang, Indonesia

masykurxrejo@walisongo.ac.id

Mhd Rasid Ritonga

University of Canberra, Australia

rasidritonga@canberra.edu.au

Abstract

This study aims to analyze the death penalty against *qatl al-ghīlah* and its relevance to positive law in Indonesia. Regardless of the debate, the death penalty in Islamic criminal law and positive Indonesian law still recognizes it as a punishment for murder. One of the four types of murder in Islamic criminal law is murder by deception (*qatl al-ghīlah*). It is similar to premeditated murder but differs in the method and process. This study used the qualitative method in the form of normative juridical research. This study found that, first, *qatl al-ghīlah* is a type of murder that does not open room for forgiveness, so *qisās* is the only punishment. Second, *qatl al-ghīlah* differs from premeditated murder, so no specific rules govern it (*rechtsvacuum*). Third, this study encourages preserving the death penalty in extraordinary crime cases. The principle of justice is the primary basis for this conclusion. This study recommends incorporating elements of Islamic criminal law as one of the elements in national law.

Keywords: Death penalty, extraordinary crimes, *qatl al-ghīlah*

How to cite: Ahmad, G., Mudzhar, M. A., Rosyid, M., & Ritonga, M.R. (2023). The death penalty in extraordinary crimes: A study on killing deception (*qatl al-ghīlah*). *Hikmatuna: Journal for Integrative Islamic Studies*, 9 (1), DOI: <https://doi.org/10.28918/hikmatuna.v9i1.945>

Received: 01-02-2023

Revised: 09-05-2023

Accepted: 08-06-2023

Introduction

A criminal offense (*jarimah*) is an action which is punishable under the law (Lamond, 2007; Zainuddin, 2017). One form of punishment for criminals is the death penalty. Its existence is recognized, both by Islamic criminal law and positive law in Indonesia (Muhyidin et al., 2022). It is applied as a final punishment for a criminal act. Nevertheless, he became a constant polemic (Zavatta, 2017). Punishment aims to teach the perpetrator a lesson and become a fortress for others to commit crimes (Hoskins, 2011; Nagin, 2013). However, this goal is one of the reasons why the death penalty was rejected. Several studies have proven that the death penalty does not teach the perpetrators a lesson or reduce the crime rate (Radelet & Akers, 1996). Meanwhile, another reason is that the death penalty application is considered obsolete and violates the right to life, an essential part of human rights (Hutapea, 2016a, 2016b; Rukman, 2016).

Regardless of the pros and cons of the death penalty, criminal law in Indonesia still recognizes and applies to perpetrators of extraordinary crimes, such as terrorism, crimes against state security, drug dealers, premeditated murder, and contract killers (Akbari, 2022; Llewellyn, 2022; Lubis, 2015; Pandji et al., 2020; Sirin, 2013). Whereas in the perspective of Islamic criminal law, the death penalty is given to the perpetrators of separatist crimes (*bughat*), violent theft (*hīrābah*), *zinā muḥṣān* (adultery committed by people who are or have been married), religious conversion (*riddah*), and intentional murder (*qatl al-'amd*) which is not forgiven (Hatta, 2012, pp. 324–329; Humayun, 2021, pp. 14–17; Mutmainnah, 2015, pp. 215–220).

In the study of Islamic criminal law, the principal punishment for intentional killing is *qiṣāṣ*. However, this bare punishment can be changed to a substitute punishment by paying *diyat* (blood money) when the victim or the victim's family forgives. The penalty can disappear altogether because *qiṣāṣ* is considered a human right that is open to the right to forgive or ignore (restorative right) (Zainuddin, 2017). The same thing applies to the *jarimah ta'zīr*, which is determined by policyholders who use retributive-restitutive justice.

Meanwhile, in the study of *fiqh al-jināyah*, there is one type of murder that cannot be forgiven, even though it has been ignored by the victim or the victim's family. Al-Khātib al-Shirbīnī mentions that there is one type of murder that is unforgivable. The murder is known as *qatl al-ghīlah*, namely killing by tricking the victim. The perpetrators carried out tricks, killing the victims in carelessness and helplessness.

Many researchers have written articles with the theme of the death penalty. They stated that despite the pros and cons, Indonesia still applies the death penalty in certain criminal cases. In his article, he mentioned several criminal cases where the perpetrators had been sentenced to death and grouped them into four categories: robbery accompanied murder, manslaughter, mutiny, and drug dealing. The death penalty must be imposed to protect life. (Fardiansyah, 2021; Nurwahidah, 2014; Salam & Karim, 2021).

Hatta, (2012) Bremi, (2021) and Pratama (2019) made the same statement. Through normative juridical studies, the death penalty, in its disputed status, is still enforced to realize human goodness and benefit. However, its implementation must be carried out carefully and by the limitations specified in the laws and regulations. More specifically, Pratama, in cases of premeditated murder, stated that the death penalty

should be applied. There are three areas for improvement in enforcement: juridical, government policy, and weak coordination between law enforcers.

Arwansyah et al. (2021) stated that the absence of a juridical provision that strictly regulates the time limit for the execution of capital punishment and violations of human rights against death row convicts while awaiting execution in Correctional Institutions is another weakness. These two things cause the implementation of death penalty executions to not fulfill the aspects of legal certainty and justice (Arwansyah et al., 2021).

The rejection of the death penalty is often based on the argument that it is contrary to human rights. It is as stated by Hutapea (2016a, 2016b). The imposition of the death penalty has long been debated. Those who are pro claim that the death penalty is the final punishment by the elements of the objective of the sentence. Meanwhile, for those who are against it, the death penalty is not only contrary to human rights, but in the context of Indonesia, it is also contrary to the 1945 Constitution Article 28 A. Lon stated that the death penalty has seriously deprived human beings of the right to life, which is inherently inseparable (Lon, 2020). However, from a human rights perspective, Rukman (2016) and Anwar (2016) agree with the existence of the death penalty for drug traffickers. The reason is that the punishment has been legally stipulated in the Narcotics Law and the Constitutional Court's decision. In addition, the imposition of the death penalty for drug dealers and dealers aims to protect more human beings.

Death penalty (*qiṣāṣ*) is interpreted as an appropriate punishment. According to Rokhmadi (2016), *qiṣāṣ* is part of human rights, so when the victim or his family forgives, it can turn into a *diyat* (blood money), or even the punishment disappears altogether. The death penalty is recognized by Islamic law even though it needs to be reformed, for example, equal treatment between male and female killers, Muslim and non-Muslims, and fathers of their children, including equalizing the level of *diyat* for male and female offenders.

Even though the conception of human rights rejects the death penalty, the two can be reconciled. Ayusriadi et al. stated that both could be reconciled through a particular dimension, which views that upholding human rights should be returned to each country because the implementation of human rights in each country may be different according to the noble values and wisdom of each Ayusriadi et al., (2018). As for the application of the death penalty in some instances in Indonesia, according to Rizal, it is by Islamic law. It is because both of them adhere to the *ultimum remedium* principle (Rizal, 2015). More than that, Ja'far stated that the application of the death penalty could strengthen moral values, justice, and human values, which are very much needed to create order and peace for humanity (Ja'far, 2014).

Method

The study was conducted by comparing existing regulations in positive law in Indonesia. As an analysis, this article uses the *rechtsvinding* approach and the philosophy of Islamic law. Thus, this article is qualitative, with data presentation and analysis using a comparative descriptive method.

Result and Discussion

Murder Crimes and Their Sentences in Islamic Law and Indonesian Positive Law

Murder (*al-qatl*) is the unlawful and premeditated killing of another human (Hossain & Rahi, 2018, p. 461; Pervin, 2016). These actions are expressly declared as forbidden acts (*harm*). These provisions are found in Sūrah al-Furqān (25): 68 and Sūrah al-Isrā' (17): 33 and are mentioned in several hadiths as follows.

“The blood of a Muslim who testifies that there is no god but God and that I am God’s Messenger may not lawfully be shed but for one of three reasons: a life for a life; a married man who commits fornication; and one who turns aside from his religion and abandons the community.”

Apart from that, other *ḥadīth*s state the same thing as follows.

“Whoever kills out of folly or for tribal motives, using a rock, a whip, or a stick; he must pay the blood money for killing by mistake. Whoever kills deliberately, he is to be killed in retaliation. Whoever tries to prevent that upon him is the curse of Allah, the angels, and all the people, and no change nor equitable exchange will be accepted from him.”

Through these verses and *ḥadīth*, Islam prohibits killing and threatens it with *qiṣās* punishment (Mumisa et al., 2015, p. 11).

Meanwhile, in Indonesian laws and regulations, the crime of murder has been regulated in Law No. 1 of 2023 concerning the Criminal Code. Chapter XXI concerning Crimes Against Lives and Fetuses Part One of the Law holds murder. Some of the articles in the law that regulate the crime of murder are as follows. First, Article 458 Paragraph (1) states that anyone who commits murder shall be punished with imprisonment for a maximum of 15 years. Article 458 Paragraph (2) says that for a murder committed against a mother, father, wife, husband, or child, the criminal penalty can be added to one-third. Article 458 Paragraph (3) provides an explanation that killing is followed, accompanied, or preceded by a crime committed to prepare or facilitate its implementation, or to release oneself or other participants from a crime in the event of being caught red-handed, or to ensure mastery goods obtained unlawfully, shall be punished with imprisonment for life or imprisonment for a maximum of 20 (twenty) years.

Second, Article 459 regulates the crime of premeditated murder, which is punishable by death or life imprisonment or a maximum imprisonment of 20 (twenty) years. Third, Article 460 Paragraph (1) states that if a mother murders her child, a maximum imprisonment of 7 (seven) years is punishable. Article 460 Paragraph (2) says that if the murder is committed with premeditation, the penalty is imprisonment for a maximum of 9 (nine) years. Article 460 Paragraph (3) letter (a) states that other people who participate in committing the crime are subject to imprisonment for a maximum of 15 (fifteen) years. Article 460 Paragraph (3) letter (b) states that the participation of other people in the murder, accompanied by prior planning, is punishable by the death penalty or life imprisonment or maximum imprisonment of 20 (twenty) years.

Moreover, in Islamic criminal law, murder is divided into two types: unlawful killing and justified killing. It is this prohibited killing that is subject to punishment. Much literature states that there are three forms of prohibited killing, namely intentional killing (*qatl al-'amd*), intentional-like killing (*qatl shibh al-'amd*), and guilty killing (*qatl al-khatā'*) (Pervin, 2016, p. 144; Rokhmadi, 2016, p. 152; Sudarti, 2021, p. 38; Wright, 2019).

First, *qatl al-'amd* is defined as a murder done intentionally (there is an intention from the perpetrator) and uses a tool that, in general, can cause death. The existence of

the perpetrator's intent is the main feature of this type of murder. As for the punishment, it is mentioned in Sūrah al-Baqarah (2): 178, namely the sentence of *qiṣāṣ*. The punishment is the principal punishment for this first kind of murder. Meanwhile, the alternative sentence is *diyyat*, given when the victim's family forgives (Hapsin & Nurdin, 2022). In addition to the principal and substitution punishments, there are additional penalties in some instances in the form of revocation of inheritance and wills (Sudarti, 2021; Yulis et al., 2022).

Second, *qatl shibh al-'amd* (semi-intentional killing) is interpreted as an act that someone against another person deliberately commits without any intention to kill, either directly or using a tool that is generally not lethal. Still, the other person dies because of his actions. In the *qatl shibh al-'amd* case, the victim's family cannot sue for *qiṣāṣ*. However, the offender is required to pay a *diyyat mughallaḏah* (augmented fine) in the form of 100 camels with details of 30 *hiqqah* camels (3-year-old female camels), 30 *jadha'ah* camels (4-year-old female camels), and 40 *khilfah* (pregnant camels). Paying a *diyyat* in cases of semi-intentional homicide is the principal punishment. At the same time, the additional sentence is the revocation of the perpetrator's inheritance rights and will Rafid A (2019); Sulaiman & Ikhlas (2018); Wright (2019).

Third, *qatl al-khaṭā'* (wrongful killing). This third type is interpreted as a person's actions not intended to injure and kill another person, but as a result of his actions, the other person dies. For example, someone cut down a tree and accidentally hit someone to death. The punishment for the perpetrators of wrongful killings has the same status as similar intentional killings in that they cannot be prosecuted *qiṣāṣ*. The type of punishment is paying a *diyyat mukhaffafah* (light) in the form of 100 camels with details of 20 camels aged 0-1 years, 20 other camels aged 1-2 years, 20 other camels aged 2-3 years, 20 other animals aged 3-4 years old, and 20 other camels aged 4-5 years. Paying the *diyyat mukhaffafah* is the principal punishment for culpable homicide. The additional sentence can be in the form of revocation of inheritance rights and wills Rafid A. (2019); Yulis et al., (2022)

Based on this description, it is understood that the imposition of the death penalty for the perpetrators of the crime of murder in the perspective of Islamic law is not the only punishment. In addition, in both perspectives-Islamic law and positive law in Indonesia-murder is considered an extraordinary crime (Prahassacitta, 2016). Killing other people's lives violates human rights, so the perpetrators should be punished severely. Both perspectives recognize the death penalty. That is, the punishment does not conflict with statutory regulations.

Criminal Murder by Deception (*Qatl al-ghīlah*)

Sūrah al-Mā'idah (5): 33 informs that a type of persecution and murder was carried out by a gang of robbers from the villages of 'Ukal and 'Uranah who pretended to have converted to Islam. At the time of the Prophet, they were not only unjust and cruel, they even murdered very unnaturally and were far from noble and chivalrous. The victim was still a teenager, sleeping almost without a fight. This type of killing is called the killing of *al-ghīlah* (the victim is in a state of carelessness and weakness). This act is very unkind, unnatural, and even cowardly attitude. Therefore, Allah SWT ordered that the perpetrators be sentenced to death, crucified, and cut off their hands and feet crosswise.

Muḥammad Abū Zahrah says:

“Killing by way of *al-ghīlah* (trickery) is worse than killing openly. Therefore, killing by *mujāharah* (openly) can still be forgiven, while killing by *al-ghīlah* cannot be excused. In this case, *Mālikiyah* thinks that killing by *al-ghīlah* cannot be ignored. That is because the meaning of robbery is an act of disturbing the situation for people who feel safe and are calm.”(Zahrah, n.d., vol. IV: 149)

Qatl al-ghīlah is a barbaric act, a coward, a loser, and another terrible stigma. That is why when the Prophet was in a deep sleep before the emigration, he was not immediately attacked by assassins en masse. They could if they agreed to kill the Prophet by way of *al-ghīlah*. But instead, they waited until the Prophet woke up and left the house. Unfortunately, what they were waiting for was not the Prophet but 'Alī Ibn Abī Ṭālib.

In the classic *Wayang* story, the son of Adipati Karno, Raden Werso Seno, was forbidden by his father and mother to participate in the Brantayuda war. However, he was determined and still appeared from a distance and carried out the murder in an *al-ghīlah* way by aiming an arrow at the Patih Negara Dwarawati, Gagak Bonkol. This cowardly shot hit Patih Gagak Bongkol's neck and died in the battle between the Pandavas and the Kauravas. Raden Werso Seno was also sentenced to *qiṣāṣ* with his executioner, Raden Setiaki, one of the Senopati Negara Dwarawati. *Al-ghīlah*'s murder was carried out with arrows and from a distance, while the punishment was retaliated with a deadly weapon called a mace (a short and large stick) made of Setiaki's yellow iron. It is the presentation of the *fiqh al-jināyah* of Nusantara based on *Wayang Kulit* folklore in the style of the people of Yogyakarta, Surakarta, and its surroundings.

In another form, the killings that fall into the *al-ghīlah* category are explained by al-Khaṭīb al-Sharbīnī as follows:

“The killing of *al-ghīlah* was carried out by deceiving the victim, such as pretending to be invited to a place, and when he arrived, the victim was immediately killed. It could also be the potential victim pretending to be let go, as if he had guaranteed his safety, even though, in reality, he was not. As stated in the book of *al-Umm*, it is forbidden for anyone to commit deceit against other people. It is to fulfill the rights that must be given to them. Likewise, if a potential victim of *al-ghīlah*'s murder pretends to be released and his safety is guaranteed, it must be protected if their security has been guaranteed.”(Al-Shirbīnī, 2000, vols. VI; 55)

In another book, Ibn Rushd illustrates well-known Islamic legal figures who argue in this matter. He says:

“*Mālik* and *al-Layth* stated that a perpetrator of *jarīmah* murder should not be sentenced to death unless the crime was committed using *al-ghīlah*. The text of the murder of *al-ghīlah* is by laying the victim down and then slaughtering it, specifically if the offender's property is also robbed and controlled by the offender.” (Al-Madanī, 2001, vols. V; 19)

Based on the description above, it is understood that *qatl al-ghīlah* is part of the types of murder other than *qatl al-'amd*, *qatl shibh al-'amd*, and *qatl al-khaṭā'*. More than that, he is more sadistic than *qatl al-'amd*. It is because the perpetrator commits deception so that the victim is helpless, careless, and unable to escape.

Penal Provisions for the Perpetrators of *Qatl al-ghīlah*

In Islamic criminal procedural law, proof of *qatl al-ghīlah* and its legal sanctions differs significantly from intentional and premeditated murder. In deliberate and premeditated killings, the *qiṣāṣ* punishment applies. If the perpetrator receives forgiveness from the victim's family, he moves on to another sanction: *diyāt mughallaḏah* or waiver of punishment. Whereas in the murder of *al-ghīlah*, full of deception without even being aware of the party to be executed, forgiveness does not apply, and it is impossible to switch to another type of sanction in the form of *diyāt*.

Ibn Rushd, in this regard, says:

“The killing of al-ghīlah was a murder that was carried out simultaneously by seizing his wealth. The perpetrators of this type of murder must be punished at ḥad according to the provisions of Allah. The victim's family should not condone this type of murder. This type of murder is equated with jarīmah ḥirābah according to the word of Allah Sūrah al-Mā'idah (5) Verse 33.” (Al-Qurṭubī, 1988, vols. XVI; 370)

Based on Ibn Rushd's explanation, it is known that legal prosecution for perpetrators of *jarīmah qatl al-ghīlah* cannot have the opportunity to wait for the sanctions to be changed from *qiṣāṣ* to *diyāt*. The punishment for killing *al-ghīlah* has only one type, namely the principal discipline in the form of *qiṣāṣ*. This is because *diyāt* can only be given to three categories of murders. First, intentional and planned killings have received forgiveness from the victim's family. Second, semi-intentional killing. Third, wrongful killing.

As for the impossibility of obtaining pardon, either by the family, judges, the family was killed, or by other parties, which resulted in a change in legal sanctions, Shihāb al-Dīn al-Nafrawī expressed his opinion as follows:

“The killing of al-ghīlah, which was carried out by seizing the victim's assets and assets, does not deserve forgiveness, either by the guardian, the ruler, or even by the victim after the execution. Forgiveness is also unacceptable, even if the victim is still an infidel and the killer is an independent Muslim. It is because murder in this context enters the realm of jarīmah ḥirābah (robbery). Robbers who, in their actions, also kill victims must be punished qiṣāṣ even though those killed are enslaved people and infidels. The prohibition of obtaining pardon for the perpetrators of al-ghīlah's murder is because, convincingly, he has spread corruption on earth. At the same time, the death penalty belongs to God, not individual rights, so it can be said that in this case, the death penalty for the perpetrators falls into the category of ḥad, not qiṣāṣ.” (Al-Nafrawī, 1995, vols. V; 182)

Meanwhile, in positive law in Indonesia, premeditated murder is regulated in Law No. 1 of 2023 concerning the Criminal Code Article 459. This article governs the crime of premeditated murder, which carries the death penalty or life imprisonment or a maximum imprisonment of 20 years. The report emphasizes that changing the sentence from the death penalty to life imprisonment or imprisonment for a maximum of 20 years is still possible. The article suggests that there is still room for not punishing death for premeditated murder.

Unraveling Benefits of the Death Penalty

The death penalty given to the perpetrators of extraordinary crimes, it seems, will be a debate of all time. It will give birth to two opposing camps: agree and disagree. Those who are against this punishment are responded to negatively because -at least- by three things. First, the death penalty is against human rights.(Lubis, 2015, p. 13; Schabas, 2000). Second, the death penalty is not proven to have a deterrent effect. This is evidenced by the persistently high crime rate, including extraordinary crimes (Wardhani, 2019). Third, the death penalty in Indonesia is considered unconstitutional (Komnas HAM, 2021; Napitupulu, 2015, p. 16; Wulandari, 2015).

As for those who agree with the death penalty, Yahya calls it the dominant group spearheaded by law enforcers (Yahya, 2013). The death penalty for perpetrators of extraordinary crimes is enforced in the framework of guaranteeing the right to life and justice for the people. Because if it is said that the death penalty has violated the right to life, imprisonment has also violated that right.

At the same time, the prison sentence that has been applied still creates a big problem. According to a report by the Ministry of Law and Human Rights of the Republic of Indonesia, the existing prisons or detention centers are already over capacity. Until September 2022, there were 276,172 prison inmates, with only 132,107 people. That is, there was a capacity increase of 104% (Ridwan, 2023). It indicates that even imprisonment has proven not to deter perpetrators and is not a lesson for society. More than that, if the death penalty is considered inhumane, the same thing happens with imprisonment. The overcrowding of prisons strengthens the argument that prison sentences are more inhumane (Humayun, 2021).

Instead of reducing this overcapacity, the Ministry of Law and Human Rights offers a solution through restorative justice. In addition, referring to the Supreme Court Decision No. 1644 K/Pid/1988 dated 15 May 1991, if a person violates customary law, then the Head and Traditional Leaders impose expected sanctions then the person concerned cannot be submitted again (for the second time) as a defendant in a trial in court with the same charge of violating the same law existed and was sentenced to imprisonment according to the provisions of the Criminal Code so that in such circumstances the transfer of case files and the demands of the Prosecutor at the District Court must be declared unacceptable. However, this jurisprudence needs to be more vital because Indonesia does not adhere to the Anglo-Saxon legal system, so judges are not bound by jurisprudence (previous judge's decision).(Kementerian Hukum dan HAM, n.d.) Meanwhile, other offers, namely the perpetrators of minor crimes, are not subject to imprisonment. The solution is that the perpetrator is given social sanctions by working in the social sector (Muhaimin, 2019; Setyawati, 2013; Wijaya, 2022). However, its implementation requires a series of procedures and strict supervision. Because if not, social punishment will not function optimally and be in vain.

Leocadio (2010) found that the death penalty proved to have a significant effect. Dezhbakhsh stated the same thing. The death penalty has a deterrent effect. Executing one perpetrator is said to have saved eighteen lives (Dezbakhsh et al., 2008; Dezbakhsh & Shepherd, 2006). Humayun (2021) also supports the existence of the death penalty. He even stated that the imposition of the death penalty in Islamic criminal law is basically in line with Article 6 of the ICCPR. Schabas (2000) also recognized that the death penalty may be imposed regarding crimes against humanity, war crimes, and genocide, as mandated by the Universal Declaration of Human Rights.

Article 6 Paragraph (2) of the International Covenant on Civil and Political Rights states that in countries that have not abolished the death penalty, death penalty decisions can only be imposed on some of the most serious crimes by the law in force at the time the crime was committed, and not against with the provisions of the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide.

As for extraordinary crimes classified as crimes against humanity, referring to Article 9 of the Law on Human Rights Courts, there are ten types as follows: murder, extermination, slavery, expulsion or forcible transfer of population, arbitrary deprivation of liberty, or other physical freedoms that violate (principles) of the main provisions of international law, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence, persecution against a particular group or association based on political equality, race, nationality, ethnicity, culture, religion, gender or other reasons that have been universally recognized as something that is prohibited under international law, enforced disappearance of people, the crime of apartheid. Thus, it can be seen that the death penalty in these crimes is punishable by death (Prahassacitta, 2016; Putri, 2019).

In addition, the death penalty in Indonesia is contained in several regulations. First, Criminal Code, specifically Articles 104, 111 Paragraph (2), 124 Paragraph (3), 140, 340, 365 Paragraph (4), 444, 149 K Paragraph (2), and 149 O Paragraph (2). Second, Law no. 35 of 2009 concerning Narcotics, specifically Article 113 Paragraph (2), 114 Paragraph (2), 116 Paragraph (2), 118 Paragraph (2), 119 Paragraph (2), 121 Paragraph (2), and 133 Paragraph (2). Third, Law No. 31 of 1999 *Juncto* Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption Article 2 Paragraph (2). Fourth, Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism Becomes Law Article 14. Fifth, MK Decision No. 2-3/PUU-V/2007. Sixth, Law no. 02/Pnps/1964 concerning Procedures for Executing Death Penalties. Seventh, Regulation of the Chief of Police Number 12 of 2010 concerning Procedures for Executing Death Penalties. Thus, looking at some of these regulations, the death penalty in Indonesia is not unconstitutional.

In developing the concept of *maqāṣid al-syarī'ah*, the term *al-ḥuqūq al-insān al-asāsī* appears (Al-Sa'd, 2008). The term emerged after Islamic contact with the West in the early 20th century. Nevertheless, early Muslim jurists have discussed the material and substance of human rights. The concept of *maqāṣid al-syarī'ah* is in line with and relevant to human rights. *Uṣūl* experts formulate five primary protections: maintaining religion and freedom of religion (*ḥifẓ al-dīn*), protecting self and survival (*ḥifẓ al-nafs*), protecting reason (*ḥifẓ al-'aql*), preserving offspring (*ḥifẓ al-nasl*), and maintaining property (*ḥifẓ al-māl*).

The Need for Law in the Criminal Murder of *al-Ghīlah*

Qatl al-ghīlah is not the same as premeditated murder. The difference lies in the method and punishment. On this basis, *qatl al-ghīlah* does not find specific rules in positive law. That is, it experienced a legal vacuum (*rechstvaccum*). (Deviani et al., 2023) In fact, at the same time, Article 1 Paragraph (3) of the 1945 Constitution states that Indonesia is a country based on law. This fact can make it difficult for law enforcers to resolve the case.

Judges' role in cases with no legal provision is central. Judges, as mandated by Law No. 48 of 2009 concerning Judicial Power. In this regulation, judges are given the broadest possible power to examine cases even though they have not been regulated in law. Judges must play a role as law discoverers (*rechtsvinding*) to remain in line with the legality principle adhered to by the criminal law system in Indonesia. (Badriyah, 2011; Manan, 2013; Muwahid, 2017)

However, even though the power of a judge as a lawmaker is guaranteed by law, he is not the holder of legislative or executive power as the Legislature Forming Body. The judge's decision only applies to each litigant (Suhariyanto, 2015). Therefore, the main steps that can be taken when there is a legal vacuum are with the policies and initiatives of the Legislation Forming Body. These provisions are regulated in the 1945 Constitution Article 5 and Article 20 Paragraphs (1) and (2).

The policies and initiatives of the Legislature Forming Agency play a vital role in creating a law and regulation, both for conditions that were not previously regulated as well as changes or improvements to existing laws and regulations but are not by the dynamics of development in society. In addition, it is also necessary to have the participation of the community in the formation of laws and regulations to create stability, regularity, and harmony of national law. More than that, there must be integrity and a professional attitude from the Judicial Body to administer justice, uphold the rule, and judge based on Pancasila and the 1945 Constitution.

More than that, the law is enacted to benefit all parties. (Kameo & Prasetyo, 2022) The statement emphasizes that benefit is the essence of the law's enactment (Iqbal, 2010). The method for discovering the heart is obtained through philosophical reasoning. As with the goals of philosophy in general, the philosophy of Islamic law seeks to find the essence and purpose of Islamic law. (Zain & Zayyadi, 2023) Through this reasoning, reality is obtained through its three frameworks: ontology, epistemology, and axiology (Engle, 2008). In another explanation, Islamic legal philosophy is equated with *uṣūl al-fiqh* (Mulyana, 2019) and *maqāṣid al-syarī'ah* (Maulidi, 2019).

Qatl al-ghīlah, as explained earlier, is a type of murder carried out using deception and trickery. The perpetrator of the murder makes the victim helpless first. For this cowardly method, the perpetrator did not get the right to apologize from the victim's family. Through this meaning, the ontological aspect has been fulfilled. Punishment for the perpetrators of murder by way of *al-ghīlah* is to ensure benefit, goodness, and justice. This aim is primarily aimed at victims and, in general, towards society and even perpetrators.

Meanwhile, in rejecting the death penalty for perpetrators of extraordinary crimes, it seems that it only refers to the goodness of the perpetrators. Meanwhile, justice for the victim, the victim's family, and the community is not a significant concern. The value of justice in the death penalty should focus on justice for the victim and the victim's family and the benefit of humankind in general. The realization of guarding and protecting life, religion, reason, property, and continuity of life is an absolute goal that must be followed. Through this explanation, the axiological aspect has been fulfilled.

Conclusion

Based on the description above, this article concludes three things. First, the types of murder in Islamic criminal law are divided into four classes: *qatl al-'amd*, *qatl shibh al-'amd*, *qatl al-khatā'*, and *qatl al-ghīlah*. The first three types still open up space for

forgiveness so that the *qisās* punishment can turn into a *diyat* or even escape punishment altogether. While *qatl al-ghīlah* is a type of murder that denies forgiveness, so the only sentence is *qisās*. Second, *qatl al-ghīlah* is not the same as premeditated murder in terms of method and punishment. So that the rule of law on *qatl al-ghīlah* is not found in positive law in Indonesia (*rechtsvacuum*), this situation requires the active role of judges as *rechtsvinding* and the Legislation Forming Body to form or perfect existing rules. Third, this article supports previous findings, which state that the death penalty must still be maintained in the legal system in Indonesia regarding crimes against humanity. It is intended to realize justice for criminals and victims, victims' families, and society in general.

References

- ‘Awdah, ‘Abd al-Qādir. (n.d.). *Al-Tashrī’ al-jinā’ī fī al-Islām muqāranan bi al-qānūnī al-waḍ’ī*. Dār al-Kutub al-‘Ilmiyyah.
- ‘Ashūr, M. al-Ṭāhir ibn. (2001). *Maqāṣid al-sharī’ah al-Islāmiyyah*. Dār al-Nafā’is.
- Akbari, A. R. (2022, August 31). *Finding certainty in an uncertain Indonesian death penalty*. The Jakarta Post. <https://www.thejakartapost.com/opinion/2022/08/30/finding-certainty-in-an-uncertain-indonesian-death-penalty.html>
- Al-‘Afāsī, A. (1993). *Maqāṣid al-sharī’ah al-Islāmiyyah wa makārimuhā*. Dār al-Garb al-Islāmī.
- Al-Jundī, S. ‘Abd al-W. (2008). *Ahammiyyah al-maqāṣid fī al-sharī’ah al-Islāmiyyah*. Mu’assasah al-Risālah.
- Al-Madanī, M. Z. al-K. (2001). *Awjaz al-masālik ilā muwaṭṭa’ Mālik*. Sheikh Abul Hasan Nadwi Center.
- Al-Nafrāwī, A. I. G. I. S. I. M. S. al-D. (1995). *Al-Fawākih al-diwānī ‘alā risālah Ibn Abī Zayd al-Qayrawānī*. Dār al-Fikr.
- Al-Qurtubī, A. al-W. I. R. (1988). *Al-Bayān wa al-taḥṣīl wa al-sharḥ wa al-tawjīh wa al-ta’līl fī masā’il al-mustakhrājah*. Dār al-Ghurub al-Islāmī.
- Al-Sa’d, G. (2008). *Huqūq al-insān ‘ind al-Imām ‘Alī ibn Abī Ṭālib ‘Alayh al-Salām Ru’yah ‘Ilmiyyah*. <http://www.alnoor.se/article.asp?id=58783>
- Al-Shirbīnī, M. al-K. (2000). *Mughnī al-muḥtāj*. Dār Al-Kutub Al-‘Ilmiyyah.
- Al-Yūbī, M. S. ibn A. ibn M. (1998). *Maqāṣid al-sharī’ah al-Islāmiyyah wa ‘alāqatuhā bi al-adillah al-shar’iyyah*. Dār al-Hijrah.
- Amnesty International Indonesia. (2020). *Vonis hukuman mati dan eksekusi 2019 laporan global amnesty international*. <https://www.amnesty.id/wp-content/uploads/2020/04/2019-DP-Report-IND-DT-MP-ABJVMJVRA.pdf>
- Anwar, U. (2016). Penjatuhan hukuman mati bagi bandar narkoba ditinjau dari aspek hak asasi manusia (Analisa kasus hukuman mati terpidana kasus bandar narkoba; Freddy Budiman). *Jurnal Legislasi Indonesia*, 13(3), 241–251. <https://doi.org/10.54629/JLI.V13I3.148>
- AR, S. (2009). Penentuan sanksi pidana dalam suatu undang-undang. *Legislasi Indonesia*, 6(4), 615–666. <https://e-jurnal.peraturan.go.id/index.php/jli/article/viewFile/337/221>
- Arwansyah, L., Najemi, A., & Prayudi, A. A. (2021). Batas waktu pelaksanaan pidana mati dalam perspektif kepastian hukum dan keadilan di Indonesia. *Pampas: Journal of Criminal Law*, 1(3), 12–30. <https://doi.org/10.22437/pampas.v1i3.11073>

- Ayusriadi, A., Razak, A., & Hamid, M. A. (2018). Perspektif hukum Islam terhadap hukuman mati berdasarkan undang-undang terkait Hak Asasi Manusia di Indonesia. *Jurnal Ilmu Hukum*, 7(2), 226–245. <https://jih.ejournal.unri.ac.id/index.php/JIH/article/viewFile/5364/pdf>
- Badriyah, S. M. (2011). Penemuan hukum (rechtsvinding) dan penciptaan hukum (rechtsschepping) oleh hakim untuk mewujudkan keadilan. *Masalah-Masalah Hukum*, 40(3), 384–392. <https://doi.org/10.14710/MMH.40.3.2011.384-392>
- Bremi, K. (2021). Politik hukum pidana terhadap pidana mati pelaku pembunuhan berencana pasal 340 KUHP Pidana. *Jurnal Ilmiah Publika*, 9(1), 42–59. <https://doi.org/10.33603/PUBLIKA.V9I1.5716>
- Dahlan, M., Bustami, M. R., Makmur, & Mas'ulah, S. (2021). The Islamic principle of ḥifz al-nafs (protection of life) and COVID-19 in Indonesia: A Case Study of Nurul Iman Mosque of Bengkulu City. *Heliyon*, 7(7), 1–9. <https://doi.org/10.1016/J.HELIYON.2021.E07541>
- Deviani, E., Putri AT, M. E., & Kusworo, D. L. (2023). Rechtsvacuum in execution of administrative sanctions and forced penalty decisions and implications of settlement personnel disputes. *International Journal of Multidisciplinary Research and Analysis*, 06(03). <https://doi.org/10.47191/IJMRA/V6-I3-29>
- Dezbakhsh, H., Rubin, P. H., & Shepherd, J. M. (2008). Does capital punishment have a deterrent effect? new evidence from postmoratorium panel data. In H. M. Mialon & P. H. Rubin (Eds.), *Economics, Law and Individual Rights* (pp. 414–442). Routledge. <https://doi.org/10.4324/9780203930885-23>
- Dezbakhsh, H., & Shepherd, J. M. (2006). The deterrent effect of capital punishment: evidence from a “judicial experiment.” *Economic Inquiry*, 44(3), 512–535. <https://doi.org/10.1093/ei/cbj032>
- Duderija, A. (2014). Islamic law reform and maqāṣid al-sharī‘a in the thought of Mohammad Hashim Kamali. In *Maqasid Al-Shari'a and Contemporary Reformist Muslim Thought: An Examination* (pp. 13–37). https://doi.org/10.1057/9781137319418_2
- Engle, E. (2008). Ontology, epistemology, axiology: bases for a comprehensive theory of law. *Appalachian Journal of Law*, 8(1), 1–16.
- Fardiansyah, A. I. (2021). Why Indonesia maintain capital punishment? *Fiat Justisia: Jurnal Ilmu Hukum*, 15(1), 25–38. <https://doi.org/10.25041/FIATJUSTISIA.V15NO1.1904>
- Hapsin, A., & Nurdin, N. (2022). Diat and Peace money in the crime of culpable homicide. *Al-Ahkam*, 32(2), 189–210. <https://doi.org/10.21580/AHKAM.2022.32.2.12413>
- Hatta, M. (2012). Perdebatan hukuman mati di Indonesia: Suatu kajian perbandingan hukum Islam dengan hukum pidana Indonesia. *Miqot: Jurnal Ilmu-Ilmu Keislaman*, 36(2). <http://jurnalmiqotojs.uinsu.ac.id/index.php/jurnalmiqot/article/view/121#>
- Hoskins, Z. (2011). Deterrent punishment and respect for persons. *Ohio State Journal of Criminal Law*, 8(2), 369–384. <http://hdl.handle.net/1811/73206#>
- Hossain, M. B., & Rahi, S. T. (2018). Murder: a critical analysis of the common law definition. *Beijing Law Review*, 9(3), 460–480. <https://doi.org/10.4236/BLR.2018.93028>
- Humayun, N. (2021). The Islamic position on capital punishment: a restorative justice

- model which aligns with international law, and inspires reasoning for prison industrial complex abolition in the U.S. *Berkeley Journal of Middle Eastern and Islamic Law*, 12(9), 9–28. <https://doi.org/10.15779/Z38028PD80>
- Hutapea, B. (2016a). *Kontroversi Penjatuan Hukuman Mati Terhadap Tindak Pidana narkoba dalam perspektif hukum dan hak asasi manusia*. badan penelitian dan pengembangan hukum dan HAM.
- Hutapea, B. (2016b). Alternatif penjatuan hukuman mati di indonesia dilihat dari perspektif HAM. *Jurnal HAM*, 7(2), 69–83. <https://doi.org/10.30641/HAM.2016.7.69-83>
- Iqbal, K. (2010). Re-conceptualising the right to development in Islamic law. *The International Journal of Human Rights*, 14(7), 1013–1041. <https://doi.org/10.1080/13642980902933597>
- Ja'far, A. K. (2014). Hukuman mati atas delik pembunuhan menurut hukum pidana Islam dan hukum pidana positif. *Al-'Adalah*, 12(2). <http://ejournal.radenintan.ac.id/index.php/adalah/article/view/194#>
- Kameo, J.-, & Prasetyo, T. (2022). Bantuan hukum bagi keluarga korban pembunuhan dalam perspektif keadilan bermartabat. *Magistrorum et Scholarium: Jurnal Pengabdian Masyarakat*, 3(2), 278–287. <https://ejournal.uksw.edu/jms/article/view/8372>
- Kementerian Hukum dan HAM. (n.d.). *Restorative Justice, Solusi Over Kapasitas Lapas Rutan*. <https://sulsek.kemenkumham.go.id/>. Retrieved 30 May, 2023, from [https://sulsek.kemenkumham.go.id/attachments/article/4443/RestorativeJustice_solusi Over Kapasitas Lapas Rutan.pdf](https://sulsek.kemenkumham.go.id/attachments/article/4443/RestorativeJustice_solusi%20Over%20Kapasitas%20Lapas%20Rutan.pdf)
- Komnas HAM. (2021, 4 November). *Komnas HAM RI soroti fenomena hukuman mati yang inkonstitusional*. Komnasham.Go.Id. <https://www.komnasham.go.id/index.php/news/2021/11/4/1975/komnas-ham-ri-soroti-fenomena-hukuman-mati-yang-inkonstitusional.html>
- Lamond, G. (2007). What is a Crime? *Oxford Journal of Legal Studies*, 27(4), 609–632. <https://doi.org/10.1093/ojls/gqm018>
- Lathifah, A., Abu, H., Rofiq, A., & Hidayatulloh, M. A. (2022). The Construction of religious freedom in Indonesian legislation: a perspective of maqāṣid ḥifẓ al-dīn. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 6(1), 369–390. <https://doi.org/10.22373/sjhc.v6i1.10957>
- Leocadio, P. (2010). *Evaluating the deterrent effect of capital punishment on crime* [City University of New York]. https://academicworks.cuny.edu/cc_etds_theses/2
- Llewellyn, A. (2022, 10 October). *Indonesia mulls introduction of a 'probationary' death penalty*. Al Jazeera. <https://www.aljazeera.com/news/2022/10/10/indonesia-considers-plans-for-a-probationary-death-penalty>
- Lon, Y. S. (2020). Penerapan hukuman mati di Indonesia dan implikasi pedagogisnya. *Kertha Wicaksana: Sarana Komunikasi Dosen Dan Mahasiswa*, 14(1), 47–55. <https://www.ejournal.warmadewa.ac.id/index.php/kertawicaksana/article/view/1549>
- Lubis, T. M. (2015). *Death penalty and the road ahead: the case of Indonesia*. Centre for Indonesian Law, Islam and Society & Asian Law Centre. <https://law.unimelb.edu.au/centres/alc/research/publications/alc-briefing-paper-series/death-penalty-and-the-road-ahead-a-case-study-of-indonesia>
- Manan, A. (2013). Penemuan hukum oleh hakim dalam praktek hukum acara di

- pengadilan agama. *Jurnal Hukum Dan Peradilan*, 2(2), 189–202. <https://doi.org/10.25216/JHP.2.2.2013.189-202>
- March, A. F. (2011). The maqṣad of ḥifz al-dīn: is liberal religious freedom sufficient for the shari'ah. *Islam and Civilisational Renewal*, 2(2), 258–378. <https://www.icrjournal.org/icr/index.php/icr/article/view/176/170>
- Mardani. (2019). *Hukum Pidana Islam*. Kencana.
- Maulidi, M. (2019). Maqasid syariah sebagai filsafat hukum islam: sebuah pendekatan sistem menurut Jasser Auda. *Al-Mazaahib: Jurnal Perbandingan Hukum*, 7(1), 113. <https://doi.org/10.14421/al-mazaahib.v7i1.2860>
- Meiliana, D. (2019, December 6). *BNN: Penyalah guna narkoba di Indonesia naik 0,03 Persen*. Kompas. <https://nasional.kompas.com/read/2019/12/06/06052331/bnn-penyalah-guna-narkoba-di-indonesia-naik-003-persen>
- Muhaimin, M. (2019). Restoratif justice dalam penyelesaian tindak pidana ringan. *Jurnal Penelitian Hukum De Jure*, 19(2), 185–206. <https://doi.org/10.30641/DEJURE.2019.V19.185-206>
- Muhyidin, M., Adhi, Y. P., & Triyono, T. (2022). Contribution of islamic law concerning the death penalty to the renewal of indonesian criminal law. *Indonesian Journal of Advocacy and Legal Services*, 4(1), 73–90. <https://doi.org/10.15294/IJALS.V4I1.55226>
- Mulyana, A. (2019). Epistemologi, ontologi dan aksiologi hukum Islam. *Muamalatuna*, 11(1), 55–79. <https://doi.org/10.37035/mua.v11i1.3324>
- Mumisa, M., Habbash, M., Jaber, T., & Macalesher, J. (2015). *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty be Unfaithful to the Message of Islam?* Penal Reform International. www.penalreform.org/keep-informed.
- Mutmainnah, I. (2015). Pidana mati terhadap pelaku kejahatan berat dan menyengsarakan. *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam*, 2(2), 209–221. <https://doi.org/10.24252/AL-QADAU.V2I2.2643>
- Muwahid, M. (2017). Metode penemuan hukum (rechtsvinding) oleh hakim. *Al-Hukama': The Indonesian Journal of Islamic Family Law*, 7(1), 224–248. <https://doi.org/10.15642/AL-HUKAMA.2017.7.1.224-248>
- Nagin, D. S. (2013). Deterrence in the twenty-first century. *crime and justice*, 42(1), 199–263. <https://doi.org/10.1086/670398>
- Napitupulu, E. A. T. (2015). *Overview on death penalty in Indonesia*. <https://icjr.or.id/wp-content/uploads/2015/06/Overview-on-Death-Penalty-in-Indonesia.pdf>
- Nurwahidah, N. (2014). Eksekusi hukuman mati di indonesia (tinjauan hukum pidana Islam). *Syariah Jurnal Hukum Dan Pemikiran*, 14(1), 1–13. <https://doi.org/10.18592/syariah.v14i1.65>
- Pandji, A. N. G. W., Swardhana, G. M., & Parwata, I. G. N. (2020). Pidana mati dalam tindak pidana kejahatan luar biasa dalam perspektif pembaharuan hukum pidana. *Kertha Wicara: Jurnal Ilmu Hukum*, 9(6), 1–13. <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/43583>
- Pervin, M. (2016). Law of murder under Islamic Criminal Law: An Analysis . *Journal of Law, Policy and Globalization*, 53, 143–149. www.iiste.org
- Prahassacitta, V. (2016). The Concept of Extraordinary Crime in Indonesia Legal System: is The Concept An Effective Criminal Policy? *Humaniora*, 7(4), 513–521.

- <https://doi.org/10.21512/HUMANIORA.V7I4.3604>
- Pratama, W. A. (2019). Penegakan hukuman mati terhadap pembunuhan berencana. *SIGn Jurnal Hukum*, 1(1), 29–41. <https://jurnal.penerbitsign.com/index.php/sjh/article/view/v1n1-29-41/13>
- Putri, D. K. (2019). Interpreting ‘Most Serious Crimes’ under Article 6(2) of ICCPR. *Mimbar Hukum*, 31(3), 419–437. <https://doi.org/10.22146/JMH.48979>
- Radelet, M. L., & Akers, R. L. (1996). Deterrence and the death penalty: the views of the experts. *Journal of Criminal Law and Criminology*, 87(1), 1–16. <https://scholarlycommons.law.northwestern.edu/jclc>
- Rafid A, N. (2019). Asas manfaat sanksi pidana pembunuhan dalam hukum pidana nasional. *Al-Syakhshiyah Jurnal Hukum Keluarga Islam Dan Kemanusiaan*, 1(2), 201–212. <https://doi.org/10.35673/AS-HKI.V1I2.494>
- Ridwan, M. (2023, May). *KPK temukan masalah dalam tata kelola lapas di Indonesia*. LensaIndonesia.Com. <https://www.lensaIndonesia.com/2023/05/10/kpk-temukan-masalah-dalam-tata-kelola-lapas-di-indonesia.html>
- Rizal, M. (2015). Penerapan hukuman pidana mati perspektif hukum Islam di Indonesia . *Nurani*, 15(1), 101–116. <https://media.neliti.com/media/publications/41891-ID-penerapan-hukuman-pidana-mati-perspektif-hukum-islam-di-indonesia.pdf>
- Rokhmadi, R. (2016). Hukuman pembunuhan dalam hukum pidana Islam di Era Modern. *At-Taqaddum*, 8(2), 150. <https://doi.org/10.21580/at.v8i2.1169>
- Rosyid, M., & Khairunnisa, N. (2023). Redefining Hifz al-Dīn as the Basis of Religious Moderation. *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman*, 21(2), 2527–6778. <https://doi.org/10.18592/al-banjari.v21i2.8453>
- Rukman, A. A. (2016). Pidana mati ditinjau dari prespektif sosiologis dan penegakan HAM. *Jurnal Equilibrium Pendidikan Sosiologi*, 4(1), 115–124. <https://doi.org/10.26618/equilibrium.v4i1.493>
- Salam, A. J., & Karim, Z. P. (2021). Death penalty in indonesia: revisiting the debate between the retentionist and the Abolitionist. *Lentera Hukum*, 8(1), 115–150. <https://doi.org/10.19184/ejlh.v8i1.20138>
- Schabas, W. (2000). Islam and the death penalty. *William & Mary Bill of Rights Journal*, 9(1), 223–236.
- Setyawati, I. W. (2013). Rekonstruksi pemidanaan kerja sosial pada tindak pidana ringan sebagai upaya pencegahan berulangnya tindak pidana ringan di Indonesia. *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 2(1). <https://doi.org/10.20961/RECIDIVE.V2I1.32004>
- Shodikin, A. (2016). Filsafat hukum islam dan fungsinya dalam pengembangan ijtihad. *Mahkamah: Jurnal Kajian Hukum Islam*, 1(2). <https://doi.org/10.24235/MAHKAMAH.V1I2.1332.G976>
- Sirin, K. (2013). Penerapan hukuman mati bagi pelaku kejahatan korupsi di Indonesia: analisis pendekatan teori maqāshid al-Syari’ah. *Istinbath: Jurnal Hukum Islam*, 12(1), 71–92. <https://doi.org/https://www.istinbath.or.id/index.php/ijhi/article/view/185>
- Sudarti, S. (2021). Hukum qishash diyat: sebuah alternatif hukuman bagi pelaku kejahatan pembunuhan berencana di Indonesia. *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam*, 12(1), 35–50. <https://doi.org/10.21043/YUDISIA.V12I1.8991>
- Suhariyanto, B. (2015). Eksistensi pembentukan hukum oleh hakim dalam dinamika politik legislasi di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum*

- Nasional*, 4(3), 413. <https://doi.org/10.33331/rechtsvinding.v4i3.14>
- Sulaiman, A., & Ikhlas, N. (2018). Objektivikasi qisas dan diyat: sebuah tawaran pembaharuan KUHP. *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 3(1), 69–84. <https://doi.org/10.22515/ALAHKAM.V3I1.1339>
- Syahriar, A., & Nafisah, Z. (2020). Comparison of maqasid al-shari'ah asy-syathibi and ibn 'ashur perspective of usul al-fiqh four mazhab. *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 3(2), 185. <https://doi.org/10.30659/jua.v3i2.7630>
- Wardhani, R. M. A. (2019). Efektivitas Penghukuman dalam studi kasus hukuman penjara dan hukuman mati: Kajian alternatif penghukuman lain. *Deviance Jurnal Kriminologi*, 3(1), 69–90. <https://doi.org/10.36080/DJK.V3I1.872>
- Wijaya, H. T. D. (2022). Penerapan sanksi sosial sebagai alternatif pemidanaan terhadap pelaku tindak pidana kejahatan siber (cyber crime). *Al-Qisth Law Review*, 5(2), 371–404. <https://doi.org/10.24853/AL-QISTH.5.2.371-404>
- Wright, B. (2019). *Homicide and Islamic Criminal Law in 19th Century Muslim Jurisdictions* [McGill University]. <https://escholarship.mcgill.ca/downloads/8336h399g.pdf>
- Wulandari, I. (2015, January 18). *YLBHI: Hukuman mati itu inkonstitusional*. *Republika*. Online. <https://news.republika.co.id/berita/nasional/hukum/15/01/17/nibl8u-ylbhi-hukuman-mati-itu-inkonstitusional?>
- Yahya, I. (2013). Eksekusi hukuman mati tinjauan maqāsid al-sharī'ah dan keadilan. *Al-Ahkam*, 23(1), 81. <https://doi.org/10.21580/AHKAM.2013.23.1.74>
- Yulis, S., Hamdani, H., & Bahreysi, B. (2022). Kebijakan hukum pidana terhadap hukuman qisas dan diyat bagi pelaku pembunuhan dalam qanun jinayat Aceh. *Al-Mizan: Jurnal Hukum Islam Dan Ekonomi Syariah*, 9(1), 22–35. <https://doi.org/10.54621/JIAM.V9I1.274>
- Zahrah, M. A. (n.d.). *Zahrah al-Tafāsir*. Dār al-Fikr al-'Arabī. <https://shamela.ws/book/37071/2782>
- Zain, M. F., & Zayyadi, A. (2023). Measuring islamic legal philosophy and Islamic Law: a Study of differences, typologies, and objects of study. *El-Aqwal: Journal of Sharia and Comparative Law*, 2(1), 1–12. <https://doi.org/10.24090/EL-AQWAL.V2I1.7472>
- Zainuddin, Z. (2017). Restorative justice concept on jarimah qisas in Islamic criminal law. *Jurnal Dinamika Hukum*, 17(3). <https://doi.org/10.20884/1.jdh.2017.17.3.826>
- Zavatta, L. (2017). Controversial Theories on the Death Penalty. *Beijing Law Review*, 8(2), 212–225. <https://doi.org/10.4236/BLR.2017.82012>