

# **DEATH PENALTY IN THE PERSPECTIVE OF ISLAMIC LAW AND LAW NO. 39 OF 1999 CONCERNING HUMAN RIGHTS MAN**

*Cindy Libraty*

Faculty of Law, Universitas Muslim Indonesia, Indonesia

*Muhammad Fauzi Ramadhan*

Faculty of Law, Universitas Muslim Indonesia, Indonesia

*Miftahul Jannah*

Faculty of Law, Universitas Muslim Indonesia, Indonesia

This study aims to find out and explain the views on death penalty according to Islamic law and based on laws related to human rights in the positive law that applies in Indonesia. The method used in this research is a library method with a normative juridical approach with a prescriptive nature of research. Based on the results of this study, it shows that the perspectives between Islamic law and human rights towards capital punishment can be reconciled. In Islamic law it clearly states that the death penalty is a necessity in the crime of murder, whereas according to the concept of human rights, especially in the international world which is dominated by western countries, it is stated that capital punishment is not recommended because it violates a person's right to life which is a gift from God. Death penalty itself in the conception of human rights has two dimensions, namely the universal dimension and the particular dimension. In the particular dimension, the view is that the enforcement of human rights is returned to each country. This dimension is in line with the wishes of Islamic law as long as it is in accordance with the proportion of harm and benefits. Human rights values, especially in Indonesia, are born from the noble values of a nation so that people may have different views regarding the need for death penalty. Decisions regarding capital punishment are returned to each country. In this case, western countries as the originators of the idea of abolishing capital punishment do not impose their will to abolish capital punishment absolutely, including Indonesia. The recommendations from this study are that the Indonesian government is expected to respect and apply the highest standards of implementation of human rights in every national policy and to comply with existing laws and legal standards with international law.

---

## **DEATH PENALTY IN THE PERSPECTIVE OF ISLAMIC LAW AND LAW NO. 39 OF 1999 CONCERNING HUMAN RIGHTS MAN**

### **INTRODUCTION**

The concept of the rule of law adopted by the 1945 Constitution of the Republic of Indonesia is active and dynamic . The model of the rule of law such as This make as active party oriented in embodiment people's welfare according to with principle welfare state . [1] Lately This execution dead against convict dead case drugs always inviting pros and cons . At the time many countries in the world have to abolish punishment dead with reason human rights protection : Right to life , Indonesia still enforce punishment dead for act criminal criminal certain , including case murder planning , terrorism , and narcotics , with reason give effect deterrent . Cruelty from the international world coming , especially from the country of which the citizen his country become convict dead case drugs . In the context of an NGO that is concerned with issues human rights enforcement provides view from aspect criminology , that criminal dead precisely No give effect deterrent to perpetrator crime , because action the can in the background behind , not only from

factor individual distributors , but also structural factors , for example instability economy public consequence condition political in country . So, because That criminal dead replaced with prison lifelong live . Therefore That is , the structural factors that become reason action crime should be focus repairs , for example factor economy , tightening security to crime ( transnational and immigration ) . Likewise with another issue that should be moreover formerly get attention like the quality of the judiciary , both courts , prosecutors and police in order to avoid error giving sanctions criminal law dead , as choice sanctions final For give effect deterrent effect and as a means guard peace normatively it is still illegal in law positive ( ius constitutum ) in Indonesia. The existence of criminal dead become debate at the time many other countries in the world have to pull out criminal dead from law positive with reason No humane and contradictory with human rights aspects , one of which is right For live ( contrary) with DUHAM) and legal instruments international other such as ICCPR Article 6 paragraph (1) as has ratified into the law Indonesian national through Law No. 12 of 2005, while Indonesia together with 63 other countries Still enforce criminal dead for suspect act criminal certain , especially crime that comes in in category crime outside ordinary (extra ordinary crime). The facts it also shows although punishment criminal this is implemented , but crime to man with remove life Still Keep going occurs in Indonesia, the majority of which its people muslim . [2] Based on the above problems , Islam offers draft important about crime life human , with to mention that act criminal murder (Al- Qatl ) is called with Al- Jinayah ala Al- Insaniyyah ( crime to soul human ) , term This The same with understanding murder in law positive . [3]Indonesia until moment This in law positive Still enforce sanctions criminal dead in system law criminal . Justification to criminal dead in law positive Indonesia, in general juridical-normative can referred to the provisions Article 10 of the Civil Code law criminal (KUHP) which states that punishment criminal dead as type criminal The principles that apply in Indonesia are listed in the Criminal Code and regulation others . Among them listed in the crime treason Article 104 of the Criminal Code, murder plans listed in Article 340 of the Criminal Code and in regulations that are Lex Specialis in nature , namely offense distribution drugs that provide sanctions criminal dead , thing This listed in Article 113 paragraph (2) and 114 paragraph (2) of the Law Number 25 of 2009 concerning narcotics and punishment criminal dead for perpetrator act criminal terrorism (Law No. 15 of 2003). All of them That according to perspective punishment Indonesian criminal law enters in category crime outside usual . [4] Facts it also shows although This criminal law is applied , but crime to man with remove life Still Keep going happened in Indonesia which is a major its people muslim . Based on the above problems , Islam offers draft important about crime life human , with to mention that act criminal murder (Al- Qatl ) is called with Al- Jinayah ala Al- Insaniyyah ( crime to soul human ) , term This The same with understanding murder in law positive . [5]Human rights man No only adopted by the system western law , will but upheld tall in Islamic law . Existence Islamic law in set law aiming For realize welfare general , giving benefits and avoidance evil to people human . welfare the summarized in the term al- masali al- khashmah namely five main points welfare in life human beings that include the choice of religion, soul , mind , wealth objects , descendants or honor . Islamic law is truly build draft base a cultured society with give guarantee protection right basic man in all aspect his life , maintaining soul , honor , honesty , and upholding justice is something that is ordered . So it is prescribed the law of jihad as effort For look after religious interests , such as law Qisas directed For guard and guarantee soul human , is effort For reject misery of the soul human . in history civilization man type crime or what is commonly known with criminal acts of a criminal nature violence to soul man first appeared is action murder . [6]

## **METHOD**

Study This is study law juridical-normative , namely directed research For to study aspect law with do assessment in a way prescriptive about provision regulation legislation and basis related theories with criminal death , Islamic law and rights basic human . [7] A number of expert say that there are two approaches in study doctrinal which includes approach legislation (statute approach) and approach conceptual (conceptual approach). The approach research used in study This is library research , namely business data collection with to examine ingredients library in the form of books , legislation and sources written otherwise that has connection direct with research . Types

of data used writer in study This is the data obtained from material literature or literature that has connection with object research . In the literature law , then source the data called material law . Legal materials is all something that can used or required For objective analyze applicable law . Collection technique material law that is carried out in study This with study library (library research), with study and examine to study a number of legislation , books , decisions , documents , journals the law that is considered relevant with research . [7]

## **DISCUSSION**

### **Existence Death Penalty in the Perspective of Islamic Law and Law No. 39 of 1999 Concerning Human Rights Man**

#### Rights Humans in Action Death Penalty

Protection right basic man is part important from enforcement law including in implementation punishment dead . Certainty enforcement law as has explained on become one of the parameters for its implementation protection No only for victims and society but also for perpetrator . Legal efforts taken in ensure implemented execution dead own deep philosophy including inside it to achievement justice . The right to get justice has become part important from protection right basic human beings . In the Law Number 39 of 1999 concerning Human Rights Humans , who are given title “ Human Rights Human Beings and Fundamental Human Freedoms ”, it was emphasized existence confession against “ rights” to obtain justice ” which consists of on three articles , namely Articles 17 to with Article 19. Article 17 of the Law Number 39 of 1999. [8]In addition , protection right basic man in implementation punishment death can also seen in another perspective is perspective Islamic religious teachings . Islam is a religion revealed by Allah SWT. During society in condition jahiliyah , which is not value dignity and honor human . At that time public Still confess existence slavery , where humans traded . At that time also not There is respect to dignity and honor women and children . [9]

#### 1. Rights of Convicts in Implementation Death penalty

Giving a number of rights certain to suspect in the process of completion case criminal is one of innovation in the Criminal Code as provision criminal procedure law . Innovation the can sourced to Constitution Number 14 of 1970 ( at that time ) this is what happened is Constitution Number 48 of 2009), namely about terms and conditions Main Point Power Justice , which is like known , not just contain restoration to power free judiciary , but also pregnant framework general or general framework of environment existing justice with The Supreme Court as Supreme State court and principles regarding Criminal Procedure Law . [10]The right to get help law for suspect / defendant it also gets the settings are inside Constitution Number 19 of 1964 concerning Terms and Conditions Main Point Power Justice , which then removed and replaced with Constitution Number 14 of 1970 (Articles 35, 36 and 37) and thereafter set up in Article 69-74 of the Criminal Procedure Code concerning Legal Aid it is said in Article 69 , among other things, it states that , " Advisors law entitled contact suspect since moment arrested or detained on all level inspection according to the prescribed procedure in law ." [11]

#### 2. Implementation Death Penalty in Human Rights Perspective Man

One of developments that become issue international is implementation right basic humans , and generally related close with the world justice process , or also abuse power from a regime government that does not Again obedient or limited by law . The judicial process crimes in various parts of the world often become spotlight , both by developed countries and developing countries or a country that adheres to principles modern law , namely the law that always follow development society and appreciate as well as uphold tall dignity and honor humanity . [12]

### 3. Objectives of Law and Human Rights Man in Implementation Death Penalty

Laws and rights basic man are two instruments important in its existence and application must always confirmed appropriate and in line with legislation . There is recognition to existence law and rights basic man bring consequences of the need for attempted protection to rights the from possibility emergence actions that can be harm man That yourself . In case implementation law , the doctrine of Indonesia as a state of law ( rechtsstaat ) has consequences that place the rule of law, respect right basic man as one of the characteristics typical of the country as One size quality law a government . Even there is inclination , for the sake of respect will protection right basic man said , then the state is tasked with only guard order society . With framework respect to right basic man said , then implementation punishment dead must refers to existence law Good in the form of certainty , justice and also the benefits intended No only for convict but also for victims and society . [13]

### 4. Existence Death Penalty in Islamic Law

In Islamic law the existence punishment dead is must especially in action crime murder . Punishment dead in Islam it is aimed at crime murder and crime Serious others who threaten people man with alternative in the form of forgiveness and diyat with involving the victim's family and implemented in front of general . Punishment dead in Islam no violate right basic man especially right life because in qishash , punishment dead is guarantee right live and only for those who violate obligation basic . [2]

## **Implementation Death Penalty According to Islamic Law With Human Rights Act Man**

### 1. Death Penalty and Human Rights Humans in Islam

Giving criminal dead to somebody is violation right basic man Because in Constitution everyone has the right For maintain live and improve level his life , including those who are convicted dead . [14]

Islam views right basic man in theocentric ( contains aspect divinity and his life man intended For serve to Him). In other words, human rights within Islamic views are categorized as self - based activities man as the caliph of Allah in advance earth . While in the West, human rights are more dotted reject to anthropocentric Where see it with align with existence man so that developing character more near award to individual solely .

### 2. Implementation Sanctions Qishash or Death Penalty

Implementation criminal dead in the background behind with the occurrence reason emergency planning , emergency protection children and emergency to the number of victims so that give birth to response For give weighting punishment for the sake of stability national . There is some of the most popular motifs in reason use punishment died in Indonesia, namely punishment dead own level greater effectiveness high , have frightening effects (shock therapy), and is also considered more economical as well as used so as not to There is vigilante action ( eigenrichting ) in society . [15]In practice a judge or prosecutor general in do demands considered too light especially to perpetrators act disturbing crime society . In terms of This without reduce freedom of judges in to drop appropriate punishment with crime or action crimes committed defendant Good prosecutor general and judges are expected demand and bring down appropriate punishment , so have impact beside have aspirations and justice society is also Power deterrent for member society that has potential For become perpetrator act criminal (general deterrent effect).

## **Conclusion**

Based on discussion by the author expose above , then can withdrawn conclusion that Existence criminal dead in perspective Islamic law and Law No. 39 of 1999 concerning right basic man is existence criminal dead in perspective Islamic law is must especially in action crime murder in Islam This known as Qisas . According to Islam, qisas dropped If the perpetrator crime No to obtain utilization from the victim's family . However If perpetrator forgiven and willing pay diyat , then punishment dead No implemented and replaced with law money or ta'zir by the judge. While in perspective right basic human , sanctions criminal dead No contradictory with instrument law national and also international , such as 1945 Constitution Number 39 of 1999 concerning Human Rights Human . Inside instrument the stated that right For life guaranteed However there is restrictions imposed by law . Implementation criminal dead based on Islamic law in relation with Constitution right basic man is Implementation criminal dead in Indonesia relevant with view Islamic law . Such as Islamic law in principle of al- maslahat , in Indonesia the verdict criminal dead shown in crime murder planning , terrorism , narcotics and crime criminal corruption . Criminal death in Indonesia is considered No violate right basic man because appetite with principle relativism adopted by some countries such as the Universal Declaration of Human Rights (UDHR ) Man ).

## References

- [1] H. Siallagan, "Penerapan Prinsip Negara Hukum Di Indonesia," *Sosiohumaniora*, vol. 18, no. 2, pp. 131-137, 2016, doi: 10.24198/sosiohumaniora.v18i2.9947.
- [2] P. Burlian, *Implementasi Konsep Hukuman Qishas di Indonesia*. 2015.
- [3] E. Gunawan, "Eksistensi Kompilasi Hukum Islam Di Indonesia," *J. Ilm. Al-Syir'ah*, vol. 8, no. 1, pp. 1-15, 2016, doi: 10.30984/as.v8i1.39.
- [4] M. R. QALANDY, "PENERAPAN ASAS LEX SPECIALIS DEROGAT LEGI GENERALI TERHADAP ANAK YANG MELAKUKAN TINDAK PIDANA PEMBUNUHAN BERENCANA," *Sustain.*, vol. 11, no. 1, pp. 1-14, 2019.
- [5] T. K. Sandra, "sanksi pemenjaraan terhadap pelaku tindak pidana pembunuhan berencana," vol. 105, no. 3, pp. 129-133, 1945.
- [6] M. S. Ummah, *Fiqih & Jinayah*, vol. 11, no. 1. 2019.
- [7] N. Qamar et al., "Metode Penelitian Hukum (Legal Research Methods)," no. December, p. 176, 2017.
- [8] H. Eko, "Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia," *Asas J. Huk. dan Ekon. Islam*, vol. 8, no. 2, pp. 80-87, 2016.
- [9] H. J. Rahman, "Tinjauan Yuridis tentang Larangan Perbudakan Menurut Instrumen hukum HAM Internasional Dan Hukum Nasional," *Lex Soc.*, vol. 7, no. 3, pp. 110-118, 2019.
- [10] B. Badaru, "Kepentingan Umum Dalam Asas Oportunitas Pada Sistem Peradilan Pidana," *AL-MANHAJ J. Huk. dan Pranata Sos. Islam*, vol. 5, no. 2, pp. 1737-1754, 2023, doi: 10.37680/almanhaj.v5i2.3715.
- [11] D. M. Putri, "Hukuman Pidana Mati dalam KUHP Baru dan Perspektif Abolisionalis serta Retensionis," *Eksekusi*, vol. 2, no. 4, 2024.
- [12] C. L. Marlina, "Analisis Yuridis Penerapan Sanksi Pidana Mati Dalam Sistem Hukum Pidana Di Indonesia," 2024.
- [13] M. Dewi, N. Aeni, and T. Bawono, "Penjatuhan Pidana Mati Dalam Persepektif Hak Asasi Manusia The Death Penalty in the Perspective of Human Rights," pp. 448-462, 2020.
- [14] R. Sinulingga and R. Sugiharto, "Studi Komparasi Sanksi Pidana Pembunuhan dalam Kitab Undang-Undang Hukum Pidana (KUHP) dengan Hukum Islam dalam Rangka Pembaharuan Hukum Pidana," *Sultan Agung Fundam. Res. J.*, vol. 1, no. 1, pp. 31-41, 2020.
- [15] A. F. Fahmi, M. P. Perdana, I. Kamaluddin, and M. Nurhadi, "Aspek Kemanusiaan Dalam Hukuman Qiṣāṣ," *Ijtihad J. Huk. dan Ekon. Islam*, vol. 15, no. 1, pp. 91-114, 2021, doi: 10.21111/ijtihad.v15i1.5109.